American Federation of Labor and Congress of Industrial Organizations

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Submitted by email to paperwork.comments@pbgc.gov

November 24, 2014

Legislative and Regulatory Department
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026

Re: Proposed Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums
Docket ID: PBGC_FRDOC_0001_ 0268

Ladies and Gentlemen:

These comments on the Proposed Submission of Information Collection for OMB Review; Payment of Premiums ("Notice"), issued by the Pension Benefit Guaranty Corporation ("PBGC"),[1] are submitted by the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") and its 56 affiliated unions representing more than 12.5 million workers across the country in all sectors of the economy, including those in manufacturing, construction, transportation, grocery and retail stores, food processing and meatpacking, health care, education, hospitality, entertainment and federal, state and local governments. Our affiliated unions negotiate pension benefits provided through both single-employer and multiemployer plans for millions of workers. For the overwhelming majority of the represented workforce, defined benefit pension plans are their primary workplace retirement vehicle.

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1 The Notice was published in the Federal Register on September 23, 2014 (79 Fed. Reg. 56831) and is available at http://www.gpo.gov/fdsys/pkg/FR-2014-09-23/pdf/2014-22580.pdf.

But, the same is not true of the private sector workforce as a whole where the number of plans[2] and the share of workers covered by defined benefit pension plans has dropped dramatically. Only 16 percent of workers participate in these plans today,[3] as compared to 38 percent in 1979.[4] Further, employers increasingly are freezing pension plans so their new hires are not covered and, in some cases, some or all of the remaining covered workers accrue no additional or only limited benefits. In 2012, just over one-quarter (26 percent) of workers participating in defined benefit pension plans were covered by frozen plans.[5]

More recently, some plan sponsors have taken the ultimate step in "de-risking"[6] their benefit obligations by offering lump sum payments to selected groups of retirees already in pay status or separated participants entitled to future deferred vested pensions or by purchasing annuities for select retiree groups.

This Notice is the first agency action directly addressing this latest and growing threat to the retirement security of workers and retirees. The proposed revisions to the 2015 premium filing procedures and instructions ("2015 Premium Payment Instructions") will require plan administrators to provide the PBGC with information about the number of former employees

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[2] According to PBGC's data, insured single employer plans plummeted from a peak of 112,208 in 1985 to 23,399 in 2013. Pension Benefit Guaranty Corporation, *2012 Pension Insurance Data Tables*, Table S-31 *available at* http://www.pbgc.gov/documents/2012-Data-Book-Tables.pdf (downloaded 11/20/2014). While the total number of participants increased from 1985 to 2011, the active participants' share declined by almost 50 percent, and the percentage of participants who were retired or separated vested participants more than doubled, increasing from 27.8 to 62.2 percent. *Id*. at Tables S-30 and S-32.

[3] Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2014*, Retirement Benefits, Table 2 *available at* http://www.bls.gov/ncs/ebs/benefits/2014/ownership/private/table02a.pdf (downloaded 11/20/2014).

[4] Employee Benefit Research Institute, *FAQs About Benefits—Retirement Issues FAQ 14, available at* http://ebri.org/publications/benfaq/index.cfm?fa=retfaq14 (downloaded 11/20/2014).

[5] Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2014*, Retirement Benefits, Table 5 *available at* http://www.bls.gov/ncs/ebs/benefits/2014/ownership/private/table05a.pdf (downloaded 11/20/2014).

[6] These transactions are often referred to as "de-risking," but the reality is that they are, as the PBGC correctly describes in the 2015 Premium Payment Instructions, risk transfers. By engaging in these transactions, plan sponsors shift investment and longevity risk to retirees and separated participants. For those retirees and separated participants. Those receiving a lump sum payment become responsible for assuring it will provide lifetime income to them and their spouses through their own investment decisions. Those for whom annuities are purchased lose PBGC protections, and the protections afforded by state regulation and state guaranty funds may not be the same provided under ERISA.

offered lump sum payments during a window period as well as those covered by an annuity purchase.[7]

The AFL-CIO supports the proposed modifications included in the 2015 Premium Payment Instructions and welcomes this initial step by the PBGC. As of today, there are no comprehensive data reflecting the number of retirees and other former employees impacted by the multitude of risk transfers that have already occurred. While the modifications for 2015 premium payments will not remedy this data gap for past events, they will provide high-level information about the number of participants affected by these transactions in the future. Collecting this information is essential to assessing the likely impact of risk transfers on both the retirement security of America's workers and retirees and the future financial condition of the PBGC's insurance program for single-employer plans. Therefore, we urge PBGC to adopt and implement the changes to the 2015 Premium Payment Instructions and collect the information on risk transfer activity.

In our view, the proposed modifications to the 2015 Premium Payment Instructions are a necessary but insufficient step. As our comments on the proposed rule on reportable events suggested,[8] the PBGC should do more than merely track the number of individuals affected. These risk transfers should be treated as reportable events, requiring plan sponsors to submit more detailed information about the transfers and their impact on the funded status of the affected plans.

We note that PBGC has been aware of risk transfer transactions and their possible impact for at least five years, raising potential concerns about the purchase of annuities before a standard termination in its Request for Public Comments issued on November 23, 2009.[9] The comments responding to the Request detailed how annuity purchases could be used as "a risk mitigation strategy" and the suggestions to the PBGC ranged from proposing no restrictions or requirements on annuity purchases to safe harbors that could afford some modest protections to plan

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7 The 2015 Premium Payment Instructions include the new risk transfer questions as Data Element 18 (p. 24) although the Description of Data Elements mistakenly lists "Risk transfer activity" as element 17 (p. 37).

8 Reportable Events and Certain Other Notification Requirements, 78 Fed. Reg. 20039 (April 3, 2013) ("2013 Reportable Event NPRM") *available at* http://www.gpo.gov/fdsys/pkg/FR-2013-04-03/pdf/2013-07664.pdf.

9 Purchase of Irrevocable Commitments Prior to Standard Termination, 74 Fed. Reg. 61074 (November 23, 2009) *available at* http://www.gpo.gov/fdsys/pkg/FR-2009-11-23/pdf/E9-28102.pdf. On the same day, the PBGC issued its initial proposed rule amending the reportable event regulations and proposed to exclude risk transfers from the scope of the transfer of benefit liabilities reportable event, a position the agency maintained in the re-proposed rule in 2013. *See* Pension Protection Act of 2006; Conforming Amendments; Reportable Events and Certain Other Notification Requirements, 74 Fed. Reg. 61248, 61251-61252 (November 23, 2009) *available at* http://www.gpo.gov/fdsys/pkg/FR-2009-11-23/pdf/E9-28056.pdf and 2013 Reportable Event NPRM

participants, such as advance notice, in the event a transaction occurred.[10] However, a year later, the PBGC announced it would not pursue a regulatory proposal or issue guidance, though it would monitor industry practice to determine the need for future guidance.[11]

The PBGC also had an opportunity as part of its proposed changes to the reportable event regulations to address risk transfers. But, in both the initial 2009 proposal and the 2013 Reportable Event NPRM, the agency chose to take no action. Risk transfers were excluded from the transfer of benefit liabilities reportable event, with the agency opining that the benefit restrictions in Section 206(g) of ERISA and Section 436 of the Internal Revenue Code were sufficient to limit lump sum payments and annuity purchases.[12]

Since the PBGC announced its decision not to issue guidance and chose to exclude risk transfers as a reportable event, significant risk transfer transactions have occurred, including those affecting retirees and other participants at General Motors Company, Ford Motor Company and Verizon Communications in the last half of 2012 and most recently Motorola Solutions and Boeing Company.[13] Tens of thousands of retirees and former employees are impacted and billions of dollars are involved. It is time for the PBGC, as well as the other regulatory agencies, including the Department of Labor ("DOL") and the Department of the Treasury ("Treasury") to take action before the retirement security of even more workers and retirees is undermined.[14]

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[10] The comments are posted on the PBGC's website at http://www.pbgc.gov/documents/purchaseofirrevocablecomments.pdf.

[11] Purchase of Irrevocable Commitments Before Standard Termination, 75 Fed. Reg. 82095 (December 29, 2010) *available at* http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32827.pdf.

[12] 74 Fed. Reg. at 61251-61252 and 78 Fed. Reg. at 20050-20051.

[13] The Pension Rights Center maintains two lists compiling information on risk transfers since 2012, one list is of companies transferring liabilities to insurance companies and the other of those companies offering lump sum buyouts. Companies may appear on both lists as the risk transfer may use both mechanisms. *See* Companies that have transferred pensions to insurance companies *available at* http://www.pensionrights.org/publications/fact-sheet/companies-have-transferred-pensions-insurance-companies; and Companies that are offering lump-sum pension buyouts *available at* http://www.pensionrights.org/publications/fact-sheet/companies-are-offering-lump-sum-pension-buyouts (downloaded 11/19/2014).

[14] We also note that Senators Ron Wyden and Tom Harkin, the current chairmen of the Senate committees of jurisdiction, recently sent a letter to the PBGC, DOL, Treasury and the Consumer Financial Protection Bureau urging the agencies to provide "clear and specific guidance" expeditiously in order to protect participants impacted by risk transfer transactions. The letter is available at http://www.finance.senate.gov/imo/media/doc/102214%20Derisking%20Letter.pdf.

We appreciate the opportunity to comment on the Notice and the proposed changes to the 2015 Premium Payment Instructions. If you have any questions about these comments or need any additional information, please do not hesitate to contact me.

Sincerely,

/s/ Karin S. Feldman

Karin S. Feldman
Benefits & Social Insurance Policy Specialist