



September 13, 2018

Regulatory Affairs Division
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street NW
Washington, D.C. 20005-4026

RE: RIN 1212-AB38 - Terminated and Insolvent Multiemployer Plans and Duties of Plan Sponsors

To Whom It May Concern:

The US Chamber of Commerce submits this letter in response to the proposed regulation on Terminated and Insolvent Multiemployer Plans and Duties of Plan Sponsors published by the Pension Benefit Guaranty Corporation (PBGC).¹ We commend the PBGC for taking action to reduce regulatory burdens within the multiemployer pension system. Statutory reform of the multiemployer pension system is a priority and it is necessary to remove as many burdensome regulatory barriers as possible. We include below five recommendations regarding the proposal's provisions.

1. The Chamber Supports Reducing the Annual Valuation Requirement for Certain Plans.

Currently, plans terminated by mass withdrawal must provide an annual actuarial valuation of the plan's assets and benefits.² The proposed rule would allow such plans to use an actuarial valuation for five years, if the present value of the plan's nonforfeitable benefits is \$50 million or less. Since actuarial valuations are plan expenses, they reduce the benefits that can be paid to participants and ultimately hasten the point when PBGC funds are needed to pay promised benefits. Therefore, lowering these administrative costs benefits the interests of both participants and the PBGC.

2. The Chamber Supports Eliminating the Annual Filing Requirement for Insolvent Plan Notices.

Plans that have terminated by mass withdrawal and plans that are in critical status must file annual notices.³ These plans must provide two types of notice—a “notice of insolvency” stating the plan year that the plan is insolvent or is expected to be insolvent and a “notice of insolvency benefit level” stating the level of benefits that will be paid during the plan year in which a plan is insolvent. The proposed rule would require these notices to be provided only if

¹ 83 FR 32815, July 16, 2018.

² ERISA sections 4041A(f)(2).

³ ERISA sections 4281 and 4245(e).

the plan is insolvent in the current plan year or expected to be insolvent in the next plan year. After the initial notice, updates would be provided only if there is a change in the amount of benefits paid that affects participants and beneficiaries generally.

Providing notices must always balance the cost of the notice with the benefit it would provide. Providing the agency and participants with redundant information on an annual basis increases plan costs without offering any additional information or benefit to the PBGC or the plan participants. As such, we believe that the PBGC has struck the right balance and encourage the PBGC to finalize this proposal.

3. The Chamber Recommends that the PBGC Reconsider the Provision Requiring Additional Information on Withdrawal Liability Payments.

The proposed rule would require all plans subject to the actuarial valuation requirement to file with the PBGC information about withdrawal liability that the plan has or has not yet assessed on withdrawn employers. Plans subject to the actuarial valuation requirement include plans terminated by mass withdrawal, plans terminated by plan amendment that are expected to become insolvent, and insolvent plans receiving financial assistance from PBGC.)

While the Chamber appreciates the need for transparency to protect the finances of the PBGC, we are concerned about the inappropriate use of this information. The proposal could result in situations where an employer's withdrawal liability is reported to the PBGC before it is assessed, which may conflict with what the employer has otherwise disclosed about the liability prior to receiving the assessment.

An employer is not required to publicly report withdrawal liability until assessed through the plan's termination (or partial termination) or the employer's complete withdrawal.⁴ We are concerned that providing this proposed information to the PBGC could create unforeseen litigation risks from outside parties asserting that the employer should have disclosed this information before.

We are particularly concerned about the proposal to require specific information about individual settlements. Withdrawal liability estimates and payments are already negatively affecting employers in multiemployer plans. As the depth of the multiemployer pension crisis increases, potential withdrawal liability assessments are affecting ordinary business activities. Banks and lenders are starting to question employers' creditworthiness, leading to higher lending rates or denial of credit. Employers have lost the opportunity to expand their business operations through mergers because other companies do not want to be associated with the potential withdrawal liability. Furthermore, small, family businesses are deciding not to pass the business down to heirs for fear of leaving them a future withdrawal liability payment.⁵

⁴ Financial Accounting Standards Board Accounting Standards Update No. 2011-09 (the Update), https://fasb.org/cs/ContentServer?c=Document_C&cid=1176158943498&d=&pagename=FASB%2FDocument_C%2FDocumentPage.

⁵ U.S. Chamber of Commerce, *The Multiemployer Pension Plan Crisis: Businesses and Jobs at Risk*, June 18, 2018, <https://www.uschamber.com/report/the-multiemployer-pension-plan-crisis-businesses-and-jobs-risk>

We are concerned that collecting this information could exacerbate these issues, particularly for employers that have yet to receive a withdrawal liability assessment. For these reasons, we believe that the PBGC should reconsider including this provision in the proposal.

If the PBGC determines that this information is necessary, we believe the PBGC could estimate multiemployer liabilities with aggregated information and without specific details about any given employer. We are concerned about making any information collected on withdrawal liability publicly available. We recommend that if the PBGC collects this information, that it not be available to the public and that reasonable safeguards are put in place to ensure the protection of confidential and proprietary information.

4. The Chamber Recommends that Plans Notify Participants of an Application for Financial Assistance.

When a plan submits an application for financial assistance because the plan is no longer able to pay out benefits above the PBGC benefit guarantee level, it should be required to state this in the annual funding notice. There would be only a minimal burden of adding this statement because it would use the existing annual funding notice. This disclosure would help participants and sponsoring employers track the financial condition of the plans. Such a disclosure would be beneficial in alerting participants about the status of the plan and helping them to understand less-than-desirable options.

5. The Chamber Recommends that Reportable Information be Included in Regulations and Not Just on the Website.

The proposed rule suggests moving some information from the rule and making it available on the website only. The stated intent is to make it easier for the PBGC to change this information going forward. However, we are concerned that this approach will not give interested parties enough notice about changes or the opportunity to comment on recommended changes. Consequently, we recommend that the PBGC maintain required reportable information within the regulations.

In conclusion, we believe that most of the proposed changes will be beneficial to plan sponsors and participants. Thank you for the consideration of our comments and we look forward to working with you to finalize this proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Spencer", with a long horizontal flourish extending to the right.

Glenn Spencer
Senior Vice President
Employment Policy Division
U.S. Chamber of Commerce