DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 24, 2016

Board of Trustees, Road Carriers Local 707 Pension Fund
14 Front Street
Hempstead, NY 11550

Dear Board of Trustees, Mr. McCaffrey, Mr. Ring, and Mr. Pergue:

On March 15, 2016, an application on behalf of the Board of Trustees of the Road Carriers Local 707 Pension Fund (Plan) was submitted to the Secretary of the Treasury (Secretary or Treasury). The application (Application) requests Treasury approval under the Multiemployer Pension Reform Act of 2014 (Kline-Miller or Act) to reduce benefits (referred to in the Act as a suspension of benefits).

The Application is made in combination with an application you submitted under the Act on behalf of the Plan to the Pension Benefit Guaranty Corporation (PBGC) on February 19, 2016, requesting PBGC's financial assistance in the form of a partition of the Plan. The Application states that it is predicated upon obtaining the partition from PBGC. On June 10, 2016, PBGC denied the Plan's application for partition.

As Special Master, appointed by the Secretary, I am writing to notify you of Treasury's decision to deny the Application because the suspension of benefits (with which the partition would be combined) fails to satisfy the statutory criteria for approval of benefit suspensions.

In my role as Special Master, I have reviewed the Application under the terms of Kline-Miller, its implementing regulations, and other applicable law. I also have reviewed the public comments received on the Application and the Plan's application to PBGC for partition. The Application states that the Plan is projected, absent suspension of benefits, to become insolvent by February 2017.

Under the Act, Treasury, in consultation with PBGC and the Secretary of Labor (DOL), must approve an application upon finding that the plan is eligible to suspend benefits and has satisfied the applicable statutory requirements.[1] The Act requires, among other things, that the proposed benefit suspensions be reasonably estimated to allow the plan to avoid insolvency.[2]

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[1] Code § 432(e)(9)(G)(i); 29 U.S.C. § 1085(e)(9)(G)(i).

[2] "Limitations on Suspensions-Any suspensions of benefits made by a sponsor pursuant to this paragraph shall be subject to the following limitations: ... Any suspensions of benefits in the aggregate ... shall be reasonably estimated to achieve . . . the level that is necessary to avoid insolvency ...." Code § 432(e)(9)(D)(iv); 29 U.S.C. § 1085(e)(9)(D)(iv). In the interest of simplicity, all citations below to Kline-Miller will refer only to the Internal Revenue Code even though Treasury's findings and conclusions have been made under both the Internal Revenue Code and the Employee Retirement Income Security Act of 1974, as amended.

As described further below, Treasury finds that the proposed benefit suspensions in the Application are not reasonably estimated to allow the Plan to avoid insolvency. Specifically, after reviewing the Application and consulting with PBGC and DOL, Treasury has determined that the suspensions described in the Application fail to satisfy the requirement in Kline-Miller that the proposed benefit suspensions, in the aggregate and considered in combination with a partition of the Plan, be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency, because without a partition, the Plan will not avoid insolvency (Code § 432(e)(9)(D)(iv).).

Treasury's finding is further described below.

FINDING

Kline-Miller requires the Secretary of the Treasury to approve, in consultation with PBGC and DOL, an application for suspension of benefits "upon finding that the plan is eligible for the suspensions and has satisfied the criteria of subparagraphs (C), (D), (E), and (F)" of section 432(e)(9) of the Internal Revenue Code, as amended by Kline-Miller.[3] The Application fails to satisfy the criteria of subparagraph (D), as further described below.

In general, a benefit reduction, in the aggregate (and, if applicable, considered in combination with a partition of the plan), must "be reasonably estimated to achieve . . . the level that is necessary to avoid insolvency."[4] The Application includes cash flow projections intended to demonstrate that this statutory solvency requirement is satisfied. Those cash flow projections include financial assistance from PBGC based on the assumption that the Plan's partition application, with which the suspension application is coordinated, would be approved.

On June 10, 2016, PBGC denied the application for partition.[5] The failure to obtain a partition order is outcome determinative for the suspension application because Section 3.02 of the Application states that the Plan actuary's certification that the Plan is projected to avoid insolvency as a result of the proposed suspensions "assumes the issuance of a partition order from the PBGC..." beginning July 1, 2016.[6] Further, the Plan stated in the Application that it will be insolvent by April 2017 if the suspensions are implemented without the partition.[7] Absent the assumed partition, the cash flow projections in the Application (updated to eliminate the assumed financial assistance from PBGC) demonstrate that the proposed suspension (without the partition) does not meet the statutory solvency requirement described above.

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[3] Code§ 432(e)(9)(G)(i).

[4] Code § 432(e)(9)(D)(iv)); 26 C.F.R. § 1.432(e)(9)-1(d)(5)(i)(A).

[5] Letter from PBGC to Mr. McCaffrey and the Board of Trustees of the Road Carriers Local 707 Pension Fund (June 10, 2016), http://www.pbgc.gov/documents/PBGC-Letter-June-2016.pdf (last visited June 14, 2016).

[6] Suspension Application Section 3.02.

[7] Suspension Application Exhibit 7 at Partition Application Exhibit 14 page 1.

Based on the foregoing, Treasury has determined that the suspension of benefits is not reasonably estimated to achieve the level that is necessary to avoid insolvency and that the Application therefore fails to satisfy the requirements of Kline-Miller set forth in Code section 432(e)(9)(D)(iv).

This notification letter will be made public in order to inform plan participants of the outcome of Treasury's review.

Respectfully,

Kenneth R. Feinberg
Special Master