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AMERICAN BENEFITS
COUNCIL

Filed Electronically

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

Re: Comments Regarding Purchase of Irrevocable Commitments Prior to Standard Termination

Dear Sir or Madam,

This letter, which is submitted by the American Council of Life Insurers (“ACLI”) and the American Benefits Council (the “Council”), provides comments in response to your request for public comment regarding the purchase of irrevocable commitments prior to standard termination, which was published on November 23, 2009 in the Federal Register. The Council is a public policy organization principally representing Fortune500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans. The Council offers an important and unique perspective of both the employer sponsors of retirement plans and the service providers that assist them. ACLI is the principal trade association of life insurers, representing over 300 members that account for over ninety (90) percent of the life insurance industry's total assets in the United States. The life insurance industry is one of the largest providers of products and services to employer-sponsored pension plans – both defined contribution and defined benefit plans. Twenty-two percent of the assets in employer-based retirement plans in America are managed by life insurers.

ACLI and the Council appreciate the opportunity to comment and we applaud the Pension Benefit Guaranty Corporation's (PBGC) commitment to safeguarding retirement plan assets and protecting plan participants in the course of plan terminations.

There are compelling reasons that plans may have for purchasing irrevocable commitments prior to the initiation of a standard termination, as pointed out in the request for public comment. When used properly, they can be a valuable tool for the plan sponsor in maintaining the plan and ensuring plan stability.

There are a multitude of different reasons unrelated to plan termination that a plan, and its participants, may benefit from the purchase of irrevocable commitments, such as:

- To take advantage of favorable interest rates, which have a significant effect on both annuity rates and plan funding status. Purchasing annuities prior to a drop in interest rates can have a significant positive impact on the plan (particularly when a plan administrator anticipates benefits going into pay status and foresees an advantage to the plan of purchasing annuities). It is not difficult to imagine a situation in which a pension plan that is currently fully funded may find itself underfunded if it waits and purchases annuities when interest rates are less favorable.
- For risk mitigation. If a plan sponsor does not want to guess at when interest rates will be favorable, he may want to establish an orderly program to purchase annuities gradually over time. This risk mitigation strategy of purchasing annuities may allow a plan sponsor to continue to operate a plan without fear that future interest rate, asset return, or mortality changes will have a disproportionate impact upon its bottom line, and therefore necessitate the termination of the plan. A strategy such as this could entail the purchase of annuities for retirees only, for retirees and deferred vested participants, or even for all participants, depending upon the amount of risk the plan sponsor wants to retain. Another form of risk mitigation involves looking not just at interest rates, but the intersection of interest rates and asset returns and funding status at a certain time.
- To purchase benefits for vested terminated participants.
- To facilitate an organizational goal, such as the sale of a subsidiary or the reduction in plan liabilities.

As discussed below, many annuity purchases are simply made in the normal course of business, unrelated to plan termination. As a result of the myriad of rationales that underlie annuity purchases, the use of a safe harbor period and limitations on purchases of irrevocable commitments beyond those already in the regulations would be counterproductive to the continuation of pension plans. In effect, the current funding rules already place limitations on what poorly funded plans can do, and further restrictions would make ongoing defined benefit plans even less desirable for plan sponsors that utilize, or are contemplating the utilization of annuity purchases in order to better address needs including risk mitigation, divisional sales, or the meeting of specific financial goals.

Given the problems that defined benefit plans have experienced resulting from the difficult economy, such strategic actions to use plan assets wisely should be encouraged, and it should be in the PBGC's best interest for sponsors to stabilize the plan in this manner. Plan administrators need maximum flexibility and should not be precluded from having access to this effective tool.

Notwithstanding the above, however, we understand the PBGC has concerns that there may be a plan sponsor that inadvisably seeks to use these products in a way that circumvents PBGC rules, potentially at the expense of rank and file employees. In those cases, as the request for comment notes, there is a possibility that "plan assets could be insufficient for plan benefits at the time of any distribution upon termination, since plan assets used to purchase irrevocable commitments (and the investment returns on those assets) would no longer be

available to pay other plan benefits.” Although there may be some who circumvent the rules to ensure that executives receive their full benefits from the plan, we urge the PBGC not to impose restrictions that would be to the detriment of the great majority of plan sponsors whose purchases are for legitimate reasons. As we explained above, we believe that it is in both the plan sponsors’ and the plan participants’ best interest to avoid unnecessary restrictions on the purchase of annuities. It is also in the PBGC’s best interest, because stabilizing the plan with this tool generally will lessen the likelihood of distress terminations. With this in mind, we list below suggestions on how we believe the PBGC can strike this balance.

(1) New Approaches Should not Apply to Certain Purchases.

There are numerous situations in which purchases of irrevocable commitments should clearly raise no concern because the transactions are not made with any intent to terminate. If the PBGC does decide to take some action in this area, then certain irrevocable commitment purchases should be carved out and exempted from any reporting or additional requirements. This carveout should include:

- annuity contracts purchased in the normal course of business (e.g., annuity contracts purchased at retirement or termination of employment, whether in a historically based series or in a one-time effort to reduce the size of the plan’s liabilities and overall risk);
- purchases by plans funded entirely with annuity contracts;
- traditional arrangements, such as group deferred, deposit administration, and IPG annuity contracts; and
- purchases by plans that include participant contributions (at least with respect to the amount of the participant contributions).

We would be happy to provide more information about the various types of product arrangements that we feel would fall into these categories.

(2) PBGC’s Authority to Correct Egregious Results.

Regarding PBGC’s concern that plan assets may not be sufficient to cover all benefits at termination if some assets are used to purchase irrevocable commitments prior to the termination, we feel that PBGC has ample remedies and authority under existing law to address this type of situation after the fact. PBGC also noted its concern that participants will not receive the proper notices and will miss the opportunity to correct information used to calculate their benefits. In the event that PBGC determines that a notice should have been provided and the notice process was intentionally circumvented, PBGC can require that the notice be provided and participants’ benefits could still be adjusted if they were to be found incorrect.

(3) Existing Reportable Events can be Used.

Rather than creating a rule (such as a new reportable event) to address the PBGC’s concerns, we suggest that the current reportable events could be used for this purpose. The current participant reduction reportable event, for example, is triggered if the purchase of an irrevocable commitment would cause the number of active participants under a plan to be reduced to less than 80 percent of the number of active participants at the beginning of the plan year (or to less than 75 percent of the number of active participants at the beginning of the

previous plan year). However, if PBGC feels that it needs to establish a new reporting mechanism to address this issue, we could conceive of a new reportable event that would require reporting when a plan purchases an irrevocable commitment(s) (1) when such plan is less than 80% funded (including if the purchase causes the plan to become less than 80% funded), and (2) which purchase results in a 25% or greater decrease in plan assets or plan participants.

(4) Any New Requirement should not add Unnecessary Expense.

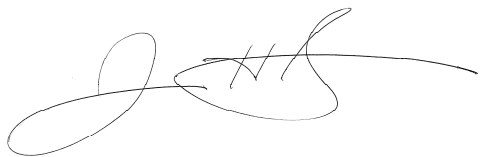
If the PBGC does decide to require additional reporting, it should use data that the plan will already have available. For example, if PBGC requests funding figures, it should be acceptable to use AFTAP calculations, rather than a termination valuation, since the actuary will already have done those calculations and producing a new calculation would add additional expense to the plan.

(5) Purchases Prior to Termination should not be Presumed to be Made with an Intent to Terminate.

In the request for comment, you ask various questions about determining whether a purchase prior to a standard termination should be considered “related to” the termination. This issue really goes to a plan sponsor’s intent when he purchases the contracts, which is very difficult to know, prove or assume. A plan may make a purchase solely to take advantage of favorable rates, and then six months later could face an unexpected and catastrophic event that prompts the sponsor to decide that termination is necessary. Such purchase, although close in time, should not be considered related to the termination. In addition, as noted earlier, there are clearly circumstances in which irrevocable commitments are purchased in the normal course of business. Because we believe that the great majority of purchases are made with the best interest of the plan as a whole and not to evade the standard termination processes, we feel that it would be inappropriate for the PBGC to make assumptions (whether based on factors or a rebuttable presumption or a safe harbor) that any purchases prior to the issuance of a NOIT are related to the standard termination or should be in any way limited.

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On behalf of the Council and ACLI member companies, thank you for consideration of these comments. As stated above, we welcome the opportunity to discuss these comments and engage in a productive dialogue with the PBGC on these important issues.



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