



Western Conference of Teamsters Pension Trust

An Employer-Employee Jointly Administered Pension Plan - Founded 1955

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Submitted via email to: reg.comments@pbgc.gov

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

**Re: 4213 Proposed Rule
(29 CFR 4213 RIN 1212-AB54)
Actuarial Assumptions for Determining an
Employer's Withdrawal Liability**

Ladies and Gentlemen:

As Co-Chairs of the Western Conference of Teamsters Pension Trust (WCTPT), we are writing in response to the request for comments on PBGC's proposed regulation on Actuarial Assumptions for Determining an Employer's Withdrawal Liability published in the Federal Register on October 14, 2022 and promulgated under the authority of ERISA sections 4213(a)(2) and 4002(b)(3). On behalf of the Board of Trustees of the WCTPT, we thank you for the opportunity to provide comments on this proposed regulation. We commend the PBGC for designing guidance on this subject that will provide multiemployer plans and their actuaries with flexibility in selecting the appropriate interest assumption to use in determining an employer's withdrawal liability; at the same time, for the reasons we elaborate on below, we strongly urge the Agency not to include in the final rule any provision that would effectively preclude the plan's actuary from using the same assumptions and methods for determining withdrawal liability as the actuary uses for determining compliance with ERISA minimum funding standards.

The WCTPT is the country's largest and most successful multiemployer pension plan. For over 65 years, the plan has provided substantial, secure retirement benefits to over half a million retirees. The plan has approximately 600,000 active and inactive vested participants, including retirees, with participants or retirees in all 50 states and every congressional district. More than 1,300 employers contribute to the Trust. Many of them are small businesses, providing unique access for their Teamster employees to participate in a well-funded defined benefit pension plan. The Trust has over \$50 billion in assets; since the Pension Protection Act took effect, WCTPT has always been in the "green zone."

Since the inception of the Multiemployer Pension Plan Amendments Act of 1980, the WCTPT's enrolled actuary has always determined the present value of the plan's liabilities for purposes of determining an employer's withdrawal liability using the same assumptions and methods (both the interest rate and other assumptions) as the actuary has used to determine the plan's compliance with minimum funding standards under section 431(b)(6) of the Internal Revenue Code and section 304(b)(6) of ERISA (the "funding assumptions"). This approach falls well within the parameters set by section 4213(a) of ERISA, which stipulates that withdrawal liability shall be determined by a multiemployer plan on the basis of either:

"(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."

Indeed, the use by the WCTPT's enrolled actuary of funding assumptions to determine withdrawal liability is arguably more conservative than the statute requires, since section 4213(a)(1) merely requires that the actuary's assumptions and methods be reasonable *in the aggregate* whereas the minimum funding standards of ERISA have required, since 1987, that *each* of the enrolled actuary's assumptions and methods used for determining compliance with those standards be reasonable.

The preamble to the proposed regulations requested comments on whether the final rule:

"should restrict the allowable options to a narrower range of interest rates or to only specific methodologies for determining interest rates. In particular, should the top of the range of permitted interest rates under section 4213(a)(2) be lower than the typical funding interest rate assumption (which represents the expected return on a portfolio with a significant allocation to return-seeking assets)?"

We strongly recommend against including in the final rule any provision narrowing the permissible range of interest rates beyond the limits specified in the proposed regulation. First, the request for comment does not put forth any rationale for including such a provision and we are hard-pressed to discern one ourselves, particularly given that the actuary's use of actuarial assumptions and methods permitted under the proposal is optional.¹ Second, any such limitation would represent a value judgment on the part of the PBGC that the enrolled actuary's funding assumptions are somehow not an appropriate basis for determining an employer's withdrawal liability, yet such a position would fly in the face of the express provisions of ERISA section 4213(a)(1), which the PBGC acknowledges would continue to allow the enrolled actuary to use funding assumptions without regard to the provisions of any regulations the PBGC might issue under the authority of section 4213(a)(2). Third, the request for comment appears to assume that

¹ As the proposal itself recognizes, the actuary always has the ability of using assumptions and methods that are permissible under ERISA section 4213(a)(1).

the interest rate a plan's actuary uses for funding purposes will always be higher than PBGC settlement rates; however, at least in the early years of MPPAA, that was not necessarily the case, and with interest rates and annuity settlement rates trending higher, the relationship might invert yet again. Has the PBGC considered the implications of establishing an upper bound to permissible interest rates that is tied to PBGC settlement rates which in some interest rate environments, might instead become a lower limit?

For similar reasons, we urge that the final rule not specify assumptions or methods other than interest assumptions. We expect such an endeavor to further increase the number of plans that decide to fall back on the statutorily permissible set of assumptions under ERISA section 4213(a)(1).

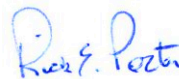
Should the PBGC decide to venture down a path of issuing a final rule that would limit, or preclude altogether, the use of funding interest rates for determining withdrawal liability, we would anticipate that multiemployer plans that currently use funding interest rates for that purpose would most likely opt to remain under the statutory scheme of permissible assumptions and methods set forth in ERISA section 4213(a)(1). At the very least, the PBGC should take such a path only after detailing any such limitations in proposed form with a detailed explanation of the rationale for doing so and an extended comment period.

If you have any questions regarding the matters discussed herein, please contact Michael Sander, Administrative Manager of the WCTPT, at (206) 329-4900 or msander@nwadmin.com. Thank you for your time and consideration.

Sincerely,



Chuck Mack
Chairman



Rick Porter
Co-Chairman/Secretary

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