

August 11, 2021

By email: reg.comments@pbgc.gov

Regulatory Affairs Division
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005
Attn: Daniel S. Liebman, Esq., Deputy General Counsel

Re: Pension Benefit Guaranty Corporation
RIN 1212-AB53
Special Financial Assistance by PBGC

Dear Mr. Liebman:

On behalf of the PACE Industry Union-Management Pension Fund (“the Fund”), we write to comment on the interim final rule regarding the special financial assistance (“SFA”) under American Rescue Plan Act of 2021 (“ARPA”). The Fund is a multiemployer plan that represents over 60,000 participants across the country, primarily in the paper industry, with unfunded liability of approximately \$3 billion calculated at a “current liability” rate. The Fund has had a rehabilitation plan in place for approximately a decade and is projected to become insolvent in 2032.

We recommend that the final regulation add an additional priority group, priority group 7, to PBGC’s priority system for filing an application for SFA.

Section 4262(d)(1) of ERISA, as amended by ARPA, permits PBGC to provide priority consideration to applications by plans in specified categories for the first two years following enactment of ARPA. The interim final rule issued by PBGC on July 9, 2021 provides for various priority categories, including priority group 6 for plans projected by PBGC to have a present value of SFA in excess of \$1 billion if financial assistance is not ordered. Interim final rule § 4262.10(d)(2)(vi). The interim final rule provides that PBGC will post on its website a list of plans that are in priority group 6 but includes no timeline for posting such a list. We understand that the list may not be posted until shortly before PBGC begins to accept applications for priority group 6 plans. This means that a plan may engage in a costly and lengthy process to prepare an application in the expectation of being in priority group 6, only to have to make significant revisions if PBGC determines that the plan’s liability was below the \$1 billion threshold and that the plan must therefore wait until the next calendar quarter to apply. Such a plan would also be relegated to the general application pool and potentially not be able to submit

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when the general application pool opens, depending on the volume of applications on that day and any volume controls put in place by the PBGC at that time.

The interim final rule contemplates that PBGC may add additional priority groups. Interim final rule § 4262.10(d)(2)(vii). To provide more certainty to plans with significant unfunded liability that do not know whether they will qualify for priority group 6, we recommend that PBGC create a seventh category of plans eligible for priority status: plans with unfunded vested benefits of over \$1 billion, determined using the assumptions for current liability (*i.e.*, the RPA '94 valuation method) as reported in the last Form 5500 Schedule MB filed prior to 2021. Because this is a known number, this category would give plans the certainty of knowing upfront whether they will be eligible for priority status. And, consistent with the stated goal of the priority mechanism “to prioritize the most impacted plans and participants first,” creation of this additional category would ensure that large plans with significant unfunded benefits can apply without having to jostle for a place in line with the more than 100 plans that will not fall into any priority category.

We further recommend that the SFA measurement date for these priority group 7 plans be determined as if they were priority group 6 plans (that is, frozen as of the last day of the calendar quarter immediately preceding the date that the plan would have first been eligible to apply as a priority group 6 plan). This would permit priority group 7 plans to use the same application prepared based on the expectation that they would qualify for priority group 6 treatment, without requiring them to incur the additional costs to revise their application to reflect a later SFA measurement date. It would also permit these plans to file applications more quickly, thus minimizing the interest required to be paid on the SFA.

In the event that the final regulation does not include our suggested priority group 7, we request that plans not eligible for any priority group be given the option to freeze the SFA measurement date as of the end of the calendar quarter before the date the PBGC begins to accept applications for non-priority group plans to save these plans the undue burden and expense of having to re-do their applications if, as a result of PBGC’s “metering system,” their application cannot be filed until the following calendar quarter.

We appreciate your consideration of our suggestions.

Respectfully,



Chuck Knight
Executive Director

cc: Board of Trustees