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

RE: Special Financial Assistance by PBGC
29 CFR Part 4262
Final rule with request for comment

Dear Sir/Madam:

I am writing to comment on the proposed regulations, specifically the withdrawal liability condition addressed in § 4262.16(g)(2) and opened to further comment through August 8, 2022. I am a single owner licensed professional, who has contributed to a multi-employer plan ("financially troubled" since 2009) for 44 years. I am in my early 70s.

As outlined in the discussion in the regulations, in approving SFA to eligible multiemployer plans, a predominant goal was to not incentivize contributing employers to withdraw. To achieve this goal, the statutory and regulatory law have directed prescribed-interest rate-assumptions to achieve this goal, largely financially unfavorable to a withdrawing employer. Concerns were raised about the effectiveness of these assumptions alone in achieving the sought-after disincentivizing of employer withdrawals after a plan receives SFA. In response to these comments, the PBGC has added a condition requiring recognizing SFA as a plan asset for withdrawal liability purposes which will allow for a phased-in recognition of SFA for withdrawal liability purposes within ten years, as outlined in the regulations.

While this does provide some limited potential benefit to employers seeking to withdraw and continues to strongly disincentivize employer withdrawal, it does not recognize the special circumstances associated a contributing employer such as myself who does not have the luxury of "waiting out" the 10-year period (or to take advantage of any phased-in recognition of the SFA) that "institutional" contributing employers have. The great majority of contributing employers are not tied to any one lifetime or more specifically one work-lifetime. They can be patient and wait out the impact of SFA on the health of a plan, wait out the economy recovering fully from the

Great Recession as well as the current turbulent economic times. Within an "institutional" employer, employees come, work, retire, and are replaced by new and younger employees who process through the same cycle. The "institutional" employer can continue to function, perform in its sector of the economy, and thus contribute to the plan to which it is signatory over generations. While the contributions and supplemental contributions may affect its ability to be competitive, they do not automatically lead to a failure to continue in business and a necessary withdrawal. Such an entity, with some belt-tightening, can wait out the ten-year phase-in for SFA, hopefully buoyed by an improving economy. An aging single owner professional employer lacks the ability to "wait out" the phase-in of the consideration of SFA and/or the recovery of the economy. As one ages, it becomes more and more apparent that there will be a limit to one's ability to effectively compete or remain competent in their profession and continue to contribute to the financially troubled plan covering one's employees. Yet withdrawal is on a practical basis prohibited due to the onerous and financially penalizing obligation that withdrawal liability would create, even for a very small office with one or two employees covered under the plan.

The longstanding disincentives to withdrawal in ERISA and subsequent statutory and regulatory law, which mandate the worst-case scenarios in terms of calculating withdrawal liability as well as the "disincentives" built into the ARPA "bail-out" of the multi-employer pension plan sector, create an environment fatal to the economic health of an aging single owner professional employer. When the plan to whom the single owner professional is obligated became "financially troubled following the Great Recession, it has been practically impossible since 2009 to bring in another professional to "carry-forward" the obligation into the next generation and thus delay withdrawal, as more institutional employers (e.g., financial institutions, freight companies, labor unions, etc.) are able to enjoy. An aging single owner professional employer is an infinitesimally small part of the larger pool of employers contributing to multiemployer plans, and thus has been ignored throughout the process developing the statutory and regulatory law to implement the ARPA "bail-out" of the multiemployer pension plans. Younger professionals, with the ability to wait out the 10-year phase-in of ARPA SFA relief, and presumed improvement in the economy, are in a much better position than those closely approaching full retirement age (FRA), or for some, well over FRA. Without a voice in the process of developing the law associated with the ARPA relief to multiemployer plans, the aging, single owner professional is left with an impossible choice in trying to delay pending retirement from the profession to reduce the impact of withdrawal liability yet facing declining ability to practice one's profession. Few single owner professionals can accept a near seven figure withdrawal liability assessment and have sufficient assets to fund their own retirement. The goal of ARPA financial relief to the financially troubled multiemployer plan was to enhance retirement security to millions of Americans will be achieved by the special financial assistance provided by ARPA, but it ignores the great hardship, with potentially devastating consequences, to the very small number of single owner professional employers impacted by forced (by age, infirmity, or death) withdrawal liability.

Accordingly, while some phased-in consideration of the SFA received by eligible plans is a small step in the right direction, it does not provide sufficient hope or relief to aging single owner professional employers who have no choice but to withdraw in the near future based on their aging-out of the ability to continue to function in their profession, their infirmity or by their death, either of which will trigger "withdrawal" and which will impose a crippling financial impact on either their ability to support their own retirement or upon their widow if the triggering event is their death. Further relief needs to be extended to this small sector of the contributing employer pool, to avoid the presumably unintended, and largely overlooked, impact withdrawal liability has on this group. I propose that for this small group of contributing employers, disincentivizing withdrawal is not relevant as withdrawal is eminent, and that the full consideration of the SFA and relaxation of the onerous interest rate assumptions are necessary to provide some relief to these employers and to provide some retirement security to this group in addition to the beneficiaries of the troubled multiemployer plans.

Thank you for your consideration of my comments.

Sincerely yours,
Welch & Condon

David B. Condon