



AMERICAN ACADEMY *of* ACTUARIES

Objective. Independent. Effective.™

September 26, 2018

Mr. Chris Allen
Senior Advisor for Benefits and Exempt Organizations
United States Senate, Committee on Finance

Mr. Gideon Bragin
Senior Tax and Pensions Policy Advisor
United States Senator Sherrod Brown

Re: Follow-Up from June 22, 2018, Meeting

Dear Mr. Allen and Mr. Bragin,

On behalf of the American Academy of Actuaries¹ Pension Practice Council, we thank you, the staff of the Joint Select Committee on Solvency of Multiemployer Pension Plans (the Committee), and its members for the opportunity to meet with you on June 22, 2018. We hope you found the discussion on possible solutions for the current multiemployer solvency crisis—as well as to stabilize the overall system going forward—to be helpful.

Our discussion touched on many concepts that could be components of a broader approach to stabilize the multiemployer pension system. As requested, we have prepared this letter to summarize and expand upon the points we covered. Please note that the American Academy of Actuaries Pension Practice Council neither endorses nor opposes any specific multiemployer pension reform proposals, including the concepts described in this letter. We do, however, believe continued discussion of all potential courses of action could be beneficial as the Committee develops a recommendation for a solution to address the financial challenges facing the multiemployer pension system.

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.

Please also note that this letter focuses on solutions for distressed plans facing projected insolvency. It does not address possible changes to funding requirements for multiemployer pension plans or other measures designed to prevent a new solvency crisis from arising in the future. We recognize that these matters are key to developing a comprehensive approach, and we would very much appreciate the opportunity to further discuss proposed options to address those challenges with you.

Loan Program for Distressed Multiemployer Plans

Much of our discussion at our June meeting pertained to a possible federally backed loan program that would enable troubled plans to avoid insolvency. The key points we discussed on that topic are described in our issue brief, *Loan Programs for Underfunded Multiemployer Plans*, which was published in May 4 of this year.² To briefly recap, a loan program could protect participant benefits by helping distressed multiemployer plans return to sound financial footing. However, such a program would also entail costs and risks borne by the taxpayers, and the actual cost of the loan program would not be known until many years in the future.

We would welcome the opportunity to further discuss with the Committee how a loan program could be designed and implemented.

Strengthening PBGC's Multiemployer Insurance Program

Under the Multiemployer Pension Reform Act of 2014 (MPRA), the Pension Benefit Guaranty Corporation (PBGC) received expanded authority to restructure distressed multiemployer plans to avoid insolvency, either by partitioning liabilities or by providing financial assistance to facilitate plan mergers. Unfortunately, PBGC's own financial limitations have prevented it from extensively using this authority to help reverse the current solvency crisis.³ Additional funding for the PBGC's multiemployer program would enable the PBGC to more effectively take part in a broad solution to stabilize the overall system.

The most direct way for Congress to improve the financial strength of the PBGC would be to increase the current premium level. While we have not analyzed the impact of higher premium levels specifically on plans, we note that when evaluating the possibility of further premium increases, it is important for the Committee to consider the costs to plans. Specifically, healthier

² Link: <https://www.actuary.org/files/publications/RisksLoanMultiPlans.pdf>

³ The PBGC projects its multiemployer program deficit to be at least \$80 billion. This amount represents the PBGC's unfunded liability with respect to providing guaranteed benefits to plans projected to become insolvent in the next 20 years. The PBGC estimates that premium revenue would need to be increased sixfold to eliminate this deficit and to forestall the insolvency of the multiemployer program.

plans or plans in industries with higher wage packages may better be able to adjust to higher premiums than poorly funded plans or plans in industries with lower wage levels. One way to address the issue of affordability would be to tie any modified premium structure to plan contribution levels. For example, a plan's premiums could be limited to a fixed percentage of the employer contributions the plan receives.

Another way to increase funding to PBGC's multiemployer program is to deduct premium payments from benefit payments made to participants in all plans covered by the program. Currently, multiemployer pension plans pay more than \$40 billion per year in benefits to retired participants and their beneficiaries, and this number is projected to rise in the coming decades. A premium equal to a small percentage of the systemwide benefit payments could generate significant additional revenue for PBGC's multiemployer program without significantly reducing retirees' benefits.⁴

Direct federal funding could also be part of a plan to improve PBGC finances. Multiemployer plans governed by applicable laws and regulations over the past few decades may in retrospect have been placed in circumstances with insufficient tools and resources to prevent the current funding crisis. Certain aspects of the rules, such as the tax deduction limits on plans considered to be overfunded and the ability for plan sponsors to use investment gains to offset the costs of new benefit accruals, may have contributed to the financial difficulties facing troubled plans, thereby creating the current crisis. The role of past funding rules and regulations in contributing to—or at a minimum failing to prevent—the current funding challenges would seem to support the notion of federal funds being used as part of the overall solution.

Authorizing PBGC to Restructure Distressed Multiemployer Plans

Under current law, the PBGC's actions related to restructuring multiemployer plans are limited to situations when (a) a plan terminates or becomes insolvent, or (b) a plan in critical and declining status applies for financial assistance from the PBGC in the form of a partition or a facilitated merger, as permitted under MPRA.⁵ The Committee could also consider whether the PBGC should have broader authority to proactively restructure distressed plans to enable them to remain solvent. If paired with additional funding, this expanded authority could provide a way for the agency to use its resources to assist a large number of distressed plans.

⁴ The cost of the insurance that the PBGC has historically provided has exceeded the premiums that were charged. From this perspective, premium payments that are deducted from current benefit payments, it could be argued, would partially reconcile the gap between past insurance costs and premiums.

⁵ Under current law, PBGC's multiemployer program operates very differently from the single-employer program. Notably, in the single-employer program the PBGC has broad authority to intervene in underfunded plans long before they are in danger of insolvency.

One way the PBGC could restructure plans is through expanded use of partitions. Under current partition rules, a plan that receives a partition from the PBGC must reduce benefits to the maximum extent permissible under MPRA. Rules that expanded the PBGC's partition authority could also relax this requirement, thus enabling the PBGC to use its resources to preserve participant benefits to the greatest extent possible. Additionally, any changes to partition rules could consider which participants may be included in a partition. For example, prior to MPRA, only certain participants (often referred to as "orphans")⁶ could be included in a partition. Under MPRA, however, the PBGC's authority to partition was expanded to potentially include any participant.

As under current law, another way in which the PBGC could restructure a distressed plan is by providing financial assistance to facilitate a merger with a healthy plan. However, MPRA appears to create a technical issue with this approach by requiring that a suspension of benefits be lifted following such a merger, based on interpretations of the applicable statute by the Department of Treasury. An expansion of the facilitated merger rules could remove this requirement and allow the PBGC greater latitude in determining when a facilitated merger is in the best interest of plan participants and the financial health of the PBGC.

Even if the PBGC's resources are significantly increased, the Committee could consider placing limitations on the financial assistance the PBGC may provide as part of a plan restructuring, similar to those that exist under current law. Notably, under current law, financial assistance provided by the PBGC must reduce its projected long-term loss with respect to the plan. Additionally, the financial assistance provided to a distressed plan must not impair the PBGC's ability to meet its existing financial assistance obligations with respect to other distressed plans. These goals could be incorporated into a solution that expands the PBGC's authority to restructure plans.

The Committee might also consider whether eligibility for restructuring should be expanded beyond plans that are in critical and declining status to other plans that are distressed but not necessarily projected to become insolvent in the next 20 years. For example, it may be appropriate to permit the restructuring of a plan in critical (but not declining) status if it is operating under a rehabilitation plan designed to forestall insolvency rather than eventually emerge from critical status.

The Committee might also consider a structure that permits plan sponsors to engage with the PBGC early in a process to develop an acceptable restructuring plan. As recent experience with applications under MPRA has shown, restricting active discussion between plan sponsors and the reviewing agencies can increase the time and cost of the application and review process, as well as create uncertainty for workers, retirees, and employers. With flexibility, the PBGC and plan

⁶ Prior to the passage of MPRA, an "orphan" participant was one whose employer had previously withdrawn from the plan and not fully paid its withdrawal liability.

sponsors could work together to make adjustments to restructuring proposals before they are implemented, instead of requiring that plan sponsors withdraw and resubmit applications.

In some situations, a plan sponsor might view immediate restructuring as a worse option for its participants than becoming insolvent years later and having benefits reduced to PBGC guarantee levels—perhaps reaching this conclusion after engaging in restructuring discussions with the PBGC. The Committee might consider under what circumstances the sponsor of a distressed plan may be permitted to decline restructuring and become insolvent, or under what circumstances the PBGC may be authorized to compel restructuring. The magnitude of the additional loss to the PBGC that would result from the plan becoming insolvent could be a factor in this determination.

The Committee also might consider to what extent plans that have already implemented a suspension of benefits under MPRA would be eligible for retroactive restructuring under an expansion of the PBGC’s authority. For example, the sponsor of a plan that has previously suspended benefits could be permitted to engage the PBGC to determine what financial assistance, if any, the PBGC may be able to provide to the plan. Such financial assistance could enable the plan sponsor to implement a partial restoration of suspended benefits.

Making Plan Benefits Adjustable as Part of Restructuring

The relief measures to improve the financial health of a distressed plan will necessarily consist of some combination of additional funding sources, benefit reductions, or both. One objective of a relief program is to keep both the amount of additional funding and severity of benefit reductions as small as possible. Another important objective is for the ongoing plan to have an acceptably high probability of avoiding insolvency in the future—while facing the risks of investment volatility and contribution uncertainty—without the need for further financial assistance.

To balance these objectives, the Committee might consider whether accrued plan benefits should become adjustable after restructuring.⁷ Making accrued benefits adjustable after a restructuring would increase the likelihood that the ongoing plan will remain solvent without the need for further financial assistance. It would also lessen the upfront benefit reductions and could reduce the financial assistance needed to implement a relief or restructuring program.

Furthermore, if the PBGC provides financial assistance to a distressed plan as part of a restructuring, the transaction could be viewed as the PBGC settling its obligations with the plan. In other words, after the plan is restructured, its benefits become adjustable, and PBGC

⁷ Making accrued benefits “adjustable” means the amount payable in future years could go down or up, depending on investment returns on plan assets or other plan experience.

guarantees no longer apply. After restructuring, the plan sponsor would be solely responsible for managing risks and paying participant benefits, with no further PBGC backstop. This notion could support the concept of making benefits adjustable after restructuring, without further PBGC coverage.

Benefit adjustments could be implemented in various ways. For example, if only a portion of participant benefits were subject to adjustments, or if there were a floor on the maximum amount of downward adjustments, the likelihood of the plan remaining solvent after restructuring would be significantly increased. With respect to the mechanics of future adjustments, one possibility is that the adjustments could be calculated automatically in accordance with a numerical formula based on the plan's investment returns or funding levels. Another possibility is that adjustments could be implemented at the discretion of the plan sponsor, subject to prescribed guidelines.

Closing

We again thank the Joint Select Committee on Solvency of Multiemployer Pension Plans and its members for the opportunity to offer our expertise and objective actuarial analysis on this important matter. We remain ready to provide further input to the Committee on the actuarial aspects of potential solutions to stabilize the multiemployer pension system, now and in the future.

If you have any questions or need additional information, please contact Monica Konaté, Academy pension policy analyst, at konate@actuary.org.

Sincerely,

Theodore Goldman, MAAA, FSA, EA
Senior Pension Fellow

Ellen Kleinstuber, MAAA, FSA, EA
Chairperson, Pension Committee

Jason Russell, MAAA, FSA, EA
Chairperson, Multiemployer Plans Committee

Joshua Shapiro, MAAA, FSA, EA
Vice President, Pension Practice Council