NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

815 16TH STREET, N.W., WASHINGTON, D.C. 20006 • PHONE 202-737-5315 • FAX 202-737-1308

MICHAEL D. SCOTT
EXECUTIVE DIRECTOR
E-MAIL: MSCOTT@NCCMP.ORG

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The Honorable Gordon Hartogensis
Director
Pension Benefit Guaranty Corporation
c/o Regulatory Affairs Division
Office of the General Counsel
445 12th Street, S.W.
Washington, D.C. 20024-2101

Submitted electronically via www.regulations.gov

Re: 4213 Proposed Rule, RIN 1212-AB54

Dear Director Hartogensis:

The National Coordinating Committee for Multiemployer Plans ("NCCMP") appreciates this opportunity to comment on the Pension Benefit Guaranty Corporation's ("PBGC") notice of proposed rulemaking entitled Actuarial Assumptions for Determining an Employer's Withdrawal Liability, published at 87 Fed. Reg. 62316 (October 14, 2022) (the "NPR" or "Proposal"). If adopted, the Proposal would provide an alternative to the "best estimate" of anticipated experience standard, which has been the subject of various court decisions that have introduced uncertainty, delay and added expense associated with withdrawal liability challenges.

The NCCMP is the only national organization devoted exclusively to protecting the interests of multiemployer plans, as well as the unions and the job-creating employers of America that jointly sponsor them, and the more than 20 million active and retired American workers and their families who rely on multiemployer retirement and welfare plans. The NCCMP's purpose is to assure an environment in which multiemployer plans can continue their vital role in providing retirement, health, training, and other benefits to America's working men and women.

The NCCMP is a non-partisan, nonprofit, tax-exempt social welfare organization established under Internal Revenue Code ("IRC" or "Code") Section 501(c)(4), with members, plans and contributing employers in every major segment of the multiemployer universe. These industries include the airline, agriculture, building and construction, bakery and confectionery, entertainment, health care, hospitality, longshore, manufacturing, mining, office employee, retail food, service, steel, and trucking/transportation. Multiemployer plans are jointly trusteed by labor and management trustees.

Summary of Comments

In the selection of discount rates for purposes of determining withdrawal liability, the NPR appropriately permits plan actuaries and trustees, in mutual consultation, to respond to the effect of the shifting of risk from withdrawing employers to the plans' participants and beneficiaries, its contributing employers, and the PBGC, and also permits them to account for and prioritize the particular needs and characteristics of their plans in the selection of such rates. For these reasons, the NCCMP supports the NPR in its current form.

Additionally, as the PBGC expressly notes,[1] erroneous court decisions have significantly harmed multiemployer plans, and will continue to do so in the future if they are not overruled or otherwise superseded. Accordingly, the NCCMP asks that the PBGC expedite the consideration of the comments on the Proposal and adopt final regulations as quickly as possible to stem that harm.

Background

As the PBGC is aware, an assessment of withdrawal liability involves a determination of the present value of a plan's vested liabilities. Such a determination requires the selection of a series of actuarial assumptions. ERISA Section 4213(a) provides two separate alternatives for the selection of those assumptions:

> (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.

Because the PBGC has up until now not issued regulations governing the selection of actuarial assumptions that may be used for withdrawal liability purposes, plans have been limited to the "best estimate" standard under ERISA Section 4213(a)(1).

Among the actuarial assumptions with the greatest effect on a plan's liabilities is the interest, or discount, rate.[2] Although employers have challenged discount rates through the years, prior to

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[1] 87 Fed. Reg. 62316, 62319 (October 14, 2022).

[2] Within actuarial parlance, the "discount rate" is the interest rate used to reduce a series of future payments to a present value. *E.g.,* Actuarial Standard of Practice ("ASOP") 27, § 3.1 ("Pension obligation values also require discount rates to convert future expected payments into present values."), § 3.9 ("A discount rate is used to calculate the present value of expected future plan payments."); Investopedia, https://www.investopedia.com/terms/d/discountrate.asp (downloaded October 31, 2022) ("The discount rate refers to the interest rate used in discounted cash flow (DCF) analysis to determine the present value of future cash flows.").

2018, not one of these efforts was successful in overturning the discount rate selected by the assessing plan's actuary.[3] In 2018, this unbroken track record changed.[4] Rather than granting statutory deference to the assessing plan actuaries' professional judgment, courts began to substitute their own judgment in these complex actuarial matters. The NCCMP's commentary on the recent court decisions is included in the Appendix to our comments. The Appendix also includes a grounding discussion of the legislative history of ERISA Section 4213 and the operative actuarial standards of practice relevant to the "best estimate" standard at issue in the various court decisions.

The Proposed Regulation

Through the NPR, the PBGC is exercising its explicit regulatory authority under ERISA Section 4213(a). That provision states, in relevant part:

> 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 . . . actuarial assumptions and methods set forth in the corporation's regulations for purposes of determining an employer's withdrawal liability.[5]

Under the Proposal, PBGC has provided an alternate means of choosing the discount rate, separate from the "best estimate" standard. The NCCMP supports both the result achieved by the Proposal and the mechanism by which the Proposal achieves it.

The NPR would permit a plan to use the discount rate used to determine the necessary contributions to the plan for purposes of the statutory minimum funding requirements (the "funding rate"), the

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[3] *See, e.g., Combs v. Classic Coal Corp.,* 931 F.2nd 96 (D.C. Cir. 1991).

[4] *See GCIU-Employer Retirement Fund v. MNG Enterprises,* No. 21-55865, 2022 BL 386351, 2021 US Dist. Lexis 145112 (9th Cir. Oct. 28, 2022) (successful challenge to the use of PBGC termination rates); *United Mine Workers of Am. 1974 Pension Plan v. Energy West Mining Co*., 39 F. 4th 730 (D.C. Cir. 2022) (successful challenge to use of PBGC termination rates); *Sofco Erectors, Inc. v. Trs. of Ohio, Operating Eng'rs, Pension Fund*, 15 F. 4th 407 (6th Cir. 2021) (successful challenge to the use of the so-called "Segal Blend"); *New York Times Co. v. Newspaper and Mail Deliverers'-Publishers' Pension Fund*, 303 F. Supp. 3d 236 (S.D.N.Y. 2018) (successful challenge to use of the Segal Blend), *appeals voluntarily dismissed*; *contra., Manhattan Ford Lincoln, Inc. v. UAW Local 259 Pension Fund*, 331 F. Supp. 3d 365 (D.N.J. 2018) (unsuccessful challenge to use of the Segal Blend), *appeal voluntarily dismissed.*

The Segal Blend is a methodology originally developed by the Martin E. Segal Co. that applies two separate interest rates to different portions of a plan's liabilities. To determine the portion of the plan's liabilities that are funded by the plan's assets, an actuary using the Segal Blend applies the PBGC's termination interest rates under ERISA Section 4044, 29 U.S.C. § 1344. To determine the value of the remaining, unfunded liabilities, the actuary applies the plan's interest rate used for purposes of minimum funding.

[5] 29 U.S.C. § 1393(a).

PBGC's termination rate established under ERISA Section 4044 (the "PBGC Rate"), or something in between. The NCCMP strongly supports this approach for a variety of reasons. First, the Proposal fairly represents the range of reasonable discount rates that have been used by multiemployer plans since the enactment of the Multiemployer Pension Plan Amendments Act (MPPAA) in 1980 and, if adopted as a final rule, would cause little disruption to the determination and collection of withdrawal liability. While many plans have used their funding rate, others have used either the PBGC Rate or an intermediate rate somewhere in between the plans' funding rate and the PBGC Rate.

Second, unlike the static and misguided approach taken by various courts, which focuses exclusively on a plan's investment experience as the only relevant "anticipated experience," the PBGC's approach allows plan actuaries and trustees, in consultation with each other, to take into account their plans' actual anticipated experience, including the effect of the transfer of risk from the withdrawn employer to the plan and its participants and beneficiaries, the remaining employers, and the PBGC.

Third, by permitting a range of assumptions rather than defining a single specific rate or methodology, plans are permitted to prioritize the relevant considerations to meet their particular needs.

Fourth, the PBGC's approach should circumvent the situation that both Congress and the Supreme Court feared and sought to prevent. The erroneous decisions by the various lower courts have weakened the statutory presumptions enacted by Congress and upheld by the Supreme Court and forced the majority of plans to prove the validity and reasonableness of their discount rate assumptions, rather than placing the burden of proving the unreasonableness of the assumptions as a whole on the contesting employer. If adopted as a final rule, the Proposal will prevent the undesirable outcome reached in the case of *Sofco Erectors, Inc. v. Trs. Of Ohio, Operating Eng'rs, Pension Fund,*[6] in which an employer challenged – successfully – the plan's discount rate assumption without even presenting an expert witness. Instead, the *plan* was required to defend its actuary's discount rate and offer its own expert testimony, only to lose because of the court's misunderstanding of basic actuarial principles. This outcome is clearly not consistent with the intent of Congress or the Supreme Court, and, if considered as precedent by other courts, would result in uncertainty, delay, and added expense for all multiemployer plans going forward.

Fifth, as the PBGC rightly points out,[7] the Proposal would allow plans to collect the funds lawfully owed to them by withdrawing employers. The PBGC's analysis demonstrates the extent to which plans would suffer from these erroneous decisions in the absence of the NPR. Ultimately, these

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[6] 15 F.4th 407 (6th Cir. 2021).

[7] 87 Fed. Reg. 62316, 62319 (October 14, 2022).

losses would cause direct harm to the plans' participants and beneficiaries, their contributing employers, and the PBGC.

Sixth, as the Proposal provides more certainty in withdrawal liability determinations, plans and withdrawing employers would see substantial cost savings in the form of reduced arbitration and litigation costs. PBGC estimated this cost-savings to be an annual savings of $500,000 to $1 million, split evenly between plans and employers.[8]

Finally, the NPR in its current form is defensible. It was adopted pursuant to the PBGC's explicit authority to regulate the assumptions used by plans in their withdrawal liability assessments.[9]

PBGC's Requests for Comments

In the NPR, the PBGC raised several questions upon which the NCCMP would like to comment.

Valid range of interest rate assumptions

The PBGC asked whether the range of interest rate options should be narrowed and, in particular, whether the top of the range should be lowered. As indicated above, the range selected by the PBGC in the Proposal adequately reflects a valid range of reasonable discount rate assumptions actually used by multiemployer plans for more than forty years. Furthermore, it allows plans to use discount rates that adequately reflect their circumstances and priorities. For these reasons, the NCCMP supports the range established by the PBGC in the proposed regulations.

Further, it is well established that a legally defined range of alternatives with defined endpoints is both valid and enforceable, notwithstanding the absence of any additional criteria, whether the range is established by statute or by regulation. For example, the IRC establishes endpoints for the interest rate a plan actuary must use for "current liability" calculations, with no additional criteria.[10] Similarly, the three-agency group consisting of the Department of Labor, the Internal Revenue Service, and the Department of Health and Human Services has issued regulations specifying the

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[8] 87 Fed. Reg. 62316, 62321 (October 14, 2022).

[9] Notwithstanding language in *Energy West* suggesting that a discount rate not based entirely on a plan's anticipated *investment* experience is unreasonable under ERISA Section 4221(a)(3)(B)(i) independent of whether it also fails to meet that court's erroneous "best estimate" requirement under Section 4213(a)(1), *Energy West,* 39 F. 4th at 741, both that decision and the decision in *Sofco* expressly acknowledge the PBGC's explicit statutory authority to prescribe the selection of discount rates for use in withdrawal liability assessments through regulation. *Energy West,*39 F.4th at 735, 740 *fn.* 9; *Sofco,* 15 F. 4th at 420.

[10] Code Section 431(c)(6)(E)(ii).

range of percentages by which copayments for medical care may be increased by a health plan without it losing its "grandfathered status."[11]

No specific criteria in setting assumptions are necessary

The PBGC raises the question whether the PBGC should specify criteria for the selection of the discount rate or other withdrawal liability assumptions, such as the estimated date of insolvency, the expected funding mix, and/or the plan's funded ratio. In the NCCMP's view, the approach taken by the PBGC in the Proposal permits plans to reflect the priorities appropriate for their plan's circumstances, as determined by their actuaries and trustees. Congress placed the statutory burden of proof on the employers challenging withdrawal liability assessments in order to protect plans and their funding. We are concerned that mandating the consideration of specific criteria would provide withdrawing employers with a new tool for challenging plans' assessment of withdrawal liability creating additional arbitration and litigation costs for plans without a concomitant benefit in terms of accuracy or fairness.

No guidance on assumptions, other than the interest rate, is needed

The PBGC has requested comments on whether it should exercise its authority to issue regulations governing the other assumptions used in withdrawal liability assessments. In the view of the NCCMP, we do not believe that regulations governing the other actuarial assumptions are needed. We note that, since the enactment of the MPPAA, there have been few, if any, serious challenges to plans' withdrawal liability assumptions, other than to the discount rate. Thus, such regulation is not necessary.[12]

A final rule should be issued expeditiously

The NCCMP is also concerned that any modification to the Proposal may delay the release of final regulations, and, consequently, its effective date. For the very reasons identified by the PBGC for issuing the NPR, the NCCMP believes it imperative that these regulations be made effective as soon as possible in order to stop the current state of uncertainty, delay and expense regarding

[11] 45 C.F.R. § 147.140(g)(1)(ii), (4)(ii). *See also* 24 C.F.R. § 206.207(b)(1)(iii), Allowable charges and fees after endorsement ("The charge is within the range established by the Commissioner, which shall be set, through notice, in an amount which shall be between 36 and 150 basis points. The Commissioner may, through a Federal Register notice for comment, extend the range of permissible charges below 36 basis points and above 150 basis points").

[12] We note that for the first thirty-eight of those more than forty years, there were also no successful challenges to the discount rates selected by plan actuaries in withdrawal liability assessments. Because of the apparently settled state of the law, it was reasonable to assume that PBGC's regulation of discount rates was also unnecessary. Although the erroneous series of court decisions rejecting thirty-eight years of settled law, the relevant actuarial standards, and the statutory presumptions demonstrated that such complacency was unwarranted, we do not believe the same risk applies to the other assumptions. This is both because the other assumptions typically have a much lesser effect on the amount of withdrawal liability assessments and because the considerations in selecting those assumptions are different from those applicable to the selection of a discount rate.

withdrawal liability challenges. Any delay in finalizing the Proposal will only exacerbate that harm, to the detriment of the plans, their participants and other stakeholders, and the PBGC itself.

Conclusion

The NCCMP appreciates PBGC exercising its statutory authority to provide an alternative to the "best estimate" standard. By specifying a range of permitted discount rates, the PBGC has chosen an approach that will greatly simplify the ability of multiemployer plans to collect amounts owed to them by withdrawing employers. This will ultimately benefit plan participants and beneficiaries, contributing employers, and the PBGC itself.

Regards,

Michael D. Scott
Executive Director

Attachment

APPENDIX

Legislative History and the Supreme Court's Decision in *Concrete Pipe*[13]

Congress has recognized that the continued well-being and security of employees, retirees, and their dependents are directly impacted by multiemployer plans and that interference with the maintenance and growth of such plans is contrary to the national public interest.[14] In order to protect the financial well-being of multiemployer pension plans, by enacting the MPPAA, Congress enshrined into law multiple safeguards to prevent employers from avoiding their obligations to fund the benefits promised to their employees and the employees of other contributing employers. Notable among these safeguards was the imposition of withdrawal liability on employers that ceased to fund those promised benefits. Recognizing the often-limited resources available to plans and the need to streamline the process of collecting withdrawal liability in order to enable plans to continue the uninterrupted flow of benefits, Congress built into those provisions a series of procedural safeguards to protect the interests of the plans and their participants and beneficiaries and to assist them in ensuring that all amounts owed are promptly collected. For example, following the assessment of withdrawal liability, employers are required to begin paying off that liability even while continuing to contest it.[15]

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[13] *Concrete Pipe & Products of California, Inc. v. Constr. Laborers Pension Trust for Southern California*, 508 U.S. 602 (1993).

[14] *See* 29 U.S.C § 1001a(a), (c) *as added by* the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. 96-364.

[15] ERISA Section 4219(c)(2), 29 U.S.C. § 1399(c)(2). As stated in the legislative history:

The committee believes it is extremely important that a withdrawn employer begin making the annual payments even though the period of years for which payments must continue will be based on the actual liability allocated to the employer.

Concrete Pipe, 508 U.S. at 628, *quoting,* H. R. Rep. 96-869, pt. 1, p. 86. Similarly, at the same time, Congress also added Section 515 of ERISA, 29 U.S.C. § 1145, which precludes employers from raising most contractual defenses. In reviewing the legislative history of this provision, the Supreme Court stated as follows:

The Committee explained that the provision was added because "simple collection actions brought by plan trustees have been converted into lengthy, costly and complex litigation concerning claims and defenses *unrelated* to the employer's promise and the plans' entitlement to the contributions," and steps must be taken to "simplify delinquency collection." Senate Committee on Labor and Human Resources, S. 1076--The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Consideration, 96th Cong., 2d Sess., 44 (Comm. Print, Apr. 1980) (1980 Senate Labor Committee Print) (emphasis added). During floor debate, Senator Williams and Representative Thompson explained the purpose and meaning of § 306(a) in the same language used in the Senate Labor Committee Print. Both legislators also stated that they endorsed cases such as *Lewis v. Benedict Coal Corp.*,

In addition, Congress included a series of presumptions to facilitate and expedite, not only the collection of withdrawal liability, but the process by which an employer may contest it as well. Congress intended those presumptions to:

> ensure the enforceability of employer liability. In the absence of these presumptions, employers could effectively nullify their obligation by refusing to pay and forcing the plan sponsor to prove every element involved in making an actuarial determination.[16]

One of the most important of these presumptions is that a plan's determination of the value of its unfunded vested benefits is presumed correct:

> unless a party contesting the determination shows by a preponderance of evidence that . . . the actuarial assumptions and methods used in the determination were, in the aggregate, unreasonable (taking into account the experience of the plan and reasonable expectations) . . . .[17]

In 1993, the Supreme Court addressed a challenge to MPPAA's withdrawal liability provisions on the grounds that these presumptions were unconstitutional. In a case in which the plan's actuary had applied the Segal Blend,[18] the Supreme Court explained the burden borne by an employer contesting the actuarial assumptions selected by a plan's actuary as follows:

> Accordingly, an employer's burden to overcome the presumption in question (by proof by a preponderance that the actuarial assumptions and methods were in the aggregate unreasonable) is simply a burden to show that the combination of methods and assumptions employed in the calculation ***would not have been acceptable to a reasonable actuary.*** In practical terms it is ***a burden to show something about standard actuarial practice***, not about the accuracy of a predictive calculation, even though consonance with professional standards in making the calculation might justify confidence that its results are sound.

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361 U. S. 459 (1960); *Huge v. Long's Hauling Co.*, 590 F. 2d 457 (CA3 1978), cert. denied, 442 U. S. 918 (1979); *Lewis v. Mill Ridge Coals, Inc.*, 298 F. 2d 552 (CA6 1962); and disapproved cases such as *Washington Area Carpenters' Welfare Fund v. Overhead Door Co.*, 488 F. Supp. 816 (DC 1980), appeal pending, No. *80-1501* (CADC), and *Western Washington Laborers-Employers Health and Security Trust Fund v. McDowell*, 103 LRRM 2219 (WD Wash. 1979), appeal pending, No. *80-3024* (CA9).

Kaiser Steel Corp. v. Mullins, 455 U.S. 72, 87 (1982).

[16] H.R.Rep. No. 869, pt. I, 96th Cong., 2d Sess. 1, 86, reprinted in 1980 U.S. Code Cong. & Admin. News 2918, 2954.

[17] ERISA § 4221(a)(3)(B)(i), 29 U.S.C. § 1401(a)(3)(B)(i).

[18] *See In re Concrete Pipe,* Arbitration Decision, reprinted at Brief for Defendants' Appellees-Cross-Appellants, Newspaper and Mail Delivers'—Publishers Pension Fund, et al., *New York Times*, Case No. 18-1140 (2nd Cir.), p. Add.91 – Add.94, ECF 57-4, pp. 27 – 30. 4044.

> . . . . The employer merely has a burden to show that an apparently unbiased professional, whose obligations tend to moderate any claimed inclination to come down hard on withdrawing employers, has based a calculation on a combination of methods and assumptions that ***falls outside the range of reasonable actuarial practice.***[19]

Therefore, in the absence of any clear legal restriction to the contrary, the lynchpin of any challenge to the assumptions used by a plan actuary – including a challenge to the discount rate used to determine the value of the plan's vested benefits – must therefore necessarily be that those assumptions combined must somehow be contrary to the relevant actuarial standards to such an extent that they are unreasonable in the aggregate.

The Actuarial Standards

In reviewing the reasonableness of the actuarial practices applicable to multiemployer and other ERISA-covered pension plans, courts have generally looked to the Actuarial Standards of Practice ("ASOPs") adopted by the Actuarial Standards Board. Consistent with the PBGC's previously-expressed opinion,[20] as well as with the NPR, those standards are explicit that different assumptions may be used based upon the purposes for which they are used.[21] Furthermore, those standards explicitly denote the differing purposes for assumptions used to determine ongoing contributions as opposed to withdrawal liability and other forms of defeasement or settlement of liabilities.[22] The standards are also very clear that there is no single "reasonable" assumption, but that there is a range of reasonableness.[23]

With regard to interest, or discount rates, the ASOPs are just as explicit. Under those standards, a plan actuary may select from, among other alternatives, either the plan's anticipated investment return or the interest rate implicit in annuity pricing.[24] Therefore, it follows ineluctably that the "range of reasonableness" must be broad enough to encompass both a plan's anticipated investment return and the interest rate implicit in annuity pricing.

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[19] *Concrete Pipe*, 508 U.S. at 634-35 (emphasis added).

[20] PBGC Op. Ltr. 86-24; PBGC *Amicus* Brief, *New York Times v. Newspaper and Mail Deliverers'-Publishers' Pension Fund,* Nos. 18-1140, 18-1408, (2nd Cir.), Dkt. 65, p. 18.

[21] *See,* ASOP 4, §§ 3.2, 3.3 (Dec. 2021, eff. Feb. 15, 2023); ASOP 27, §§ 3.2(a), 3.6(a)

[22] ASOP 4, § 3.3.a., f.; ASOP 27, § 3.9.

[23] ASOP 27, § 3.62.

[24] ASOP 27, § 3.9.a., b.

The Aberrant Court Decisions

The various court decisions rejecting the plan actuaries' choice of discount rate assumptions are premised on two fundamental errors in those courts' interpretations of ERISA Section 4213(a). That language requires assessing withdrawal liability to use:

> 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 . . . .[25]

First, those courts erroneously construe the "best estimate" language to do more than simply ensuring the independence of the plan actuary in selecting assumptions.[26] Instead, they elevate it to something that creates a substantive requirement that overrides and supplants the burdens of proof provided in ERISA Section 4221(a)(3)(B)(i).[27]

The second, and perhaps even more egregious, error made by these courts is their unsupported inference that the phrase "anticipated experience under the plan" in the context of the selection of a discount rate necessarily requires that the discount rate be based on the plan's anticipated *investment* experience. As the actuarial standards make clear, although a discount rate *may* reasonably be based on a plan's anticipated investment experience, it is not *required* to be. Nowhere in ERISA's multiemployer plan provisions is there any requirement that the discount rate be based upon the plan's anticipated investment return, let alone its actual investment portfolio. As the actuarial standards recognize, a withdrawal represents a defeasance and settlement of the withdrawing employer's liability, which results in a shifting of risk to the participants and beneficiaries, the remaining contributing employers, and, ultimately, the PBGC through its guarantee program. Thus, the "anticipated experience" of the plan following an employer's withdrawal would reflect the employer's elimination of all future risk, and the associated increase in risk borne by the plan, its participants, and its other remaining stakeholders.

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[25] 29 U.S.C. § 1393(a)(1).

[26] *Cf., Wachtell, Lipton, Rosen & Katz v. C.I.R.,* 26 F.3d 291, 296 (2d Cir. 1994) ("We believe that the 'best estimate' requirement is basically procedural in nature and is principally designed to insure that the chosen assumptions actually represent the actuary's own judgment rather than the dictates of plan administrators or sponsors."); *Citrus Valley Estates, Inc. v. C.I.R*., 49 F.3d 1410, 1414 (9th Cir. 1995) ("This means that the 'best estimate' provision of *section 412(c)(3),* properly construed, is essentially procedural in nature. The 'best estimate' language is 'principally designed to insure that the chosen assumptions actually represent the actuary's own judgment rather than the dictates of plan administrators or sponsors.'", citations omitted.); *Rhoades, McKee & Boer v. United States*, 43 F.3d 1071, 1074-75 (6th Cir. 1995); *Vinson & Elkins* v. C.I.R., 7 F.3d 1235, 1238 (5th Cir. 1993) ("The statute refers to the *actuary's* best estimate, not that of a court or of outside experts. . . . In light of this analysis, we find that the best estimate test is procedural, as opposed to substantive, in nature. The statute refers to the *actuary's* best estimate, which implies a procedural approach. One goal of such an inquiry would be to determine whether assumptions truly came from the plan actuary or whether they were instead chosen by plan management for tax planning or cash flow purposes.").

[27] 29 U.S.C. § 1401(a)(3)(B)(i).

Furthermore, in addition to its inconsistency with Congress' intent in passing the MPPAA, the erroneous inference drawn by these courts demonstrates their lack of understanding of actuarial principles and serves to underscore the wisdom of Congress' and the Supreme Court's directive that these are actuarial matters that should be left to the experts – the enrolled actuaries and the relevant actuarial standards.