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December 13, 2022

VIA ELECTRONIC SUBMISSION

John Ginsberg
Regulatory Affairs Division
Office of the General Counsel
Pension Benefit Guaranty Corporation
445 12th Street SW
Washington, DC 20024-2101

Re: PBGC's Actuarial Assumptions for Determining an Employer's Withdrawal Liability
RIN: 1212-AB54

Dear Assistant General Counsel Ginsberg:

FCA International (FCA) appreciates the opportunity to comment on PBGC's Proposed Rule, *Actuarial Assumptions for Determining an Employer's Withdrawal Liability*, 87 Fed. Reg. 62316 (June 28, 2022).

FCA represents the largest community of finishing contractors in North America. FCA membership is comprised of over 7,000 contractors engaged in architectural glass & metal, drywall finishing, flooring, industrial coating, painting & wallcovering and sign work. FCA contractors share a common mission – to provide their customers with the highest quality craftsmanship. FCA contractor members are responsible for over 100 million hours of work annually, employing the best-trained, safest and most productive craftspeople in the industry.

Overall, FCA is concerned about negative impacts this proposed rule could have on contributing employers that have no intention of withdrawing from the plan. We respectfully ask PBGC to pause the proposed rules and instead propose new rules that are designed to provide clarity to multiemployer plans without sacrificing the finances of contributing employers.

First, the proposed rule provides plans with the discretion to set the “discount rate” as low as the settlement interest rate assumptions prescribed by the PBGC under section 4044 of ERISA. This is concerning because the resulting increase in liability would cause the value of contributing contractors to plummet. Contractors exploring a potential sale, purchase, or financing could be challenged if the plan adopted a very low discount rate following implementation of the PBGC's proposed rule. That is, the contractor's contingent liability – i.e., the potential withdrawal liability that could be assessed by the plan – could drag on the contractor's finances even if the contractor

had no plans of withdrawing from the plan. Consider, for example, in United Mine Workers,¹ the employer's withdrawal liability would have been \$75 million higher using the plan's discount rate, which would have been appropriate under the PBGC's proposed rule.

Second, lowering a plan's discount rate may result in an even more direct and immediate impact on the finances of contributing contractors if the Financial Accounting Standards Board (FASB) changes its accounting standards to require contractors to account for withdrawal liability. In 2011, for example, the FASB proposed accounting standards that included the "Disclosure of Certain Loss Contingencies," such as potential withdrawal liability from a multiemployer pension plan. While the FASB standard was not adopted, that change would have negatively affected FCA contractors' financial solvency, credit worthiness and bonding capacity (essentially their continued existence). If this standard is ever revived, it could have a devastating impact on a contractor's finances if the PBGC adopts the proposed rule.

Finally, rather than reducing litigation, the breadth of the proposed standard may be attacked by withdrawing employers as too broad. Indeed, the breadth of discretion in setting the discount rate in the proposed rule may result in more litigation (rather than less) over a withdrawing employer's withdrawal liability.

In summary, the PBGC needs to ensure that any final rule does not adversely impact contributing contractors who have no plans of withdrawing from the pension fund. Specifically, as drafted, the proposed rules would give plans nearly unchecked authority to lower their "discount rates" and increase contractor withdrawal liability. For contractors who are not planning to withdraw, this could lead to problems with financial solvency, credit worthiness and bonding capacity (essentially their continued existence). This is especially true if FASB modifies its accounting standards to require contractors to account for withdrawal liability. Either way, the PBGC should pause the proposed rules and instead propose rules that are designed to provide clarity to multiemployer plans without sacrificing the finances of contributing employers. This is critical to the continued existence of contributing employers and the plans they sponsor.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony D. Darkangelo', with a stylized, cursive script.

Anthony D. Darkangelo
CEO

cc: Martin J. Walsh, Secretary
U.S. Department of Labor

¹ *United Mine Workers of Am. 1974 Pension Plan v. Energy West Mining Co.*, 39 F.4th 730 (D.C. Cir. 2022).