Waterfront Warehouse Local 1429
Pension Fund

Board of Trustees Meeting

February 17, 2021

WATERFRONT WAREHOUSES LOCAL NO. 1429 PENSION FUND
AGENDA
FEBRUARY 17, 2021

A. ROLL CALL

B. READING OF THE MINUTES - November 10, 2020

C. ADMINISTRATIVE REPORTS

1. Statement of Changes In Fund Balance (Oct - Dec, 2020)
2. Statement of Fund Balance (December 31, 2020)
3. Schedules (Jan - Dec, 2020)
4. Monthly Pension Payments (Oct - Dec, 2020)
5. Bills to be Approved and Paid (February 17, 2021)

D. UNFINISHED BUSINESS

1. Benefit Accrual Discussion

E. NEW BUSINESS

1. Retirements: **None**

2. Morgan Stanley Graystone Consulting Investment Review
3. PPA Zone Certification
4. Payroll Audit Policy
5. Guidance on Locating Missing Participants
6. Rule on Environmental, Social and Governance (ESG) Investing
7. Administrative Manager Contract Renewal
8. Questions
9. Date of Next Meeting - May, 2021

Waterfront Warehouses Local 1429
Pension Fund
911 Ridgebrook Road
Sparks, Maryland 21152-9451
Toll Free Telephone (888) 494-4443
www.associated-admin.com

Trustees Attending: Trip Bailey, Andre Coley, Jeremy Riddle, Rob Turner

Others Attending: Tim Boles, Kim Bradley, Chad Houser, David Jensen, Jeff Maygers, Meredith Miraglia, Kathy Phillips, Rick Romano

The Trustees met via conference call on November 10, 2020.

Chairman Bailey called the regular meeting to order at 12:00 p.m.

A. The Minutes of the meeting of August 18, 2020 were approved as written.

B. The Trustees welcomed Mr. Rick Romano to the meeting. Mr. Romano is on Local 1429's contract negotiating committee and presented some specific questions to the Trustees related to contract proposals that could impact this Pension Plan. He asked about the cost of lowering the age of Normal Retirement below the current age of 65. He also inquired about the cost of possibly adding a "30 and Out" provision to the Plan. Mr. Tim Boles of Bolton estimated the cost of such a study would be in the $2,500 to $4,000 range. The Trustees thank Mr. Romano and excused him from the meeting.

C. The Statement of Changes in Fund Balance, Statement of Fund Balance, Schedules, Monthly Pension Payments, Bills to be Approved and Paid, and Investment Manager Reports were reviewed and accepted.

D. Unfinished Business

   1. Benefit Accrual Discussion
   The Trustees discussed a potential increase in the accrual rate as well as the cost of reducing the retirement age for a service pension from 65. The Trustees discussed either a contribution increase or funding margin to pay for any potential increase. The Trustees agreed to take no action at this time and tabled the discussion indefinitely.

E. New Business:

   1. The Trustees approved the following Normal Pension:
   Charles Feaster Single Life $287.50 Effective 2/01/2020

   2. Mr. Chad Houser and Mr. Steven Ford of the Houser Ford Group reviewed the September 30, 2020 Graystone Consulting report and the update through November 9, 2020. Market value of assets in the portfolio at quarter end was $8,096,161. For the quarter, the portfolio increased 5.72% net of fees. As of November 9, 2020, the portfolio market value rose to $8,573,305. The return year to date through September 30, 2020 is 0.34%.

Mr. Houser noted the market differences between Growth and Value investments in 2020. The iShares Russell 3000G is up 20.08% year to date compared to the iShares Russell 3000V which is down 11.18% year to date.

Mr. Houser had no portfolio recommendations at this time.

3. Mr. Maygers of Weyrich, Cronin & Sorra (WC&S), reviewed with the Trustees the annual audited financial statements of the Pension Fund for the year ended December 31, 2019. The audited financial statements were issued with an unmodified opinion, which is the highest level of assurance that can be rendered. The WC&S Board Communication Letter and the WC&S Management Comments Letter were provided to and reviewed by the Trustees.

4. Mr. Maygers then presented the payroll audit of BalTerm, the lone contributing employer, for hours worked in 2018 and 2019. The audit found some discrepancies in contributions made on behalf of some participants; a shortage of $2,493.75. Trustee Riddle asked for Mr. Maygers to provide the detail on those differences so he could correct them. Mr. Maygers stated he would email the file to him.

5. Mr. Boles of Bolton, Inc. presented the January 1, 2020 Actuarial Valuation. The Funded Ratio is 105.6% based on actuarial value and present value of accumulated benefits (PVAB) and 107.8% based on market value and PVAB. The corresponding Funded Ratios for the previous year were 104.4% and 93.9%, respectively. The actuarial value of assets at January 1, 2020 was $8,149,356 compared to the PVAB of $6,717,061. The Trustees discussed funding levels, demographics, assumptions, and other items included in the report.

6. Mr. Jensen presented a copy of the ERISA Section 104(d) notice that was previously mailed to the employer and to Local 1429.

7. Date of the next meeting: February 17, 2021 at 12:00 p.m. at the offices of Associated Administrators, 911 Ridgebrook Road, Sparks, Maryland 21152.

Adjournment: 1:24 p.m.

Respectfully submitted,

David Jensen
Account Executive

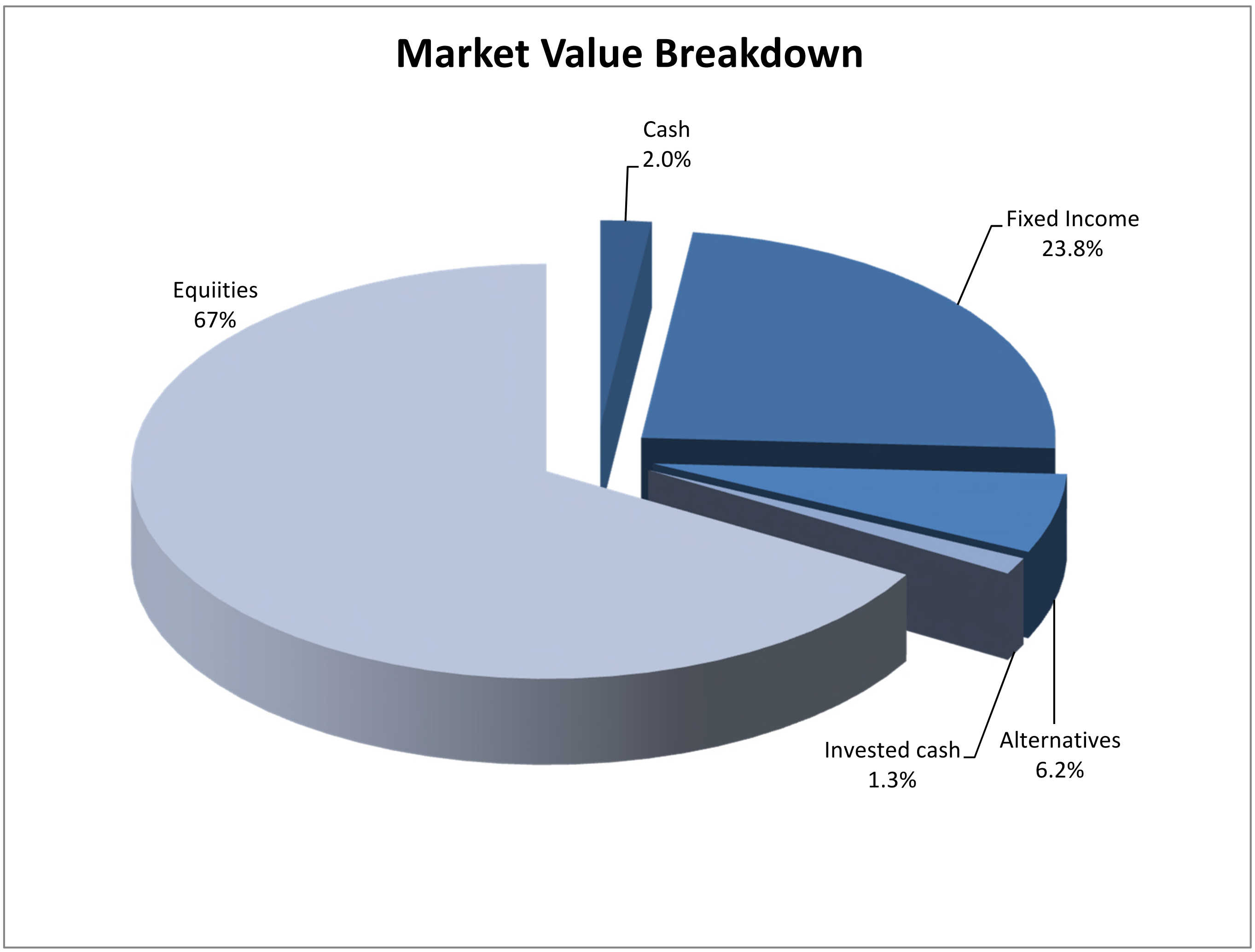
WATERFRONT WAREHOUSE LOCAL 1429 PENSION FUND
STATEMENT OF CHANGES IN FUND BALANCE - CASH BASIS
FOR THE TWELVE MONTHS ENDED DECEMBER 31, 2020

	October	November	December	Current Year To Date	Prior Year To Date
Additions					
Employer Contributions	$ 45,132.60	$ 24,413.10	$ 18,094.65	$ 273,536.59	$ 242,366.86
Interest Income	1,347.05	2,325.59	537.33	23,561.03	26,533.26
Dividend Income	8,532.22	5,949.12	22,385.55	136,479.42	184,433.64
Gain (Loss) On Sale	(2,929.37)	(29,984.78)	(7,425.56)	(256,392.73)	(63,529.72)
Gain (Loss) Exchange of Securities	16,404.90	1,257.23	22,221.61	135,645.46	79,844.55
Total Additions	68,487.40	3,960.26	55,813.58	312,829.77	469,648.59
Deductions					
Pensions Benefits Paid	19,093.92	16,793.92	16,793.92	206,094.85	193,543.80
Old Pension Checks Write/Off	-	-	-	-	-
Actuarial Fees	4,312.50	7,550.00	4,887.50	37,066.30	45,971.19
Administration	5,288.25	0.40	-	20,999.40	20,387.50
Audit Fees	452.50	-	794.00	12,952.50	5,000.00
Audit Fees - Pensioner Deaths	-	-	-	-	-
Bond	-	-	-	-	-
Conference	-	-	-	-	-
Consulting Fees	-	-	-	-	-
Dues	-	-	-	1,065.00	1,065.00
Fiduciary Liability Insurance	-	-	-	2,441.00	2,594.00
Investment Advisor Fees	10,072.63	1,379.88	1,822.76	50,153.80	49,350.64
Legal Fees	1,575.00	168.75	337.50	21,431.25	15,461.06
P B G C	2,880.00	-	-	2,880.00	2,987.00
Postage	0.20	-	0.40	104.98	101.59
Printing	-	5.47	5.08	91.28	47.06
Social Security Administration	-	-	-	-	-
Wire Fees	-	-	-	-	-
IRS Filing Fees	-	-	-	-	-
Bank Service Charges	-	-	-	1,021.68	868.45
Meeting Expenses	-	-	-	120.16	438.17
Total Deductions	43,675.00	25,898.42	24,641.16	356,422.20	337,815.46
Net Increase (Decrease)	$ 24,812.40	$ (21,938.16)	$ 31,172.42	$ (43,592.43)	$ 131,833.13
Fund Balance - December 31, 2019				7,813,580.25	
Fund Balance - December 31, 2020				$ 7,769,987.82	

WATERFRONT WAREHOUSE LOCAL 1429 PENSION FUND
STATEMENT OF FUND BALANCE
AS OF DECEMBER 31, 2020

	Cost Basis	Market Basis
Cash - Bank of America - Operating	$ 142,112.60	$ 142,112.60
Cash - Bank of America - Payment	42,690.84	42,690.84
Morgan Stanley - Cash	122,309.14	122,309.14
Morgan Stanley - Fixed Income	2,154,364.01	2,214,815.43
Morgan Stanley - Equities	4,780,933.05	6,201,783.11
Morgan Stanley - Alternatives	527,539.59	576,078.71
Taxes Withheld	38.59	38.59
Deferred Revenue	-	-
	$ 7,769,987.82	$ 9,299,828.42

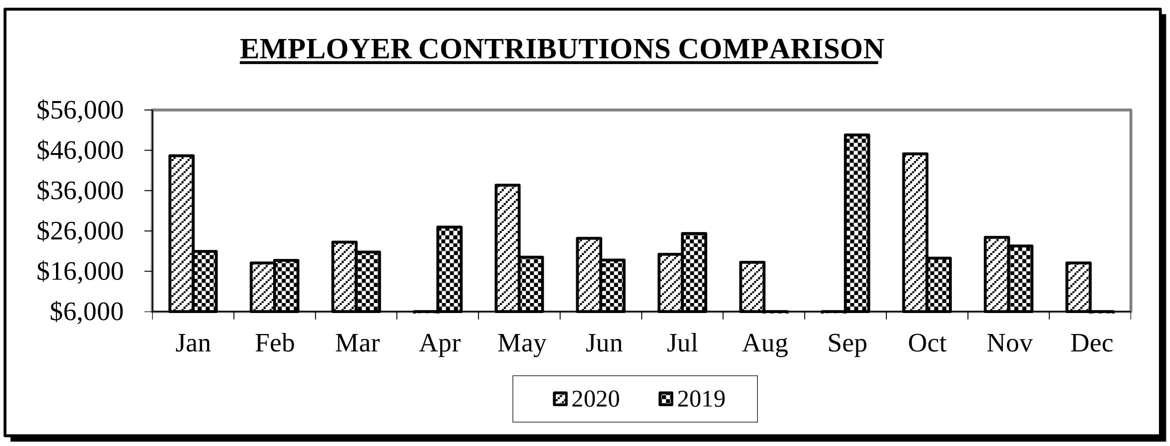
Market Value of Fund Balance as of December 31, 2019	8,285,968.97
Increase in Market Value of Fund Balance as of December 31, 2020	$ 1,013,859.45
Decrease in Cash	(43,592.43)
Unrealized Gain on Investments	1,057,451.88
	$ 1,013,859.45



WATERFRONT WAREHOUSE LOCAL 1429 PENSION FUND
SCHEDULES
FOR THE TWELVE MONTHS ENDED DECEMBER 31, 2020

EMPLOYER CONTRIBUTIONS

Month Received	Current Year To Date	Prior Year To Date	Prior Year Total
January	$ 44,638.83	$ 20,927.55	$ 20,927.55
February	18,078.98	18,745.88	18,745.88
March	23,213.25	20,802.15	20,802.15
April	-	26,925.38	26,925.38
May	37,353.53	19,521.79	19,521.79
June	24,187.95	18,775.80	18,775.80
July	20,223.60	25,360.01	25,360.01
August	18,200.10	-	-
September	-	49,780.24	49,780.24
October	45,132.60	19,272.41	19,272.41
November	24,413.10	22,255.65	22,255.65
December	18,094.65	-	-
	$ 273,536.59	$ 242,366.86	$ 242,366.86
Average per month	$ 22,794.72	$ 20,197.24	$ 20,197.24



PENSIONS PAID

Month Paid	Current Year To Date	Prior Year To Date	Prior Year Total
January	$ 15,716.11	$ 17,021.68	$ 17,021.68
February	12,496.11	17,021.68	17,021.68
March	12,496.11	17,966.68	17,966.68
April	30,172.66	17,966.68	17,966.68
May	16,506.42	17,966.68	17,966.68
June	16,506.42	16,181.68	16,181.68
July	16,506.42	16,181.68	16,181.68
August	16,506.42	14,135.08	14,135.08
September	16,506.42	14,953.72	14,953.72
October	19,093.92	15,716.11	15,716.11
November	16,793.92	15,250.54	15,250.54
December	16,793.92	13,181.59	13,181.59
	$ 206,094.85	$ 193,543.80	$ 193,543.80
Projected Annual Pensions	$ 206,094.85	$ 193,543.80	

WATERFRONT WAREHOUSE LOCAL 1429 PENSION FUND
MONTHLY PENSION PAYMENTS
AS OF DECEMBER 31, 2020

	October	**November**	**December**	**Quarterly Total**
Wendell Bean	563.39	563.39	563.39	1,690.17
Donald Bruce	396.90	396.90	396.90	1,190.70
Frances Burkhardt	1,090.25	1,090.25	1,090.25	3,270.75
Raymond Carter	1,916.68	1,916.68	1,916.68	5,750.04
Ameena Coley	516.13	516.13	516.13	1,548.39
James Crawford	725.33	725.33	725.33	2,175.99
Michael Engles	475.00	475.00	475.00	1,425.00
Dennis K Evans, Sr.	962.50	962.50	962.50	2,887.50
Charles Feaster	2,587.50	287.50	287.50	3,162.50
Floyd Foster	688.28	688.28	688.28	2,064.84
Lynn. Jacobs	327.68	327.68	327.68	983.04
Jessie Joe	497.08	497.08	497.08	1,491.24
Dawn Klosterman	83.53	83.53	83.53	250.59
Wayne Reichart	1,618.63	1,618.63	1,618.63	4,855.89
Daryl Shufford	945.00	945.00	945.00	2,835.00
Edward Shultz	1,995.00	1,995.00	1,995.00	5,985.00
Robert Singletary	718.08	718.08	718.08	2,154.24
Eugene Skinner	152.78	152.78	152.78	458.34
Mark Stanley	884.00	884.00	884.00	2,652.00
Paul Henry Stylc	964.38	964.38	964.38	2,893.14
Sharon Walker	111.76	111.76	111.76	335.28
Paul Young	874.04	874.04	874.04	2,622.12
	$ 19,093.92	**$ 16,793.92**	**$ 16,793.92**	**$ 52,681.76**

WATERFRONT WAREHOUSE LOCAL 1429 PENSION FUND
BILLS TO BE APPROVED AND PAID
February 17, 2021

	Payee/Purpose	Period	Check #	Amount
1.	Abato Rubenstein & Abato, P.A.	9/20		
	Legal Fees		1354	168.75
2.	Associated Administrators, LLC	Printing 7/20 - 9/20		
	Printing & Accurint	Accurint 8/20 & 9/20	1355	5.87
3.	Bolton Partners, Inc.	10/20		
	Actuarial Fees		1356	7,550.00
4.	Abato Rubenstein & Abato, P.A.	10/20		
	Legal Fees		1357	337.50
5.	Bolton Partners, Inc.	11/20		
	Actuarial Fees		1358	4,887.50
6.	Weyrich, Cronin & Sorra	12/19		
	Progress Billing - Payroll Audit		1359	794.00
7.	Associated Administrators, LLC	Printing 10/20 - 11/20		
	Printing & Accurint	Accurint 10/20 & 11/20	1360	5.48
8.	Associated Administrators, LLC	1/21-3/21		
	Administration		1361	5,288.25
9.	Weyrich, Cronin & Sorra	12/19		
	Progress Billing - Audit		1362	3,600.00
10.	Bolton Partners, Inc.	12/20		
	Actuarial Fees		1363	2,575.00
				$ 25,212.35

Actuarial Zone Certification Report

Waterfront Warehouses Local No. 1429 Pension Fund

For the Plan Year January 1, 2021 through December 31, 2021

Bolton

Submitted by:

Timothy D. Boles, ASA, EA
Actuary
443.573.3938
tboles@boltonusa.com

Meredith Miraglia, CEBS
Senior Actuarial Analyst
443.573.3905
mmiraglia@boltonusa.com

Table of Contents

Summary of Findings

Determination

We have determined that the Waterfront Warehouses Local No. 1429 Pension Fund is in neither Critical nor Endangered Status for the plan year beginning January 1, 2021 based on the following findings:

(A) The Plan is not in Critical Status.

(B) The funded percentage is in excess of 80 percent.

(C) The Plan is not projected to have a Funding Standard Account (FSA) accumulated funding deficiency for the current year or any of the six (6) succeeding plan years taking into account any extension of amortization periods.

Sincerely,

Timothy D. Boles

Timothy D. Boles, ASA, EA

Meredith Miraglia

Meredith Miraglia, CEBS

Background

For plan years beginning after December 31, 2007, multiemployer defined benefit pension plans must certify their funding status pursuant to the Pension Protection Act of 2006 (PPA). The Multiemployer Pension Reform Act of 2014 (MPRA) modified the funding status criteria for plan years beginning after December 31, 2014 as described below:

Critical Status

A multiemployer plan is in Critical Status for a plan year if, as determined by the plan actuary, the plan is described in one or more of the following subparagraphs as of the beginning of the plan year:

(A) The funded percentage of the plan is less than 65 percent, and the plan is projected to be unable to pay benefits within seven years. The funded percentage is the ratio of the actuarial value of assets to the present value of accumulated plan benefits.

(B) The plan has a FSA accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods, or the plan is projected to have an FSA accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods.

(C) (i) The plan's normal cost for the current plan year, plus interest for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last day of the preceding plan year, exceeds the present value of the reasonably anticipated employer and employee contributions for the current plan year;

(ii) The present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

(iii) The plan has an FSA accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods.

(D) The plan is projected to be unable to pay benefits within five years.

Beginning with the first plan year commencing in 2015, a multiemployer plan may elect to be in Critical Status if the plan is projected to be in Critical Status in any of the 5 succeeding plan years. If the plan does not elect to be in Critical Status certification of the projection to be in Critical Status within 5 succeeding plan years is still required.

Background

Critical and Declining Status

A multiemployer plan is in Critical and Declining Status if the plan meets the criteria for Critical Status and is projected to be unable to pay benefits during the current plan year or any of the 14 succeeding plan years. The 14 year period is extended to 19 if either:

(A) The ratio of Inactive to Active participants exceeds 2 to 1, or

(B) The plan's funding percentage is less than 80%.

Endangered Status

A multiemployer plan is in Endangered Status for a plan year if, as determined by the plan actuary, the plan is not in Critical Status for the plan year and, as of the beginning of the plan year, either:

(A) The plan's funding percentage for such plan year is less than 80%, or

(B) The plan has an FSA accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods.

A plan is in Seriously Endangered Status for a plan year if the plan is described in both subparagraphs (A) and (B).

A multiemployer plan is not required to enter into Endangered Status if:

(A) The plan is not projected to be in Endangered Status as of the end of the tenth plan year following the plan year of certification, and

(B) The plan was in neither Critical nor Endangered Status for the plan year immediately preceding the year of certification.

Neither Critical Nor Endangered Status

A multiemployer plan is neither Critical nor Endangered Status if it does not fall into any of the categories described above.

Estimated Change in Net Assets Available

Income Statement for the Plan Year Ending December 31, 2020

Beginning of the Year		
Net Assets Available for Benefits as of December 31, 2019	$	8,320,665
Plus: Prior Year's Adjustments	$	-
Net Assets Reflecting Adjustments	**$**	**8,320,665**
Receipts		
Contributions	$	273,537
Investment Yield	$	1,062,049
Investment Expenses	$	(50,154)
Net Investment Yield	$	1,011,895
Total Estimated Receipts	**$**	**1,285,432**
Disbursements		
Benefits	$	206,095
Administrative Expenses	$	100,174
Total Estimated Disbursements	**$**	**306,269**
End of the Year		
Net Change in Assets	$	979,163
Estimated Net Assets Available for Benefits as of December 31, 2020	**$**	**9,299,828**

Estimated Investment Return (Market Value)

The table below shows the investment yield results at market value for the year ended December 31, 2020. The method used in determining this figure is to divide the investment yield by the investment base. The investment base is the beginning-of-the-year balance plus ½ of the net capital additions (consisting of employer contributions less benefit payments, and administrative expenses).

Development of Investment Return		
[1] Opening Balance	$	8,320,665
[2] Estimated Closing Balance	$	9,299,828
[3] Estimated Net Capital Additions	$	(32,732)
[4] Calculation Base ([1] + 1/2 x [3])	$	8,304,299
[5] Estimated Investment Yield ($)	$	1,011,895
[6] Estimated Investment Yield (%)		12.2%

Asset Valuation Method

The actuarial value of assets is determined using the smoothed market value in accordance with Revenue Procedure 2000-40 and described as follows:

(A) An expected asset value is determined. This value is equal to the market value of assets on the preceding valuation date multiplied by the valuation rate of interest plus the excess of contributions over disbursements during the preceding plan year with interest at the valuation rate from the middle to the end of the year.

(B) If there is an excess of market value over expected value, the difference is a gain. If the expected value is greater than the market value, a loss is determined.

(C) The preliminary actuarial value of assets is equal to the market value of assets, with gains subtracted or losses added as follows:

- (i) 4/5 of the prior year's gain or loss
- (ii) 3/5 of the second preceding year's gain or loss
- (iii) 2/5 of the third preceding year's gain or loss
- (iv) 1/5 of the fourth preceding year's gain or loss

(D) If the preliminary actuarial value of assets is more than 20% above the market value, it is adjusted downward to the value 20% above market value; if more than 20% below market value, it is adjusted upward to the value 20% below market value.

Development of Estimated Actuarial Value of Assets

The Smoothed Market Value Method of Asset Valuation is determined as follows as of January 1, 2021.

Development of Actuarial Value of Assets		
[1] Market Value of Assets as of January 1, 2020	$	8,320,665
[2] Estimated Contributions during the year	$	273,537
[3] Estimated Disbursements during the year	$	306,269
[5] Interest to January 1, 2021	$	539,779
[6] Expected Value as of January 1, 2021 ([1] + [2] - [3] + [5])	$	8,827,712
[7] Estimated Market Value of Assets as of December, 31, 2020	$	9,299,828
[8] 2020 Gain/(Loss) ([7] - [6])	$	472,116
[9] January 1, 2021 Write-Ups:		
4/5 of 2020 Gain/(Loss)	$	377,693
3/5 of 2019 Gain/(Loss)	$	536,740
2/5 of 2018 Gain/(Loss)	$	(490,210)
1/5 of 2017 Gain/(Loss)	$	58,217
Total	**$**	**482,440**
[10] Estimated Actuarial Value of Assets as of January 1, 2021 ([7] - [9])	$	8,817,388
[11] Minimum Estimated Actuarial Value of Assets (0.8 x [7])	$	7,439,862
[12] Maximum Estimated Actuarial Value of Assets (1.2 x [7])	$	11,159,794
[13] Final Estimated Actuarial Value of Assets	**$**	**8,817,388**

Actuarial Funding Method

The unit credit cost method is used in establishing the unit credit normal cost and present value of accumulated plan benefits.

The unit credit method assigns the normal costs of the plan to the years in which the benefits accrue.

Unit Credit Normal Cost

In this method an active participant's cost for pension benefits as well as auxiliary benefits earned during the year are calculated. This annual cost is called the unit credit normal cost.

Present Value of Accumulated Plan Benefits

The following table shows a development of the estimated present value of accumulated plan benefits as of January 1, 2021. In general, this term means the present worth, expressed in a single sum, of the benefits yet to be paid, for each of the three major classes of plan participants:

(1) Those already receiving pension benefits;

(2) Those who have been separated from active service, are vested in their accrued benefits, are still living, and are not yet receiving pension benefits; and

(3) Those who are in active service in employment covered by the plan.

Funded Percentage

Also shown in the following table is the estimated funded percentage as of January 1, 2021. The funded percentage is the ratio of the actuarial value of assets to the present value of accumulated plan benefits.

Development of Funded Percentage		
[1] PVAB as of January 1, 2020	$	6,717,061
[2] Estimated Unit Credit Normal Cost	$	169,300
[3] Estimated Benefits Paid	$	206,095
[4] Interest to January 1, 2021	$	440,915
[5] Changes in Liability due to Assumption Change	$	-
[6] Changes in Liability due to Plan Amendment	$	-
[7] Estimated PVAB as of January 1, 2021 ([1] + [2] - [3] + [4] + [5] + [6])	$	7,121,181
[8] Estimated Actuarial Value of Assets	$	8,817,388
[9] Estimated Funded Percentage as of January 1, 2021 ([8] / [7])		123.8%

Funding Standard Account

The Funding Standard Account (FSA) compares:

- The sum of ERISA's minimum requirements since the effective date of ERISA, against,

- The sum of all plan contributions since the effective date of ERISA,

both adjusted for interest.

The minimum required contribution under ERISA consists primarily of two major components. These are:

- The Normal Cost, which is the addition to the plan's assets to cover the growth in plan liabilities due to additional benefits accrued by active participants during the year based on the plan's valuation cost method, and

- Amortization Payments, which are annual payments to cover the difference between existing liabilities and the existing assets.

Each year the actuary measures changes in liabilities from plan amendments, investment and other gains and losses, and other sources, and sets up new schedules with annual amortization payments.

The FSA Credit Balance is used to determine if the plan is meeting the minimum funding requirements of ERISA.

- current contributions are higher than the current minimum requirements, the Credit Balance is growing.

- If current contributions are less than the minimum, the Credit Balance will decline.

As of December 31, 2020, the estimated Credit Balance is $799,838.

The following is a projection of the FSA through the plan year ending December 31, 2027.

Funding Standard Account Projection

Plan Year Beginning 1/1	Beginning Funded Percentage[1]	Beginning Credit Balance	Normal Cost	Net Amortization Charge/(Credit)	Anticipated Contribution	Interest	Ending Credit Balance
2021	123.8%	799,838	194,827	125,416	273,537	40,064	793,196
2022	125.8%	793,196	196,808	121,982	273,537	39,726	787,669
2023	126.9%	787,669	198,829	122,050	273,537	39,231	779,558
2024	131.1%	779,558	200,890	92,377	273,537	40,499	800,327
2025	132.8%	800,327	202,992	100,415	273,537	41,190	811,647
2026	133.6%	811,647	205,136	69,943	273,537	43,767	853,872
2027	134.4%	853,872	207,323	20,589	273,537	49,577	949,074

[1] This plan typically uses the Entry-Age-Normal funding method, but this funded percentage projection uses the Unit Credit funding method, per PPA rules.

Assumptions

Method of Funding

The Entry-Age-Normal Cost Method has been used to develop the funding requirements presented. Under this method, the normal cost for each participant is the level contribution which would have been required from the participant's age at original entry into the employer's service in order to fund the participant's benefit at retirement age. The unfunded actuarial liability represents the reserve which would have been on hand if the normal cost had been paid for all prior years (as if the plan had always been in effect), less plan assets. Actuarial gains or losses resulting from plan experience which differs from the actuarial assumptions, plan amendments or changes in the actuarial assumptions are considered to be new pieces of actuarial liability and must be funded over no more than fifteen years.

Interest Rate

6.50% compounded annually

Mortality

RP-2014 Blue Collar Mortality adjusted to 2006 and projected generationally using MP-2018

Expenses

The prior year's administrative expenses are assumed as a mid-year number for the current year. That mid-year number is then discounted to the beginning of the year and included in the normal cost.

Expenses are then assumed to increase 2% annually.

Withdrawal

Turnover Table T-5. Representative rates are:

Age	Rate
25	7.7%
40	5.2%
55	0.9%

The withdrawal decrement table was determined using professional judgement.

Disability

None assumed.

Assumptions

Retirement Age

Normal Retirement Age for which active participants (65). Age 62, or attained age if over 62, for terminated vested participants.

Future Service Credit

Current rate of service.

Percent Married

85% of the population is assumed to be married with females assumed to be three years younger than males. The percent married and spousal age assumptions are based on

Form of Payment

All active and terminated vested participants are assumed to elect a life annuity at assumed retirement age.

Actuarial Certification of Funding Status

The Pension Protection Act of 2006 (PPA), as amended by the Multiemployer Pension Reform Act of 2014 (MPRA), requires an actuarial certification of whether or not a multiemployer Plan is in Endangered Status, and whether or not a multiemployer Plan is or will be in Critical Status or Critical and Declining Status, for each plan year. This certification must be completed by the 90th day of the plan year and must be provided to the Secretary of the Treasury and to the Plan sponsor. If the certification is with respect to a plan year that is within the Plan's funding improvement period or rehabilitation period arising from a prior certification of Endangered, Critical or Critical and Declining Status, the actuary must also certify whether or not the Plan is making scheduled progress in meeting the requirements of its funding improvement or rehabilitation Plan. Failure of the Plan's actuary to certify the status of the Plan is treated as a failure to file the annual report under section 502(c)(2) of the Employee Retirement Income Security Act of 1974 (ERISA). Thus, a penalty of up to $1,100 per day may apply.

The following is such actuarial certification for the plan year beginning January 1, 2021, a copy of which was mailed to the Secretary of the Treasury before the 90th day of the plan year.

Bolton
Employee Benefits, Actuarial & Investment Consulting

February 10, 2021

Internal Revenue Service
Employee Plans Compliance Unit
Group 7602 (TGE:EP:EPCU)
Room 1700, 17th Floor
230 South Dearborn Street
Chicago, Illinois 60604

Re: Certification of the Waterfront Warehouses Local No. 1429 Pension Fund

Dear Sir:

This is a certification required by section 305(b)(3)(A) of ERISA and by section 432(b)(3)(A) of the Internal Revenue Code for the following Plan.

Plan Name: Waterfront Warehouses Local No. 1429 Pension Fund

EIN: 52-6089265

PN: 001

Plan Sponsor: Board of Trustees of Waterfront Warehouses Local No. 1429 Pension Fund
c/o Dave Jensen, Associated Administrators, LLC
911 Ridgebrook Rd
Sparks, MD 21152-9451
(410) 254-6847

Certification for the Plan Year: January 1, 2021 to December 31, 2021

As the Plan actuary, I certify that:

(1) The Plan is NOT in Endangered Status for the plan year ending December 31, 2021

and

(2) The Plan is NOT and WILL NOT be in Critical Status for the plan year ending December 31, 2021, nor will it be in Critical Status for any of the 5 succeeding plan years.

Timothy D. Boles

February 10, 2021

Timothy D. Boles, ASA, EA
Enrollment Number 20-08131

Date

WATERFRONT WAREHOUSES LOCAL 1429 PENSION FUND

CONTRIBUTING EMPLOYER PAYROLL AUDIT POLICY

WHEREAS, the Trustees of the Waterfront Warehouses Local 1429 Pension Fund (hereinafter referred to as "the Fund") desire to reduce to writing their policy of auditing employers who contribute to the Fund in order to continue to meet the fiduciary responsibilities imposed on them by Section 404 of the Employee Retirement Income Security Act of 1974, as amended (hereinafter "ERISA") to discharge their duties solely in the interests of the participants and beneficiaries of the Fund; and

WHEREAS, the Trustees believe it to be in the interests of said participants and beneficiaries and a requirement of their fiduciary duties to audit the records of contributing employers to ensure that contributions are being made in the required amounts on all employees for whom contributions are due in accordance with the applicable collective bargaining agreement and the controlling Trust Agreement; and

WHEREAS, the Trustees wish to adopt a Contributing Employer Payroll Audit at this time;

NOW, THEREFORE, BE IT RESOLVED:

It is the policy of the Fund to collect all employer contributions as they are due, and to make such diligent and systematic audit efforts as are appropriate under the circumstances to do so.

Section 1
General Payroll Audit Policy

The Trustees have the legal right to exercise all remedies allowable under the Fund's Restated Agreement and Declaration of Trust, Participation Agreements, and under ERISA, including, but not limited to:

1. The right to establish a date on which contributions are due;

2. The right to audit the financial records of the employers, including but not limited to payroll ledgers, federal and state tax returns, IRS Form 941 and such other books and records of the employers as are necessary for the auditor to reasonably determine that the proper contributions have been made;

3. The right to require that the delinquent employer pay the cost of an audit, interest, attorney's fees, and any other expenses incurred by the Fund in determining the amount of a delinquency and in collecting the delinquency;

4. The right to recover liquidated damages;

5. The right to take all other steps and to perform all other acts that are necessary to collect contributions due to the Fund in a timely and expeditious manner.

The procedures set forth herein shall be followed unless the Board of Trustees determines that they should be waived or modified in a particular instance.

Section 2
Payroll Audit Procedure

1. All contributions shall be payable on or before the fifteenth day of the calendar month for which they are made, which is the month following the month in which the hours are worked. For example, contributions due for hours worked in January are due by February 15. Payment of contributions made within 15 days of the Due Date, a grace period will be applied. The failure of the employer to make the contributions during the time stated above shall be deemed a violation of the Agreement and Declaration of Trust, the Participation Agreements, if any, and the related collective bargaining agreement or other written agreement entered into between the employer and participating Union, and the employer shall be considered to be in default.

2. The Trustees shall have discretion in determining which employers will be audited and the frequency of the audits, in consultation with the Fund's auditor. The auditor may utilize the services of the Fund's Administrator in reviewing the employer contributions. If the Trustees determine, in their sole discretion, that an audit of the contributing employer's payroll records (beyond the annual audit of the Fund's financial statements) is necessary, the auditor may move forward with the steps as set forth herein. In addition, special audits will be conducted when directed and if warranted.

3. Prior to conducting each audit, a letter will be sent to the employer advising the employer of the impending audit, citing the Trustees' authority to conduct the audit and describing the records required.

4. In the event that an employer refuses to permit an audit upon request by the Fund, or if the employer refuses the Fund's auditor access to pertinent records, then the Fund's Administrator may refer the matter to Fund counsel.

5. The Trustees recognize that in some instances it is not feasible for the auditor to access pertinent records at the employer's primary business location, or the location where records subject to the audit are kept. In those instances, the auditor may request that the employer comply with the audit by sending the requested materials via mail, fax, electronic mail, or any other means by which the auditor and the employer agree. In the event that an employer refuses to make its records available, then the matter may be referred to Fund counsel.

6. If a matter is referred to Fund counsel, Fund counsel shall thereafter demand that the employer make available such books and records as are necessary for the Fund's auditor to conduct an audit. If the records are not made available as a result of Fund counsel's letter, the employer shall be liable for any attorney's fees incurred by the Fund in enforcing the Fund's right to audit the employer's records. If necessary, upon direction of the Trustees, Fund counsel shall institute legal action to enforce the Trustees' right to conduct a payroll audit and the employer shall be assessed all costs and attorney's fees incurred as a result of the employer's refusal to permit an audit or refusal to make available all pertinent records.

7. At the discretion of the Trustees, upon completion of audit fieldwork and analysis of the employer's payroll records, the auditor will conduct an exit interview with the employer to discuss the auditor's preliminary findings. The auditor will issue a draft report to the employer with the preliminary payroll audit findings.

8. As soon as practical after the interview, the audit findings will be forwarded to the Trustees, including any employer statements regarding the audit findings. Upon direction from the Trustees, the Fund's Administrator shall send a demand letter to the employer, including all amounts owed as a result of the payroll audits. The employer will be notified that it may contest the findings in writing to the Trustees within ten (10) days after receipt of the Administrator's letter. Any such request shall be duly considered by the Trustees at the next regular Trustees meeting following the Fund's receipt of the request. The decision of the Fund shall be final and binding.

9. After demand is made to the employer, if there remains a dispute as to the results of the audit or if the audit deficiency is not paid by the employer, the Fund's Administrator may refer the matter to Fund counsel. Thereafter, the procedures set out in Section 3 of these Rules will be followed. Nothing herein shall prohibit the Trustees from referring the matter to the Fund counsel prior to the Administrator sending a demand letter pursuant to Section 2, Paragraph 8.

10. In the event that a payroll audit reveals that an employer owes delinquent contributions to the Fund in excess of twenty-five percent (25%) of the contributions due for the period being audited, or in the event that the employer refuses, resists or impedes any payroll audit by the Fund, the employer shall also be required to pay and shall be liable for the Fund's costs of the payroll audit, and any costs of attempts to require the employer to comply with the Fund's procedures, including subsequent audits made necessary thereby.

Section 3
<u>Legal Action and Settlement</u>

1. When an audit delinquency is turned over to Fund counsel for collection, Fund counsel shall send a letter to the employer demanding payment of the delinquent contributions, interest and liquidated damages, and the costs of audit and collection, as computed by the Fund's auditor.

2. The employer will be notified that it may contest the findings in writing to the Fund within ten (10) days after receipt of Fund counsel's letter. Any such request shall be duly considered by the Trustees at the next regular meeting following the Fund's receipt of the request. The decision of the Trustees shall be final and binding.

3. In the event an employer fails to pay the delinquent contributions, interest and liquidated damages within twenty (20) days after Fund counsel's demand for payment, Fund counsel is authorized to initiate legal action, unless Fund counsel recommends a different course of action based upon pertinent factors, which may include, but are not limited to, the following:

   a) the financial condition of the employer;

   b) the probability of collecting a judgment once it is obtained;
   c) the employer's past performance as a contributing employer;

d) the amount of the delinquency;

e) the length of time the delinquent amount has been owed;

f) the likelihood that the costs of the suit will exceed the recovery; and

g) any other factor that in the discretion of the legal counsel, may have a material bearing on the collection of the delinquent contributions.

4. Any recommendation by Fund counsel shall be made to the Fund. A legal action may be deferred pending action of the Trustees, and the Trustees reserve the right to accept, reject or modify any such recommendation.

5. A suit, arbitration, action, charge or other proceeding to enforce the obligation to make such contributions may be commenced by the Fund in its own name, by one or more of the Trustees on behalf of the Fund, and/or by the Union or the International Longshoremen's Association ("ILA") in their own names. However, no proceeding by the Union or ILA for such contributions shall be compromised or settled or binding upon the Fund without the Fund's written consent.

6. Fund counsel is authorized to enter settlement negotiations (including the sending of a demand letter or other correspondence) with delinquent employers. Without further approval of the Fund, legal counsel may agree to the immediate payment of the full amount owed, but any settlement which waives or compromises the amount owed, including interest, liquidated damages, attorney's fees or costs, must be approved by the Trustees.

7. Fund counsel has the authority to reject any proposal for settlement that contemplates payment of amounts due over a period of time, if its acceptance would result in collection of less than the total amount owed and if, in the attorney's opinion, it is unreasonable. Such rejection shall be subject to the Trustees' subsequent review and approval. The Trustees may approve a proposal to extend the time of payment or reduce the payment, in accordance with their fiduciary obligations.

8. The Fund reserves the right to accept or reject an employer's proposal to pay delinquent contributions, interest, liquidated damages, and attorney's fees over a period of time and to compromise any claim or delinquent account as recommended by legal counsel; provided, however, that any such decision to extend the time for payment, or to compromise the amount owed, complies with all applicable laws and regulations, including but not limited to Department of Labor Prohibited Transaction Exemption 76-1.
9. Settlements calling for payments over time or compromising the amount, including interest, liquidated damages, attorney's fees, or costs, must be in writing and signed on behalf of the Fund and the employer.

10. Notwithstanding, the procedures set out in this policy, the Trustees may refer any delinquent account to Fund counsel at an earlier or later date than provided for herein where circumstances warrant that collection action be expedited or delayed.

Section 4
Remedies

The remedies available to the Fund is set forth in their Agreement and Declaration of Trust, Participation Agreements and under applicable law. These remedies include, but are not limited to, the following:

1. Interest owed by a delinquent employer shall be calculated at the rate of 1.5% per year.

2. Liquidated damages shall be calculated at the rate of 20% of the amount due, or the rate prescribed by the Internal Revenue Code or applicable state law, whichever is greater.

3. Attorney's fees shall be assessed against a delinquent employer at the attorney's standard hourly rate, for all time spent by Fund counsel in collection efforts pursuant to Section 3 hereof.

4. The cost of the audit shall be assessed against the employer if the amount due, as determined by the audit, is in excess of twenty-five percent (25%) of the contributions due for the period being audited, or if the employer refuses, resists or impedes any payroll audit.

5. All costs actually incurred in court actions for collection of amounts shown due by an audit or to enforce the Trustees' right to audit the employer's payroll records shall be assessed against the delinquent employer, including but not limited to, filing fees, fees for service of process, copying charges, postage, and such other costs as would otherwise be charged to the Fund.

6. Nothing in this Section or Policy shall be construed as limiting the authority of the Trustees to compromise, settle or otherwise waive any right, payment or interest they possess consistent with the obligation to act in the best interests of the participants. Failure to make payments in a timely manner may also result in the termination of the employer's participation in the Fund and/or the termination or suspension of benefits to the employer's employees. In such case, the employer shall be liable and responsible to pay benefits to the employees and participants directly and to indemnify and hold the Fund harmless for any claims arising out of such benefits. If the employer is in default, the Fund shall not be under any obligation to continue providing benefits for such employees, participants or beneficiaries for whom such contributions were to be made, to the extent permitted by law.

Section 5
Miscellaneous

1. The Trustees may amend, modify or revise this Policy or any of its procedures at any time, in their discretion, in accordance with the voting provisions of the Waterfront Warehouses Local No. 1429 Pension Fund Restated Agreement and Declaration of Trust.

2. All questions or disputes relating to the interpretation, meaning and/or application of this Policy shall be finally and exclusively resolved by the Trustees in the exercise of their discretion and in the performance of their fiduciary obligations to the Fund's participants and beneficiaries, in the protection of the financial integrity and soundness of the Fund and the efficient and effective administration of the Fund.

3. If an employer's contributions decline significantly (by 10% or more) from its preceding contributions, the Administrator shall contact the employer for an explanation of the decline. If the decline is not explained, the Administrator shall report the situation to Board of Trustees at its next regularly scheduled meeting or earlier if more immediate action appears necessary.

4. Subject to the terms and conditions of this policy, and federal law, an employer that makes a contribution to the Fund in excess of the amount required and under a mistake of fact or law may request a refund of the amount of such excess contributions. Refunds are applied as a "credit" to reduce the employer's future contribution obligations. No refund of excess contributions shall be granted by the Fund without a written request for such refund having been received within 3 years after the date that such excess contributions were received by the Fund. To the extent applicable, any excess contributions which are no longer in possession of the Fund, such as contributions that have been reciprocated or passed through to other benefit plans, may not be refunded to the employer. If the Fund incurs a direct or indirect cost, expense or liability as a result of an excess contribution, any refund of such contribution shall be reduced by the full value of such cost, expenses or liability. The obligation to discover and delineate the amount of excess contributions within the time limits provided within the policy is the sole and exclusive responsibility of the employer. The request of the employer for refund of excess contributions must be in writing and shall not be effective until it is received by the Board of Trustees. The failure and/or refusal of the employer promptly and fully to comply with any or all of the provisions of this policy shall result in the denial of the request for the refund of excess contributions. As used in this policy, the term "refund" shall include the offset of previously-submitted excess contributions against currently due contributions ("credits"). As such, upon approval of the Trustees, an employer may be permitted to credit excess contributions, less the Fund's set-offs described in this Policy, against current contributions only to the same extent and under the same terms and conditions as such employer may be entitled to a refund under this Policy. Any employer's attempt to recoup any excess contribution discovered by a payroll audit through a procedure other than the one described in this paragraph (for instance by the employer unilaterally taking a credit) shall result in the automatic forfeiture of the refund and the treatment of any credit taken by the employer as a delinquent contribution.

ADOPTED this ____ day of ______________________________, 2021, by the Trustees of the Waterfront Warehouses Local No. 1429 Pension Fund, as evidenced by the signatures set forth below.

______________________________	______________________________
Andre Coley, Union Trustee	Jeremy Riddle, Employer Trustee
______________________________	______________________________
Robert Turner, Union Trustee	Morgan C. Bailey, Employer Trustee

Kimberly L. Bradley
James R. Rosenberg •
Paul D. Starr •
Corey Smith Bott
Brian G. Esders •
Shauna Barnaskas
Ashley E. Macaysa +

• Also admitted in DC
+ Admitted in PA only

LAW OFFICES
ABATO, RUBENSTEIN AND ABATO, P.A.
809 Gleneagles Court
Suite 320
Baltimore, Maryland 21286
(410) 321-0990
(410) 321-1419 fax
www.abatolaw.com

Cosimo C. Abato
(1930 - 1995)
Bernard W. Rubenstein
(1920 - 2009)
Anthony A. Abato, Jr.
(1933 - 2015)

Of Counsel
H. Victoria Hedian
Stephen W. Godoff •

To: Trustees, Waterfront Warehouses Local 1429 Pension Fund

From: Kimberly Bradley and Shauna Barnaskas

Date: February 12, 2021

Re: DOL Guidance on Lost and Missing Participants

Introduction

Several years ago the Employee Benefits Security Administration ("EBSA") division of the United States Department of Labor ("DOL") launched a nationwide compliance initiative related to payment of benefits to terminated vested participants in defined benefit pension plans. This was in part, a response to DOL audits of plans with millions of dollars of unclaimed pension benefits for participants who were older than normal retirement age. The initiative concerns a pension plan's practices in maintaining complete and accurate information, communicating benefits to participants and beneficiaries, and implementing plan procedures for locating and notifying participants that benefits are due and payable at normal retirement age. The initiative was launched in response to a growing concern that there is a widespread problem such that there could be billions of dollars of pension benefits due and payable to workers that have not been distributed. DOL had affirmed that failure to identify, locate, and distribute benefits to participants who are entitled to payment is a violation of the fiduciary duties of prudence and loyalty, but had not previously provided specific guidance regarding plan actions that would comply with its interpretation regarding missing participants.

Until recently, DOL guidance addressed lost and missing participants in the context of plan termination; it never provided guidance addressing the practical realities of resolving these issues in the context of an ongoing plan. However, due to the fact that many DOL plan audits were revealing inconsistent enforcement actions and varying positions on search methods, on January 12, 2021, DOL issued internal compliance guidance for its Regional Directors, as well as guidance on "best practices" for pension plans to follow in locating missing participants and ensuring that plan participants and beneficiaries receive their promised benefits at normal retirement age. This memorandum focuses on the recent "best practices" guidance from EBSA's Office of Regulations and Interpretations.

"Red Flags" Indicating a Missing Participant Issue

In its audits, DOL found that many times there are "red flags" or warnings that indicate a plan has a problem with lost or missing participants, but either fails to address it, or does not know how to resolve it. Two principal indicators of a missing participant issue include more than a small number of missing or nonresponsive participants, and more than a small number of terminated vested participants who have reached normal retirement age, but have not begun receiving their pension benefits. This often stems from missing, inaccurate, or incomplete contact information such as outdated physical addresses or email addresses, partial social security numbers, and missing spouse information. In addition, some plans do not have sound policies and procedures for handling returned mail or uncashed checks.

Conversely, plans with a low number of nonresponsive participants share the following common characteristics: ensuring plan records are complete, up to date, setting up methods to locate and document searches for missing participants, and taking proactive steps to ensure participants and beneficiaries are receiving their entitled benefits. DOL believes that those plans have established “best practices” in managing their plan and utilizing policies and procedures to continuously ensure it is minimizing the number of missing participants.

Best Practices

For the first time, DOL has issued “best practice” guidance for plan fiduciaries to consider in determining what steps are appropriate for their plan to reduce the number of lost and missing participants. This guidance is intended to help plans minimize the number of missing participants. In doing so, DOL provided four broad categories of areas that should be analyzed, including recommended practices to help reduce lost and missing participants in each category. It notes that the practices will not be appropriate for each plan; plans should consider the size of a participant’s accrued benefit and account balance in comparison to the cost of search efforts in determining what steps to take. A plan’s actions should be analyzed on a case-by-case basis.

1. <u>Maintaining Accurate Census Information</u>

To ensure participants and beneficiaries are receiving their proper benefits, a plan needs to continuously have the ability to contact them both now and once they retire. This starts with maintaining accurate contact information and continuously ensuring it is up to date. DOL recommends the following steps:

- Contact participants and beneficiaries on a periodic basis to confirm or update contact information.
- Include contact information change requests in plan communications along with a reminder to advise the plan of changes to contact information.
- Flag undeliverable mail and uncashed checks, and *follow up*.
- Maintain and monitor an online platform for participants to use to update contact information.
- Provide prompts for participants and beneficiaries to confirm contact information upon login to online platforms.
- Regularly request updated contact information for beneficiaries, if any.
- Regularly audit census information and correct data errors.

2. <u>Implement Effective Communication Strategies</u>

DOL recommends common-sense communication strategies that include using plain language, clearly indicating upfront about what any communication is about, and clearly marking envelopes and other correspondence with original plan or sponsor names so recipients can easily identify the communication as important. Additionally, DOL recommends that plans encourage contact through web sites and toll-free numbers.

3. Missing Participant Searches

If a plan already has an issue with lost or missing participants, this is arguably one of the most important steps (although plans with minor issues should still utilize these steps). DOL suggests utilizing some or all of the following steps on a regular basis:

- Checking with related plans, and employers, for any participant, beneficiary or next of kin information.
- Request updated contact information from designated plan beneficiaries (i.e. spouse and children) and the employee's emergency contacts.
- Tap into colleagues and coworkers of lost and missing participants by using the union's local offices and union communications.
- Utilize free online search engines, public record databases, obituaries and social media.
- Use a commercial locator service, credit-reporting agency, or proprietary internet search tool.
- Send mail with a tracking number such as USPS certified mail.
- Attempt contact through email, telephone, text and social media.
- Conduct a death search if a participant is nonresponsive over a period of time.
- Register missing participants on public and private pension registries with privacy and cyber security protections (i.e. National Registry of Unclaimed Retirement Benefits), and publicize the registry through correspondence and communications to existing participants and retirees.

4. Documenting Procedures and Actions

The final step DOL recommends is to make sure the plan has written policies and procedures clearly establishing consistent practices, and ensure the plan is following those procedures. Document key decisions and actions taken. Fiduciaries should make sure their service providers are following these procedures and should continue to identify any areas for improvement.

Impact on Waterfront Warehouses Local 1429 Pension Plan

DOL audits in recent years have consistently targeted a plan's consideration of lost and missing participants as well as timely payment of benefits to eligible terminated vested participants. This is why the Trustees implemented a "Policy on Location and Payment of Benefits to Missing and Terminated Vested Participants" in 2017. This policy already includes many of the DOL's recommendations, including but not limited to reviewing terminated vested employees who have reached normal retirement age, or are nearing normal retirement age, including a reminder in annual benefit statements to include a reminder to update contact information, and utilizing diligent efforts to locate missing participants, and keeping records of attempts to locate missing participants. We recommend that the Trustees of the Waterfront Warehouses Local 1429 Pension Plan review its current Policy, check for any "red flags," and determine if it desires to implement any of the DOL "best practices" into its existing policy.

Kimberly L. Bradley
James R. Rosenberg •
Paul D. Starr •
Corey Smith Bott
Brian G. Esders •
Shauna Barnaskas
Ashley E. Macaysa +

• Also admitted in DC
+ Admitted in PA only

LAW OFFICES
ABATO, RUBENSTEIN AND ABATO, P.A.
809 Gleneagles Court
Suite 320
Baltimore, Maryland 21286
(410) 321-0990
(410) 321-1419 fax
www.abatolaw.com

Cosimo C. Abato
(1930 - 1995)
Bernard W. Rubenstein
(1920 - 2009)
Anthony A. Abato, Jr.
(1933 - 2015)

Of Counsel
H. Victoria Hedian
Stephen W. Godoff •

MEMORANDUM

To: Trustees, Waterfront Warehouses Local 1429 Pension Fund

From: Kimberly Bradley and Ashley Macaysa

Date: February 17, 2021

Re: DOL Final Rule on Financial Factors in Selecting Plan Investments

---

Introduction

In June 2020, the Department of Labor ("DOL") issued a proposed regulation on plan fiduciaries' duties under ERISA when considering environmental, social, and governance ("ESG") factors in investment decisions. After a notice and comment period, on October 30, 2020, DOL issued a Final Rule, that was published in the Federal Register on November 13, 2020.[1] The Final Rule became effective on January 12, 2021.[2]

DOL guidance on Economically Targeted Investments ("ETIs") has shifted over time in response to political influence and changes in presidential administrations. DOL issued guidance under the Clinton administration in 1994, the Bush administration in 2008, the Obama administration in 2015, and finally the Trump administration in 2018. Democrat administrations have traditionally espoused a more favorable position on ETIs, while Republican administrations have traditionally been more restrictive. With different interpretations and conflicting corrections or clarifications over the years, it has become very difficult for fiduciaries to navigate this investment guidance, which purports to assist fiduciaries but has instead caused confusion for investors.

To add to this, the recent change in presidential administrations may impact DOL's Final Rule concerning ETIs. On January 20, 2021, the Biden administration issued a memorandum to the heads of executive departments and agencies regarding regulatory freezes.[3] President Biden also issued an Executive Order directing heads of all agencies to review all existing regulations adopted between January 20, 2017 and January 20, 2021 that are, or may be inconsistent with, the administration's policy as outlined in the Executive Order.[4] Thereafter, the Biden administration published a non-exclusive list of agency actions that heads of relevant agencies will review, in accordance with the Executive Order, wherein

---

[1] 85 Fed. Reg. 72846 (Nov. 13, 2020).
[2] 29 C.F.R. §§ 2550.401c-1 et seq.
[3] See *Regulatory Freeze Pending Review*, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review (last visited Feb. 9, 2021).
[4] See EO 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, 86 Fed. Reg. 7037, https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01765.pdf.

DOL's Final Rule regarding "Financial Factors in Selecting Plan Investments" was explicitly listed.[5] Notwithstanding, as the Final Rule had already taken effect prior to a change in administrations, DOL may be required to revisit the administrative rulemaking process if it wishes to make formal changes. It unclear whether DOL will enforce the Rule as written and it has yet to issue guidance on this matter. As such, the Final Rule remains in place until formal action is taken to change or nullify the Rule. An outline of the Proposed and Final Rules are detailed below.

Proposed Rule and Criticisms

The June 2020 Proposed Rule would have prohibited fiduciaries from selecting investment options based on ESG considerations unless those considerations were independently financially advantageous according to generally accepted investment theories. This would require fiduciaries to rely on "pecuniary" factors such as diversification, liquidity, and rate of return rather than ESG factors. Upon the "rare" (according to DOL) occasion where investment choices are otherwise equal, the ESG factors may be considered as a tiebreaker. In that event, the decisionmakers would be required to retain extensive documentation justifying their selections. The Proposed Rule would have required some plans to modify their investment policies and practices regarding selecting and monitoring investments, and it would likely have increased costs in the form of documentation and recordkeeping changes to meet the new requirements.

In accordance with administrative rulemaking requirements, DOL submitted the Proposed Rule for a public comment period. It received the unprecedented number of public comments, which included approximately 1,000 written comments.[6] It also received 7,600 written submissions as part of separate petitions.[7] Investing using ESG considerations has significantly increased in recent years, and many critics suggested that the Proposed Rule would restrict investments that are otherwise highly-performing investments based on ESG factors.[8] Critics suggested that the regulation unreasonably prohibits trustees from considering ESG considerations by making too broad of a prohibition. Even professionals who are in favor of the regulation in theory criticized the language, indicating it might force investors to provide inconsistent advice.[9] The harshest criticism included comments that the Proposed Rule was unnecessary, antiquated, and held a hostile view of ESG investing. Despite significant criticism, DOL moved forward with the Final Rule, stating it "believes that there are sufficient reasons to justify the promulgation of this final rule, including the lack of precision and consistency in the marketplace with respect to defining ESG investments and strategies . . . and perceived variation in some aspects of the Department's past guidance on the extent a fiduciary may consider non-pecuniary factors in making investment decisions."[10] DOL analyzed and addressed the criticism in its Final Rule, and made changes where it believed to be appropriate.

---

[5] See *Fact Sheet: List of Agency Actions for Review*, https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review (Jan. 20, 2021).

[6] Final Rule on Financial Factors in Selecting Plan Investments, § C (codified at 29 C.F.R. pt. 2550).

[7] Id.

[8] See Godbout, Ted, "DOL Takes Fire from All Sides on Fiduciary Advice Proposal," National Association of Plan Advisors (Sept. 4, 2020), https://www.napa-net.org/news-info/daily-news/dol-takes-fire-all-sides-fiduciary-advice-proposal?utm_campaign=Headlines_090820_US&utm_medium=email&utm_source=Eloqua.

[9] Id.

[10] Id. at § C.

Final Rule

The Final Rule amends the investment duties regulations of federal law which has been in place since 1979. It requires plan fiduciaries to select investments and strategies based solely on how they will affect the plan's financial performance, otherwise referred to as pecuniary goals. As mentioned, the Proposed Rule was received with significant criticism. DOL addressed the criticism head-on in the Final Rule and largely defended its position. While the Final Rule rolled back certain restrictions and burdens from the Proposed Rule, DOL reaffirmed its position that ERISA requires fiduciaries to treat financial interests as paramount when making investment decisions. DOL emphasized that the main purpose of the regulatory action remained the same:

> Under the Final Rule, plan fiduciaries, when making decisions on investments and investment courses of action, must focus solely on the plan's financial risks and returns and keep the interests of plan participants and beneficiaries in their plan benefits paramount. The fundamental principal that an ERISA fiduciary's evaluation of plan investments must be focused solely on economic considerations that have material effect on the risk and return of an investment based on appropriate horizons, consistent with the plan's funding policy and investment policy objective. The corollary principle is that ERISA fiduciaries must never sacrifice investment returns, take on additional risk, or pay higher fees to promote non-pecuniary benefits and goals.[11]

Despite dismissing and disagreeing with much of the criticism, the Final Rule implemental several important changes in response to public comments. Similar to the Proposed Rule, the Final Rule makes five major amendments to the investment duties regulation under Title 1 of ERISA:

1. The Final Rule confirms that ERISA fiduciaries must evaluate investments and investment courses of action based solely on pecuniary factors, or those financial considerations that have a material effect on the risk and/or return of an investment consistent with the plan's investment objectives and funding policy.[12]
2. An express regulatory provision is added stating that compliance with the exclusive purpose (loyalty) duty in ERISA section 404(a)(1)(A) prohibits fiduciaries from subordinating the interests of participants to unrelated objectives, barring them from sacrificing investment return or taking additional risks to promote non-pecuniary goals.[13]
3. The Final Rule adds a provision requiring Fiduciaries to consider reasonably available alternatives to meet their prudence and loyalty duties under ERISA.[14]
4. New text is added to set forth required investment analysis and documentation for circumstances in which plan fiduciaries use non-pecuniary factors when choosing between investments where the Fiduciaries are unable to distinguish on the basis of pecuniary factors alone.[15]

[11] Id. at § B.
[12] Id. (codified at 29 C.F.R. pt. 2550.404a-1(c)).
[13] Id. (codified at 29 C.F.R. pt. 2550.404a-1(c))
[14] Id. (codified at 29 C.F.R. pt. 2550.404a-1(b)(2)).
[15] Id. (codified at 29 C.F.R. pt. 2550.404a-1(c)(2)).

5. Finally, the Final Rule states the prudence and loyalty standards set forth in ERISA apply to a fiduciary's selection of designated investment alternatives to be offered to plan participants and beneficiaries in a participant-directed individual account plan.[16][17]

The most significant change from the Proposed Rule to the Final Rule is the removal of reference to ESG factors. DOL agreed with the commenters that reference to ESG considerations for investments is often vague and inconsistent.[18] ESG has often been used interchangeably with the terms ETI, impact investing, sustainability and non-financial performance metrics, with no uniform meaning.[19] Therefore, the Final Rule no longer explicitly refers to ESG factors, but rather uses the term "pecuniary factors," defined as those factors with a material demonstrable impact on investment performance.[20] Although the Proposed Rule was seen as virtually eliminating the use of ESG, or socially responsible, factors in investment decisions, the Final Rule leaves room for these types of considerations in investments if assessed from a purely economic manner. It states that ERISA fiduciaries should consider all relevant factors in evaluating whether there may be a material effect on the return and risk of an investment. Further, when comparing investment alternatives, the Final Rule resolved that a fiduciary is only required to compare alternatives that are "reasonably available under the circumstances."[21] This is intended to confirm that the rule does not require fiduciaries to scour the market and consider every alternative and is consistent with language in prior DOL publications.[22]

When discussing the "tie-breaker" or "all things being equal" portion of the rulemaking, DOL chose not to explicitly incorporate a tie-breaker provision by name, but generally allow for a modified tiebreaker. The language from the Proposed Rule was simplified in the Final Rule to focus on situations in which a fiduciary is unable to distinguish investment alternatives on the basis of pecuniary factors alone, and removes the stringent documentation requirements of the Proposed Rule in favor of a simplified documentation.[23] Specifically, when a fiduciary is unable to determine which investment is in the best interests of the plan based on pecuniary reasons alone, non-pecuniary factors can be considered so long as the fiduciary documents why pecuniary factors were not sufficient to select the investment, how the investment compares to the alternative investments, and how the non-pecuniary factors are consistent with the interests of participants and beneficiaries of the plan.[24]

The Final Rule also adds a caution to multiemployer plans. The language makes very clear that increasing participant contributions or otherwise benefitting union labor is generally not a pecuniary factor that may be considered outside the tie-breaker context.[25] "The purpose of plan investments under ERISA is to provide and protect retirement benefits – not to strengthen employers or unions or provide job security."[26] A fiduciary's investment duties are satisfied if the fiduciary gives appropriate consideration to facts and circumstances that the fiduciary knows or should know are relevant to the particular

[16] Id. (codified at 29 C.F.R. pt. 2550.404a-1(d)).
[17] This portion of the Final Rule would only apply to self-directed defined contribution plans, and therefore it would not apply to the Waterfront Warehouses Local 1429 Pension Fund.
[18] Final Rule, § D.2.
[19] Id.
[20] Id.
[21] Id. at § D.1.
[22] Id.
[23] Id. at § D.3.
[24] Id.
[25] Id. at § D.2.
[26] Id.

investment and acts accordingly.[27] In doing so, fiduciaries should focus on non-pecuniary factors in selecting investment courses of action, and must never sacrifice investment returns, take on additional risk, or pay higher fees to promote non-pecuniary benefits and goals.

Conclusion

While the Final Rule regarding "Financial Factors in Selecting Plan Investments" became effective on January 12, 2021, the Biden administration has explicitly called upon DOL to review its Rule. At present, it is unclear how and when DOL will make changes or issue guidance on this matter. It is also unclear whether DOL will enforce the regulations as written. If you have any questions about this guidance, please feel free to contact us.

[27] Id. (codified at 29 C.F.R. pt. 2550.404a-1(b)(1)(i)).