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January 29, 2024

Mr. Andres Garcia
Internal Revenue Service
Room 6526
1111 Constitution Avenue, NW
Washington, DC 20224

Filed via email: pra.comments@irs.gov

Re: Notice and Request for Comments: Proposed Information Collection; Requesting Comments on Form 15315, OMB Number: 1545-2111; Annual Certification for Multiemployer Defined Benefit Plans

Dear Mr. Garcia:

Thank you for the opportunity to comment on the recently published Proposed Information Collection Request, OMB Number: 1545-2111; Annual Certification for Multiemployer Defined Benefit Plans, published in the *Federal Register* on November 28, 2023 (Notice).¹ The Notice states that there is no change to the existing collection such that no changes are being proposed to either the Instructions for Form 15315 (Instructions) or the Form 15315 (Form). The Notice invites comments be provided regarding the collection of information as described in the Instructions and as required on the Form.

The Form is used by actuaries to report to the Secretary of the Treasury the funding status (actuarial certification) of a multiemployer defined benefit plan. The Instructions, Form, and the Notice relate to a matter of great importance to Segal and our approximately 400 multiemployer pension plan clients covering 3.8 million participants. Our unique experience in providing actuarial services to ERISA-covered multiemployer plans serves as a backdrop for the comments we offer in response to the Notice.²

The Notice requests that commenters focus their comments on five areas. Our comments concentrate on the first area:

Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

¹ 88 Fed. Reg. 83205 (November 28, 2023).

² On June 24, 2020, the Internal Revenue Service (IRS) sought comments regarding a proposed version of the Instructions and the Form (see Proposed Information Collection Request Submitted for Public Comment; Comment Request Relating to Annual Certification for Multiemployer Defined Benefit Plans, OMB Number: 1545-2111; Regulation Project Number: REG—151135-07, 85 Fed. Reg. 38020 (June 24, 2020)). As the IRS is aware, Segal filed comments regarding the proposed version of the Instructions and the Form on August 21, 2020.

Our comments, which offer suggested modifications to the Instructions and the Form, are as follows.

The provision in the Instructions addressing the “Purpose of Form” should require that relevant actuarial documents be attached to or submitted with the Form. As we noted in our August 21, 2020 comment letter, we believe the Form has standardized the way required information is presented in the annual status certification. However, to inform the ERISA agencies and multiemployer plan stakeholders as to the status of multiemployer plans and the multiemployer system, the Instructions should be modified to clearly *require* that the actuarial projections, statements, and exhibits that are relevant to the determination of plan status be attached to the Form or submitted separately.

As currently stated, the Instructions provide that such material can be “attached to this Form.”³ While we believe that, in compliance with actuarial standards of practice (ASOPs), many actuaries typically include this information as attachments to the Form, not all appear to do so. In addition, enrolled actuaries not associated with professional actuarial organizations are not subject to the ASOPs. Actuaries may interpret the Instructions as allowing for a permissive filing of this information. Accordingly, the Instructions should be modified to state that actuarial projections, statements, and exhibits that are relevant to the determination of plan status “must” be filed as attachments to the Form or filed separately.

Part III of the Instructions should be modified to state whether the actuary is required to file a revised Form for plans that later elect to be in critical status. Section 432(b)(4) of the Internal Revenue Code (IRC) provides that a plan sponsor of a plan that is not in critical status for the plan year but that is projected by the actuary to be in critical status in any of the succeeding five plan years may, not later than 30 days after the annual status certification is due, elect to be in critical status for the current plan year. The additional 30 days in which a plan sponsor may elect to be in critical status means that the actuary may not know at the time that the Form is required to be filed (which is no later than the 90th day after the beginning of the plan year) whether the plan sponsor will take advantage of the 120-day deadline in which to make an election. To accommodate this, the Instructions should be modified to clarify whether the actuary is required to file a revised Form or to file other notification to the IRS, in the event of such an election.

Part III of the Instructions and Line 3 of the Form should be modified to accommodate Special Financial Assistance (SFA) recipient plans. Part III of the Instructions describes the various plan statuses, including an explanation that, as required under §432(b)(7) of the IRC, plans that receive SFA are “deemed to be in critical status” until the last day of the last plan year ending in 2051. Line 3 of the Form requires that the actuary check the appropriate box to indicate the plan’s status.

³ We interpret “attached to this form” as used in the current version of the Instructions to mean that the actuarial projections, statements, and exhibits that are relevant to the determination of plan status that are required to be provided in accordance with the ASOPs can be filed as an attachment to the Form or can be filed separately.

In the absence of detailed guidance from the IRS regarding the definition of deemed critical status, actuaries for SFA-recipient plans generally understand that although the plan is "deemed" to be in critical status, the actuary should also certify to the plan's actual status based on the other paragraphs of §432(b) of the IRC. To accommodate SFA-recipient plans, Part III of the Instructions and Line 3 of the Form should be modified to instruct actuaries to indicate both the deemed critical status as well as the certified status of SFA-recipient plans.

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Thank you for the opportunity to provide comments on this very important subject. If you have any questions about these comments please contact me at kriley@segalco.com or 617.424.7336.

Regards,



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