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Regulatory Affairs Group
Office of the General Counsel
Pension Benefit Guaranty Corporation
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RE: Comments on Proposed Rule to Amend PBGC's Regulation on Mergers and Transfers Between Multiemployer Plans

To Whom It May Concern:

The Multiemployer Pension Plans Subcommittee of the American Academy of Actuaries[1] respectfully submits the following comments regarding the proposed rule to amend the regulation on mergers and transfers between multiemployer plans. The proposed rule would implement the facilitated mergers provisions of the Multiemployer Pension Reform Act of 2014 (MPRA). It would also change the provisions of the existing regulations governing all multiemployer mergers and transfers, including those not facilitated by PBGC.

Introduction

Since the original issuance of regulations on mergers and transfers involving multiemployer pension plans, the multiemployer system has changed dramatically. In particular, the concept of plan "solvency" has significantly different implications now than it did in the past. Prior to the 2008 financial crisis and subsequent recession, few plans faced immediate or projected insolvency. Now, a significant minority of them—mostly, plans certified to be in "critical and declining" status—have serious solvency issues that must be addressed.

When very few multiemployer plans faced the possibility of near-term insolvency, it may have made sense to prohibit mergers and transfers unless each plan existing after the transaction was projected to satisfy stringent tests based on minimum asset, cash flow, and funding threshold requirements. Times are quite different now. The focus today should instead be on promoting mergers and transfers between multiemployer plans that postpone projected insolvencies, increase benefit security for plan participants and beneficiaries, and reduce expected long-term losses for PBGC's multiemployer program. This focus

[1] The American Academy of Actuaries is an 18,500+ member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

requires safe harbor tests that accommodate transactions that forestall insolvency or reduce the risk of plan insolvency.

MPRA acknowledges this new reality in granting PBGC authority to facilitate mergers between multiemployer plans. Specifically, under section 4231(e)(2) of ERISA, PBGC may provide financial assistance to facilitate a merger that it determines is "necessary to enable one or more of the plans involved to avoid or postpone insolvency." The fact that the statute permits PBGC to provide financial assistance that would enable a plan to *postpone* insolvency—not just avoid it—is an important concept that should be applied throughout the regulations on mergers and transfers. Similarly, section 4231(e)(2)(B)(ii) states that the financial assistance must be "necessary for the merged plan to become or remain solvent." This concept of enabling a plan to become or remain solvent should also be applied to all transfers and mergers, including transactions not facilitated by PBGC.

PBGC's proposed rule, however, would make the solvency requirements for mergers and transfers involving multiemployer plans even stricter than they are under current regulations. The tighter requirements may be intended to protect plan participants and beneficiaries (as well as PBGC) from losses resulting from accelerated plan insolvency triggered by inappropriate mergers and transfers. This objective, however, could be better achieved by promoting mergers and transfers that would *postpone* insolvency in situations where insolvency is unavoidable. Transactions should be evaluated not against the ideal outcome of no participant benefit losses, but against the current realities facing plans.

For example, the regulations should permit a transfer of unfunded accrued benefits from a plan facing insolvency into a well-funded plan, provided that the transfer would postpone insolvency for the first plan and would not adversely affect the participants in the second plan. The regulations should also permit a merger between two or more plans that are currently or projected to be insolvent, to the extent that efficiencies gained from the merger would postpone insolvency for the plans involved. Under either of these transactions, PBGC's expected long-term losses with respect to the plans involved would be reduced and participant benefit security would be improved. The proposed rule effectively prohibits transactions like these, even though they are in the best interests of plan participants.

The following comments discuss the solvency requirements for mergers and transfers between multiemployer plans (Topic A), clarification that may be needed regarding mergers facilitated by PBGC (Topic B), and clarification that may be needed regarding mergers following a suspension of benefits under MPRA (Topic C).

Topic A. Solvency Requirements for Mergers and Transfers

As described below, we believe PBGC should consider revising the solvency requirements for mergers and transfers involving multiemployer plans. Depending on the circumstances, mergers and transfers involving multiemployer plans with solvency issues could have significant positive impacts on participants and beneficiaries, as well as reduce PBGC's expected long-term losses with respect to the plans involved. The solvency requirements in the proposed rule, however, would effectively prohibit mergers and transfers involving plans that are approaching insolvency.

The current regulations and the proposed rule both require solvency for any plan that exists after a merger or transfer. Instead, the regulations should permit mergers and transfers to the extent that they demonstrate that any insolvency for the plans involved is *postponed*, or the risk of insolvency is reduced, as a result of the transaction.

Background

Section 4231(b) of ERISA sets forth the requirements for mergers and transfers involving multiemployer plans. These comments focus on paragraph (3) of this section, which states that a merger or transfer is not permitted unless the benefits of participants and beneficiaries are not reasonably expected to be subject to suspension due to plan insolvency, as defined in section 4245.

As prescribed under section 4231.3(a)(3) of the existing regulations, each plan that exists after the merger or transfer must either (i) pass the required solvency tests under section 4231.6 or (ii) otherwise demonstrate that benefits are not reasonably expected to be subject to suspension due to plan insolvency, as defined under section 4245 of ERISA.

The tests under section 4231.6 of the regulations have become a "safe harbor" demonstration of solvency for plans seeking a merger or transfer. The regulations establish separate solvency tests for plans that are not "significantly affected" versus those that are:

- Section 4231.6(a) sets forth the general solvency tests for plans that are not significantly affected. Under current regulations, most plans can pass these general tests, including many plans that are projected to be insolvent several years in the future.

- Section 4231.6(b) sets forth the solvency tests for significantly affected plans. Given current multiemployer pension plan dynamics, these tests are very difficult for most plans to pass, including many plans that are not projected to be insolvent at any point in the future. As a result, a significantly affected plan would likely have to "otherwise demonstrate" that it is projected to remain solvent, as permitted under section 4231.3(a)(3)(ii) of the regulations. It would be helpful for PBGC to describe how plans have made or could make such a demonstration.

In its proposed rule, PBGC discusses the need for more rigorous solvency tests, to require plans to better demonstrate that they will reasonably avoid insolvency. For example, the proposed rule would change certain solvency tests under section 4231.6 that were based on a five-year period to be based on a 10-year period. PBGC also discusses its view that endangered and critical status plans generally present a greater risk of insolvency, and that non-de minimis transfers involving these plans may increase their risk of insolvency. The proposed rule therefore would expand the definition of "significantly affected" plan to broadly include any plan in endangered or critical status engaging in a non-de minimis transfer.

We agree with PBGC's assessment of the risks associated with endangered and critical status plans. Regulatory changes that would encourage mergers and transfers that serve to reduce the risk of insolvency would address these risks directly and effectively. However, the proposed rule appears to make the rules regarding mergers and transfers more restrictive, without regard to whether the transaction would decrease the risk of insolvency.

Specifically, we see two adverse consequences arising from the proposed rule:

1. The proposed rule would effectively prohibit any merger or transfer involving a multiemployer plan that is approaching insolvency. As described in the examples below, a merger or transfer

involving plans approaching insolvency could have significantly positive effects on participants and beneficiaries, as well as PBGC's multiemployer program. We encourage PBGC to amend the regulations to encourage mergers and transfers that protect participant benefits and reduce the expected long-term losses to PBGC by *postponing* projected insolvency.

2. A lesser (but still important) consequence is that the proposed rule would effectively force any plan in endangered status or critical status seeking a transfer to "otherwise demonstrate" that it is projected to remain solvent. The solvency tests under section 4231.6—specifically those for "significantly affected" plans—are out of date in that they do not reflect the current dynamics of multiemployer plans. If these tests are intended to be the primary means to demonstrate solvency, we encourage PBGC to update them to be more applicable to the current state of multiemployer plans by focusing on postponing insolvency or reducing the risk of insolvency.

Example: Transfer of Unfunded Accrued Benefits

Consider the following example of a possible transfer between two hypothetical multiemployer plans. The transfer would postpone insolvency for the first plan, it would not adversely affect the second plan, and it would reduce the expected long-term losses to PBGC. Such a transfer would be permitted under current regulations, but it would be prohibited under the proposed rule.

- The first plan is in critical and declining status. Its funded percentage is currently 50 percent and projected to decline rapidly. Insolvency is projected within 15 years. The current unfunded actuarial accrued liability is approximately $300 million.

- The second plan is larger, and it is in neither critical status nor endangered status; i.e., it is in the "green zone." Its funded percentage is 95 percent, and its unfunded liability is $200 million.

- The plans wish to engage in a transfer from the first plan to the second plan. The transferred benefits relate to service earned with certain employers who participate in both plans. Under the proposed transfer, the second plan would receive unfunded accrued benefits of $100 million.

- The affected employers enter into an agreement with the second plan to make special contributions to fully fund the unfunded accrued benefits transferred from the first plan. As a result, the participants and beneficiaries in the second plan prior to the transfer would not be disadvantaged by the transfer.

- The participants and beneficiaries in the first plan prior to the transfer would benefit significantly from the transfer. The funded percentage of the first plan would increase from 50 percent to 57 percent as a result of the transfer. The transfer would not enable the first plan to avoid insolvency indefinitely, but it would postpone insolvency by several years. Perhaps most importantly, the risk of benefit losses associated with the liabilities transferred to the second plan would be effectively eliminated. PBGC's overall expected long-term loss with respect to the plans involved would also be significantly reduced.

Under current regulations, the transfer described above would be permitted. Specifically, because the first plan is not transferring assets that are 15 percent or more of its assets prior to the transfer, it would not be significantly affected, and it would be able to pass the general solvency tests under section 4231.6(a). The second plan would also not be significantly affected, and it would be able to pass the general solvency tests under section 4231.6(a). Therefore, both plans would meet the applicable solvency requirement.

Under the proposed rule, however, the transfer would not be permitted. The first plan would be "significantly affected" because it is a critical status plan engaging in a non-de minimis transfer. The first plan would not be able to pass the stricter solvency rules under section 4231.6(b) for significantly affected plans. Furthermore, without clarification from PBGC, the first plan would likely not be able to "otherwise demonstrate" that it is not reasonably expected to avoid insolvency under section 4245 of ERISA. Because the first plan would not be able to meet the applicable solvency requirement, the transfer would not be permitted.

Example: Merger to Gain Efficiencies

- Consider the following example of a possible merger between two hypothetical small multiemployer plans. Due to economies of scale, the merger would result in efficiency gains and would therefore postpone projected insolvency for the plans involved. Both plans are in critical and declining status, and they are both projected to become insolvent around the same time, in approximately seven or eight years. Both plans have exhausted all other reasonable measures to forestall possible insolvency, including suspensions of benefits under MPRA.

- The plans have determined that a merger between the two of them—without financial assistance from PBGC—would produce efficiency gains. Specifically, the plans expect the merger to result in material reductions in administrative expenses and investment manager fees.

- Following the merger, the merged plan would still be projected to become insolvent. However, due to the reductions in administrative and investment expenses, overall solvency would be postponed by a year or more. The merger would therefore have a positive effect on all of the participants and beneficiaries covered under the plans. By postponing insolvency, it would also reduce the expected long-term losses to PBGC with respect to the plans involved.

Under current regulations, the merger described above would likely be permitted, because the merged plan would pass the general five-year solvency tests under section 4231.6(a). Under the proposed rule, however, the merger would be prohibited. The merged plan would certainly fail the stricter solvency tests under section 4231.6(a), which would involve a 10-year period rather than a five-year period. Furthermore, absent guidance from PBGC, neither plan would be able to "otherwise demonstrate" that it is not reasonably expected to avoid insolvency under section 4245 of ERISA.

Solvency Tests for Significantly Affected Plans

As noted above, the proposed rule makes the solvency tests under section 4231.6 more rigorous than under current regulations. While it may be difficult for some plans with solvency issues to pass the general tests under paragraph (a) of that section, it would be difficult for *most* multiemployer plans to pass the tests for "significantly affected" plans under paragraph (b).

Specifically, with respect to each test in section 4231.6(b):

- Paragraph (1): It would be virtually impossible for a plan in critical status to demonstrate that it is projected to meet minimum funding requirements for the next 10 plan years. The determination may also be difficult for a plan in endangered status.

- Paragraph (2): A plan in endangered or critical (but not declining) status may be able to demonstrate that the fair market value of assets immediately after the transfer equals or exceeds the sum of the expected benefit payments for the next 10 plan years after the transfer. However, this test may be difficult for a plan in critical and declining status to pass.

- Paragraph (3): Only about 25 percent of multiemployer plans (regardless of certification status) would be able to demonstrate that expected contributions equal or exceed expected benefit payments for the next plan year. As plans continue to mature in the coming years, a decreasing percentage of them will be able to pass this test.

- Paragraph (4): It may be difficult for a plan in critical status to demonstrate that expected contributions for the next 15 years equal or exceed normal costs and an amortization of the unfunded liability over that period. This test would be virtually impossible for a plan in critical and declining status to pass.

In effect, the proposed rule would force any "significantly affected" plan—including any plan in endangered status or critical status seeking a non-de minimis transfer—to "otherwise demonstrate" that it is projected to remain solvent under section 4245. As previously mentioned, we believe that the safe harbor solvency tests should be updated to reflect the current dynamics of multiemployer plans and the MPRA goals of plans postponing or avoiding insolvency.

Suggested Revisions

Section 4231(a) of ERISA grants authority to PBGC to issue regulations that would permit a merger or transfer between multiemployer plans that do not otherwise meet the requirements of section 4231(b). In other words, PBGC has authority to issue regulations that would permit a merger or transfer, even if not all plans resulting after the transaction are projected to avoid insolvency, as required under section 4231(b)(3).

The multiemployer plan landscape has changed drastically over the past several years. It is quite possible for a merger or transfer involving plans facing insolvency to have significant positive effects on participants and beneficiaries, as well as reduce the expected long-term loss to PBGC, even if not all plans resulting after the transaction are projected to avoid insolvency. We believe that PBGC should consider using its authority to issue regulations that encourage such mergers and transfers, in accordance with the goals stated in MPRA.

With these points in mind, we respectfully submit the following suggestions for consideration:

1. A third test should be added to section 4231.3(a)(3) allowing plans to demonstrate that the transaction would *postpone* insolvency or reduce the risk of future insolvency. Specifically, a plan that does not (i) pass the solvency tests in section 4231.6 or (ii) otherwise demonstrate that it is reasonably expected to avoid insolvency could instead (iii) demonstrate that the proposed transaction would protect participant benefits by postponing insolvency or reducing the risk of insolvency. The new test could also require a demonstration that the transfer does not have a

materially adverse effect on the participants and beneficiaries covered under any of the plans involved.

2. The solvency tests for significantly affected plans under section 4231.6(b) should be updated to reflect the current dynamics of multiemployer plans. The test in paragraph (3) requiring positive cash flow is impractical for most multiemployer plans, even those without solvency issues, and should be removed as counterproductive.

3. To the extent plans in certain situations may be expected to "otherwise demonstrate" that they are reasonably expected to avoid insolvency, PBGC should consider issuing guidance on how to make such a demonstration. Such guidance should not preempt a plan's ability to demonstrate that the proposed transaction would postpone insolvency or reduce the risk of insolvency, as described in item 1 above.

Topic B. Actuarial Certification for a Financial Assistance Merger

Section 4231(e)(2) of ERISA grants PBGC the authority to provide financial assistance to facilitate a merger that it determines is "necessary to enable one or more of the plans involved to avoid or postpone insolvency." As described below, PBGC should consider further clarifying the rules regarding the actuarial certification for a merger of one or more multiemployer plans facilitated by financial assistance from PBGC. Without additional clarification, the proposed rule could discourage an application for financial assistance to facilitate a merger of a small plan in critical and declining status into a large, well-funded plan.

Background

Section 4231(e)(2) of ERISA provides PBGC the power to deliver financial assistance to facilitate a merger between multiemployer plans that it deems necessary to enable one or more of the plans involved to avoid or postpone insolvency. Paragraph (B)(ii) of that section requires that, when facilitating a merger, PBGC must reasonably expect that the financial assistance is necessary for the merged plan to become or remain solvent.

In its discussion of the proposed rule, PBGC states that it does not interpret this section to preclude a small plan in critical and declining status from receiving financial assistance to merge into a large, well-funded multiemployer plan. PBGC further describes how it may provide financial assistance to facilitate a merger it determines is necessary to enable *one or more* (but not necessarily all) of the plans to avoid or postpone insolvency.

Under the proposed rule, section 4231.15(f) would require a statement from an enrolled actuary that financial assistance is necessary for the merged plan to become or remain solvent. The requirements differ depending on whether or not the merged plan would be in critical status immediately after the merger, disregarding any financial assistance from PBGC. Specifically:

- Paragraph (1): If the merged plan would be in critical status without financial assistance, the actuarial statement must demonstrate that the merged plan will avoid insolvency with the proposed financial assistance. In other words, the statement must indicate that the financial assistance is both necessary and sufficient to enable the merged plan to avoid insolvency under section 305(e)(9)(D)(iv) of ERISA and the regulations thereunder (excluding stochastic projections).

- Paragraph (2): If the merged plan would not be in critical status without financial assistance, the actuarial statement must demonstrate that the merged plan will avoid insolvency for the next 20 years with the proposed financial assistance. If such a demonstration could be made without the financial assistance, the statement must demonstrate that "the financial assistance is necessary to mitigate the adverse effects of the merger on the *merged* plan's ability to *remain solvent* [emphasis added]."

PBGC Requests for Comments

In its discussion of the proposed rule, PBGC requests comments on two issues related to the topic of financial assistance to facilitate mergers. The first issue relates to the methods to determine whether the merged plan would be in critical status. The second issue relates to alternative approaches or methods to demonstrate plan solvency.

Issue 1: Determination of Critical Status for Merged Plan

With respect to the first issue, we believe the proposed rule is appropriate as it is written. Specifically, we agree that it is appropriate for the enrolled actuary to use "reasonable" estimates and methods to determine whether the merged plan would be in critical status following the merger and without the proposed financial assistance.

We also agree with PBGC's comments that an optional approach may also be appropriate. Specifically, the final regulations could provide that the determination may be made on the basis of the combined projections used in each plan's status certification for the plan year immediately preceding the merger.

If PBGC includes such guidance in the final regulations, however, it should take care to allow the enrolled actuary to make reasonable adjustments to the data and projections from the most recent status certifications. For example, it may be reasonable for the actuary to adjust the results to reflect recent plan experience. It may also be reasonable for the actuary to adjust the results to reflect an anticipated change in actuarial assumptions appropriate for the merged plan.

In any further guidance on this issue, PBGC should allow for professional judgment and reasonable adjustments by the enrolled actuary.

Issue 2: Demonstration of Plan Solvency

With respect to the second issue, we believe additional guidance is needed on paragraph (2) of section 4231.15(f), regarding how a plan that would *not* be in critical status following a merger should demonstrate that the absence of financial assistance would adversely affect the merged plan's ability to remain solvent.

The need for additional guidance assumes the term "merged plan" means a plan that is the result of the merger of two or more multiemployer plans, consistent with the definition under section 4211.2 of the regulations. It also assumes "remain solvent" follows the definition of insolvency under section 4245 of ERISA.

The remaining discussion on this topic includes an example of a financial assistance merger and possible clarifications to be included in the final regulations.

Example: Financial Assistance Merger

Consider a possible financial assistance merger between two hypothetical multiemployer plans.

- The first plan is relatively small and in critical and declining status. Its funded percentage is currently 50 percent and projected to decline rapidly. Insolvency is projected within 15 years. Due to its modest benefit levels, participant benefits are nearly fully guaranteed by PBGC, and the maximum suspension of benefits permitted under MPRA would not enable the plan to avoid insolvency. The current unfunded actuarial accrued liability is approximately $20 million.

- The second plan is larger, and it is in neither critical nor endangered status; i.e., it is in the "green zone." Its funded percentage is 85 percent, and its unfunded liability is $100 million. The first plan proposes a merger with the second plan to be facilitated with financial assistance from PBGC.

- With financial assistance from PBGC amounting to $14 million, the funded percentage for the first plan would be similar to the funded percentage for the second plan. In other words, the funded percentage for the merged plan would be about 85 percent. The sponsor of the second plan would be able to demonstrate that its participants are not adversely affected by the financially assisted merger, in that current and projected funding levels would not be diminished.

- Without financial assistance from PBGC, the funded percentage of the merged plan would be 83 percent. While current and projected funding levels for the merged plan would be somewhat lower than for the second plan on its own, the merged plan would be projected to remain solvent in all future years. While the absence of financial assistance would not adversely impact the merged plan's ability to remain solvent, the sponsor of the second plan would likely not agree to an unassisted merger, as it would result in reduced current and projected funding levels and increases the plan's risk of insolvency if there is adverse plan experience in the future.

- As noted above, if the merger does not occur, the first plan would be projected to become insolvent within 15 years. Upon insolvency, the first plan would impose a liability on PBGC of approximately $60 million, representing the value of guaranteed benefits measured based on PBGC's actuarial assumptions. For the sake of this illustration, assume the $14 million of financial assistance from PBGC to facilitate the merger is less than the amount that would be required for a partition.

It is conceivable PBGC would consider providing financial assistance to facilitate a merger like the one described above, as the merger would reduce PBGC's expected long-term losses with respect to the plans involved. However, given the lack of clarity in the proposed rule, the merged plan in this example may have difficulty demonstrating that the financial assistance mitigates or lessens the ability of the merged plan to remain solvent within the meaning of section 4245 of ERISA.

Possible Clarifications

Without a clarification to paragraph (2) of section 4231.15(f), plan sponsors may be discouraged from applying for financial assistance to facilitate a merger such as the one described above, due to the uncertainty regarding how to meet the certification requirement and the expense associated with such an application. To address this issue, the final rule should clarify the meaning of “remain solvent” under paragraph (2) of this section. Two changes could provide the necessary clarification:

1. The “remain solvent” requirement could consider current and future funding levels over a long-term period. For example, the actuarial certification could demonstrate that, absent financial assistance from PBGC, the merger would result in a measurable decrease in current and future funding levels for one or more of the plans involved.

2. Alternatively, if it is necessary to apply a literal “remain solvent” requirement, the final rule could provide guidance that the determination may be made on the basis of stress testing over a long-term period. For example, the merged plan could demonstrate that with financial assistance it would remain solvent in the face of future adverse experience that would cause insolvency in the absence of financial assistance. In other words, the financial assistance is needed to mitigate against possible insolvency, even if insolvency is not projected under the actuary’s best estimate assumptions.

Topic C. Annual Determinations for Continued Suspensions Following a Merger

We believe that PBGC should consider working with the Department of the Treasury (Treasury) to issue guidance regarding the annual determinations for continued suspensions of benefits, following a merger. Absent guidance, the statute may be interpreted to require the immediate restoration of suspended benefits following a merger, if the merged plan could not demonstrate that continued suspensions are required to avoid insolvency. Such an interpretation would effectively stop a plan in critical and declining status from using a suspension of benefits under MPRA to make itself a more attractive merger partner.

Background

In its discussion of the proposed rule, PBGC describes how, unlike with a partition, a suspension of benefits under section 305(e)(9)(G) of ERISA is not a prerequisite for a facilitated merger under section 4231(e). While a suspension of benefits is not required, PBGC recognizes that some plans may need to consider a suspension as part of a proposed financial assistance merger.

As an example, PBGC notes how a merger of a plan in critical and declining status into a large, well-funded multiemployer plan may involve a suspension of benefits for the plan in critical and declining status, effective on the date the merger occurs. PBGC then describes how the suspension of benefits would remain in effect only if the plan sponsor determines under section 305(e)(9)(C)(ii) that the plan is projected to become insolvent unless the suspension remains in effect, in spite of the plan sponsor having taken all other reasonable measures to avoid insolvency. PBGC notes that absent that determination, the suspended benefits must be restored.

Further clarification is needed on how to perform the annual determination under section 305(e)(9)(C)(ii) following a plan merger. In a merger involving a small plan in critical and declining status and a large, well-funded plan, the sponsor of the large plan may view a suspension of benefits for the small plan as a necessary condition for the merger (whether or not the merger is facilitated by PBGC). If the suspended benefits must be restored a few months later because the merged plan cannot make the necessary determination under section 305(e)(9)(C)(ii), it is unlikely the sponsor of the large plan would agree to the merger in the first place.

Suggested Clarification

A new rule could clarify that, following a merger of two or more multiemployer plans, the sponsor of the merged plan has the option of using separate accounting when making the annual determination under section 305(e)(9)(C)(ii). In other words, when making the required determination, the sponsor may project future solvency for the portions of the merged plan's benefits, assets, and contributions that are attributable to the plan for which benefits were suspended prior to or coincident with the merger. Absent such a clarification, it will be quite difficult for a plan in critical and declining status to use a suspension of benefits under MPRA to make itself a more attractive merger candidate to a financially strong plan.

We understand that Treasury has interpretive jurisdiction over the subject matter in section 305. We encourage PBGC to work with Treasury to develop a rule that clarifies the annual determination under section 305(e)(9)(C)(ii) following a merger.

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The Multiemployer Pension Plans Subcommittee appreciates the opportunity to provide input to PBGC on this proposed rule. We would be happy to discuss any of the issues raised in this letter at your convenience. Please contact Matthew Mulling, the Academy's pension policy analyst (202-223-8196 or mulling@actuary.org) if you have any questions or would like to discuss these issues further.

Sincerely,

Ted Goldman, MAAA, FSA, EA
Senior Pension Fellow
American Academy of Actuaries