No. 19-1336

IN THE

Supreme Court of the United States

THE NATIONAL RETIREMENT FUND, ET AL.,

Petitioners,

—v.—

METZ CULINARY MANAGEMENT, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY TO OPPOSITION

RONALD E. RICHMAN
Counsel of Record
MAX GARFIELD
ANDREW B. LOWY
SCHULTE ROTH & ZABEL LLP
919 Third Avenue
New York, New York 10022
(212) 756-2000
ronald.richman@srz.com
max.garfield@srz.com
andrew.lowy@srz.com

Counsel for Petitioners

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

REPLY BRIEF FOR THE PETITIONER 1

A. THE AAA, IN THE ISSUE BRIEF, HIGHLIGHTS THAT RETROACTIVE CHANGES TO ACTUARIAL ASSUMPTIONS ARE NECESSARY. 2

B. THE AAA, IN THE ISSUE BRIEF, CONFIRMS THAT THE ISSUE PRESENTED HAS BROAD IMPACT, DESPITE NO CIRCUIT SPLIT. 5

C. THERE IS NO LEGISLATION IN CONGRESS THAT WILL ADDRESS THE ISSUE BEFORE THE COURT. 7

D. THE "FACTUAL FEATURES" METZ RELIES UPON TO ASSERT THAT THIS CASE IS A "POOR VEHICLE" ACTUALLY REINFORCE WHY THIS COURT SHOULD GRANT THE PETITION. 7

E. THE SECOND CIRCUIT CREATED AN INAPPROPRIATE LIMITATION THAT DOES NOT EXIST IN ERISA. 10

CONCLUSION 11

Reply Appendix – American Academy of Actuaries, Issue Brief, Selection of Actuarial Assumptions for Multiemployer Plans (July 2020) 1a

TABLE OF AUTHORITIES

Page(s)

Cases

Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal., 508 U.S. 602 (1993) .... *passim*

Sofco Erectors Inc. v. Trs. of the Ohio Operating Engineers Pension Fund, et al., Case No. 2:19-cv-2238, 2020 WL 2541970 (S.D. Oh. May 19, 2020) 10

SUPERVALU, Inc. v. Bd. of Trs. of Sw. Pa. & W. Md. Area Teamsters & Emp'rs Pension Fund, 500 F.3d 334 (3d Cir. 2007) 9

Statutes

29 U.S.C. § 1392(c), Section 4212(c) of ERISA 9

29 U.S.C. § 1393(a)(1), Section 4213(a)(1) of ERISA 6

29 U.S.C. § 1401(c), Section 4221(c) of ERISA 8

Other Authorities

Rehabilitation for Multiemployer Pensions Act of 2019, H.R. 397, (116th Cong.)....................... 7

About Us, American Academy of Actuaries, https://www.actuary.org/content/about-us 1

Vision & Mission, American Academy of Actuaries, https://www.actuary.org/content/vision-mission 1

REPLY BRIEF FOR THE PETITIONER

The National Retirement Fund and the Board of Trustees of the National Retirement Fund (collectively, the "Fund") submit this reply brief in response to Metz Culinary Management, Inc.'s ("Metz") opposition brief (the "Opposition") to the Fund's Petition for Writ of Certiorari (the "Petition").

Last month, after the Fund filed its Petition, the American Academy of Actuaries (the "AAA") published an issue brief entitled "Selection of Actuarial Assumptions for Multiemployer Plans" (the "Issue Brief"). Reply App. 1a-11a. The AAA is a professional association dedicated to serving the public and U.S. actuarial profession. *About Us*, American Academy of Actuaries, https://www.actuary.org/content/about-us (last visited Aug. 20, 2020). The AAA has more than 19,500 members, which include consultants, corporate executives and staff, regulators, government officials, academics, and retired actuaries. *Id.* As part of its mission, the AAA provides independent and objective analysis and advice and advocates on behalf of the actuarial profession, including by publishing statements such as the Issue Brief. *Vision & Mission*, American Academy of Actuaries, https://www.actuary.org/content/vision-mission (last visited Aug. 20, 2020).

The Issue Brief sets forth what the profession considers appropriate conduct for actuaries. This is exactly the type of guidance that the Supreme Court in *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.,* 508 U.S. 602, 635 (1993) indicated should control actuarial issues relating to the calculation of withdrawal liability. The Issue Brief highlights the harm that the Second

Circuit's decision creates for the actuarial profession and multiemployer pension plans. It also showcases how the four points Metz raises in its Opposition ignore actual practice and an actuary's duties under the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"). After a brief discussion of the Issue Brief, the Fund addresses Metz's arguments below.

A. THE AAA, IN THE ISSUE BRIEF, HIGHLIGHTS THAT RETROACTIVE CHANGES TO ACTUARIAL ASSUMPTIONS ARE NECESSARY.

The AAA states in the Issue Brief, "an actuary typically makes the final selection of actuarial assumptions after the measurement date . . . ." Reply App. 7a. This is because "the actuary typically reviews the reasonableness of the assumptions every year to ensure they remain an appropriate estimate of anticipated future plan experience." *Id.* The AAA also states that "the most recent relevant data that the actuary uses to perform this analysis is generally not available until after the measurement date." Reply App. 6a. Accordingly, an actuary's "[a]nalysis of newly available data and experience may be an appropriate reason to make a decision after the measurement date to change actuarial assumptions." Reply App. 7a.

As this Court acknowledged in *Concrete Pipe*, "[s]ince the methodology is a subject of technical judgment within a recognized professional discipline, it would make sense to judge the reasonableness of a method by reference to what the actuarial profession considers to be within the scope of professional acceptability in making an unfunded liability

calculation." 508 U.S. 602, 635 (1993). The Issue Brief is what the actuarial profession considers appropriate. According to leaders in the actuarial profession, when an actuary relies on prior-year assumptions, the actuary risks making assumptions based on stale information. Reply App. 7a. By contrast, when an actuary uses "the most recent relevant data," the actuary "ensures the results fully reflect current experience and the actuary's best estimate of the situation of the measurement date." *Id.* As discussed at length in the Petition, an actuary's ability to make assumptions based on the actuary's "best estimate" is critical to a plan's financial stability and is required under ERISA. Pet. at 20-25.

The AAA explains in the Issue Brief that for withdrawal liability, it is "especially important" for an actuary to base his or her assumptions on the most recent relevant data "because that calculation effectively settles a withdrawing employer's obligation to the plan." Reply App. 7a. A withdrawn employer is no longer participating in the pension fund and is no longer subject to its funding obligations. *See* App. 141a. While an ongoing contributing employer's contribution rate may change from time to time to meet funding requirements, a withdrawn employer's withdrawal liability payments to a pension fund are fixed at the time of withdrawal. *See id.* If a fund's investments underperform, and the fund does not meet the actuary's investment return assumption, a withdrawn employer will not be obligated to contribute more to a fund. *See id.* As a result, once an employer withdraws from a fund, the employer is no longer facing any risk connected with the performance of the plan's assets. *See id.* This is why it is particularly

important for an actuary's assumptions for withdrawal liability purposes to be based on the most recent data.

In addition to discussing an actuary's periodic review of actuarial assumptions, the AAA addresses the issues that arise when a pension plan decides to engage a new actuary to replace its existing actuary. Reply App. 8a-10a. In its Issue Brief, the AAA confirms that a new actuary is expected to "review, among other things: the plan's situation; the prior actuary's work, including an evaluation of the assumptions the prior actuary selected; and other facts and circumstances affecting the plan." Reply App. 9a. After the new actuary completes this review and assessment, the new actuary "might, in the exercise of professional judgment and based on the available data, plan experience, reasonable future expectations, and other relevant factors, determine that changes to plan's [sic] actuarial assumptions are needed." *Id.*

The AAA states, "[d]epending on when in the Plan Year the change takes place and the time the new actuary needs to complete a review and assessment, any assumption changes that the new actuary determines are appropriate may occur after a given measurement date." Reply App. 9a. This is exactly what happened here. Pet. at 3-4; *see Concrete Pipe,* 508 U.S. at 635 ("consonance with professional standards in making the [withdrawal liability] calculation might justify confidence that its results are sound"). The Fund retained a new actuary at Horizon Actuarial Services LLC ("Horizon"), who undertook a review of the Fund's condition and the prior actuary's

assumptions.[1] Following a careful review, the Horizon actuary, in his professional judgment and based on the most recent data he reviewed, decided to change the Fund's actuarial assumption to better reflect the actual experience of the Fund as of December 31, 2013. Pet. at 4.

B. THE AAA, IN THE ISSUE BRIEF, CONFIRMS THAT THE ISSUE PRESENTED HAS BROAD IMPACT, DESPITE NO CIRCUIT SPLIT.

The AAA, in the Issue Brief, shows that Metz's assertion that the issue created by the Second Circuit's ruling is narrow is unmerited. Metz claims that the absence of a circuit split furthers its misguided claim that the issue in this case "has minimal prospective importance." Opp'n at 14. The fact that there is no circuit split and that this case arose four decades after enactment of the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA") is because of the profession's broad acceptance and use of the very practice the Second Circuit seeks to stop. *See* Brief for *Amicus Curiae* Horizon Actuarial Services, LLC at 4. (the Second Circuit's decision "seriously distorts settled actuarial practices and places independent actuaries in an impossible position"). The Second Circuit's decision upsets the apple cart that has been in place for almost forty years and makes it impossible, at times, for actuaries to comply with ERISA by using their "best estimate" in accordance with accepted

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[1] Contrary to Metz's unsupported, and unsupportable, comment concerning Horizon—that the Fund retained Horizon "as a way to hike withdrawal liability"—the Fund had no knowledge as to the actuarial assumptions Horizon would select. *See* App. 98a, 105a-106a, 138a-142a.

actuarial practices. *See* Section 4213(a)(1) of ERISA, 29 U.S.C. § 1393(a)(1); *Concrete Pipe,* 508 U.S. at 631; Reply App. 4a, 7a.

Metz's contention that it is unclear whether "any other plan or actuary has ever *tried* to alter assumptions retroactively" and that there is no reason "to think that other plans or actuaries will ever seek to do so in the future" is belied by the AAA in the Issue Brief. Opp'n at 15. The AAA plainly states that it is commonplace for an actuary to select assumptions after the Measurement Date (as defined in the Petition). Reply App. 7a. Ironically, Metz touts the lack of an *amicus* brief from the AAA as evidence that an actuary's ability to retroactively change actuarial assumptions is a discrete issue and ignores the Issue Brief, although it was published before Metz submitted its Opposition. The Issue Brief puts a spotlight on the pervasiveness of the practice and confirms the Fund's position in the Petition.

In an effort to belittle the harmful effect of the Second Circuit's erroneous holding, Metz notes that actuaries can still change assumptions prospectively. Opp'n at 13, 15. This argument is deeply troubling for two reasons. Metz is actually arguing that, even if an actuary believes that current assumptions may not be correct, or are incorrect, the actuary should continue to calculate withdrawal liability using the incorrect assumptions until the following year. This violates ERISA and the premise of this Court's holding in *Concrete Pipe* that actuaries will act in accordance with accepted actuarial practices. 508 U.S. at 635.

Metz's argument also glosses over the importance of having an accurate withdrawal liability

calculation. As discussed above and in the Issue Brief, withdrawal liability is effectively a plan's last chance to settle a withdrawing employer's obligation to the plan. Relying on an actuary's ability only to prospectively change assumptions, even after determining that such assumptions are, or may be, flawed, ignores the fact that this is the only opportunity for the plan to address a currently withdrawing employer's unfunded obligation to a plan. *See* Reply App. 7a.

C. THERE IS NO LEGISLATION IN CONGRESS THAT WILL ADDRESS THE ISSUE BEFORE THE COURT.

The fact that Congress may address the underfunding of the Pension Benefit Guaranty Corporation's insurance fund and multiemployer plans by providing financial help does not suggest that Congress will address ERISA's rules governing the selection of actuarial assumptions for the calculation of withdrawal liability. In fact, the only legislation passed by either house in Congress does not address the issue before the Court. *See* Rehabilitation for Multiemployer Pensions Act of 2019, H.R. 397, 116th Cong. (2019).

D. THE "FACTUAL FEATURES" METZ RELIES UPON TO ASSERT THAT THIS CASE IS A "POOR VEHICLE" ACTUALLY REINFORCE WHY THIS COURT SHOULD GRANT THE PETITION.

Metz points to what it characterizes as two "factual features" in claiming that this case is a "poor vehicle" for this Court's review. Opp'n at 3, 17.

Nothing about the Second Circuit's decision turns on or is determined by the facts of this case. The fact that Metz withdrew before the Fund's new actuary formulated his interest rate assumption does not raise a "due process" or "fairness" concern. This Court's central holding in *Concrete Pipe* was that the statutory presumption in favor of pension funds' determinations is constitutional, and does not violate due process, because of the opportunity for independent arbitral review and the role of independent actuaries governed by professional standards of conduct. 508 U.S. at 635-636.

In fact, the Second Circuit usurped the arbitrator's role and violated ERISA's rules governing dispute resolution of withdrawal liability disputes by determining, without any factual or legal basis, that it had to guard against Horizon using inappropriate actuarial assumptions because Horizon selected those assumptions after the Measurement Date. *See* Section 4221(c) of ERISA, 29 U.S.C. § 1401(c); *Concrete Pipe*, 508 U.S. at 630. It was, and is, for the Arbitrator to determine whether the Fund's actuary used appropriate actuarial assumptions, not the Second Circuit. In fact, the Arbitrator—the statutory finder of fact—reserved Metz's right in arbitration to challenge the interest rate that the actuary used. *See* App. 92a, 94a, 104a.

Metz's argument that it was too late for the employer to alter its behavior is not changed by the Second Circuit's decision. Opp'n at 17. The Fund has no obligation to provide notice to employers of any change made by the actuary in the actuarial assumptions used to calculate withdrawal liability.

Accordingly, whether the Fund alters the assumptions before or after the Measurement Date, or before or after any employer withdraws, is irrelevant. Metz would not be able to react to any change because Metz would not know of the change until it received its assessment of withdrawal liability.

Metz's claim that it would have been able to calibrate its withdrawal to when it would have been more advantageous economically also ignores the fact that participating employers in a multiemployer pension fund are prohibited by law from doing exactly that. Section 4212(c) of ERISA provides, "[i]f a principal purpose of any transaction is to evade or avoid liability under [Part 1 of MPPAA], this part shall be applied (and liability shall be determined and collected) without regard to such transaction." 29 U.S.C. § 1392(c). *SUPERVALU, Inc. v. Bd. of Trs. of Sw. Pa. & W. Md. Area Teamsters & Emp'rs Pension Fund*, 500 F.3d 334, 343 (3d Cir. 2007) (finding that an employer entering into a "Termination Agreement" negotiated with the union to change the employer's year of withdrawal and reduce its withdrawal liability, even though a *bona fide* transaction, was a transaction with a principal purpose to avoid withdrawal liability that violated Section 4212(c) of ERISA).

Metz focuses on the different interest rate assumptions utilized by the Fund's new actuary here for withdrawal liability purposes and minimum funding purposes, calling this a "distinct legal defect." Opp'n at 17. In doing so, Metz raises an issue not before the Court. It also mangles this Court's determination in *Concrete Pipe* that an actuary's use of different interest rates for the two different

purposes does not violate an employer's due process rights.[2] Pet. at 19. Shortly before the Fund filed its Petition, yet another district court reaffirmed decades worth of decisions in which courts and arbitrators have held consistently, as a matter of law—and contrary to Metz's assertion here—that neither the relevant statutory provisions of ERISA nor this Court's holding in *Concrete Pipe* require the interest rates to be the same. *See Sofco Erectors Inc. v. Trs. of the Ohio Operating Engineers Pension Fund, et al.*, Case No. 2:19-cv-2238, 2020 WL 2541970 at *9-10 (S.D. Oh. May 19, 2020) (finding that "to the extent [the employer] argues that 'the use of different interest rates in different contexts is always impermissible as a matter of law, that argument fails'") (quoting *New York Times Co. v. Newspaper & Mail Deliverers'-Publishers' Pension Fund*, 303 F. Supp. 3d 236, 254-55 (S.D.N.Y. 2018)); *see also* Pet. at 18, 28.

E. THE SECOND CIRCUIT CREATED AN INAPPROPRIATE LIMITATION THAT DOES NOT EXIST IN ERISA.

Metz points to the Second Circuit's interpretation of the legislative intent behind Section *4214* of ERISA as justification for the Second Circuit's interpretation of Section *4213* of ERISA. Opp'n at 22. The Second Circuit violated basic principles of statutory interpretation by creating a limitation that

[2] The Issue Brief reinforces the appropriateness of different rates. The AAA wrote, "[t]wo key annual multiemployer liability measurements are those used for statutory minimum funding purposes and those used for employer withdrawal liability purposes. Actuaries sometimes use different assumptions for valuing these liabilities." Reply App. 4a.

Congress chose, for good reason, not to include in the provision of ERISA governing the selection of actuarial assumptions for withdrawal liability. The Second Circuit's misguided concern that the possible misuse of different interest rates by the actuary justifies its statutory interpretation has no basis in ERISA, violates ERISA's rules governing actuaries, prohibits actuaries from using their best estimates and acting in accordance with appropriate actuarial practices, and eviscerates the due process protection set forth in ERISA's arbitration scheme.

CONCLUSION

For the foregoing reasons and those stated in the Petition for Writ of Certiorari, the Petition should be granted.

Respectfully submitted.

RONALD E. RICHMAN
Counsel of Record
MAX GARFIELD
ANDREW B. LOWY
SCHULTE ROTH & ZABEL LLP
919 Third Avenue
New York, New York 10022
(212) 756-2000
ronald.richman@srz.com
max.garfield@srz.com
andrew.lowy@srz.com

Counsel for Petitioners

REPLY APPENDIX

AMERICAN ACADEMY OF ACTUARIES

Issue Brief

Selection of Actuarial Assumptions
for Multiemployer Plans

July 2020

Key Points

- When determining funding standards and withdrawal liability, ERISA requires that actuaries use reasonable assumptions that account for plan experience and offer their "best estimate of anticipated experience under the plan."
- While the plan's benefit obligations, funded status, and withdrawal liability could be measured on the prior year assumptions, using the most recent relevant data ensures the results fully reflect current experience and the actuary's best estimate of the situation as of the measurement date.
- ASOP Nos. 27 and 35 acknowledge that several different assumptions may be reasonable for a given measurement, and that different actuaries may select different reasonable assumptions.

Multiemployer pension actuaries use many assumptions in measuring plan obligations, funded status, and withdrawal liability. In selecting actuarial assumptions, an actuary would typically review recent plan experience occurring up to the measurement date, as well as consider significant events that may occur after the measurement date. For these and other reasons,

actuaries often do not finalize the assumptions for a given measurement until after the measurement date. However, recent controversy has arisen around the selection of actuarial assumptions that can be used to determine employer withdrawal liability under a multiemployer pension plan.

This issue brief considers post-measurement date changes in actuarial assumptions and is meant to contribute to the public policy analysis of multiemployer pension plan issues by providing insights into some of the considerations that go into the selection of actuarial assumptions, and the approaches that actuaries use in practice. It is not intended to provide actuaries practicing in this area with guidance on how to select actuarial assumptions or with legal advice.[1] Furthermore, this issue brief focuses on issues affecting multiemployer plans, and some of the concepts it discusses may not apply to other types of defined benefit pension plans.

This issue brief builds upon prior work of the American Academy of Actuaries concerning the selection of actuarial assumptions for pension obligations, both for multiemployer plans and in general. Please refer to these earlier issue briefs for more information:

- *Determining Withdrawal Liability for Multi-employer Pension Plans: A Range of Approaches*

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[1] The discussion in this issue brief reflects practice as of June 30, 2020. Certain practices described in this issue brief could be significantly affected by changes in statutes or federal regulations that take effect after June 30, 2020, or by judicial decisions after June 30, 2020, construing applicable statutes or regulations.

to Actuarial Assumptions, April 2020. This issue brief discusses considerations and approaches used in the selection of interest rates for withdrawal liability.

- *Assessing Pension Plan Health: More Than One Right Number Tells the Whole Story*, July 2017. This issue brief discusses how more than one measurement may be needed to determine the financial health of a pension plan.
- *Measuring Pension Obligations*, November 2013. This issue brief discusses how different discount rates are useful for their intended purpose, although the measurements may differ significantly.

Background

Multiemployer defined benefit pension plans provide lifetime payments beginning at a participant's retirement. These benefits accrue over a participant's working career and, in an attempt to ensure the plan will accumulate sufficient resources to pay the promised benefits, federal law requires the prefunding of these benefits according to specific rules.

The Employee Retirement Income Security Act of 1974 ("ERISA") established minimum funding standards for private pension plans in the United States, including multiemployer pension plans. Under these funding standards, an Enrolled Actuary annually calculates and certifies the benefit liabilities, funded status, and statutory minimum required contribution of the plan.

The Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA") amended ERISA to mandate

the determination and assessment of withdrawal liability for employers that cease their participation in multiemployer plans. Withdrawal liability is the employer's share of the plan's unfunded vested benefit liability, if any.

When determining funding standards and withdrawal liability, ERISA requires that actuaries use reasonable assumptions that account for plan experience and offer their "best estimate of anticipated experience under the plan."[2]

Key Liability Measurements and Actuarial Assumptions

Two key annual multiemployer liability measurements are those used for statutory minimum funding purposes and those used for employer withdrawal liability purposes. Actuaries sometimes use different assumptions for valuing these liabilities.[3] ERISA requires that the assumptions for both measurements are reasonable and represent the actuary's best estimate of anticipated experience under the plan.

There are two broad categories of actuarial assumptions used to measure obligations for multiemployer plans:

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[2] 29 U.S.C. §§ 1084(c)(3), 1393(a)(1). While Congress has authorized the Pension Benefit Guaranty Corporation to promulgate regulations governing actuarial assumptions and methods applicable to withdrawal liability, *id.* § 1393(a)(2), it has not done so.

[3] See the April 2020 issue brief *Determining Withdrawal Liability for Multiemployer Pension Plans: A Range of Approaches to Actuarial Assumptions.*

- **Economic Assumptions**, which include inflation, investment returns, discount rates, compensation increases, cost-of-living adjustments, rate of payroll growth, growth of individual account balances, conversion factors for lump sums and variable benefits, and administrative expenses; and
- **Demographic Assumptions**, which include rates of retirement, termination of employment, mortality (and mortality improvement), disability (and disability recovery), election of optional forms of benefits, and future service or benefit credits (often expressed as hours worked).

Certain assumptions, such as those for participant mortality and discount rates, typically have the greatest effect on the valuation of current plan obligations. Nonetheless, each assumption warrants specific analysis, and the actuary must exercise professional judgment in selecting it. The assumption-selection process is guided by the Actuarial Standards of Practice ("ASOPs") established by the Actuarial Standards Board ("ASB").

Actuarial Standards of Practice ("ASOPS")

The ASOPs set forth the procedures an actuary should follow when performing actuarial services and identify what the actuary should disclose when communicating the results of those services. They neither prescribe every step in an actuarial assignment nor dictate a single approach or outcome. Rather, the ASOPs require the actuary to follow a process but to use professional judgment when selecting assumptions; the process includes analyzing plan experience and reaching a conclusion,

while also recognizing that different actuaries can reasonably reach different conclusions even when faced with the same data and other inputs. The following ASOPs guide actuaries in selecting assumptions used in measuring pension obligations:

- ASOP No. 27, *Selection of Economic Assumptions for Measuring Pension Obligations*
- ASOP No. 35, *Selection of Demographic and Other Noneconomic Assumptions for Measuring Pension Obligations*

While these ASOPs vary somewhat in specific guidance, they both require that the actuary consider the purpose and type of the measurement and the materiality of the assumption to the measurement. Likewise, both require the actuary to evaluate the relevant economic/demographic data and recognize that the selection of actuarial assumptions is generally based on knowledge of the situation as of the measurement date of the pension obligation.

When evaluating the relevant data, the actuary usually reviews relevant recent and long-term historical data and considers the development of trends over time without giving undue weight to recent experience unless warranted by other factors. Further, the actuary generally considers the possibility that some historical data may no longer be appropriate for use in developing assumptions for future periods because of changes in the underlying environment.

In practice, the most recent relevant data that the actuary uses to perform this analysis is generally not available until after the measurement date.

Accordingly, an actuary typically makes the final selection of actuarial assumptions after the measurement date but before preparation of the actuarial model used to perform the calculations, finalization of the obligation being valued, and issuance of an actuarial communication (referred to as a Statement of Actuarial Opinion). While the plan's benefit obligations, funded status, and withdrawal liability could be measured on the prior year assumptions, the advantage of using the most recent relevant data ensures the results fully reflect current experience and the actuary's best estimate of the situation as of the measurement date. This is especially important for withdrawal liability because that calculation effectively settles a withdrawing employer's obligation to the plan.

The actuary typically reviews the reasonableness of the assumptions every year to ensure they remain an appropriate estimate of anticipated future plan experience. Analysis of newly available data and experience may be an appropriate reason to make a decision after the measurement date to change actuarial assumptions. Another reason to update assumptions after the measurement date includes events occurring after the measurement date. These reasons are contemplated by the ASOPs.

Events Occurring after the Measurement Date

A multiemployer pension plan actuary may become aware of significant real-world events that occur after the measurement date but before the actuarial communication is finalized. In such a case, the actuary may decide that it is necessary to

reflect these future events in the actuarial assumptions as of the measurement date. The applicable ASOPs permit actuaries to reflect events occurring after the measurement date in the actuarial assumptions as of the measurement date, if appropriate, as described in the citations below:

Section 3.5.5 of ASOP No. 27

"The economic assumptions selected should reflect the actuary's knowledge as of the measurement date. However, the actuary may learn of an event occurring after the measurement date that would have changed the actuary's selection of an economic assumption. (For example, a collective bargaining agreement ratified after the measurement date may lead the actuary to change the compensation increase assumption that otherwise would have been selected.) If appropriate, the actuary may reflect this change as of the measurement date."

Section 3.10.5 of ASOP No. 35

"The demographic assumptions selected should reflect the actuary's knowledge as of the measurement date. However, the actuary may learn of an event occurring after the measurement date (for example, plan termination or death of the principal owner), that would have changed the actuary's selection of a demographic assumption. If appropriate, the actuary may reflect this change as of the measurement date."

Change in Actuary

The sponsor of a multiemployer pension plan may decide to engage a new plan actuary to replace its

existing one. In such circumstances, the new actuary will review, among other things: the plan's situation; the prior actuary's work, including an evaluation of the assumptions the prior actuary selected; and other facts and circumstances affecting the plan. Once that assessment is complete, the new actuary might, in the exercise of professional judgment and based on the available data, plan experience, reasonable future expectations, and other relevant factors, determine that changes to plan's actuarial assumptions are needed. Depending on when in the Plan Year the change takes place and the time the new actuary needs to complete a review and assessment, any assumption changes that the new actuary determines are appropriate may occur after a given measurement date.

ASOP Nos. 27 and 35 acknowledge that several different assumptions may be reasonable for a given measurement, and that different actuaries may select different reasonable assumptions (see citations below). For example, there are various approaches used by multiemployer plan actuaries to evaluate an appropriate discount rate for determining pension obligations for withdrawal liability purposes. One actuary might review all relevant information and use professional judgment to set assumptions for the measurement. Another actuary independently reviewing the same information may ultimately select different assumptions based on professional judgment. While both sets of assumptions would likely meet each others' "reasonable" standard, it is far less likely that the two actuaries would select the same

assumption for any particular purpose when operating under a "best estimate" standard.

Section 3.6.2 of ASOP No. 27

"The actuary should recognize the uncertain nature of the items for which assumptions are selected and, as a result, may consider several different assumptions reasonable for a given measurement. The actuary should also recognize that different actuaries will apply different professional judgment and may choose different reasonable assumptions. As a result, a range of reasonable assumptions may develop both for an individual actuary and across actuarial practice."

Almost identical guidance is found in Section 3.4 of ASOP No. 35.

Conclusion

The assumption-setting process is a critical component to measuring pension obligations and there is a broad range of actuarial assumptions that could be considered reasonable for a given purpose. The selection of actuarial assumptions relies heavily on professional judgment, technical knowledge, and the information available to the actuary. Updates to actuarial assumptions may occur after the measurement date for a variety of reasons. Guided by ERISA and the Actuarial Standards of Practice, actuaries regularly review previously selected assumptions and may make updates to reflect new experience and changes in outlook.

AMERICAN ACADEMY OF ACTUARIES

1850 M Street NW, Suite 300
Washington, DC 20036
202-223-8196 | www.actuary.org

Craig Hanna, Director of Public Policy
Linda K. Stone, Senior Pension Fellow

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Members of the Multiemployer Plans Committee, which authored this issue brief, include Christian Benjaminson, MAAA, FSA, EA—*Chairperson*; Joseph Hicks Jr., MAAA, FCA, MSPA EA—*Vice Chairperson*; Mariah Becker, MAAA, ACA, EA; Susan Boyle, MAAA, FSA, FCA, EA; Paul Bullock, MAAA, ASA, FCA, EA; James Dexter, MAAA, FSA, FCA, EA; Jim Donofrio, MAAA, FSA, EA; Francis Gowen, MAAA, ASA, EA; Paul Graf, MAAA, ASA, FCA, EA; Eli Greenblum, MAAA, FSA, FCA, EA; Victor Harte, MAAA, EA; Mandy Notaristefano, MAAA, FSA, FCA, EA; David Pazamickas, MAAA, ASA, EA; Josh Shapiro, MAAA, FSA, FCA, EA; and Peter Sturdivan, MAAA, FSA, EA.

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