

NEW ENGLAND TEAMSTERS AND TRUCKING INDUSTRY PENSION FUND

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August 8, 2022

Via Electronic Mail (reg.comments@pbgc.gov)

Regulatory Affairs Division
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005
Attn: Daniel S. Liebman, Esq., Deputy General Counsel

Re: Comments on the Withdrawal Liability Conditions of Section 4262.16(g) of the PBGC's Final Rule Related to Special Financial Assistance (RIN1212-AB53)

Dear Mr. Liebman:

On behalf of the Board of Trustees (the "Trustees") of the New England Teamsters & Trucking Industry Pension Fund (the "Fund"), the following comments are submitted with respect to the withdrawal liability conditions set forth in Sections 4262.16(g)(1) and (2) of the PBGC's final rule (the "Final Rule") related to special financial assistance ("SFA"). As discussed in more detail below, the requirement under Section 4262.16(g)(1) of the Final Rule to use mass withdrawal interest assumptions beginning with the first plan year in which SFA is received could incentivize contributing employers to withdraw from the Fund. This is due to fact that the Fund – with PBGC approval – has for many years maintained two withdrawal liability pools with separate calculation methodologies. The Fund submits that this result would be contrary to the stated intent of the Final Rule. Accordingly, the Fund respectfully requests that PBGC clarify the Final Rule to provide a mechanism for funds to request and for PBGC to approve exemptions from or modifications to the requirements of Sections 4262.16(g)(1) and (2).

Relevant Background on the Fund

In 2010, the PBGC approved the Fund's request to use an alternative withdrawal liability allocation method. Specifically, the PBGC approved an amendment to the Fund's governing plan document to divide the Fund into two separate liability pools. The creation of a second liability pool offered existing contributing employers the opportunity to satisfy their withdrawal liability in the original

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liability pool (the "Legacy Pool") and continue participation in the Fund through the newly created liability pool (the "New Pool"). Under the arrangement, the Legacy Pool continues to use the presumptive method for allocating withdrawal liability, while the New Pool uses the direct attribution method for allocating withdrawal liability.

The arrangement was designed to generate much-needed cash flows for the Fund as it faced potential insolvency. It also was designed to encourage continued participation by existing contributing employers, as well as attract new employers – which would participate under the New Pool. More than 10 years later, the two liability pools have had the desired effect. More than 100 contributing employers have transitioned and paid significant sums to the Fund to satisfy their withdrawal liability.

To memorialize the transition from the Legacy Pool to the New Pool, contributing employers entered into written agreements with the Fund. If a contributing employer subsequently withdraws from the New Pool, it is subject to a so-called "snap back" penalty and is required to pay additional monies to the Fund to satisfy its withdrawal liability. In exchange, the Trustees agreed to not create withdrawal liability for any employers contributing to the New Pool. In the event withdrawal liability is created, either through Trustee action or the implementation of federal laws or regulations, the employer may withdraw without being subject to the "snap back" penalty.

Impact of the Final Rule on the Fund

If the Fund applies for and receives SFA, Section 4262.16(g)(1) of the Final Rule would require the Fund to use mass withdrawal interest rates when calculating unfunded vested benefit liability in both the Legacy Pool and the New Pool. This requirement would significantly increase unfunded vested benefit liability in the New Pool and, in some instances, create withdrawal liability for the first time in the New Pool. This in turn would allow contributing employers to withdraw from the New Pool without being subject to the "snap-back" penalty described above. Stated differently, the cost for employers to withdraw from the Fund would be less than it is today.

The Fund is concerned that this will create an incentive or an opportunity for employers to withdraw from the Fund, which would negatively impact its long-term financial health. This result also is directly contrary to PBGC's stated intent in the Final Rule, where it modified the withdrawal liability conditions for receiving SFA "[t]o ensure SFA is not used to subsidize employer withdrawals."¹

Proposed Solution

The Trustees propose that PBGC add a provision to the Final Rule that gives PBGC the ability to consider and grant an exemption from or modifications to the requirements of Sections 4262.16(g)(1) and (2) for funds on a case-by-case basis. These requests could be submitted in connection with a fund's SFA application and decided in connection with the approval or denial of that application. This would allow the PBGC to consider unique facts and circumstances, like

¹ See 87 Fed. Reg. 40,996.

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those involving the Fund, and to make adjustments consistent with the stated intent of the Final Rule. This exercise of discretion would be consistent with the broad authority granted PBGC under the statute.² It also would be consistent with the Final Rule in other areas, where PBGC has created mechanisms for funds to request exemptions from certain conditions on the receipt of SFA.³

Thank you for your careful consideration and attention to these important issues. Please contact me if any additional information would be helpful to the PBGC in its consideration of these comments.

Sincerely,



Edward F. Groden
Executive Director
New England Teamsters & Trucking
Industry Pension Fund

² See 29 U.S. Code § 1432(c).

³ For example, Section 4262.16(b)(3) (allowing a plan to request PBGC approval of a proposed benefit or benefit increase no earlier than 10 years after the plan year in which the plan receives SFA), Section 4262.16(d)(2) (allowing a plan to request PBGC approval of certain proposed contribution changes), Section 4262.16(e)(2) (allowing a plan to request PBGC approval of certain contribution reallocations no earlier than 5 years after the plan year in which the plan receives SFA), and Section 4262.16(f)(2) (allowing a plan to request PBGC approval for transfers of assets or liabilities or mergers).