



August 25, 2017

Via Electronic Mail

The Honorable W. Thomas Reeder
Director
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026

Submitted by e-mail to: reg.comments@pbgc.gov

Re: Pension Benefit Guaranty Corporation, Regulatory Planning and Review of Existing Regulations, Request for Information (82 Fed Reg. 34619, July 26, 2017) Implementing Executive Order No. 13771 (January 30, 2017) and No. 13777 (February 24, 2017) (“RFI”)

Dear Mr. Reeder:

The United Food and Commercial Workers International Union (“UFCW”) is pleased to respond to the RFI issued by the Pension Benefit Guaranty Corporation (“PBGC”) concerning regulatory and deregulatory actions the PBGC should undertake. By way of background, the 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 with 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. Of the UFCW’s 1.3 million members, approximately 700,000

are covered under jointly-administered Taft Harley funds, the overwhelming majority of which are self-funded multiemployer plans. Therefore, the continued strength of the multiemployer defined benefit plan system is of paramount importance to the UFCW and its members.

The UFCW requests that the PBGC focus its attention on two areas of reform: the PBGC's proposed rules on mergers and transfers between multiemployer plans, and the Fiscal Year 2018 proposed budget related to new premiums on multiemployer pension plans.

1. Mergers and Transfers for Multiemployer Plans.

The ability of multiemployer defined benefit plans to engage in mergers and/or transfers has been a critical part of the long-term strength and viability of these plans. The UFCW has been a strong advocate of mergers and transfers where those transactions are in the long-term best interests of UFCW plan participants and beneficiaries. In particular, mergers and transfers create the opportunity for a healthier and stable employer contribution base as well as economies of scale unavailable to smaller plans. Moreover, the ability of larger combined multiemployer plans to diversify investments across a broad array of investment strategies is another important factor dictating in favor of mergers and transfers.

The economic downturn in 2008-2009 put further stress on defined benefit plans across the country, and a number of multiemployer pension plans that were previously well-funded now found themselves in critical, or critical-and-declining status. Those plans have adopted rehabilitation plans as required by the Pension Protection Act. For multiemployer plans that have viable rehabilitation plans with a clear pathway to Green Zone status, mergers offer an added opportunity for continued stability and further assurance to participating employers that the plans can effectively emerge from critical status without further increases in contributions.

Congress recognized the important role that mergers and transfers could play in the long-term health of multiemployer plans when the Multiemployer Pension Reform Act of 2014 (“MPRA”) was enacted. In fact, the MPRA contains detailed provisions for mergers that are to be facilitated by the PBGC. The goal of facilitated mergers is to save financially troubled plans from insolvency by encouraging mergers with stronger multiemployer plans. Thus, the clear message of MPRA is to encourage mergers with financially stable plans, where appropriate.

On June 6, 2016, the PBGC issued proposed regulations modifying the requirements for mergers and transfers between multiemployer plans under Section 4231 of ERISA. Rather than encourage mergers and transfers between plans, the proposed regulations modify the existing rules in a way that will restrict options for multiemployer plans that are interested in pursuing mergers and transfers. For example, the proposed regulations governing a merger or transfer involving a “significantly affected plan” is permitted only if (1) expected contributions equal or exceed the estimated amount necessary to satisfy the minimum funding requirements of Code 431 for ten years (current regulations require five years) after the proposed effective date of the merger or transfer; and (2) the plan’s expected fair market value of assets immediately after the merger or transfer equal or exceed the total amount of expected benefit payments for the first ten years (current regulations require five years) beginning on or after the proposed effective date of the merger or transfer.

As a practical matter, a financially troubled plan will now have a more difficult time merging into a better funded plan, even with a route toward solvency following the merger. The PBGC should modify the existing proposed regulations in a way that permits mergers and transfers involving endangered, critical, or critical-and-declining plans where the plans can

establish that the merger does not increase risks of overall plan insolvency, are not adverse to the overall best interests of the participants and beneficiaries, and reduce the financial exposure of the PBGC.

2. PBGC Premiums.

The 2018 Proposed Budget includes significant increases in PBGC multiemployer premiums. In particular, there would be a new variable rate premium for multiemployer plans based on plan underfunding and a new premium which would be assessed on withdrawn employers and payable directly to the PBGC. Currently, ERISA only imposes a flat-rate premium for multiemployer plans which is currently \$28 per participant.

The premium increases contemplated under the proposed budget would impose significant strains on the entire multiemployer defined benefit plan system. The increases in PBGC premiums could force many more employer withdrawals which would in turn adversely impact the overall financial solvency of the multiemployer plan system. The economic risk to employers contributing to multiemployer plans is likely to be significant with potentially reduced revenues, curtailed employment, and possible business closures that result from employer withdrawals from multiemployer plans. Additionally, participants and retirees currently covered by multiemployer plans will be exposed to significant reductions in retirement benefits to the extent plan insolvency is accelerated.

Rather than seek unsustainable increases in PBGC premiums, the PBGC should focus on implementing the provisions of MPRA and encourage plan mergers and plan consolidations that can stabilize the existing multiemployer program. Additionally, the PBGC should actively discuss with the Department of the Treasury the implementation of funding rules that can create

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pathways to plan solvency, particularly in volatile investment markets, further stabilizing multiemployer plans in the long term.

We appreciate the opportunity to submit these comments in response to the PBGC's RFI. Should you have any questions or wish to discuss any of the UFCW's comments, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Clark', with a long horizontal flourish extending to the right.

Nicholas W. Clark