

# American Federation of Labor and Congress of Industrial Organizations



815 Sixteenth Street, N.W.  
Washington, D.C. 20006  
(202) 637-5000  
www.aflcio.org

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*Submitted by Email to [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov)*

June 2, 2014

Legislative and Regulatory Department  
Pension Benefit Guaranty Corporation  
1200 K Street, NW  
Washington, DC 20005-4026

Re: Title IV Treatment of Rollovers From  
Defined Contribution Plans To Defined Benefit Plans  
Docket ID: PBGC\_FRDOC\_0001\_0251  
RIN: 1212-AB23

Ladies and Gentlemen:

These comments on the proposed rule on the Title IV Treatment of Rollovers From Defined Contribution Plans to Defined Benefit Plans ("Proposed Rule"), issued by the Pension Benefit Guaranty Corporation ("PBGC"),<sup>1</sup> are submitted by the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") and its 56 affiliated unions. Together with its community affiliate, Working America, the AFL-CIO represents more than 12.5 million workers across the country in all sectors of our economy, from manufacturing, construction, transportation, grocery and retail stores, food processing and meatpacking, health care, education, hospitality, entertainment to federal, state and local governments. Our affiliated unions negotiate pension benefits for millions of workers which are provided through single employer and multiemployer plans. For the overwhelming majority of these workers, defined benefit pension plans are their primary workplace retirement vehicle, and many also have a retirement savings plan, such as a 401(k) plan, available to them.

<sup>1</sup> The Proposed Rule was published in the Federal Register on April 2, 2014 (79 Fed. Reg. 18483) and is available at <http://www.gpo.gov/fdsys/pkg/FR-2014-04-02/pdf/2014-07323.pdf>.

The same is not true of the private sector workforce as a whole. Over the last three decades, the private defined benefit pension system has shrunk considerably as a share of the workplace retirement market. The number of plans has dropped dramatically,<sup>2</sup> and today, only 16 percent of workers participate in defined benefit plans<sup>3</sup> as compared to 38 percent in 1979.<sup>4</sup> Further, employers increasingly are freezing pension plans so they are closed to newly hired workers and, in some cases, some or all of the remaining covered workers accrue no new or only limited benefits. In 2012, just over one-quarter (26 percent) of workers participating in defined benefit pension plans were covered by frozen plans.<sup>5</sup>

Accompanying the erosion of secure defined benefit pension plans has been the explosive growth of defined contribution plans. In 2011, the number of defined contribution plans reached 638,000, almost double the number in 1980.<sup>6</sup> More than 80 percent of the defined contribution plans in 2011 were 401(k)-type plans,<sup>7</sup> and these plans covered more than 61 million active workers.<sup>8</sup> As of 2011, all defined contribution plans covered just over 40 percent of the private sector workforce.

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<sup>2</sup> According to PBGC's data, insured single employer plans plummeted from a peak of 112,208 in 1985 to 25,607 in 2011. Pension Benefit Guaranty Corporation, *PBGC Pension Data at a Glance (1975-2011)*, Table S-31 available at <http://pbgc.gov/documents/pension-insurance-data-tables-2011.pdf> (downloaded 6/1/2013). While the number of participants increased over the same time period, the percentage of active participants declined by almost 50 percent while the total percentage of retired and separate vested participants more than doubled.

<sup>3</sup> Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2013*, Retirement Benefits, Table 2 available at <http://www.bls.gov/ncs/ebs/benefits/2013/ownership/private/table02a.pdf> (downloaded 5/31/2014).

<sup>4</sup> Employee Benefit Research Institute, *FAQs About Benefits—Retirement Issues FAQ 14*, available at <http://ebri.org/publications/benfaq/index.cfm?fa=retfaq14> (downloaded 6/1/2014).

<sup>5</sup> Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2013*, Retirement Benefits, Table 4 available at <http://www.bls.gov/ncs/ebs/benefits/2013/ownership/private/table28a.pdf> (downloaded 6/1/2014).

<sup>6</sup> US Department of Labor, Employee Benefits Security Administration, *Private Pension Plan Bulletin Historical Tables and Graphs*, Table E1 available at <http://www.dol.gov/ebsa/pdf/2011pensionplanbulletin.pdf> (downloaded 6/1/2014).

<sup>7</sup> US Department of Labor, Employee Benefits Security Administration, *Private Pension Plan Bulletin Historical Tables and Graphs*, Tables E1 and E20 available at <http://www.dol.gov/ebsa/pdf/2011pensionplanbulletin.pdf> (downloaded 6/1/2014).

<sup>8</sup> US Department of Labor, Employee Benefits Security Administration, *Private Pension Plan Bulletin Historical Tables and Graphs*, Table E20 available at <http://www.dol.gov/ebsa/pdf/2011pensionplanbulletin.pdf> (downloaded 6/1/2014).

The now dominant defined contribution plans provide less retirement security than traditional defined benefit plans as they require workers to assume more risk with respect to their future retirement income. They bear the risk of inadequate contributions, inadequate investment returns and excessive fees, market shifts as retirement approaches and outliving their retirement savings.

The failure of these plans is evident. For households able to accrue any retirement savings, the 2010 median account balance was \$40,000. For those near retirement (ages 55 through 64), the typical balance was two and half times as large--\$100,000—but it translates into only about \$330 of monthly retirement income under the four percent systematic withdrawal rule of thumb recommended by many financial advisors. Many households have no retirement savings at all: nearly 45 percent of working age households (those with a head of household between ages 25 through 64) have no retirement savings account of any kind.<sup>9</sup>

The Proposed Rule addresses one significant shortcoming of retirement savings plans that contributes to retirement insecurity—the absence of any meaningful method for providing lifetime retirement income.<sup>10</sup> Building on the two-year-old guidance from the Treasury Department and the Internal Revenue Service<sup>11</sup> that provided a path for defined benefit pension plans to accept direct rollover distributions from 401(k) savings plans, the Proposed Rule sets forth how any monthly benefit attributable to that rollover will be guaranteed under Title IV in the event PBGC becomes trustee of the receiving plan. The AFL-CIO generally supports the Proposed Rule though, as described below, we suggest some clarifications to be included in the final rule.

We also recognize that, at best, few workers are likely to benefit from the protections in the Proposed Rule. Nothing in either ERISA or the Internal Revenue Code requires defined

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<sup>9</sup> Nari Rhee, *The Retirement Savings Crisis: Is it Worse Than We Think?* (National Institute on Retirement Security, June 2013) available at [http://www.nirsonline.org/storage/nirs/documents/Retirement%20Savings%20Crisis/retirementsavingscrisis\\_final.pdf](http://www.nirsonline.org/storage/nirs/documents/Retirement%20Savings%20Crisis/retirementsavingscrisis_final.pdf).

<sup>10</sup> It is the rare 401(k) savings plan that offers workers any payment option other than a single lump sum. And, lump sum distribution options are increasingly available under defined benefit pension plans. For example, virtually all hybrid pension plans, such as cash balance plans, offer lump sum distributions though the qualified joint and survivor annuity remains the normal form of payment. See, William J. Wiatrowski, *The Last Private Industry Pension Plans: A Visual Essay* (Monthly Labor Review, December 2012) available at <http://www.bls.gov/opub/mlr/2012/12/art1full.pdf>

<sup>11</sup> Revenue Ruling 2012-4 available at <http://www.irs.gov/pub/irs-drop/rr-12-04.pdf>.

benefit plans to include provisions permitting the receipt of eligible rollover distributions from defined contribution plans,<sup>12</sup> and given the continued decline in private sector defined benefit pension plan coverage, there are not likely to be many opportunities for workers to take advantage of the rollover opportunity. Nevertheless, we believe that for workers given such a rollover option, it can provide an efficient and valuable means for converting individual account accumulations into lifetime income.

#### Clarification of “Mandatory Employee Contributions”

Throughout the preamble and in the specific changes proposed to PBGC’s guaranteed benefit and allocation of assets regulations, the Proposed Rule uses the terms “accumulated mandatory employee contributions” or “mandatory employee contributions,” each of which is defined elsewhere in the PBGC regulations.<sup>13</sup> It is not clear from the use of these terms whether any employer contributions and related investment income included in the original rollover amount, including employer matching, elective or non-elective contributions, are to be afforded the Priority Category 2 allocation and the exclusion from the maximum guaranteeable benefit limitation and the five-year phase-in limitation for benefit increases.

In our view, the better reading of the Proposed Rule is that any portion of the benefit derived from the rollover amount includes both salary deferral contributions made by the worker and any additional employer contributions provided for under the defined contribution plan. “Employer contributions” as used in the preamble and the Proposed Rule is based on the definition in proposed Section 4044(c)(4)(ii), and that definition clearly does not encompass funds actually contributed by the employer under the defined contribution plan. Instead, it describes the portion of the monthly benefit derived from the use of more favorable actuarial assumptions than those mandated by Internal Revenue Code Section 417(e). To avoid any confusion, we suggest the final rule be explicit that the full rollover amount, regardless of the source of contributions, will be taken into account.<sup>14</sup>

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<sup>12</sup> Moreover, by its terms, Revenue Ruling 2012-4 is limited to defined benefit and defined contribution plans maintained by the same plan sponsor. According to the most recent EBRI data, only 11 percent of private sector workers are covered by both types of plans. To be sure, the Proposed Rule does not appear to include the same limitation.

<sup>13</sup> See Section 4001.2 (defining “mandatory employee contributions”) and Section 4022.2 (defining “accumulated mandatory employee contributions”). These definitions do not explicitly include a direct rollover, and the Proposed Rule does not include any changes.

<sup>14</sup> Revenue Ruling 2012-4 is also not explicit, but its use of the term “eligible rollover distribution” suggests the rollover amount includes the full balance of the account whether attributable to worker salary deferral contributions or direct employer contributions. Under Internal Revenue Code Section 402(c)(4), an “eligible rollover distribution” is defined, in part, as “any distribution ... of all or any portion of the balance to the credit of the employee.” No distinction is made among the various types of contributions that generated that balance.

We also recommend that the final rule include additional language clearly stating that the annuity benefit resulting from a rollover amount is guaranteed. Clarifying language could, for example, be added to the definition of pension benefit in Section 4022.2.

#### Explanations and Notices

To the extent that defined benefit plans allow direct rollovers from defined contribution plans, existing disclosure requirements will require modification to make sure any regularly provided disclosures, including summary plan descriptions and annual funding notices, accurately notify workers of the potential Title IV treatment of any rollover amount. Clear and timely disclosure of how an individual's benefit derived from a direct rollover would be treated under PBGC's guarantee rules is likely to have an important influence on the rollover decision. For example, knowing whether the full amount of the benefit would be guaranteed without limit or the amount guaranteed would be conditioned on the funded status of the plan and the maximum guaranteeable benefit could make the difference in an individual's choice.

The PBGC should work with the Departments of Labor and Treasury to assure that appropriate explanations, notices and disclosures for workers are developed. It might also be helpful for the agencies to consider how best to encourage plan sponsors to adopt provisions allowing for direct rollovers.

The AFL-CIO appreciates the opportunity to comment on the Proposed Rule and we would be happy to provide any additional information or assistance as the PBGC develops the final rule.

Sincerely yours,

/s/ Karin S. Feldman  
Karin S. Feldman  
Benefits and Social Insurance Policy Specialist



Financial Security...for Life.

***Walter Welsh***

*Executive Vice President, Taxes & Retirement Security*  
(202) 624-2157 t (866) 953-4149 f  
walterwelsh@acli.com

***James Szostek***

*Vice President, Taxes & Retirement Security*  
(202) 624-2378 t (866) 953-4149 f  
jimszostek@acli.com

***Shannon Salinas***

*Counsel, Taxes & Retirement Security*  
(202) 624-2028 t (866) 953-4149 f  
ShannonSalinas@acli.com

Submitted Electronically

June 2, 2014

Legislative and Regulatory Department  
Pension Benefit Guaranty Corporation  
1200 K Street NW  
Washington, DC 20005-4026

**RE: Title IV Treatment of Rollovers from Defined Contribution Plans to Defined Benefit Plans (RIN 1212-AB23)**

Dear Sir or Madam:

On behalf of the American Council of Life Insurers (“ACLI”)<sup>1</sup>, we write in response to the Pension Benefit Guaranty Corporation (“PBGC”) proposed rule on Title IV Treatment of Rollovers from Defined Contribution Plans to Defined Benefit Plans, published in the Federal Register on April 2, 2014 (the “Proposed Rule”). In 2012, IRS released Revenue Ruling 2012-4, which confirmed that a defined benefit plan may accept a rollover from a defined contribution plan and clarified how the qualified plan rules under the Internal Revenue Code will apply to that situation. PBGC’s Proposed Rule provides clarifying guidance on how the PBGC will treat such amounts rolled into defined benefit plans.

As noted in the preamble, the Proposed Rule “is part of PBGC’s efforts to enhance retirement security by promoting lifetime income options.” The ability to roll over amounts from a defined contribution plan, which may not have an annuity as a distribution option, to a defined benefit plan “expands the opportunities for participants to elect lifetime income options.” ACLI appreciates PBGC’s

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<sup>1</sup> The American Council of Life Insurers represents more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. These member companies represent over 90% of the assets and premiums of the U.S. life insurance and annuity industry. ACLI member companies offer insurance contracts and other investment products and services to qualified retirement plans, including both defined benefit pension and 401(k) arrangements, and to individuals through individual retirement arrangements (IRAs) or on a non-qualified basis. ACLI member companies also are employer sponsors of retirement plans for their own employees.

efforts to encourage lifetime income payments, and we appreciate that PBGC has made this very helpful clarification for plan sponsors who are considering the guidance under IRS Revenue Ruling 2012-4.

ACLI is likewise committed to expanding the role of guaranteed lifetime income in retirement plans. Lifetime guarantees, such as the annuities provided by our member companies, provide a source of income that cannot be outlived. By providing insurance against a drop in standard of living, annuities with guaranteed lifetime income play an important role in retirement security. An annuity with guaranteed lifetime income has the potential to provide a higher sustainable level of income than can be achieved with other financial assets. Like payments from the PBGC, private annuities address longevity risk through the pooling of risks. PBGC's Proposed Rule acknowledges this important role of lifetime income.

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On behalf of the ACLI member companies, thank you for consideration of these comments. We welcome the opportunity to discuss them with the PBGC.

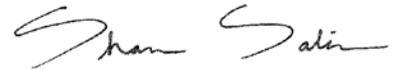
Sincerely,



Walter C. Welsh  
Executive Vice President,  
Taxes & Retirement Security



James H. Szostek  
Vice President,  
Taxes & Retirement Security



Shannon Salinas  
Counsel,  
Taxes & Retirement Security



Filed Electronically:  
Via [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov)

June 2, 2014

Legislative and Regulatory Department  
Pension Benefit Guaranty Corporation  
1200 K Street, NW  
Washington, D.C. 2005-4026

**Attention: Title IV Treatment of Rollovers From Defined Contribution  
Plans to Defined Benefit Plans  
29 CFR Parts 4001, 4022, and 4044  
RIN 1212-AB23**

Dear Sir and Madam:

AARP commends the Pension Benefit Guaranty Corporation (PBGC) for issuing this proposed regulation that provides additional guarantees for the rollover of pension benefits, thus facilitating access to lifetime income streams and bolstering participants' retirement security. Millions of workers change jobs each year and the Government Accountability Office (GAO) recently concluded that no unified rules exist to provide workers with either comprehensive notices or the ability to remain in their former employer's retirement plan or rollover their retirement assets to other retirement plans. Given the demographic and economic changes underway in our country, having a seamless system for retaining or rolling-over retirement monies is critical to workers' long-time retirement security. AARP appreciates that the PBGC's proposal is consistent with recent guidance from the Department of Treasury as well as initiatives from the Department of Labor.

As the largest nonprofit, nonpartisan organization representing the interests of Americans age 50 and older and their families, a major priority for AARP is to assist Americans in accumulating and effectively managing adequate retirement assets to supplement Social Security. Under the current retirement system, individuals have significant responsibility to make appropriate choices so that they have adequate income to fund their retirement years. Millions of our members are employed, full or part-time, with many participating in employer-provided retirement plans.

We are concerned that - unlike the benefits they have earned in Social Security - many Americans will outlive their retirement assets due to inadequate savings, increased debt and the combined effects of inflation, longer life expectancies and the overly optimistic assumptions many individuals make when spending down these assets. Effectively

managing the decumulation phase of retirement can be especially complicated, but it is essential for the long-term well-being of the millions of American workers whose retirement security will depend on a combination of Social Security and timely use of retirement assets. Many employers and workers currently cash out retirement savings with lump sum payments, which shifts management risk to individuals and can significantly jeopardize retirement security.

Under the proposed regulation, if a worker rolls over a lump sum distribution to the employer's defined benefit plan -- and the plan is underfunded, terminated and taken over by the PBGC -- the individual benefits earned from a rollover generally would not be subject to the PBGC's maximum guarantee limits. Moreover, the proposal clarifies that the rollover amounts would be characterized as accrued benefits derived from mandatory employee contributions and thus assigned to priority category two (PC2). This characterization would permit these rollover assets to assert a higher claim on plan assets; usually plan assets are sufficient to meet the benefits claimed in PC2. Finally, these rollover amounts would generally not be subject to the PBGC's five-year phase-in limits, restricting benefit increases to 20% annually until they are completely phased-in.

We note that the PBGC should clarify whether this proposal is limited only to defined contribution plans or whether it applies to all rollovers, including those from defined benefit plans. The proposal seems to indicate that the protections only apply to employee contributions; thus portions of a lump sum distribution that include both employer and employee contributions would be subject to different rules. If the PBGC does not intend to apply this regulation to the total amount of the lump sum distribution, it will be particularly important for participants to understand that difference and appropriate model notices should be issued so that plans may provide this information to participants prior to the rollover. If this reading of the proposal is correct, AARP doubts that many workers would be willing to roll over any lump sum distribution to their employer's defined benefit plan for fear of losing a portion of that amount.

Participants should receive notice that not all of the rollover amount may be protected under the PC2 category; that is particularly important for those workers who have higher benefit amounts. Participants should also be informed that these lump sum distributions are not available for these rollover amounts. Finally, participants should be informed that any rollover amount in excess of the accrued benefit treated as derived from mandatory employee contributions would be subject to the five-year phase-in limits.

From a practical viewpoint, in order for this proposal to have any meaningful impact on workers' retirement security, defined benefit plans must permit rollovers from defined contribution plans as an option in the first instance. Then participants must know about the option and understand how it works. Faced with a lump sum distribution that may be a much higher amount than an individual has ever had -- and little or no financial experience about how to translate that amount into an income stream -- it would be very easy for a worker to assume that he or she is much better prepared for retirement than is actually the

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case. AARP suggests that participants receive certain explicit disclosures prior to the roll over so that they are fully informed about this process. For example, included in those disclosures should be information concerning the approximate amount of additional monthly income which the lump sum would generate as well as how these amounts would be treated in the event of a plan insolvency. Thus, we suggest that the PBGC work with the Departments of Labor and Treasury to formulate educational plans and outreach to participants to better inform them about PBGC coverage, longevity risk and the value of lifetime income options along with publicizing this option to both employer and employees.

Again, thank you for your efforts to provide guidance on additional guarantees for the rollover of pension benefits which ultimately will improve participants' retirement security.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Certner".

David Certner  
Legislative Counsel and Legislative Policy Director  
Government Affairs