



Founded 1889

**United Association** of Journeymen and Apprentices of the  
Plumbing and Pipe Fitting Industry of the United States and Canada

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December 13, 2022

**VIA E-Mail ([reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov))**

Regulatory Affairs Division  
Office of the General Counsel  
Pension Benefit Guaranty Corporation  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20024-2101

**Re: RIN 1212-AB54  
4213 Proposed Rule**

Ladies and Gentlemen:

These comments are submitted on behalf of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (“UA” or “United Association”) in response to the Pension Benefit Guaranty Corporation’s (“PBGC”) request for comment on the proposed rule to provide interest rate assumptions that may be used by a plan actuary in determining a withdrawing employer’s liability under the Employee Retirement Income Security Act of 1974 (ERISA) as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). The UA strongly supports the PBGC’s proposed rule.

**I. Introduction**

By way of background, the United Association represents over 362,000 skilled craft workers in the plumbing and pipe fitting trades. The UA and its affiliated local unions represent these workers for purposes of collective bargaining including the provision of retirement benefits through multiemployer defined benefit pension plans of which there are approximately 140 sponsored by the UA or a UA-affiliated labor organization. For those UA-connected plans that have unfunded vested benefit liability, particularly for those plans whose actuaries use a discount rate for purposes of withdrawal liability other than the funding rate, recent case developments have caused great concern and uncertainty. The UA is very interested in the adoption of the proposed PBGC rule because it will greatly assist the defined benefit pension plans in which its members are participants to be able to assess and collect withdrawal liability to an appropriate extent and without drawn out and costly disputes over reasonable actuarial assumptions.

## II. Discussion

ERISA section 4213(a)(2) provides the authority for the PBGC to prescribe by regulation actuarial assumptions that may be used by a plan actuary in determining the unfunded vested benefits (UVB) of a plan for purposes of determining an employer's withdrawal liability. Although the PBGC has not acted on this authority until now, the lack of regulations was not a significant problem for almost forty years during which time plan actuaries typically used the funding assumption, the settlement interest rate assumptions prescribed by the PBGC under ERISA section 4044 ("4044 rates"), or a rate that uses both the funding rate and the 4044 rates and blends the UVB amounts calculated under each in proportion to the extent that plan assets fund plan liabilities, which is often referred to as the Segal Blend approach. Any and all of those possibilities were upheld as reasonable by arbitrators and courts as long as it was clear that the rate used was selected by the actuary.<sup>1</sup>

That situation changed in 2018 when the first of several cases was decided that came to a different result concluding that the "best estimate of anticipated experience under the plan" in ERISA section 4213(a)(1) had to be understood as requiring the plan actuary to use the same discount rate as is used for minimum funding under Internal Revenue Code section 431(b)(6), as described in Code § 431(c)(3), or a discount rate very close to that rate.<sup>2</sup> Because there is an inverse relationship between the discount rate and a plan's unfunded vested benefit liability, the result of being required to use the currently higher funding rates was to lower the amount of the challenging employer's withdrawal liability. This was the employers' self-interested goal but was adverse to the interest of the plans, their participants, and the PBGC.<sup>3</sup>

The result of the recent cases is to leave plans that use a rate other than the funding assumption in a state of legal uncertainty. Prior cases have made clear that the trustees may not decide the interest rate themselves and have to rely instead on the professional judgment of their actuary who determines an interest rate subject to professional standards.<sup>4</sup> Where plans have

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<sup>1</sup> See, e.g., *Chicago Truck Drivers, Helpers and Warehouse Workers Union (Indep.) Pension Fund v. CPC Logistics, Inc.*, 698 F.3d 346, 355-57 (7<sup>th</sup> Cir. 2012), among many others.

<sup>2</sup> See cases cited at 87 Fed. Reg. 62316, 62317 n.3 (Oct. 14, 2022).

<sup>3</sup> The irony here is that, as noted by the 7<sup>th</sup> Circuit, "[w]hen developed (in the 1980s, shortly after the Multiemployer Pension Plan Amendments Act was passed), an era generally of high interest rates, the Segal Blended Rate usually *did* generate a higher interest-rate estimate than the Funding Rate, making the estimate of the plan's shortfall smaller for withdrawal-liability purposes than for penalty-tax purposes." 698 F.3d at 354. Thus, the employers' victory in the recent cases requiring use of the funding rate or a rate very close to it could become a burden if the economy reverts to higher interest rates, which will make the funding assumption the more expensive option for withdrawing employers. By contrast, the proposed regulation provides flexibility that will make it more durable to changes in the economy.

<sup>4</sup> See *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust*, 508 U.S. 602, 635-36 (1993).

actuaries whose “best estimate” for purposes of withdrawal liability is the 4044 rates or the Segal Blend, these recent cases create a real dilemma.

The PBGC has proposed to resolve this dilemma in the proposed rule by making clear “that use of 4044 rates, either as a standalone assumption or combined with funding interest assumptions, represents a valid approach to selecting an interest rate assumption to determine withdrawal liability in all circumstances.”<sup>5</sup> Thus, the proposed rule establishes a range of permissible interest rates for this purpose, from the 4044 rates to the funding assumption, and permits use of any rate within that range. This permits funds to once again rely on their actuaries’ professional judgment as to what is the most appropriate interest rate within the range of options prescribed by the PBGC for the purpose of calculating withdrawal liability.

The PBGC requested comment on whether the top of the range of permitted interest rates should be lower than the typical funding interest rate assumption. The UA does not think so because there are a number of plans that use the funding assumption for purposes of withdrawal liability, and those plans should be permitted to continue their current practice.

The UA also does not think it is necessary for the PBGC to specify assumptions other than the interest rate assumption, which is the assumption that has by far the largest impact on the amount of a plan unfunded vested benefit liability. Rather, the UA encourages the PBGC to move quickly to finalize the proposed rule to provide certainty to plans and employers and to end the current flow of costly litigation.

### **III. Conclusion**

The United Association thanks the PBGC for this opportunity to offer its views on the proposed regulation. For the reasons explained here, the UA believes that the proposed regulation is greatly needed and will assist multiemployer pension plans to calculate withdrawal liability with the benefit of their actuaries’ best estimate of an appropriate interest assumption for withdrawal liability purposes within the parameters set forth in the proposed rule. This will enable some underfunded pension funds to collect more withdrawal liability than they would be able to under the cramped reading of the statute set forth in recent court decisions. The proposed rule is, therefore, in the public interest because it will help to ensure that the participants in those plans receive the benefits they earned, which will avoid burdening the PBGC and, by extension, the public fisc.

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<sup>5</sup> 87 Fed. Reg. at 62317.

Respectfully submitted,

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