Meeting of the American Academy of Actuaries Multiemployer Plans Committee and Representatives from the Department of the Treasury, PBGC, and Department of Labor

March 14, 2019

Notes from Third Meeting to Discuss MPRA Application Process and Other Matters Related to Multiemployer Pension Plans

On March 14, 2019, members of the Multiemployer Plans Committee of the American Academy of Actuaries (the Committee) met with officials of the U.S. Department of Treasury (Treasury), the Pension Benefit Guaranty Corporation (PBGC), and the Department of Labor (DOL). The first portion of this meeting pertained to applications by plans in critical and declining status to suspend benefits or partition liabilities as permitted under the Multiemployer Pension Reform Act of 2014 (MPRA). Discussion also covered the topics of withdrawal liability, mergers and transfers, and possible multiemployer pension reform legislation.

The following notes for this meeting are intended to supplement the notes from two prior meetings with the regulatory agencies, on February 22, 2017, and February 23, 2018, which can also be found on the Multiemployer Plans Committee page on the Academy website.[1] Discussion from those two meetings focused primarily on applications to suspend benefits or partition liabilities as permitted under MPRA. Actuaries, plan sponsors, and other professionals should refer to the notes from the prior meetings.

For convenience, these notes often refer to comments or questions made by "the Committee" or "members of the Committee." The opinions expressed by Committee members at the meeting, however, are those of individual meeting participants and do not necessarily represent the official statements or opinions of any board or committee of the American Academy of Actuaries, or any other actuarial organization, nor do they necessarily express the opinions of their employers.

Also for convenience, these notes often refer to comments made by "Treasury" or "PBGC." These notes, however, merely reflect the Committee's understanding of the current views of the representatives from the government agencies; they do not represent official statements or positions of the agencies, and they should not be relied upon by any person for any purpose.

1. MPRA Application Process

Treasury reported on activity with applications to suspend benefits or partition liabilities under MPRA. Since February 23, 2018, the date of last meeting between the Committee and the agencies, there have been two (2) approved suspensions with partition, five (5) approved suspensions without partition, two (2) withdrawn applications, and two (2) applications filed and currently under review.

[1] Multiemployer Plans Committee page: www.actuary.org/committees/dynamic/MULTIEMP.

Projections of Contributions

Treasury discussed factors the actuary should consider when selecting assumptions for projecting future contributions, including contribution base units and withdrawal liability payments, based on its observations from reviewing recent applications to suspend benefits. Treasury noted that issues with these assumptions are among the more common reasons recent applications have been withdrawn.

- The plan actuary should develop assumptions for future contribution base units and withdrawal liability payments based on input from the plan sponsor. At the same time, the plan actuary should independently assess the input provided by the plan sponsor and develop a solid basis that is reasonable. The plan actuary should justify those assumptions within the application submitted.

- Months into its review, Treasury will likely request the plan sponsor to provide information on contributions, employer withdrawals, and active participant experience that has occurred after the application was submitted. The intent of this request is to confirm that the latest trends support the assumptions included in the application.

- The plan actuary should explain and justify any discrepancies in employer or contribution data between the application and the latest Form 5500 filings. For example, the application should explain if any changes in contribution base units are due to new or temporary projects.

- Treasury may ask the plan sponsor to provide information regarding its policy for collecting withdrawal liability payments, as well as a list of employers that withdrew in the last five or 10 years and the payments collected from them. The data should support the assumption for withdrawal liability payments from future withdrawals.

- Treasury may request financial statements for participating employers that represent a significant percentage of total contributions to the plan. Both Treasury and PBGC have entered into non-disclosure agreements with employers when the requested information is not publicly available.

- Treasury may request historical data regarding contributions and contribution base units split by major employers or employer groups. Treasury may also request historical contribution base unit data split between continuing employers and withdrawn employers. The plan actuary should provide clear justification for any assumption that is not supported by recent trends.

- Treasury may request information regarding reciprocity agreements and how they are reflected in the assumptions for projecting future contributions. (One member of the Committee expressed concern over Treasury placing too much importance on reciprocity in projecting future contributions.)

- PBGC shared an anecdote about a plan with an overall trend of declining contribution base units. However, when focusing on the remaining employers (excluding those that

had previously withdrawn), contribution base units had increased in recent years. In this case, recent trends supported the assumption for level future contribution base units.

- PBGC also noted that a significant change in contribution rates required under the adopted rehabilitation plan may be considered in justifying a contribution base unit assumption that differs from recent experience. For example, if the rehabilitation plan previously required significant contribution rate increases but now requires lower (or no) future increases, that could help support an assumption that future contribution base units may differ from recent experience.

<u>Equitable Distribution</u>

Treasury discussed the equitable distribution standard under MPRA. First and foremost, Treasury strongly encourages plan sponsors to study the regulations on the topic, including the illustrative examples.[2]

A default approach to equitable distribution is to apply the same percentage reduction to all participants, subject to the limitations under MPRA. If a plan sponsor diverges from this simple approach, it must be prepared to provide supporting evidence that the proposed suspension is equitably distributed across all participant groups. Again, Treasury encourages a close review of the applicable regulations for guidance.

Treasury indicated that if a proposed suspension recalculates benefits based on a new, uniform formula without acknowledging how the new post-suspension formula compares to the pre-suspension formula, an application will likely not pass the regulatory equitable distribution standard. The plan sponsor should consider the various levels of accrual rates that historically applied and the differing impact of the reductions for different participant groups under the proposed suspension. In demonstrating that the proposed suspension is equitably distributed, the plan sponsor should provide as much detail as possible illustrating how different participant groups will be affected.

If needed, Treasury will provide guidance to the plan sponsor as to how to identify the participant groups for demonstrating that the proposed suspension is equitably distributed, including as part of a pre-application conference. (See the notes below on pre-application conferences.) Treasury provided the following example related to participant grouping for purposes of demonstrating equitable distribution.

> *Example*. Consider a plan that defines benefits as a percentage of contributions. Originally, the monthly accrual rate was 2% of annual contributions. Years ago, the monthly accrual rate was lowered to 1.5% of contributions for future service. The proposed suspension would recalculate all accrued benefits to be 1% of contributions.
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> The plan sponsor's demonstration that the proposed suspension is equitably distributed would need to include at least three participant groups: (i) those whose benefits are based entirely on the 2% accrual rate, (ii) those whose benefits are based entirely on the 1.5% accrual rate, and (iii) those whose benefits are based on both the

[2] Link to final regulations: https://www.govinfo.gov/content/pkg/FR-2016-04-28/pdf/2016-09888.pdf.

> 2% and the 1.5% accrual rates. The third group may need to be further stratified, depending on the specific circumstances.
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> In this example, the proposed suspension would result in greater benefit reductions for the participants in the first group than those in the second group. The plan sponsor should demonstrate why the different levels of reductions are equitably distributed. If requested, Treasury will provide input to the plan sponsor on how much, if any, the third group would need to be further stratified.

Responding to a question from the Committee, Treasury indicated that a proposed suspension that is specifically designed to eliminate benefit increases from the late 1990s may pass the equitable distribution standard. Treasury noted that they recently approved an application to suspend benefits that removed such benefit increases.

Investment Return Assumptions

Treasury reported that, following the publication of the notes from the February 23, 2018, meeting, it saw a significant "improvement" in the selected investment return assumptions in applications to suspend benefits. (See the notes from that meeting for more information.)

Concerns remain, however, with assumptions that do not adequately consider the possibility for future changes in target asset allocations and liquidation of alternative investments such as real estate, hedge funds, or private equity. In other words, when performing projections of plan assets, the plan actuary should consider the possibility that the plan sponsor will need to liquidate such investments, perhaps at a loss (liquidation penalty). More specifically:

- The plan actuary should consider what future events may trigger a change in the target asset allocation, and how the plan sponsor would change the asset allocation in those events. For example, the plan sponsor may change the target asset allocation if plan assets drop below a certain point.

- The plan actuary should also consider whether the plan's specific investments in asset classes such as real estate or private equity are easily liquidated. For example, the implications of liquidation might be different for a direct real estate investment (in other words, when the plan owns an actual physical property) versus a real estate fund.

- If the plan is required to perform stochastic projections as part of its application for a suspension of benefits, the plan actuary should consider the percentage of scenarios that result in liquidation.

- In evaluating whether to assume that the plan sponsor may change the target asset allocation, the plan actuary should seek input from the plan's investment consultant and the plan sponsor.

Treasury stated that plan actuaries should consider the applicable actuarial standards of practice, specifically No. 27 and No. 41, when selecting and documenting the investment return assumptions for an application to suspend benefits. The plan actuary may rely on the advice from outside experts (for example, the plan's investment consultant) in selecting the investment return assumptions, but the selected assumptions must still reflect the actuary's professional judgment.

More specifically, the final regulations for applications to suspend benefits under MPRA require that the selected actuarial assumptions be reasonable, both individually and in the aggregate. The final regulations also require the selected assumptions to be appropriate for the purpose of the measurement. Due to these requirements, the plan actuary cannot simply rely on assumptions developed by outside experts without also determining that those assumptions are both reasonable and appropriate for the purpose of the measurement.

Pre-Application Conferences

In November 2017, Treasury first indicated its willingness to engage with plan sponsors to discuss possible applications to suspend benefits before the application is formally submitted. The February 23, 2018, meeting was the Committee's first opportunity to discuss with Treasury how these pre-application conferences will be conducted.

At the March 14, 2019, meeting, Treasury provided further guidance on pre-application conferences. For completeness, the following points overlap with the notes from the February 23, 2018, meeting.

- Interested plan sponsors may request a pre-application conference by emailing MPRAinfo@treasury.gov. In the email, the plan sponsor should provide the list of attendees who will be representing the plan and the issues to be discussed. Treasury will seek to include representatives from the Department of Labor and PBGC on the call.

- Treasury is willing to engage in multiple pre-application conferences, if needed.

- Treasury may provide feedback on the selection of actuarial assumptions but will not approve any particular actuarial assumption or set of assumptions as reasonable. Treasury maintains that it must review the entire application to determine whether the selected actuarial assumptions are reasonable.

- Treasury will not make a determination as to whether the proposed suspension is equitably distributed. Treasury notes that this determination may be affected by the public comments submitted on the application. Treasury will, however, provide guidance on how the plan sponsor should identify different groups of participants for purposes of demonstrating that the proposed suspension is equitably distributed.

Pre-Application Best Practices

In addition to information on how pre-application conferences work, Treasury provided additional best practices for plan sponsors prior to submitting an application to suspend benefits.

- Treasury encourages plan sponsors to develop a timeline leading up to the effective date of the proposed suspension. In particular, the plan sponsor should consider the time it will take to administer the participant vote and to change the amounts on pension checks.

- Before sending participant notices, the plan sponsor should do a rigorous check of current mailing addresses. Using the last known address is generally not an acceptable practice. If needed, the plan sponsor should perform a lost participant search.

Application Review Process

Treasury and PBGC provided further feedback based on their review of recent applications to suspend benefits or partition liabilities.

- Treasury and PBGC noted that some recent applications have included programming errors or approximations made outside of the valuation system. Plan actuaries should be as precise as possible with their calculations. If a plan actuary is aware of unavoidable limitations with the valuation software that require approximations for programming the proposed suspension, the actuary should consider raising the issue in a pre-application conference. Any approximations or changes to the projected benefits from the valuation output should be identified and explained early in the application review process.

- After submitting an application to suspend benefits, plan sponsors and plan actuaries should be prepared for questions and requests for information from Treasury and PBGC. Treasury and PBGC noted that some applicants have not been timely with their responses, as needed to expedite the review process. Information not provided in a timely fashion can impair a plan sponsor's ability to receive an approval of an application.

- Treasury and PBGC encourage plan sponsors and plan actuaries to review the presentation at the 2018 Conference of Consulting Actuaries (CCA) Annual Meeting by Boris Vaynblat (The McKeogh Company) during Session 409, "Anatomy of a Successful Suspension of Benefits Application."[3] This presentation provides good practical guidance on preparing a successful application and emphasizes the importance of starting the process early.

- In a follow-up communication with the Committee, Treasury indicated that it wishes to remind applicants that for purposes of the "does not materially exceed" test, applicants do not need to demonstrate that a plan will become insolvent if a similar but smaller suspension goes into effect. Rather, to satisfy this test, the application need only demonstrate that, with a similar but smaller suspension, the plan will not be able to meet the test defined in the applicable regulations—that the alternative suspension is reasonably estimated to enable the plan to avoid insolvency.

Expected Number of Future Applications

Treasury and PBGC asked the Committee for input on the number of plans that are likely to submit applications to suspend benefits or partition liabilities in the coming year. Treasury and PBGC noted that they are aware of only a few plans in critical and declining status that are considering submitting applications.

The Committee members responded that they did not expect many more plans currently in critical and declining status to submit applications to suspend benefits or partition liabilities, for the following reasons:

- Many plans that are currently in critical and declining status cannot avoid projected insolvency, even with maximum benefit suspensions. These plans are too close to their

[3] This presentation can be downloaded by CCA members at www.ccactuaries.org.

projected insolvency date, have benefit levels that are not much more than PBGC guarantee levels, or both. For those plans that might apply concurrently for a partition of liabilities, uncertainty about PBGC's available resources becomes an important factor.

- Plan sponsors often perform an analysis of which participants would be "helped or hurt" by a suspension of benefits. This analysis considers the plan's projected insolvency date, and whether PBGC's multiemployer program will remain solvent and be able to pay guaranteed benefits. In many cases, the plan sponsor concludes it would be in the overall best interest of the participants not to apply for a suspension of benefits.

- Although Treasury has provided more details about the application process in recent years, preparing an application remains a time-consuming and expensive process, and approval is far from a certainty. In a case where the plan sponsor has determined that a suspension of benefits may be slightly beneficial to the participant population overall, that slight benefit may not justify the significant expense and uncertainty associated with the application process.

- Even though the Joint Select Committee on Solvency of Multiemployer Pension Plans dissolved at the end of 2018, many plan sponsors are holding out hope for a legislative solution to the solvency crisis. While some plan sponsors may decide to proceed with preparing an application to suspend benefits under current law, others may determine that the expense is not worth it until the legislative picture becomes clearer, especially as some proposals would repeal relevant provisions under MPRA.

2. Withdrawal Liability

PBGC provided commentary on various issues related to withdrawal liability.

Proposed Regulations on Simplified Methods

PBGC discussed the proposed regulations on simplified methods for certain withdrawal liability determinations, issued on February 6, 2019. PBGC noted that comments are due no later than April 8, 2019. Members of the Committee expressed concern over ambiguity related to the effective date of any new regulations. PBGC indicated that their intent is to have any new rules apply prospectively only.

Some members of the Committee also expressed concern that the simplified methods set forth in the regulations might not be consistent with reasonable methods already adopted by certain plan sponsors. PBGC indicated that the preamble to the proposed rule states that a plan sponsor can choose to use an alternative approach that satisfies the requirements of the applicable statutory provisions and regulations, rather than one of the simplified methods.

The Committee also raised a concern with the proposed rule related to determining the portion of contribution increases required by a funding improvement plan or rehabilitation plan that should be excluded for purposes of calculating withdrawal liability. Specifically, the Committee expressed concern over the apparent requirement to actuarially "split" benefit-bearing contribution increases. PBGC indicated that under the proposed rule, for purposes of withdrawal liability, an increase in a benefit-bearing contribution rate is treated similarly to a plan

amendment increasing benefits. PBGC invited comments on the proposed rule regarding alternative methods that plan sponsors use to identify additional contributions used to provide an increase in benefits.

Responding to a question from the Committee, PBGC indicated that the proposed regulations would clarify, prospectively, the order in which the de minimis credit is applied relative to the affected benefits base (for prior reductions in adjustable benefits as part of a rehabilitation plan). The proposed regulations indicate that the de minimis credit should be applied after the affected benefits base, not before.

PBGC indicated that the simplified methods in the proposed regulations do not address a partition of liability, and that the partition order for a plan would set forth how the withdrawal liability calculations must be done.

Recent Application Experience

PBGC discussed recent experience with applications by plan sponsors for alternative terms and conditions to satisfy withdrawal liability and alternative withdrawal liability allocation methods. PBGC noted that the number of applications for alternative withdrawal liability rules over the past year has been lower than expected.

Alternative Settlement Terms

Under ERISA section 4224, a plan sponsor may adopt an alternative terms and conditions for the satisfaction of an employer's withdrawal liability that differ from those described under ERISA section 4219, if the alternative terms are consistent with ERISA.

In April 2018, PBGC issued guidance in the form of a policy statement on this topic.[4] PBGC encourages plan sponsors to request PBGC review of alternative terms and conditions to settle withdrawal liability, especially in situations when the plan sponsor is considering adopting "global" terms that will apply to all participating employers in the plan. PBGC noted its concern that alternative terms sometimes may be inconsistent with ERISA; while the purpose of alternative terms may be to avoid damage to employers, the terms must also maximize collections for the plan. PBGC encourages plan sponsors to discuss their alternative settlement terms and proposals informally with PBGC. PBGC noted, however, that PBGC approval of alternative settlement terms is generally not required, and PBGC can only determine whether the alternative terms are not inconsistent with Title IV of ERISA.

As part of its review of alternative settlement terms, PBGC will evaluate whether the proposed terms will maximize collection of withdrawal liability and employer contributions, when compared to the statutory payment rules. PBGC will determine whether the proposed terms are in the best interest of plan participants and beneficiaries and do not create an unreasonable risk of loss to PBGC. If needed, PBGC will work with the plan sponsor to modify the proposed terms to lessen the risk of loss to plan participants and beneficiaries or to PBGC.

PBGC noted that in late 2014, it approved alternative settlement terms for a plan that was projected to become insolvent. In this situation, the alternative terms proposed by the plan

[4] Link to PBGC policy statement: https://www.federalregister.gov/documents/2018/04/04/2018-06780/requests-to-review-multiemployer-plan-alternative-terms-and-conditions-to-satisfy-withdrawal.

sponsor would allow employers that remain in the plan through the insolvency date to settle their withdrawal liability at a significant discount. The plan sponsor was able to demonstrate that the proposed terms would keep employers participating in the plan, and the additional contribution income would delay the date of projected insolvency. As a result, the net effect of the alternative settlement terms reduced the risk of loss to plan participants and beneficiaries and to PBGC.

Alternative Allocation Methods

Under ERISA section 4211, a plan sponsor may adopt an alternative method for allocating unfunded vested benefits for purposes of determining employer withdrawal liability. Any alternative method must not increase the risk of loss to plan participants and beneficiaries or to PBGC's multiemployer insurance program. Under ERISA, PBGC approval is required for any alternative allocation method.

In recent years, PBGC has reviewed applications for alternative allocation methods that would bifurcate unfunded vested benefits following a merger of two plans. PBGC has also reviewed applications for so-called "two-pool" methods, in which a separate pool of unfunded vested benefits is established for employers that begin participating in the plan after a certain date, designed to attract new participating employers to the plan.

PBGC noted that the review and approval process for a two-pool method is relatively simple when the method does not allow existing employers to "jump" from the old pool to the new pool. PBGC indicated that it is regularly approving methods without jumping for plans in critical and declining status as well as plans in the "green zone." The process is more complicated and time-consuming when the method does allow for jumping.

PBGC described how, under a two-pool method that permits jumping, the method typically requires an employer that transitions from the old pool to the new pool to satisfy its withdrawal liability in the old pool. Withdrawal liability may be settled as a lump sum, or through periodic payments. Such a withdrawal liability settlement may be attractive to financially strong employers in the plan. The plan sponsor may also view the settlement as beneficial to plan participants. For example, a lump sum withdrawal liability settlement from a large employer, combined with continued contributions from that employer, could improve cash flow for a plan in critical and declining status, thus extending its projected solvency.

In reviewing an application for a two-pool method that permits jumping, PBGC will request information regarding proposed settlement rules for employers that jump from the old pool to the new pool. PBGC will evaluate how much the proposed method and settlement rules are expected to improve plan funding levels and solvency. (PBGC noted that some recent applications have shown insignificant improvement on projected solvency.) PBGC will also evaluate whether the proposed method and settlement rules would increase risk to plan participants and beneficiaries, as well as to other employers that remain in the old pool, and PBGC's multiemployer insurance program.

PBGC noted that in the past year, it has approved one application for a two-pool method that permits jumping, and two others are in the review stage.

3. Mergers and Transfers

PBGC discussed various issues related to mergers and transfers between multiemployer plans.

Final Regulations

In September 2018, PBGC published final regulations on mergers and transfers.[5] The final regulations updated provisions in the prior regulations, though to a far lesser extent than the proposed regulations. The final regulations also provided new guidance on facilitated mergers, as permitted under MPRA.

(In a follow-up communication with the Committee, PBGC noted that clarification is needed in the final regulations, specifically in the second example of how a plan can demonstrate that financial assistance is needed in order to mitigate the adverse effect of a proposed merger. This example holds that the demonstration of adverse effect may be based on stochastic modeling showing "that the merged plan's probability of insolvency within 30 years of the merger exceeds 65% without the requested financial assistance." The percentage in this example should be 35% rather than 65%.)

Facilitated Mergers

PBGC described the statutory requirements for PBGC to provide financial assistance to facilitate a merger between two or more multiemployer plans. First, at least one of the plans must be in critical and declining status. Furthermore, PBGC must reasonably expect that the financial assistance will reduce its expected long-term loss with respect to the critical and declining plan(s) involved, and determine that the financial assistance is necessary for the merged plan to remain solvent. The financial assistance must also not impair PBGC's ability to provide financial assistance to other plans that are projected to become insolvent, and it must be paid exclusively from PBGC's multiemployer program.

In evaluating whether the facilitated merger with financial assistance from PBGC (a "financial assistance merger") would reduce its expected long-term loss, PBGC will consider the value of financial assistance provided to facilitate the merger, versus the value of assistance it would eventually provide to the plan in critical and declining status without the facilitated merger. These determinations are made based on the same assumptions as in PBGC's financial statements. PBGC noted that the interest rate assumption is based on a yield curve, not the ERISA section 4044 select and ultimate rates.

PBGC described that when applying for a financial assistance merger, the plan actuary should be prepared to provide PBGC with several sets of projections. Projections should include cash flows—including withdrawal liability payments and contributions—up to and after the projected date of insolvency. (PBGC noted that sometimes the plan actuary will perform projections only up to the date of insolvency.)

PBGC acknowledged that the statutory requirement that the financial assistance must be "necessary for the merged plan to become or remain solvent" may appear to be a barrier for a plan in critical and declining status merging with a large, healthier plan. For example, based on

[5] Link to final regulations: https://www.federalregister.gov/documents/2018/09/14/2018-19988/mergers-and-transfers-between-multiemployer-plans.

the plan actuary's best estimate assumptions, following a merger between two such plans, the merged plan would still be projected to remain solvent without PBGC financial assistance. PBGC explained that there is some interpretive latitude with this statutory requirement, and plan actuaries should consider whether financial assistance is needed to avoid the merger having an adverse effect on the merged plan.

For example:

- The plan actuary could demonstrate through stochastic projections that, absent financial assistance from PBGC, the merger would substantially increase the probability of insolvency for the merged plan. The plan actuary could then demonstrate that the requested financial assistance would mitigate this adverse effect of the merger.

- The plan actuary could also perform deterministic projections reflecting a reasonable level of future adverse experience, such as investment returns that are lower than the actuary's best estimate assumption. PBGC mentioned, by way of an example of what might be considered reasonable based on its current thinking, a demonstration that reduces the median expected returns by one-half of the standard deviation.

PBGC indicated, however, that its thought process on this matter is evolving, and that its review of any such demonstration will consider the specific facts and circumstances. Any plan sponsor considering this approach is encouraged to discuss it with PBGC prior to submitting request for financial assistance to facilitate a merger.

PBGC also noted the following with respect to financial assistance mergers:

- The final regulations do not require, by default, detailed demonstrations that the amount of financial assistance to facilitate a merger be less than the financial assistance that would have been provided as part of a partition. PBGC acknowledges that the additional requirement of modeling a hypothetical suspension of benefits and partition could add significantly to the administrative burden on the plan sponsor preparing an application for a facilitated merger.

- Financial assistance from PBGC is limited to the value of guaranteed benefits in the critical and declining plan(s) involved in the transaction. Benefits in excess of the guarantee will need to be supported from other resources.

- Financial assistance for a facilitated merger is expected to be paid in installments over a limited period (such as 10 years).

- Financial assistance for a facilitated merger will most likely be paid quarterly, similar to how assistance is paid to plans that are insolvent and paying guaranteed benefits.

- A suspension of benefits is not a requirement for a financial assistance merger. Therefore, a proposed financial assistance merger that does not involve a suspension of benefits will be subject only to review and approval by PBGC, not by Treasury.

- Because a financial assistance merger does not involve a reduction in participant benefits, PBGC views the purpose of measurement differently than Treasury does for a suspension of benefits. As a result, the reasonableness standard for assumptions used in an application for a financial assistance merger may differ from the standard for an application for a suspension of benefits. PBGC also noted that the final regulation does not require the plan actuary to provide PBGC with individual participant test cases as part of an application for a financial assistance merger. Test cases must be provided to Treasury as part of any application for a suspension of benefits. PBGC reserves the right to request additional information.

- PBGC has not yet received a formal application for a financial assistance merger, though a few plan sponsors have made informal inquiries.

Interaction Between Benefit Suspension and Merger

PBGC noted that Treasury has jurisdictional authority over matters related to suspensions of benefits, including how they interact with a plan merger. Treasury has not changed its opinion that suspended benefits must be restored following a merger if the merged plan cannot demonstrate that suspensions are necessary to remain solvent.[6] Treasury added that it does not view the purpose of a benefit suspension to make a plan a more attractive merger partner.

PBGC surmised that plan sponsors interested in a benefit suspension and a merger might consider nontraditional merger terms. For example, there may be merit to structuring the arrangement as an "alliance" instead of a merger. However an arrangement is structured, if the benefit suspension is to remain in force, the plan actuary must demonstrate that the plan is projected to become insolvent unless the suspension remains in place.

4. Possible Multiemployer Reform Legislation

Present at the meeting were PBGC employees who served as technical detailees to the Joint Select Committee on Solvency of Multiemployer Pension Plans. The outline of possible reforms that was prepared by Joint Select Committee staff and released to certain groups (and ultimately the public) in November 2018 was discussed.

It was pointed out that even though the Joint Select Committee has been dissolved, the process succeeded in educating key legislative staffers on issues facing multiemployer pension plans. That said, it should not be assumed that the concepts in the Joint Select Committee outline will appear in future legislative proposals that are developed under "regular order" under the four Committees of jurisdiction.

[6] The applicable statute is ERISA section 305(e)(9)(C)(ii), Internal Revenue Code section 432(e)((9)(C)(ii).