

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS



815 16TH STREET, N.W., WASHINGTON, DC 20006 • PHONE 202-737-5315 • FAX 202-737-1308

RANDY G. DEFREHN
EXECUTIVE DIRECTOR
E-MAIL: RDEFREHN@NCCMP.ORG

Submitted online at <http://www.regulations.gov>

**RE: Request for Information: Multiemployer Pension Reform Act of 2014;
Partitions of Eligible Multiemployer Plans and Facilitated Mergers**

cc

Issues Affecting Both Partitions and Facilitated Mergers

1. *Application Process:* With respect to MPRA's changes to the rules governing mergers and partitions under sections 4231 and 4233 of ERISA, respectively, on which aspects of the application process would guidance be needed or helpful?

2. *PBGC Determinations:* With respect to a PBGC determination under section 4233(b)(3) that a partition is necessary for a plan to remain solvent, or in the case of a facilitated merger involving financial assistance under section 4231(e)(2)(B) that financial assistance is necessary for a merged plan to become or remain solvent:

- What types of actuarial and plan administrative information and analysis are available to demonstrate that a partition or facilitated merger of the plan is necessary to remain solvent?

- What issues arise in demonstrating solvency over an extended duration?

3. *Small Plans:* What special concerns do small multiemployer plans and their sponsors have regarding partition and facilitated mergers?

4. *Participants and Beneficiaries:* What special concerns do participants and beneficiaries in multiemployer plans have regarding the process for considering applications for partition and facilitated mergers?

Issues Affecting Partitions Only

5. *Notice:* With respect to the requirement under section 4233(a)(2) to provide notice to participants and beneficiaries not later than 30 days after submitting the application for partition:

- How can PBGC reduce the burden of providing the notice under current law, while still providing important information to participants and beneficiaries? Should PBGC consider issuing a model notice in future guidance?

- What type(s) of information would participants and beneficiaries find most helpful?
- Given that the amount of liabilities required to be transferred in a partition may not be known at the time notice is issued, how should the notice reflect the requirements of section 4233(e)(1), which ensure that affected participants and beneficiaries will receive no less than they would have received prior to the partition (taking into account benefit suspensions under section 305(e)(9) and any plan amendments following the partition effective date)?

6. *PBGC Determination:* For purposes of the requirement under section 4233(b) that PBGC determine, in consultation with the Participant and Plan Sponsor Advocate, that the plan sponsor has taken (or is taking concurrently with an application for partition), all reasonable measures to avoid insolvency, including the maximum benefit suspensions under section 432(e)(9) of the Code:

- What actuarial, economic, industry, or other information could a plan sponsor provide to make such a showing? What information or analysis might be difficult to provide?

illustrative (“...In its

- **With respect to the consultation process under section 4233(b)(2), how can the Participant and Plan Sponsor Advocate best assist PBGC in making its determination under this section?**

7. *Concurrent Applications:* What practical issues do plan sponsors and their professional advisors anticipate may arise in connection with a decision to submit combined applications for partition to PBGC under section 4233 of ERISA, and suspension of benefits to the Department of Treasury under section 432 of the Code? In responding to this question, consider the following:

- *Timing:* With respect to an application for partition, PBGC is required to make a determination not later than 270 days after the application date (or, if later, the date such application was completed). With respect to an application for suspension of benefits, the Treasury Secretary (in consultation with PBGC and the Secretary of Labor) is required to approve or deny an application within 225 days after submission.

- *Effective Date:* With respect to a concurrent application for partition and suspensions of benefits, the suspension of benefits may not take effect prior to the effective date of such partition.

- *Solvency:* Under section 4233(c), the amount to be transferred in a partition is the minimum amount of the plan's liabilities necessary for the plan to remain solvent. Section 432(e)(9)(D)(iv) of the Code provides that any suspensions of benefits, in the aggregate (and, if applicable, considered in combination with a partition of the plan under section 4233 of ERISA), shall be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.

8. *Transferred Liabilities:* Prior to MPRA, PBGC's partition order would provide for a transfer of no more than the non-forfeitable benefits directly attributable to service with the bankrupt employer and an equitable share of assets. In contrast, under section 4233(c), the partition order will provide for a transfer of the minimum amount of the plan's liabilities necessary for the plan to remain solvent. In addition, section 4233(e)(1) prescribes a continuing payment obligation that applies to the plan that was partitioned (the original plan).

- What types of actuarial and administrative information and data do multiemployer plans generally maintain that would allow PBGC to determine the minimum amount of the plan's liabilities necessary for the plan to remain solvent?

- What administrative or operational issues (*e.g.*, recordkeeping, benefit processing, allocation of expenses) arise in connection with this change?

- Are there additional issues that arise with respect to the transfer of the plan's liabilities for particular groups of individuals?

9. *Post-Partition:* With respect to issues that might arise post-partition:

- What kinds of administrative or operational issues (*e.g.*, recordkeeping, benefit processing, allocation of expenses, the original plan's ongoing payment obligations under section 4231(e)(1)) might arise post-partition for plan sponsors?

- What issues or challenges do plan sponsors and their professional advisors anticipate in connection with the special withdrawal liability rule under section 4233(d)(3), which applies for a 10-year period following the partition effective date?

- What issues or challenges do plan sponsors and their professional advisors anticipate in connection with the special benefit improvement and premium rules under sections 4233(e)(2) and (3) of ERISA, which apply for a 10- year period following the partition effective date?

- Is there a need for additional postpartition oversight by PBGC to ensure compliance with MPRA's post-partition requirements, and if so, in what areas?

Issues Affecting Facilitated Mergers Only

10. *Technical Assistance:* MPRA provides a non-exclusive list of the types of non-financial assistance that PBGC may provide in the context of a facilitated merger (*e.g.*, training, technical assistance, mediation, communication with stakeholders, and support with related requests to other government agencies). For purposes of a facilitated merger, which of these types of assistance would plan sponsors and professional advisors find most helpful? Are there other examples of nonfinancial technical advice that would help facilitate multiemployer mergers?

11. *PBGC Determination:* For purposes of the facilitated merger requirement under section 4231(e)(1) that PBGC determine, in consultation with the Participant and Plan Sponsor Advocate, that the transaction is in the interests of the participants and beneficiaries of at least one of the plans and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of the plans:

- What actuarial, economic, industry, or other information could the plan sponsors of the plans involved in the proposed merger provide to make such a showing?

• With respect to the consultation process under section 4231(e)(1), how can the Participant and Plan Sponsor Advocate best assist PBGC in making its determination under this section?

12. *Concurrent Applications:* What procedural issues do plan sponsors and their professional advisors anticipate in connection with a decision to request assistance from PBGC for a facilitated merger under section 4231(e) of ERISA, concurrently with an application for suspension of benefits from the Department of Treasury under section 432(e)(9) of the Code?

A handwritten signature in black ink, reading "Randy G. Holman". The signature is written in a cursive style with a large initial "R".