

Via Electronic Submission
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November 9, 2022

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

Re: Comments in Response to Final Rule on Withdrawal Liability:
RIN 1212-AB54

The United Food and Commercial Workers International Union (“UFCW”) respectfully submits the following comments to the Pension Benefit Guaranty Corporation (“PBGC”) in connection with the PBGC’s Proposed Rule (“Rule”) on the actuarial assumptions for determining an employer’s withdrawal liability. The UFCW seeks one clarification with respect to the implementation of the rates prescribed by the PBGC under Section 4213(a)(2): the final rule should provide that no affirmative action is required by the plan’s actuary or by the plan to implement the interest rate assumptions prescribed by the PBGC, particularly where there is no change in the current interest rate assumption selected by the actuary under Section 4213(a)(1).

UFCW is a labor organization that represents working men and women across the United States. UFCW’s 1.3 million members work in a range of industries, with the majority working in retail food, meat packing and poultry, food processing and manufacturing and retail stores. We are North America’s neighborhood union and the largest union of young workers, with 40% of UFCW members under the age of 30. UFCW members are from many backgrounds and walks of life but come together as UFCW for the shared goal of achieving the American dream. UFCW is about workers helping workers improve working and living standards through better wages, benefits, and working conditions.

Hundreds of thousands of current and former UFCW members are covered by multiemployer defined benefit pension plans. How withdrawal liability is calculated, including the interest rate assumptions used by the plan actuary in the calculation of withdrawal liability, is of critical importance to these UFCW multiemployer plans. These multiemployer plans are a vital source of retirement income for many UFCW members and therefore it is critical that the plans remain on sound financial footing. The proper

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assessment and collection of withdrawal liability is one essential component to maintaining the solvency of multiemployer pension plans over the long term. Accordingly, UFCW submits the following comments for PBGC's consideration.

As an initial matter, the UFCW applauds the efforts made by the PBGC in exercising its regulatory authority in confirming a plan actuary's wide range of options in selecting the interest rate assumptions used to calculate unfunded vested benefits in the determination of withdrawal liability. The UFCW believes that the PBGC has appropriately captured the three most common approaches in the use of interest rate assumptions in calculating withdrawal liability: the interest rate used for ongoing minimum funding; a blended interest rate using both ongoing funding and settlement interest rate assumptions; and an approach that uses only settlement interest rate assumptions prescribed by PBGC under Section 4044 of ERISA. The UFCW believes that this range of interest rates reflects the rates currently employed by a vast majority of actuaries in calculating withdrawal liability under Section 4213(a)(1) of ERISA and should continue to be allowed under the exercise of PBGC's authority under Section 4213(a)(2) of ERISA. The UFCW appreciates that the PBGC's exercise of authority to allow actuaries to select from a range of interest rates will avoid further litigation and expense to the detriment of multiemployer plan participants and the PBGC insurance program.

The UFCW seeks an important point of clarification with respect to the implementation of the rates prescribed by the PBGC under Section 4213(a)(2). The final rule should provide that no affirmative action needs to be taken by the plan's actuary or the Board of Trustees of a plan to implement the interest rate assumptions prescribed by the PBGC, particularly where there is no change in the current interest rate assumption selected by the actuary under Section 4213(a)(1). Section 4213(a) of ERISA supports this approach:

The corporation may prescribe by regulation actuarial assumptions which may be used by a plan actuary in determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part. Withdrawal liability under this part shall be determined by each plan on the basis of –

- (1) actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan, or
- (2) actuarial assumptions and methods set forth in the corporation's regulations for purposes of determining an employer's withdrawal liability.

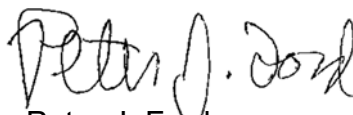
Thus, while the statute makes clear that withdrawal liability is determined by the plan, the actuarial assumptions used in the calculation of unfunded vested benefits are

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selected by the plan's actuary whether under Section 4213(a)(1) or 4213(a)(2). The preamble to the Proposed Rule clearly recognizes that the selection of actuarial assumptions, including the interest rate assumption, is within the exclusive domain of the plan actuary rather than a plan sponsor, the Board of Trustees -- "[t]he use of actuarial assumptions and methods prescribed by the PBGC under methods prescribed by PBGC under Section 4213(a)(2) would not be subject to the requirements of Section 4213(a)(1), and accordingly, the plan's actuary would be permitted to determine withdrawal liability under the proposed rule without regard to Section 4213(a)(1)." Federal Register Vol 87, No.198 at 62318. Because the plan actuary is solely responsible for determining the interest rate assumption under either Section 4213(a)(1) or Section 4213(a)(2), the PBGC should confirm in the final rule that the plan sponsor is not required to elect the interest rate assumptions set forth under the regulations. Moreover, the regulations should confirm that no other affirmative step is required to be taken by the plan's actuary if the interest rate assumption is within the scope of interest rate assumptions authorized by § 4213.11(b). This clarification will avoid specious challenges by withdrawing employers that either the plan sponsor was required to select the interest rate assumption or that the plan's actuary is responsible for affirming that the interest rate utilized in determining the employer's withdrawal liability is being made under ERISA Section 4213(a)(2) where there has been no change in the interest rate previously used under ERISA Section 4213(a)(1). Absent this clarification, withdrawing employers may take the position that absent an affirmative election under Section 4213(a)(2), the interest rate selected continues to part of the actuary's "best estimate" under Section 4213(a)(1) and still subject to challenge under the current line of cases. This clarification will avoid unnecessary litigation expense to the detriment of the multiemployer plan participants and the PBGC insurance program.

UFCW appreciates this opportunity to comment on the use of interest rate assumptions in determining withdrawal liability. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,



Peter J. Ford
General Counsel