



August 11, 2021

The Honorable Gordon Hartogensis
Director
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005

Attn: Regulatory Affairs Division, Office of the General Counsel

**Re: Special Financial Assistance by PBGC
RIN 1212-AB53**

Director Hartogensis:

On July 12, 2021, the Pension Benefit Guaranty Corporation (PBGC) published in the *Federal Register* an Interim Final Rule (IFR) setting forth the requirements for special financial assistance applications for troubled multiemployer plans. The special financial assistance program was created by the American Rescue Plan Act of 2021¹ and allows PBGC to directly fund severely underfunded multiemployer pension plans. These funds are designed to address the immediate financial crisis threatening the retirement security of plan participants and shore up the solvency of PBGC's Multiemployer Insurance Program.

FMI appreciates the opportunity to comment on the important issues raised by the IFR. As the Food Industry Association, FMI works with and on behalf of the entire industry to advance a safer, healthier and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain — from retailers that sell to consumers, to producers that supply food and other products, as well as the wide variety of companies providing critical services to retailers, wholesalers and suppliers — to amplify the collective work of the industry. Additional information about our organization is available at www.FMI.org.

Many of FMI's member companies are contributing employers to multiemployer pension plans. The financial challenges posed by the breadth and number of

¹ Pub L. No. 117-2 (March 11, 2021).





underfunded plans - and subsequent potential for the insolvency of PBGC's Multiemployer Insurance Program - has hindered economic growth and job creation within the industry for decades. We appreciate the alacrity with which PBGC has moved to release the IFR and respectfully submit the following comments:

FMI encourages PBGC to revise the regulation to exclude existing plan resources when calculating the amount of special financial assistance.

The regulation interprets the statutory language to say that the amount of assistance to be provided is determined by accounting for both the potential assistance and the existing plan resources, in order to pay benefits until 2051. The text of the statute supports an alternative interpretation under which the special financial assistance alone (without regard to existing plan assets) should be sufficient to allow the plan to pay benefits. This alternative interpretation would provide larger amounts of assistance to eligible plans, ensure they are better able to weather altered economic conditions, and pay benefits through at least 2051.

PBGC should limit the scope of the prescribed interest rate to existing plan resources, while allowing the use of a more realistic interest rate with respect to the special financial assistance.

When determining the amount of special financial assistance, it is necessary to project future investment returns on both the existing plan assets and on the special financial assistance. The statute prescribes an interest rate for purposes of determining the amount of assistance that is generally the lesser of the interest rate the plan used in its 2020 zone status certification or a prescribed cap (currently roughly 5.5%). However, special financial assistance must be invested exclusively in investment-grade corporate bonds, which are currently yielding returns of less than 3%.

The regulation provides that the interest rate prescribed by the statute will be used to project returns on both the existing plan resources and on the special financial assistance. Because the special financial assistance will not be able to achieve the 5.5% return assumption, many plans receiving assistance will be projected to become insolvent before 2051. Allowing the use of a more realistic interest rate with respect to the special financial assistance would align the regulation with the Congressional intent that plans remain solvent until 2051. This approach is consistent with the fact that plans did not have an interest rate assumption applicable to special financial assistance in their 2020 zone status certifications.





PBGC should allow plans to invest a portion of the special financial assistance in equities and other return-seeking asset classes, as this is necessary to give highly distressed plans a stronger chance of achieving the 2051 solvency target.

The statute provides that special financial assistance must be segregated from other plan assets and must generally be invested solely in investment-grade corporate bonds. PBGC is granted authority to allow the investment of special financial assistance in asset classes other than investment-grade corporate bonds. The regulation does provide that up to 5% of the special financial assistance may be invested in bonds that were investment grade when they were purchased but are no longer considered investment grade. No other exceptions were provided. Investing at least a portion of the special financial assistance in assets that are likely to produce returns above projected investment-grade corporate bond returns should improve the long-term solvency of plans and make them more likely to hit the 2051 target.

FMI believes PBGC should refrain from challenging the assumptions used in the most recent zone status certification prior to 2021.

Other than the interest rate assumption, the actuarial assumptions used to calculate the amount of financial assistance are generally the same as the assumptions in the most recent zone status certification prior to 2021. If a plan sponsor concludes that the default assumptions are unreasonable, it may propose the use of different assumptions. The regulation also makes it clear that PBGC reserves the right to consider an assumption used in the prior zone status certification as unreasonable and insist on a change, even if the plan sponsor does not request such a change. The intent of the statute is for those assumptions to serve as the default assumptions for determining the special financial assistance amount and should not be challenged by PBGC.

FMI requests plans be permitted to use either the participant counts from the Form 5500 or the participant counts from the Schedule MB when determining eligibility for special financial assistance.

For certain plans, one of the criteria to be eligible for special financial assistance is that the ratio of active to inactive participants must be less than 2:3. The regulations specify the use of end-of-year participant counts reported on the Form 5500 for this purpose. An alternative approach would be to use the participant counts reported in the Schedule





MB attachment to the Form 5500, which for a variety of reasons may be different from the counts reported on the Form 5500 itself.

In reviewing requests to accept reduced contribution rates, PBGC should be mindful of the fact that sustained high contribution rates are placing a heavy burden on contributing employers who compete against companies that do not have comparable financial obligations.

Prior to the passage of ARPA, underfunded multiemployer plans were generally allowed to accept reductions in the employer contribution rates if the trustees conclude that accepting the lower rates is in the best interest of plan participants (presumably because the lower rates will prevent employer withdrawals and bankruptcies). The regulation applies a condition on plans that receive special financial assistance that is comparable to existing law, except that PBGC approval is required if the contribution rate reduction affects more than \$10 million of annual contributions. How the \$10 million threshold is defined is not fully clear. The intent appears to be to require PBGC approval if the *impact* on the annual contributions exceeds \$10 million; it could also be interpreted to require PBGC approval if the total amount of contributions prior to the reduction is above \$10 million. FMI requests that PBGC clarify that the \$10 million dollar threshold for the PBGC approval requirement applies to the impact of the proposed contribution rate reduction, and not to the underlying amount of annual contributions.

FMI appreciates PBGC's consideration of our requested changes to the IFR. If there are additional questions we can respond to or issues you would like to discuss, please do not hesitate to let us know.

Thank you.

A handwritten signature in black ink, appearing to read 'Andrew S. Harig', with a long horizontal flourish extending to the right.

Andrew S. Harig
Vice President – Tax, Trade, Sustainability & Policy Development

