



AMERICAN ACADEMY of ACTUARIES

Objective. Independent. Effective.™

December 23, 2019

The Honorable Chuck Grassley
Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lamar Alexander
Chairman
U.S. Senate Committee on Health, Education,
Labor and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

[Submitted via MultiemployerReform2019@finance.senate.gov]

RE: Comments on the *Multiemployer Pension Recapitalization and Reform Plan*

Dear Chairman Grassley and Chairman Alexander:

The Multiemployer Plans Committee of the American Academy of Actuaries¹ respectfully submits the following comments on the *Multiemployer Pension Recapitalization and Reform Plan* (“the Proposal”) released on November 20, 2019.

The Proposal would make changes to nearly all aspects of multiemployer plan funding, governance, and administration. In an effort to submit comments in a short time frame, we are sending our initial comments on the Proposal and may follow up with additional comments. As part of our preliminary analysis, we have identified areas where the Proposal has the potential to effectively address weaknesses that are present under current law, without imposing undue practical challenges for plan sponsors (see “Improvements to Current Law”). We have also identified areas of concern we see within the Proposal that may be problematic for plan sponsors, participants, and contributing employers (see “Proposal Concerns”).

Improvements to Current Law

1. Pension Benefit Guaranty Corporation (PBGC) Guaranteed Benefits and Financial Assistance
Under current law, the level of benefits guaranteed by PBGC is low in comparison to the benefits provided by multiemployer plans covering most workers. The maximum guaranteed benefit for a participant with 30 years of service is \$1,072.50 per month. This often covers less than half of the underlying plan benefit. Additionally, PBGC is only authorized to intervene with a failing plan when the plan fully exhausts its assets, despite the fact that insolvency can be projected with a high degree of certainty many years before the assets are depleted. Within the current framework, plans facing inevitable insolvency would continue to pay full participant benefits and make additional benefit

¹ The American Academy of Actuaries is a 19,500-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.

promises to active participants despite the plans' dire financial condition, with benefits being cut to the guaranteed level after the plan assets are exhausted.

The Proposal would make two significant changes to the PBGC multiemployer insurance program:

- First, the guarantee level would be substantially increased, resulting in a participant with 30 years of service being eligible for a maximum guaranteed benefit of \$1,680 per month, an increase of roughly 57% over the current level. The increased guarantee level would help participants who would otherwise have their benefits reduced.
- Second, rather than waiting until the plan spends its last dollar of assets, benefits would be reduced to the guaranteed level when insolvency is projected to occur within five years. The earlier intervention would help reduce the PBGC's obligation; however, the impact on participants depends on their benefit levels compared to the increased guarantee.

In combination, these changes would represent a move in the direction of (a) earlier intervention in plans that are headed toward failure, and (b) the imposition of less severe benefit reductions.

2. Mergers

In some situations, it could be advantageous for a plan to implement benefit suspensions under the *Multiemployer Pension Reform Act of 2014* ("MPRA") in conjunction with merging with a better-funded plan. The suspensions in this transaction could preserve higher long-term benefits in the underfunded plan than would be possible outside of the merger, while also making the merger financially feasible for the stronger plan. Current regulatory interpretations of MPRA require that the suspensions be rescinded unless doing so would cause the merged plan to be projected to become insolvent. This interpretation has effectively prevented any mergers of this nature from occurring.

The Proposal would provide a legislative change to MPRA by removing the requirement to rescind benefit suspensions in this situation. The Proposal would also amend the fiduciary and withdrawal liability rules to be more conducive to mergers between strong and weaker plans. By removing some of the barriers to these transactions, the Proposal would provide distressed plans greater ability to remain solvent through mergers with stronger plans.

3. Zone Statuses

When a multiemployer plan is trending toward financial distress, the adverse impacts can be minimized if the trend is recognized early and the plan sponsor has access to effective tools for addressing the emerging funding imbalance. Current zone status rules contain provisions along these lines, examples of which include the role of funding standard account projections in zone status determinations and the ability of critical status plans to reduce or eliminate so-called adjustable benefits such as early retirement benefits and recently adopted benefit improvements.

The Proposal would build upon this structure in various ways. For example, zone status determinations would incorporate projections of the plan's funded percentage and a plan's ability to reduce adjustable benefits would be expanded. The enhanced early warning and remediation provisions in the Proposal could help plans identify and correct funding imbalances. Reducing the

level of participant benefits is never a desirable outcome, but in some cases such corrective measures can restore balance to plan funding levels and avoid projected insolvency.

4. Disclosures

The Proposal presents new approaches that could improve existing participant disclosures. Current law requires multiemployer plans to provide a variety of information to participants annually, but this information is largely lacking any analysis that communicates the extent to which funding levels are subject to uncertainty and risk.

The Proposal would require that the participant notices in multiemployer plans contain certain sensitivity metrics that illustrate the potential impacts of downturns in the financial markets or in the industries covered by the plans. While it might take time to find effective ways to communicate these concepts to participants, the disclosure provisions of the Proposal represent a significant step toward improving participants' understanding of pension funding risks.

5. Mass Withdrawal

Under current law, a mass withdrawal occurs when all (or substantially all) employers stop contributing to a multiemployer pension plan. When a mass withdrawal occurs, different withdrawal liability rules apply compared to the rules that apply in other circumstances. For example, following a mass withdrawal, plan liabilities must be measured using PBGC discount rates, as opposed to other circumstances in which the actuary uses a best-estimate assumption. Additionally, when a plan is distressed, most withdrawal liability assessments have a 20-year cap on the duration of the quarterly payment schedule. In a mass withdrawal, however, the 20-year cap is removed, and payments can continue well beyond 20 years—potentially in perpetuity. These rules usually make withdrawal liability assessments significantly larger in a mass withdrawal.

As a result, under current law, employers that contribute to financially distressed plans have an incentive to withdraw before a mass withdrawal occurs, in order to avoid the assessment of the larger mass withdrawal liability amounts. This incentive can be harmful to plans, as it leads to situations where more and more employers seek to leave quickly, as none of them want to still be in the plan when a mass withdrawal ultimately occurs.

The Proposal would largely harmonize the rules that apply to all withdrawals, regardless of whether a mass withdrawal has occurred. This change would remove a significant incentive for employers to withdraw from distressed plans sooner than perhaps they otherwise would, which could help financially weak plans from deteriorating further.

Proposal Concerns

1. Link Between Actuarial Assumptions & Participant Benefit Levels

Many elements of the Proposal involve actuarial assumptions. Actuaries understand the importance of selecting reasonable and appropriate assumptions to value pension obligations. We are also aware that slight changes in assumptions can have a large impact on plan funding and zone status.

We are concerned by two areas of the Proposal where actuarial assumptions and the resulting actuarial determinations will have a direct and immediate impact on participant benefit levels:

- Using the plan actuary’s certified zone status as the basis for determining the percentage of the retiree “co-payment” paid to PBGC; and
- Defining plan failure as the point when projected insolvency is within five years, at which point participant benefits must be reduced to the PBGC guarantee.

2. Discount Rate

For minimum funding purposes, the Proposal limits the actuarial interest rate assumption (i.e., the discount rate) to be the lesser of 6.0% or the 24-month average of the 3rd segment corporate bond rate plus 2.0%. We have concerns about the selection of fixed rates (i.e., the 6.0% cap and the 2.0% added to the 3rd segment rate) that lack a clear underlying basis, rather than rates that vary with market conditions. Fixed rates have the advantage of simplicity and they may rely on rates that reflect a desired level of conservatism at the time of their development, but there are also drawbacks. The ranges of reasonable interest rates will change over time and the fixed rates could be inappropriate in future economic environments.

Moreover, the impact of a constrained discount rate would be significant, as many plans currently use a discount rate of 7.0% or more. There may be reasonable arguments both for and against the use of lower discount rates (those issues are beyond the scope of these comments), but the practical challenges of moving to the proposed structure would be very significant. The discount rate provisions of the Proposal require some combination of dramatically increased employer contributions, severe reductions in future benefit accruals, and reductions to accrued benefits, which could discourage plan participation. An effective reform framework will need to balance the competing objectives of ensuring that contribution levels are high enough to adequately secure the benefits, while not imposing contribution increases that are counterproductive.

3. PBGC Premiums

Under current law, plans pay PBGC a flat-rate premium for each active, inactive, and retired participant. The per-participant premium is indexed for inflation and is scheduled to be \$30 for 2020. The Proposal would increase the flat-rate premium to \$80 per participant. The Proposal also would add a new variable-rate premium based on 1% of the Plan’s unfunded current liability (capped at no more than \$250 per participant), and imposes additional premiums on employers, unions, and participants.

PBGC’s multiemployer program is reported to be \$65.2 billion underfunded in fiscal year 2019, so increased PBGC premiums are an expected part of any multiemployer reform legislation. However, the level of premium increases under the Proposal warrants scrutiny.

The proposed variable premium component is an attempt to assess premiums based on the risks PBGC faces in insuring plans and to incent plans to become better funded. However, most plans will hit the variable premium cap because this portion of the premium is based on current liability, which typically produces a much higher liability measurement than is used for other purposes. This, together with the increase in the fixed rate, will cause an elevenfold increase in PBGC premiums, which for many plans is currently their single largest administrative expense. Further, because the

Current liability interest rate changes annually, significant volatility could arise, making it difficult to manage the variable rate premium, especially within the collective bargaining cycle.

The amount of stakeholder co-payments can be significant for both contributing employers and local unions, potentially encouraging a reduction in active participation over time, which would exacerbate challenges with the plans' financial conditions. In addition, the collection of these payments every month will be administratively burdensome and expensive for plans, as plan administrators try to account for participants working with multiple employers or participating in both regional and national plans.

While the retiree co-payments share similar structural issues to the stakeholder co-payments, they also add a 3% to 7% reduction in retiree benefit payments based on a plan's zone status certification. We understand the rationale behind this type of risk-based premium but note that connecting it to the zone status certification could result in a direct and immediate impact on participant benefits for modest changes in assumptions. For example, a key assumption that often impacts zone status is the anticipated work level and resulting plan contributions. A slight change in this assumption could change the zone status, which may trigger an immediate cut to participant benefits. More specifically, it is possible that a 2% per year membership decline could result in a critical zone status certification while a 1% per year membership decline could result in a "safe" status certification. This scenario illustrates how linking the retiree co-payments with zone status may have unintended consequences that warrant further evaluation.

In addition, as structured, frozen plans and terminated plans are treated the same as declining plans. However, not all frozen plans and terminated plans are struggling financially. The logic of retirees in solvent plans paying for the special partition program that benefits retirees in otherwise insolvent plans needs to be carefully reconsidered.

Ignoring the retiree co-payments, the combination of the new flat-rate premium, capped variable rate premium, and stakeholder co-payments results in a staggering premium increase for most plans. While the Proposal suggests these premium reforms are designed to broaden the base upon which premiums are assessed and more equitably spread the costs of insuring benefits, the practical impact is that these premiums will likely add system-wide stress by adding large premium increases to plans that cannot afford them and burden otherwise healthy plans with the cost of insuring benefits in other plans that are not healthy, over which they have no control.

Finally, there are references to "federal funding" in the Proposal and the white paper that accompanies it, but no specifics were noted. The inclusion of federal assistance would offset and lower the burden the Proposal puts on plans, participants, beneficiaries, and employers.

4. Partition

We believe the Proposal's expansion of the framework that exists under current law to aid in recovery for troubled multiemployer plans to be beneficial. Liability removal, or partition, would shift obligations to PBGC such that the ongoing plan can remain solvent. The Proposal expands the plans eligible for this relief to include not only critical and declining plans, but also certain critical plans. These expanded criteria will be helpful in assisting plans much earlier than under current law.

The Proposal lists several conditions that eligible plans would need to meet to be considered for partition. They include (1) adjusting the rate of future accruals to not exceed 1% of annual contributions, (2) determining that the plan sponsor has adopted all reasonable measures to avoid insolvency, and (3) adopting benefit suspension no greater than 10%. However, we are unsure whether the “no greater than 10%” condition is mandatory or permissive. It’s also not clear whether any applicable suspension is determined based on current rules that set a floor, that the result cannot be less than 110% of the PBGC guarantee, or possibly whether the resulting benefit can be even lower than the PBGC guarantee. Finally, it is not clear whether the 10% retiree PBGC premium co-payment for partitioned plans is in addition to the suspension, such that participants could have benefits reduced by a maximum of 20%, and also whether the 10% retiree PBGC premium co-payment (or any of the other retiree co-payments) is limited to 100% of the PBGC guarantee.

For the application process, PBGC would need to first provide guidance within 180 days and then applications have up to a 120-day review period. We suggest there be a transition period where plans can continue to apply under current law as to not delay needed relief. However, once the process is in place, the 120-day review period will help plans implement suspensions and partitions sooner than the current 270-day period. The ability to determine the initial transfer amount and having the ability to increase or decrease the transfer amount under a post-partition review is a valuable change for plans.

Finally, with the expanded eligibility criteria and requirement to file within one year of enactment, we assume many plans (perhaps over 100) will be requesting this relief. PBGC currently does not have the necessary staff and resources needed to implement and run this program within the stated time frame.

5. Withdrawal Liability

Under current law, when an employer ceases contributing to an underfunded multiemployer pension plan, it is assessed a share of the underfunding. The employer has the option of satisfying its obligation to the plan under a statutory payment schedule or with a single-sum payment. If the contribution base units have been relatively stable, then the annual payment amount will be roughly comparable to what the employer was contributing to the plan prior to withdrawal. Payments continue until the allocated liability is fully paid off, with a limit of 20 years that applies in most situations.

The payment schedule under current law attempts to balance the goal of fully paying off the allocation of unfunded liability with practical limitations regarding the amount and duration of the payment schedule. In situations where the 20-year cap is not reached, the payment schedule generally will amortize the liability.

Although the connection between an employer’s share of the underfunding and the actual amount of underfunding paid through current law is not perfect, the Proposal would completely eliminate any direct connection between the withdrawal liability payment schedule and the employer’s share of the unfunded liabilities. While the annual payment would be determined in a somewhat similar manner to current law, the duration of the payment schedule would be established based on the plan’s funded ratio. This approach could result in relatively short payment schedules that are inadequate to pay off the employer’s share of the unfunded liabilities, or long payment schedules that are more than

actually needed to fund the liabilities. In addition, it would be possible for the sum of the potential withdrawal liabilities for all employers to be significantly more or less than the total amount of underfunding, without any apparent reason for the disparity.

Existing withdrawal liability payment rules might not strike the right balance between requiring withdrawn employers to fund their allocated shares of the liabilities and recognizing the practical limitations affecting these employers. However, Congress should consider maintaining the connection between withdrawal liability assessments, the level of an employer's participation, and the amortization of unfunded liabilities, while simplifying the mechanics of determining a withdrawn employer's obligation to the plan.

The Multiemployer Plans Committee appreciates the opportunity to provide this input. We would be happy to discuss any of the issues raised in this letter at your convenience. Please contact Philip Maguire, the Academy's pension policy analyst (202-785-7868 or maguire@actuary.org) if you have any questions or would like to discuss these issues further.

Sincerely,

Christian Benjaminson, MAAA, FSA, EA
Chairperson, Multiemployer Plans Committee
American Academy of Actuaries

cc: The Honorable Mitch McConnell
The Honorable Charles E. Schumer
The Honorable Ron Wyden
The Honorable Patty Murray