November 14, 2016

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The Honorable Jacob J. Lew
Secretary of the Treasury
Department of the Treasury, MPRA Office
1500 Pennsylvania Avenue NW, Room 1224
Washington, DC 20220
Attn: Eric Berger

Re: New York State Teamsters Conference Pension and Retirement Fund MPRA Application

Dear Secretary Lew:

The International Brotherhood of Teamsters ("IBT") is submitting detailed comments (see attached letter) asking you to reject the Multiemployer Pension Reform Act of 2014 ("MPRA") suspension of benefits application submitted by New York State Teamsters Conference Pension and Retirement Fund ("New York Teamsters" or "Fund"). You may recall that the IBT also commented on the Central States, Southeast, and Southwest Areas Pension Plan ("Central States") MPRA suspension of benefits application in December 2015. Treasury’s decision in Central States adopted many of the IBT’s key arguments in its determination to reject Central States’ application.

The IBT has been consistent in our opposition to these MPRA suspension of benefit applications. In the case of the New York Teamsters, as with Central States, the IBT’s analysis focuses on faulty and unrealistic economic assumptions used by the plan to rationalize its compliance with MPRA. As in Central States, the IBT demonstrates that future investment return assumptions and employer contribution assumptions used by the Fund are unreasonable and cannot be fulfilled.

The IBT believes that critical and declining plans are not like other plans, because their advanced demographic maturity and exaggerated negative cash flows (above 10% of assets) make their funding condition impossible to improve based on MPRA’s solvency requirements. Plans that are depleting 10% or more of assets each year on benefit payments can find themselves in a death spiral. Such plans are especially susceptible to adverse experience early in the solvency projection period that will accelerate the insolvency day of reckoning. Financial economists call this “sequence of return risk.” Critical and declining plans cannot sustain early actuarial losses, either from investment performance or below assumption contributions.
MPRA, which we opposed, failed to factor in the adverse impact of negative cash flow and sequence of return risk. MPRA assumed that accrued benefit reductions alone would be adequate self-help to effectively rebalance and revive the funding of these plans. In contrast, the IBT's analytical comments demonstrate that MPRA was based on a false premise. MPRA failed to factor in the current and future unstable and uncertain investment environment reflected in the capital markets, and assumes status quo trends in future employer contributions in plans that have been experiencing a free-fall in their contribution base. The IBT's concerns about the key economic assumptions used in the New York Teamsters MPRA application, as with Central States, are supported by the fact that both applications fail all four of the Revenue Procedure 2016-27 Section 6.04 sensitivity tests, as well as the sensitivity modeling prepared by IBT's actuarial consultant.

The New York Teamsters' MPRA suspension of benefit application, once again like Central States, fails another crucial test: in neither case does the respective plan actually recover or emerge out of PPA critical status. At the end of the extended solvency projection period, New York Teamsters is only 31% funded after cutting $700 million of accrued benefits. How can a plan survive under these circumstances with no margin of error? These results cannot be consistent with the public policy mandate that Congress envisioned for MPRA.

The unfortunate lesson prompted by these suspension of benefit applications is that MPRA will not resolve the current multiemployer pension funding crisis or the projected insolvency of the PBGC's multiemployer insurance program. Congress will have to grapple with the fact that benefit cuts and PBGC premium increases will not save these critical and declining plans. Treasury's decisions on these MPRA applications act as a reality check for all stakeholders including the Federal Government. The sooner everyone recognizes the futility of these MPRA suspension of benefit applications, the sooner Congress can debate a real rescue plan for multiemployer plans. For all these reasons, we respectfully request that you reject the New York Teamsters' MPRA application.

Sincerely,

James P. Hoffa
General President

Ken Hall
General Secretary-Treasurer
November 14, 2016

The Case Against the New York Teamsters' Application

The IBT respectfully submits these comments on the New York Teamsters suspension of benefits application ("Application") filed pursuant to MPRA.1 Treasury should reject the Application for the same principal reason that, by letter from Kenneth R. Feinberg dated May 6, 2016 ("Feinberg letter") it denied the application to suspend benefits filed by Central States. In the Feinberg letter, Treasury stated that "a key test for any application under [MPRA] is whether the proposed benefit suspensions take a plan off the path to insolvency." That letter went on to say that "Treasury finds that the [Central States] Plan's proposed benefit suspensions are not reasonably estimated to allow the plan to avoid insolvency." Treasury's reasoning in its decision regarding Central States applies with equal force to the New York Teamsters Application. See also, Treasury Letter dated November 3, 2016 to Ironworkers Local 16 Pension Fund. Accordingly, it is incumbent upon Treasury to deny the Application, as it did in Central States.

We note that the history of the New York Teamsters and the actions of its board of trustees demonstrate good stewardship on many levels by both the Fund's stakeholders and the trustees. Active participants and contributing employers have already made tremendous economic sacrifices in terms of major benefit accrual reductions and huge employer contributions prior to 2016. Moreover, the trustees have used every possible tool available, including investment policy changes, both before and after the enactment of the Pension Protection Act of 2006, to protect the solvency of the Fund. Nevertheless, it is simply too late for the New York Teamsters to be saved by benefit cuts. Indeed, this Fund's experience well illustrates the failure of retirement policy devised by Congress since 2006 to stem the dramatic decline in funded ratios that are the direct result of 15 years of volatile and uncertain capital markets, including two historic asset market crashes.

The Application fails to meet the standards set out by MPRA and Treasury's regulations thereunder. For the reasons set forth below, the IBT submits that the New York Teamsters have not demonstrated that the proposed suspensions will result in the Fund avoiding insolvency.

The Application's Solvency Projections Demonstrate the Weakness of the New York Teamsters' Case

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1 This document employs the terms defined in the letter dated November 14, 2016 to which it is attached.
The Application goes through the required steps of producing deterministic and stochastic projections that attempt to support its position that the proposed benefit suspensions satisfy the statutory requirements of MPRA. As part of this process, the Fund uses the minimum extended period of 30 years to maintain plan solvency. Under the deterministic test, it remains solvent through 2048, while under the stochastic test it demonstrates a 55% probability of avoiding insolvency, just above the 50% standard required by MPRA. However, what these test results fail to highlight is that the projected funding ratio peaks at only 42.2% in 2018 after the plan’s accrued liability is reduced by $716 million, or 22.3%. The funding ratio proceeds to decline over time bottoming out at 23.6% funded in 2041, and then recovers to a weak 31.4% funded by the end of the extended solvency period in 2048. This funded ratio pattern post-suspension of benefits does not engender confidence about the future of the New York Teamsters. Post-suspension of benefits, it will remain a very weak pension plan in which no new employer will likely be willing to participate. Furthermore, the post-suspension of benefits trend suggests that even slight variations from Application’s assumptions will threaten the Fund’s future solvency and potentially trigger additional benefit suspensions in future years.

The projections required by Section 4.03 of Revenue Procedure 2016-27, which test whether the proposed benefit suspension is reasonably estimated to not materially exceed the level necessary to avoid insolvency, reinforce the IBT’s argument that the Fund has little to no margin of error to maintain solvency. Under the deterministic projection, the Application projects insolvency in 2044, the 28th year of the extended period. While under the stochastic projection, the probability of maintaining solvency falls to 45%, below the MPRA standard of 50%. These tests clearly suggest how vulnerable the Application is to failure.

**The Application’s Economic Assumptions Are Highly Questionable in Relation to Historic and Expected Trends**

MPRA projections of plan solvency are driven by future investment return assumptions and future membership (contribution base units) assumptions. The Application uses a select and ultimate investment assumption of 6.75% for the first ten years, and 7.5% for all years beyond ten years for deterministic projections. The decision by the New York Teamsters to use the above select and ultimate return assumptions is a clear recognition that the plan’s current 8.5% investment return assumption is not appropriate for purposes of a cash flow projection for a critical and declining plan.

This is especially important since a number of financial experts are predicting a low return environment for the next 5-10 years. For example, in a recent research piece dated October 2016 by Research Affiliates (www.researchaffiliates.com) titled, “Take the 5% Challenge,” the authors, John West and Jim Masturzo, determined that the average and median nominal annualized long-term expected returns were 6.2% and 6.0% respectively. The authors calculated these nominal expected returns based on surveys of institutional investors, including corporate and public pension funds, endowments, and public mutual fund retirement calculators. These average expected returns are considerably lower than the select and ultimate rates utilized in the Application and described above. If the New York Teamsters earns the average return of 6.0% quoted in the Research Affiliates report in the first ten years, the plan actually goes
insolvent in 2048, the 30th and last year of the extended solvency period. If this takes place, the plan would have to earn 8.25% in the remaining 20 years to avoid insolvency. Consistently earning expected returns at such a high level would truly be a leap of faith.

The Application itself references Actuarial Standard of Practice No. 27, which requires special attention to factors like investment volatility and cash flow timing when setting investment assumptions. In this regard, we note that during the ten-year period 2006-2015, the New York Teamsters failed to earn either 6.75% or 7.5% four out of ten years. Two of those four years of underperformance (2014 and 2015) occurred in consecutive years. There is no reason to expect the Fund’s historic volatility of investment returns to change in the future. Moreover, the Application’s projection purportedly demonstrating that the proposed suspension will satisfy the requirements under Section 4.03 of Revenue Procedure 2016-27, indicates that the Fund’s cash flow (Contributions – (Benefit Payments and Administrative Expenses)) will remain extraordinarily negative, ranging from 14% of assets in 2016 and 11% of assets in 2027 in the first ten years, post-suspension of benefits. This continued extreme negative cash flow, even after the proposed suspension of benefits, suggests that the Application is highly vulnerable to failure.

The Application further assumes zero decline in membership for the largest employers and -2.0% for other employers during the projection period. This key assumption ignores the fact that contribution base units overall have declined 35.4% in the ten-year period 2006-2015, a 4.74% annual decline. How is it possible that the New York Teamsters membership will not continue to decline based on current economic facts and trends? If this key assumption is incorrect, the Fund’s negative cash flow described above will become even more accentuated, and will undermine the Application’s solvency projection. This problem becomes clearly evident in the sensitivity tests described below.

The Application Fails All Required Sensitivity Tests

MPRA and the final regulations promulgated thereunder require applicants to calculate a set of sensitivity analyses that act to test the applicant’s solvency assumptions. These sensitivity tests provide a strong indication as to whether the proposed suspension of benefits application is credible. In many ways, these sensitivity tests act as a reality check. In the case of the New York Teamsters, the sensitivity tests substantiate the IBT’s arguments in the previous section that the Application is doomed to fail.

Section 6.04 of Revenue Procedure 2016-27 requires four separate demonstrations of the sensitivity of the MPRA solvency projections. The New York Teamsters fail all four solvency sensitivity tests:

1. The first test assumes the rate of return is reduced by 1.0 percentage point annually. Under that scenario, the Fund becomes insolvent in 2038, the 22nd year of the solvency period.

2. The second test assumes the rate of return is reduced by 2.0 percentage points annually. Under that scenario, the Fund becomes insolvent in 2034, the 18th year of the solvency period.
3. The third test is based on future contribution base unit increases and decreases at a rate equal to the average annual rate of increases and decreases that the plan experienced between 2006 – 2015. The average decline of contribution base units was 4.74% annually during that period. Under that scenario, the New York Teamsters become insolvent in 2029, the 13th year of the solvency period.

4. The fourth test uses the average change in contribution base units for the period described in No. 3 above and reduces it by 1.0%, or a -5.74% annual future change. Under that scenario, the News York Teamsters become insolvent in 2028, the 12th year of the solvency period.

The IBT's actuarial consultant, Cheiron, modeled several additional sensitivity projections for the New York Teamsters based on rate of return and contribution base assumptions. The projections on the following pages further demonstrate how vulnerable the Application is to projection assumptions:
1. When the membership decline assumption used in the Application is slightly changed from 0.0% (for UPS, ABF and YRC) annually to 0.5%, the Fund becomes insolvent in 2042, the 26th year of the solvency period.
2. When the membership decline assumption used in the Application is changed from 0.0% to 1.0%, the Fund becomes insolvent in 2038, the 22nd year of the solvency period.
3. If the expected return assumption in the Application is changed from 6.75% in the first 10 years to 5.5%, the Fund becomes insolvent in 2040, the 24th year of the solvency period.
4. If the plan's investment return is 0.0% instead of 6.75% in just the first year, 2016, the Fund becomes insolvent in 2041, the 25th year of the solvency period. This test demonstrates how extremely sensitive the Fund is to sequence of return risk. In effect, any early investment underperformance completely undermines the Application's solvency projections.
Conclusion

The New York Teamsters Application should be rejected based on unreasonable economic assumptions that use crucial expected future investment returns and contribution base units that will never be realized. Although the Fund makes a heroic effort to comply with MPRA, its financial circumstances are too far gone to meet the standards required for long term solvency. For example, the Fund’s negative cash flow remains above 11% of assets, which most experts consider an unsustainable level even after the projected suspension of benefits. At the same time, the plan’s funded ratio never recovers, remaining in a range of 23-31% funded during the entire extended solvency period.

The Application fails all four solvency sensitivity tests required by MPRA. The Fund’s severe negative cash flow makes the plan hypersensitive to early investment underperformance in the first ten years of the solvency projections. The Application is also highly dependent on maintaining the employer contribution base. The Application assumes that the large employers will maintain status quo participation during the entire solvency period, even though membership has declined 4.74% annually for the past ten years. As shown earlier, the IBT’s modeling indicates that if the membership assumption (for UPS, ABF and YRC) varies slightly to either a decline of 0.5% or 1.0% annually, the Application fails. The Application contains no margin of error if reality proves different from its unreasonably optimistic assumptions.

This Fund, like most critical and declining plans, has been so devastated by 15 plus years of investment losses that it cannot possibly recover, even after proposed MPRA benefit suspensions. Plans like the New York Teamsters are struggling with impossible economic facts and circumstances. The Fund faces a death cycle of negative cash flow, asset depletion, and a declining contribution base that is both self-fulfilling and impossible to manage. A similarly situated for profit institution would be seeking protection under the U.S. Bankruptcy Code.

The New York Teamsters Application symbolizes the failure of MPRA’s suspension of benefit provisions to arrest the decline of deeply troubled multiemployer plans. It completely demonstrates that benefit reductions alone cannot make these plans financially sustainable and viable. Plans like the New York Teamsters have been financially weakened to the extent that they cannot effectively utilize MPRA’s suspension of benefits provisions and maintain plan solvency over extended periods. For all the foregoing reasons, Treasury should deny this Application.

Respectfully,

John F. Murphy
International Vice President