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June 17, 2024

James Butikofer
Employee Benefits Security Administration
U.S. Department of Labor
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Re: Proposed Information Collection Request, 89 FR 26932

Dear Mr. Butikofer,

Thank you for the opportunity to submit comments regarding the U.S. Department of Labor’s (“Department”) Proposed Information Collection Request regarding Retirement Savings Lost and Found, 89 Fed. Reg. 26932 (Apr. 16, 2024). This letter is submitted on behalf of the Boards of Trustees (the “Boards” or the “Trustees”) of the PACE Industry Union-Management Pension Fund (PIUMPF) and the National Integrated Group Pension Plan (NIGPP). PIUMPF and NIGPP (collectively, “the Plans”) are multiemployer defined benefit pension plans in critical status that received Special Financial Assistance (SFA) under the American Rescue Plan Act (ARPA).

1. Duties to Participants: The Boards have concerns regarding sharing the Plan’s information with the Department, where there is no legal requirement to do so. Plan fiduciaries have an obligation to plan participants to maintain the confidentiality of their data, and also a

duty under ERISA § 403(c)(1) to use plan assets for “the exclusive purpose of providing benefits to participants...and defraying reasonable expenses of the plan.” Before providing information to the Department, the Boards would like assurances from the Department that the Department does not view such cooperation as violating the exclusive purpose rule found in ERISA or otherwise compromise the Boards’ duties to plan participants and beneficiaries. Moreover, while the Proposed Information Collection Request asserts that the Department will follow security protocols to protect plan data, the Boards would like assurances that they will not face liability in the event that the Department’s security measures fail (*e.g.*, if the Department’s systems are breached), and that the Department will take appropriate steps to remedy the effects of any such breach, similar to the assurances that plans typically require of contracting parties who will have access to plan data . In addition, the Boards would like a commitment from the Department that this information will not be shared with other governmental agencies, and will not be used by the Department for any other purpose other than the creation of the database required by the Secure 2.0 Act, as that could potentially create additional burden and expense for the plan or lead to results not in the interests of the plan participants.

2. Scope and Expense of Requests: The Boards also have concerns regarding the extent of data requested in the Proposed Information Collection Request, and the cost that this work will impose on the Plans. As multiemployer plans, the Plans must pay any administrative costs from the assets available to pay benefits. As underfunded plans in critical status, the Plans already have limited funds to pay projected benefits. When each Plan applied for SFA assistance, each Plan projected the amount necessary to pay benefits through 2051 based on its history of administrative expenses. Any rule that imposes a significant additional administrative burden on the Plans therefore increases the possibility that the Plans’ assets will be insufficient to pay benefits through 2051. As a result, the Boards want to avoid any new obligation that will create a significant new administrative burden.

The Proposed Information Collection Request explains that the Department “had planned to use data that plan administrators submitted to the Internal Revenue Service (IRS) on Form 8955-SSA (Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits)” but was unable to obtain that information directly from the IRS. Because the Plans already compile the Form 8955-SSA data for the IRS, they could provide this data to the Department with only limited additional expense.

However, the Department’s Proposed Information Collection Request appears to go far beyond the Form 8955-SSA requirements and requires additional information that is not kept by the Plans in a manner that could be easily aggregated for transmission to the Department. The Trustees have particular concern with the breadth of the Request, which appears to go far beyond what is necessary to set up the lost participant database, and which threaten to create a substantial administrative burden for the Plans. For instance:

- Time Scope: The Proposed Request “asks for specific information dating back to the data a plan became subject to ERISA.” Both PIUMPF and NIGPP were formed prior to ERISA’s passage, and therefore this Request appears to ask for fifty years of data, which is not reasonable. Moreover, both NIGPP and PIUMPF had a number of plans that merged into them– collecting historical data for merged plans would be

very burdensome, if it was even possible. Such historical data has minimal marginal benefit to the Department in setting up a database for participants who are now entitled to an unclaimed benefit.

- Information Not Available: Some of the information requested is not typically in the Plans' records for terminated participants, particularly those who have not yet commenced a benefit. The Plans do not typically have information about designated beneficiaries of participants until the participant applies for a benefit. The Plans seldom have email addresses or phone numbers for participants. The Plans also do not have information about the precise "nature, form, and amount" of benefit until the participant applies for the benefit.
- Participants who are not "lost": Although the purpose of the Proposed Request is to establish a database to find "lost" participants (those who are entitled to a benefit but have not claimed it), the Proposed Request seeks a great deal of information about participants who have claimed their benefit. For instance, the Proposed Request seeks information regarding individuals who cashed out their benefit in a lump sum (without any limitation in time), and information about when participants commenced their annuity and the amount. The data concerning lump-sum payments to long-gone individuals would be very time-consuming to compile, and the information requested regarding participants currently receiving a benefit could also be challenging (for instance, because some participants start a benefit, then stop it as they return to covered work, identifying the start date for the benefit may not be simple).

3. Opportunity to Remove Deceased Participants: The Boards request that the Department use this data-collection opportunity to cross-check the plan participant lists against the Social Security Full Death Master File. Plans no longer have access to this important federal resource to determine whether terminated participants are still living, and are forced to rely on incomplete death records compiled by private companies. As part of the SFA application process, the PBGC has been cross-checking plan participant data against the federal Social Security Full Death Master File. This process has proven that the private death search systems available to plans are missing many deaths, and therefore it is likely that some number of the participants that appear to be "lost" are actually deceased. While creating the lost participant database will serve a worthy goal of enabling participants to locate and claim benefits, it also creates some increased risk of fraudulent applications by making this information more readily available to the general public. In order to minimize the risk of fraudulent claims, it would be extremely helpful for the Department to cross-check plan files against the Death Master File, so that plans may update their records regarding deceased participants. Similar to the manner in which the PBGC is handling SFA applications, the Department could provide the plan administrator a list of participants showing as deceased without giving the plan access to the Death Master File.

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The comments above are specific to multiemployer defined benefit plans, and may not apply in the same manner to single-employer plans. We urge the Department to consider the

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circumstances of multiemployer plans, which are somewhat different than the circumstances of single-employer plans, in developing any final rule or guidance regarding this program.

Please let us know if you would like to discuss any of these issues. We thank you for your time and attention to these issues, and your efforts in ensuring that American workers receive the benefits they have earned.

Sincerely,

/s/ Kathleen Keller
Kathleen Keller

cc: Don Mickel, NIGPP Administrative Agency
Carolyn Adams-Rossignol, PIUMPF Executive Director