

Via electronic delivery

October 19, 2022

Director Gordon Hartogensis
Pension Benefit Guaranty Corporation
445 12th Street, SW
Washington, DC 20024-2101

RE: RIN 1212-AB54 Actuarial Assumptions for Determining an Employer's Withdrawal Liability

Dear Director Hartogensis,

The undersigned request an extension of the comment period from 30 to at least 60 days for the proposed regulation regarding the Actuarial Assumptions for Determining an Employer's Withdrawal Liability (Proposed Regulation), which was published in the Federal Register on October 14, 2022.

The Proposed Regulation implements section 4213 of the Employee Retirement Income Security Act of 1974, as amended (ERISA). This section was added to ERISA as part of the Multiemployer Pension Plan Amendments of 1980, and provides, in part, that the Pension Benefit Guaranty Corporation (PBGC) "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."

While Section 4213 has been in the law for over 40 years without any regulatory guidance, PBGC is providing the public only 30 days to respond to the Proposed Regulation.¹ In the preamble to the Proposed Regulation, PBCG repeatedly states this change will increase withdrawal liability for contributing employers, which includes many small employers with fewer than 10 employees. However, PBGC does not fully take into consideration the impact this increase will have on employers, which are the only entities that contribute to these plans, or the wage and benefit compensation of current, active employees. Given the importance of balancing the needs of plan solvency and employer and employee financial health, we respectfully request that the comment period be extended to at least 60 days from the date of publication in the Federal Register.

¹ In the preamble to the Proposed Regulation, PBGC seems to insinuate that the public should have been on notice that it intended to issue a proposed regulation because of footnote 18 in the preamble of the notice of proposed rulemaking for Special Financial Assistance under ERISA section 4262 issued July 12, 2022, in which PBGC stated that it intended to propose a separate rule of general applicability under section 4213(a) of ERISA to prescribe actuarial assumptions that may be used by a plan actuary in determining an employer's withdrawal liability. However, notice in a footnote in an unrelated proposed regulation is not sufficient to prepare a response to this Proposed Regulation.

Sincerely,

Associated General Contractors of America

The Association of Food and Dairy Retailers, Wholesalers and Manufacturers

The Connecticut Construction Industries Association, Inc.

DHL

FMI – the Food Industry Association

International Warehouse Logistics Association

Leicht Transfer & Storage Co.

Paul Hastings LLP

Spangler Candy Company

U.S. Chamber of Commerce

cc: Kristin Chapman, Chief of Staff

John Ginsberg, Assistant General Counsel, Multiemployer Law Division, Office of the
General Counsel