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August 11, 2021

The Honorable Gordon Hartogensis
Director
Pension Benefit Guaranty Corporation
c/o Regulatory Affairs Division
Office of the General Counsel
1200 K Street NW,
Washington, DC 20005–4026

[Submitted via electronic mail: reg.comments@pbgc.gov]

RE: Comments on the Interim Final Rule for Special Financial Assistance by the PBGC

Dear Director Hartogensis:

On behalf of the Multiemployer Plans Committee of the American Academy of Actuaries,[1] I respectfully submit the following comments on the Interim Final Rule (IFR) issued by the Pension Benefit Guaranty Corporation (PBGC) that sets forth the requirements for applications for Special Financial Assistance (SFA) under the American Rescue Plan Act of 2021 (ARPA). The IFR was first released by the PBGC on July 9, 2021, and published in the Federal Register on July 12, 2021.

Our comments reflect observations about actuarial matters covered by the IFR and include certain areas that may need further clarification. Our comments cover several topics including eligibility, amount of SFA, impact on plans with benefit suspensions under the Multiemployer Pension Reform Act of 2014 (MPRA), actuarial assumptions, the application process, withdrawal liability, and conditions and restrictions. Some of our comments reference a "listen-only" meeting we had with PBGC officials on March 17. We welcome the opportunity to meet with PBGC representatives to discuss our comments.

Eligibility for Special Financial Assistance

ARPA defined four types of multiemployer plans that are eligible for SFA:

[1] The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

(1) plans in critical and declining status in any plan year beginning in 2020, 2021, or 2022;

(2) plans with a suspension of benefits approved under the MPRA as of March 11, 2021;

(3) plans in critical status with a modified funded ratio of less than 40% and a ratio of active to inactive participants less than 2:3, in any plan year beginning in 2020, 2021, or 2022; and

(4) plans that became insolvent after December 16, 2014, have remained insolvent, and have not terminated as of March 11, 2021.

<u>Plans in critical but not declining status</u>

The IFR provides clarification for plans in the third eligibility category: plans in critical but not declining status. The IFR links the sources for the modified funded ratio and participant counts to items reported on the Form 5500. For purposes of the modified funded percentage, the IFR defers to plan actuaries in their selection of the current liability interest rate. The IFR also clarifies that the conditions for eligibility do not need to be satisfied for the same plan year. In general, the IFR provides additional flexibility for plans in critical but not declining status to demonstrate that they are eligible for SFA.

Nevertheless, there are several concerns on plans in this category that the PBGC may wish to further clarify:

- *Eligible plans receiving zero SFA.* While the IFR provides flexibility for plans in critical but not declining status to demonstrate eligibility, the PBGC also recognizes that many plans in this category will not receive any SFA. (PBGC officials made a comment to this effect in a webinar briefing on the implementation of the SFA program on July 9, 2021.) Many have questioned whether this interpretation—that many eligible plans will ultimately receive zero SFA—is consistent with the intent of law. We welcome any further commentary the PBGC could provide on this matter.

- *Receivable withdrawal liability payments.* The IFR defines the modified funded percentage as the current value of net assets plus the current value of receivable withdrawal liability payments (adjusted for uncollectible amounts) divided by the current liability. The inclusion of the withdrawal liability receivables in the asset value may cause some plans that would otherwise receive SFA to be ineligible. Due to the uncertain nature of future withdrawal liability payments, the PBGC may wish to consider excluding receivable payments from the determination of the plan's eligibility for SFA since future withdrawal liability income is part of the determination of the amount of SFA.

- *Election to be in critical status.* The IFR makes it clear that plans electing to be in critical status under §305(b)(4) of the Employee Retirement Income Security Act (ERISA) are ineligible for SFA. We encourage the PBGC to clarify whether a plan that made this election in a previous year would still be eligible if it meets the criteria under §305(b)(2) during the 2020, 2021, or 2022 plan years.

- *Coordination with temporary funding relief under ARPA.* We believe further clarification is needed as to how the temporary delay in zone status under section 9701 of ARPA affects SFA eligibility. In particular, the PBGC may wish to consider a hypothetical situation in which a plan has already made an election to freeze its zone status in 2021, but the plan would be eligible for SFA because it meets the criteria absent the freeze. For example, would a plan be eligible for SFA if it has made an election to remain in the "green zone" for the 2021 plan year, but it would otherwise have been in critical status and meets the criteria related to modified funded percentage and participant ratio? If the plan in this example would be ineligible for SFA, would the plan have the opportunity to reverse its earlier election under section 9701?

Informal consultation on eligibility

The IFR notes how a plan sponsor may contact the PBGC informally to discuss a potential application for SFA. We note that some plan sponsors that request informal consultations may seek confirmation of their eligibility for SFA. Some plan sponsors may seek consultation on eligibility relatively soon, even if they will not be permitted to submit an application until 2023.

As described above, eligibility may be uncertain for some plans in critical but not declining status. A proposed change in actuarial assumptions may also add uncertainty to a plan's eligibility. Because the application process will require significant plan resources, we encourage the PBGC to be as forthcoming as possible on plan eligibility in these informal consultations. We understand that the PBGC may not be able to definitively confirm a plan's eligibility, but the more information it can provide, the better the plan sponsor will understand the risk its application will be denied due to ineligibility.

Amount of Special Financial Assistance

The IFR provides interpretations on two critical components of the determination of the amount of SFA: the calculation methodology for the amount of SFA under section 4262(j) of ARPA, and the interest rate assumption under section 4262(e)(2). As described below, while the IFR provides clarity on the calculation methodologies, it does not address a significant disconnect in the statute that could result in many plans that receive SFA falling short of their intended solvency target.

Amount of SFA

The IFR prescribes a methodology under which the amount of SFA is the difference between two present values: the present value of plan obligations less the present value of plan resources. Plan obligations are plan benefits (including any reinstated benefits where applicable) and administrative expenses expected to be paid from the SFA measurement date through the plan year ending in 2051. Plan resources include current plans assets, and the present value of both withdrawal liability payments and future employer contributions.

This approach, however, ignores the actual timing of cash flows. If cash flow is projected to become positive toward the end of the period, the present value calculation outlined in the IFR would result in the sum of those positive years being *subtracted* from the SFA needed just to get to the "crossover point" when annual cash flows move into positive territory, potentially several years prior to the end of 2051.

We concur with the inclusion of withdrawal liability payments, however we question the use of all plan contributions—as a portion of the annual contributions are intended to fund benefits that are payable after 2051 (including amounts already contributed that are already part of plan assets).

We also note that the statute requires the amount of SFA to be calculated based on "funding projections…performed on a deterministic basis." Multiemployer plan actuaries may interpret this language to mean that the amount of SFA must be calculated based on funding projections rather than a present value calculation, and that the funding projections must be performed on a deterministic basis rather than a stochastic basis. We acknowledge that the PBGC may consider the projections of cash flows underlying the present value calculations to be deterministic in that they are based on a single set of assumptions. It may be harder, however, to argue that present value calculations are the same as "funding projections."

On the basis of deterministic funding projections, the amount of SFA would be determined on an iterative basis to achieve the desired target—in this case, solvency through the end of the 2051 plan year. In the vast majority of cases, this methodology will produce the same amount of SFA as the present value calculations prescribed in the IFR. It is theoretically possible, however, for the two methodologies to produce a different amount. For example, consider a demographically mature plan with annual benefit payments projected to decline rapidly, and with a relatively high level of contribution income resulting from withdrawal liability payments. The amount of SFA determined on a present value basis may produce a deterministic funding projection that causes the plan's asset value to go negative prior to 2051, before eventually returning to zero by the end of 2051. In other words, the SFA determined based on present value calculations would cause the plan to fall short of its intended funding target.

Furthermore, if the PBGC decides to reevaluate solutions to address the interest rate disconnect (as described below), it may need to revise the calculation methodology for determining the amount of SFA. Specifically, deterministic funding projections would support a "bifurcated" interest assumption (or other similar assumption), while present value calculations do not.

Interest rate assumption

The IFR specifies the amount of SFA is calculated based on an interest rate assumption equal to the interest rate used for purposes of projecting the funding standard account in the most recent zone status certification completed prior to January 1, 2021, subject to an upper limit equal to the third Pension Protection Act (PPA) funding segment rate[2] plus 200 basis points.

We acknowledge and concur with the IFR in clarifying the plan's interest rate from the most recent zone status certification completed before January 1, 2021, is the rate used for purposes of projecting the funding standard account. A possible alternative interpretation would have been to use the investment return assumption used for projecting plan solvency, which for many eligible plans would have been incomplete and unnecessarily complicated for this purpose.

We also recognize that the PBGC declined to permit a "bifurcated" interest rate assumption for purposes of determining the amount of SFA. In the preamble to the IFR, the PBGC notes that the statute does not require the interest rate assumption to be reasonable, that a plan may not propose an alternative interest

[2] The rate specified in §303(h)(2)(C)(iii), disregarding modifications made under clause (iv) of such section

rate assumption in its application for SFA, and that the PBGC does not have the authority to provide a different interest rate than the one mandated in the statute. Respectfully, actuarial assumptions should be reasonable and appropriate for their intended purpose. As such, we encourage the PBGC to revisit the concept of a "bifurcated" rate, though we recognize this will affect the overall cost of the program.

Interest rate disconnect

In our discussion with PBGC staff on March 17, 2021, we noted the potential disconnects between the statutory intent of the SFA, the interest rate used to determine the amount of SFA, and the investment restrictions imposed on SFA assets. We are concerned that these disconnects will result in the SFA program failing to meet its statutory objectives, even under the interpretation adopted by the PBGC.

Specifically, the vast majority of eligible plans will be subject to the interest rate limit, meaning their amount of SFA will be determined using an interest rate of about 5.5%. At the same time, the statute requires that SFA assets must be invested in investment-grade bonds (or other investments permitted by the PBGC). Currently, annual yields on investment-grade bonds are around 2.0%-2.5%.[3]

This disconnect introduces a "negative arbitrage" for the vast majority of plans that are eligible to receive SFA. Due to current, low yields on investment-grade bonds, many plans may not be able to attain a total return on plan assets of at least 5.5%. If investment returns on plan assets fall short of the interest rate used to determine the amount of SFA, the plan would fall short of its intended funding target. In other words—plans that cannot meet their benchmark investment return would become insolvent sooner than 2051. In fact, many plans that receive SFA—especially those that are already insolvent or close to insolvency—are likely to exhaust their assets 6-12 years before 2051.[4]

Possible remedies to the disconnect

When we discussed the interest rate disconnect with PBGC staff on March 17, 2021, we raised the possibility of a "bifurcated" interest assumption for determining the amount of SFA, especially considering there was no pre-2021 assumption for returns on SFA assets. Under this approach, a deterministic projection would be used to calculate the amount of SFA required to enable the plan to remain solvent and pay benefits without reduction through 2051. The deterministic solvency projection would be based on two interest rate assumptions: (a) for SFA assets, an interest rate based on current yields on investment grade bonds for SFA assets; and (b) for non-SFA assets and future contributions, the plan's limited interest rate assumption as described under §4262(e)(2).

As noted earlier, the PBGC provides a determination in the IFR that the interest rate assumption specifically defined in the statute should apply to both SFA assets and pre-SFA assets. As we discussed with PBGC staff on March 17, the interest rate assumption used in the most recent zone status certification completed before January 1, 2021, applied to existing plan assets and did not include a provision for the SFA program. For this reason, as well as the disconnect created by a single interest rate

[3] We defer to investment professionals on current yields and investment return expectations on bonds. Nevertheless, we note that, as of the date of this letter, most bond indexes that could be considered "investment grade" show yields between 1.5% and 3.0%.

[4] The webcast hosted by the Academy on August 3, 2021, included examples of plans receiving SFA and becoming insolvent before 2051 due to investment returns falling short of the benchmark interest rate.

assumption, the PBGC may wish to reconsider whether the prescribed interest rate under §4262(e)(2) should apply only to non-SFA assets.

In the IFR preamble, the PBGC acknowledged concerns regarding the gap between expected returns on SFA assets and the benchmark interest rates. As a possible remedy, the PBGC is seeking public input on the investment of SFA assets, with the goal of finding a more appropriate balance between certainty of investments and plan sponsor flexibility. If the PBGC ultimately issues further guidance permitting plans to invest SFA assets in investments that target returns around 5.5%, plans may be able to reduce or eliminate the negative arbitrage through their investment policies.

Of course, structuring plan investments to achieve higher expected returns comes with additional risk. We defer to investment professionals for further commentary on this topic.

Plans with Benefit Suspensions under MPRA

There are 18 plans with an approved benefit suspension under MPRA, three of which also have partition. These plans are automatically eligible for SFA under ARPA and can apply as early as January 1, 2022. For plans that apply and are approved, participants will have suspended benefits reinstated and will receive retroactive payments. Plan trustees may be faced with a potential fiduciary concern, though the recent statement from the Department of Labor (DOL)[5] may suggest otherwise. While the MPRA suspension (and partition, if applicable) was designed to enable a plan to remain solvent over the long term, albeit with reduced benefits continuing, trustees have the option to apply for the special financial assistance and restore benefits but would likely face a higher probability of being insolvent in the next 20-25 years. Some may argue rescinding the suspension and electing SFA would put the plan in a worse financial position for the long-term. Participants would also have a dilemma—retirees, and older participants, would reasonably be expected to encourage the trustees to apply for SFA, while younger participants could be faced with larger benefit cuts if the plan ultimately becomes insolvent.

Further, we seek clarification on the retroactive payments for beneficiaries. We understand this is guidance provided in Internal Revenue Service (IRS) Notice 2021-38, but we mention it here for completeness. The Notice states the make-up payments are the payments not paid to an individual on account of the suspension. The reference to "individual" seems to imply that beneficiaries would only receive the make-up payments for the period of time when they began collecting, not the period of time the participant received reduced benefits. The make-up amounts could change significantly depending on the interpretation. We recommend the entire family unit receive the make-up payment which would be consistent with the intent to restore the benefits that were reduced. More guidance or examples on how the make-up payments are calculated would be helpful.

Finally, we seek clarification on the requirements to repay reinstated benefits that were previously suspended. ARPA allows the amounts to be paid either as a lump sum within 3 months of the effective date or in equal monthly installments over 5 years. However, the IFR does not provide any further

[5] DOL issued a statement encouraging "all eligible plans to apply for SFA without raising potential fiduciary liability concerns about undoing current or precluding future MPRA suspensions."

guidance on whether this is a decision made by the plan or if each individual participant can elect which option is in his/her best interest.

Actuarial Assumptions

The assumptions to be used to determine plan eligibility and the SFA amount as specified in ARPA are intended to be the same assumptions (other than interest rate) used in the plan's most recently completed zone certification before January 1, 2021, unless the assumptions are unreasonable. The IFR provided guidance on the process for changes in assumptions after the plan determines a prior assumption to be unreasonable. Additional nonbinding guidance was provided in PBGC SFA 21-02, "Special Financial Assistance Assumptions," where the PBGC describes "generally acceptable" and "generally not acceptable assumption changes."

The PBGC has recognized that some pre-2021 zone certification assumptions for insolvent plans may only be applicable up to the point of insolvency. In these cases, the actuary would need extended assumptions to value the plan through the plan year ending in 2051. The PBGC perspective is that extended assumptions are an assumption change, but the guidance describes acceptable assumptions that can be used with appropriate documentation on how it was determined. The PBGC provides acceptable changes to extend the contribution base units (CBUs) assumption and administrative expense assumption, but the guidance is silent on the plan demographic assumptions (mortality, disability, turnover, and retirement). We believe those assumptions are applied to all participants for their *entire lifetimes* and are used as the basis for completing the pre-2021 zone certification. We recommend that the PBGC give consideration to demographic assumptions being referenced in the guidance to clarify that they do not need to be extended and confirm they are applicable to the entire SFA period, subject to the rules on actuary-proposed changes due to the prior assumption being deemed unreasonable.

Additionally, we seek clarification on the following assumptions as outlined in the guidance:

- Mortality—The guidance states a change to the Pri-2012 blue collar (BC) table with the appropriate projection scale will be an acceptable change. However, the guidance is silent on disabled retiree mortality. Please clarify whether using the Pri-2012 BC table would be appropriate for all retirees, disabled or non-disabled, under this guidance.

- CBUs—The guidance indicates that it is generally acceptable to project contraction of no more than 3% per year for 10 years and 1% per year thereafter, but we assume if historical contraction (other than the "COVID exclusion period") supports a higher contraction assumption that would be permitted with necessary documentation. Similarly, we conclude that a pre-2021 zone certification assumption that has a higher contraction assumption (based on pre-COVID-19 experience) is also acceptable and does not have to be changed; this should be confirmed in guidance. Finally, we appreciate the example provided in the guidance, but recommend more examples be added to clarify different circumstances. For example, if a CBU assumption described in the pre-2021 zone certification was applicable for the next 20 years, but the plan was insolvent in 5 years, does the extension period start in year 6 or in year 21? This would also be applicable to plans that are already insolvent that identified a specific industry activity assumption in the pre-2021 zone certification based on their knowledge of the entire industry and the impact on plan participation. Lastly, we seek clarification on whether factoring in actual membership decline between the pre-2021 zone certification and the SFA measurement date is considered an assumption change.

- COVID-19 exclusion period—We recognize the PBGC wants plan COVID-19 experience to be excluded and not skew the CBU assumption, but we question whether other factors that affect the plan should also be ignored during the COVID-19 exclusion period as well. In setting regular plan assumptions, observed experience would be included for the post-exclusion period prior to the SFA measurement date, but retirement and turnover patterns may be materially different in the years after the exclusion period; if so, they should be given far more weight than pre-exclusion experience.

- Assumptions for future employer withdrawals—We recommend the PBGC consider providing guidance on how they will evaluate assumptions with regard to future employer withdrawals and collectability of resulting withdrawal liability payments. It would be helpful to have examples of withdrawal liability income. If there is no future contraction projected, as an extension of the assumptions, then it may not make sense to have income from future withdrawals, other than at the level of actual withdrawals experienced during level workforce periods.

- New Entrant Assumptions—We recommend new entrant assumptions be considered as an “extended” assumption as some plans with a very short projection period may not have an explicit new entrant assumption. Also, we understand that an acceptable assumption change is based on new entrant characteristics for the 5 years preceding the SFA measurement date. We assume if this period was materially affected by COVID-19 an alternative assumption with proper documentation can be proposed. Similarly, if data is not available for the 5 years prior to the SFA measurement date, we assume an alternative assumption can be proposed with proper documentation, such as the most recently available 5-year period, excluding the COVID-19 exclusion period.

- Changes in assumptions—Clarification is needed for plans where pre-2021 zone certification assumptions have already been changed in the regular course of actuarial valuation and review of assumptions. We assume if the plan determines the pre-2021 assumptions are reasonable for the purpose of determining the SFA then those assumptions are acceptable to be used in the application, without challenge from the PBGC (unless clearly unreasonable).

- Change in actuarial firm—We note that actuarial assumptions are reviewed and often updated when a plan changes actuarial firms. It would be helpful for the PBGC to provide a set of safe-harbor assumptions that may be used in determining plan eligibility in the case of a change in actuarial firm, similar to the acceptable assumption changes under PBGC SFA 21-02. For assumptions used in calculating the amount in situations where the plan’s actuarial firm has changed, we would encourage the PBGC to consider the new actuary’s duty to review and update assumptions to be consistent with their best estimate.

Application Process

<u>SFA Measurement Date</u>

A plan's application for SFA needs to be prepared with calculations demonstrating the plan's projected amount of SFA as of the SFA measurement date with certain data items (e.g., the fair market value of plan assets) determined as of such measurement date. The SFA measurement date is the end of the calendar quarter immediately preceding a plan's initial application for SFA.

Having the SFA measurement date change immediately after the end of the calendar quarter could be problematic. This would make it difficult, if not impossible, for a plan sponsor to initially apply for SFA in the first few days or weeks after a calendar quarter. This condenses the timeframe within a calendar quarter that a plan sponsor can initially apply for SFA, which could result in non-uniform application dates within a quarter and an additional processing burden on the PBGC. Further, a condensed time frame could increase the likelihood of the PBGC having to temporarily close the application portal. The PBGC should consider adjusting the measurement date requirements to allow plans shut off from applying in a given quarter to still use the original measurement date (see next section) or provide guidance for plans to submit at the beginning of a calendar quarter.

Further, PBGC guidance stipulates projections are based on participant data as of the first day of the plan year in which the initial application is filed. If the application is filed within 270 days after the beginning of the current plan year and the actuarial valuation is not completed, the projection may be based on the prior year's data. We are aware of plans that are unable to complete the actuarial valuation report within 270 days due to reporting delays and plan complexity. We recommend extending this period to 1 year, otherwise these plans would essentially be unable to apply until the current valuation is completed.

<u>PBGC "Metering" System</u>

The PBGC guidance indicates that the PBGC will institute a metering system to manage the filing and processing of applications. Ostensibly, one goal of the metering system is to avoid situations where the PBGC is flooded with applications and does not have the capacity to process all applications within the required 120-day review period. That is, if the PBGC does not have sufficient resources to process applications, it may prohibit plans that are eligible to apply for SFA from submitting an application.[6]

A plan would prepare its initial application for SFA based on a specific SFA measurement date, with corresponding data and assumptions, that align with the plan's intended application submission date.

As a result of the metering system, a plan may be unable to submit its application when desired with a possible delay into a later calendar quarter with a new SFA measurement date. It is also possible that the delay could result in the required use of new census data. These delays would result in additional and

[6] It is uncertain if the PBGC will ever reach the point where it does not have enough resources to process applications within its 120-day review period. However, the PBGC is likely to experience its largest surge in applications on March 11, 2023, (or soon after) when the vast majority of eligible plans are provided the first opportunity to apply.

unexpected work to be performed by plan professionals, which would lead to increased administrative expenses for plans and an added burden for taxpayers.

In the preamble to the guidance issued by the PBGC, it recognizes that a change to the SFA measurement date and corresponding data can lead to duplicate work and delays. The PBGC uses this issue as part of an argument for requiring the “base data” (the SFA measurement date, participant census data, and interest rate assumption) in an application to remain the same as reported on a plan’s initial application for SFA. However, a plan needs to be able to submit an application in order for the base data to be locked in.

One solution to this issue is to allow plans to lock-in their base data if they are ready to apply, but unable to do so as a result of the metering system. Plans could submit a “Notice of Intent to File” and then the same application can be submitted at a later date without the need for additional work and expense by plans; this notice would also provide the PBGC with the additional time needed to adequately process the application.

Projected Benefit Payments by Participant Status

The PBGC issued instructions setting forth the requirements for a multiemployer plan filing an application for SFA with the PBGC. Section B of the instructions identifies various plan documents that a plan sponsor is required to submit with their application for SFA that the PBGC believes are “readily available to the plan sponsor.”

Section B(5) requires that the plan sponsor provide the plan actuary’s certification of plan status for the 2018 plan year and each subsequent annual certification completed before the application filing date, with documentation supporting each actuarial certification of plan status. Documentation supporting a certification of critical and declining status must include a plan-year-by-plan-year projection demonstrating the plan year that the plan is projected to become insolvent.

One provision that could be problematic is the PBGC’s requirement that projected benefit payments in the documentation separately identify payments associated with:

- current retirees and beneficiaries,
- terminated vested participants not currently receiving benefits,
- currently active participants, and
- new entrants.

This information is not readily available to a plan sponsor, since it is not a required disclosure item and is not commonly broken out in such a manner in actuarial reports. In many cases, a plan’s actuary can rerun historical valuations to generate these results. However, this information may not be accessible (1) in a takeover case where the plan has a new actuarial firm or (2) when an actuary changes valuation software and does not have the ability to rerun prior valuations under the prior software.

It is not apparent why projected benefit payments need to be broken out in such a manner for historical reporting periods, since the demonstration of a plan's insolvency can be clearly illustrated based on projected benefit payments in the aggregate.

Given the potential added expense to plans and taxpayers, possible inability for some plan sponsors to provide such information, and lack of necessity for historical documentation purposes, we respectfully suggest that the PBGC reconsider this requirement, even if only for the certifications prior to 2021. If the PBGC determines this item should remain a required disclosure item for applications, then we suggest a plan sponsor be provided leniency during an application review if they are unable to provide such documentation with acceptable reasons.

Withdrawal Liability

The IFR requires plans receiving SFA to use mass withdrawal liability interest rates to determine the present value of vested benefits for the assessment of withdrawal liability. Currently, these rates are historically low. As these rates fluctuate, an employer's potential withdrawal liability will change. In a rising interest rate environment, an employer could be incentivized to withdraw from a plan.

In addition, the SFA is considered an asset of the plan when determining unfunded vested benefits for the assessment of withdrawal liability. Depending on the amount of SFA, even in combination with the required use of mass withdrawal liability interest rates, the amount of unfunded vested benefits during the SFA coverage period could be less than prior to the SFA coverage period. This is especially true for plans that already use mass withdrawal interest rates for withdrawal liability.

Further, the SFA amount is to be determined by projecting withdrawal liability payments, both for currently withdrawn employers and potential withdrawals during the SFA coverage period. As stated previously, even with the use of mass withdrawal liability interest rates, an employer's withdrawal liability may decrease, thereby increasing the potential for the employer to withdraw. This would increase the potential withdrawals during the SFA coverage period, resulting in a potentially higher SFA amount. Consequently, due to the higher projected withdrawals, the needed SFA amount would increase, resulting in an increased likelihood of employer withdrawals. This creates a circular issue.

An option that has been raised by some is one in which the SFA assets would be disregarded in the determination of unfunded vested benefits for assessment of withdrawal liability. Our understanding is the PBGC determined this alternative to be more administratively complex and therefore less desirable. However, the SFA assets need to be separately identified under both the requirements of the IFR for purposes of investment segregation and for the determination of minimum funding requirements so this option should not add any administrative complexity.

The IFR requires plans to use the mass withdrawal interest rates until the later of 10 years after the end of the plan year in which the plan receives payment of SFA or the last day of the plan year in which the plan no longer holds any SFA or earnings. Under these provisions, plans could prolong the use of mass withdrawal liability interest rate assumptions simply by keeping a small SFA balance. The PBGC might consider changing to a fixed period, such as 10 years, for which the use of mass withdrawal liability interest rate assumptions.

Some plans have adopted two-pool alternative withdrawal liability arrangements that separate unfunded vested benefit pools. One pool would include all of a plan's legacy liabilities ("old pool"), while the other would consist of future liabilities of some employers ("new pool"). A two-pool alternative withdrawal liability arrangement may attract new employers or retain employers who would otherwise be reluctant to remain in a plan due to the uncertainty of withdrawal liability costs. Both outcomes can help improve the long-term financial security of benefits for plan participants and beneficiaries.

The requirement to use mass withdrawal liability interest rates to determine the present value of vested benefits would likely introduce unfunded liabilities in the new pool. This could result in a significant reduction in ability for plans to attract new employers and may result in additional withdrawals. The PBGC might consider providing alternative options for the valuation of unfunded vested benefits in the new pool that preserve the ability of plans to attract and retain employers.

Lastly, in the Preamble to the IFR, a footnote was included that stated the PBGC intends to propose a separate rule of general applicability under §4213(a) of ERISA to prescribe actuarial assumptions which may be used by a plan actuary in determining an employer's withdrawal liability. This section was introduced with the passage of Multiemployer Pension Plan Amendments Act of 1980 and applies to all multiemployer pension plans, not just those receiving SFA. Depending on the separate rule, the guidance could be helpful in resolving disputes around the assumptions used to determine unfunded vested benefits for the assessment of withdrawal liability.

Conditions & Restrictions

ARPA provides for a number of restrictions and conditions on plans receiving SFA. These include conditions on benefit increases, allocation of plan assets, decreases in contributions, allocations of contributions, and withdrawal liability interest assumption and settlements. The restrictions pertain to the segregation of the SFA from other plan assets and requirements to invest in investment-grade bond or other investments as permitted by the PBGC.

We have concerns over the conditions on retroactive benefit improvements for plans that go beyond what was required under PPA and MPRA in developing their rehabilitation plans. Some plans reduced benefits to lower than 1% of contributions and other plans instituted a full plan freeze. Similarly, some plans took greater steps in removing adjustable benefits than other plans. These plans took rigorous actions attempting to correct their funding situation and are unable to restore benefits that would have otherwise been accrued without bargaining additional contributions. We suggest the considerations be adjusted in these circumstances and allow for a minimum level of future accruals be factored into the SFA determination and retroactive increases be permitted if they are paid for by additional contributions (similar to the current PPA requirements for plans in endangered or critical status). If reduced benefits are allowed to remain at current levels for an extended period, we have concerns that the active membership may no longer choose to support the plan over the long term, and this could create a complication for future collective bargaining. This is similar to the exception allowed to reduce contribution rates if it would reduce the risk of loss to the plan. Otherwise, this would create a circular issue as it could affect assumptions used in the determination of the SFA.

Finally, the IFR requires plans to have sufficient assets in permissible investments to pay 1 year of benefit payments and administrative expenses. We recognize and appreciate the de-risking inherent in this requirement, but this condition may not be appropriate for all plans. Specifically, this requirement only considers negative components of a plan's cash flow and disregards positive components like employer contributions and withdrawal liability payments.

A common risk measure for pension plans is net cash flow (contributions minus benefit payments and administrative expenses) divided by market value of assets. This risk measure can be particularly useful in reviewing a plan's investment policy as it indicates to what extent current plan assets are needed to provide current benefits. Because benefits must be paid immediately when due, this can affect the liquidity management of plan assets through the timing of asset sales and resulting investment returns. Furthermore, negative net cash flow coupled with investment return volatility can yield surprising results even if a plan's investment return assumption is achieved over the long term, as the timing of favorable and unfavorable returns can have a dramatic impact on the plan's financial status. Plans with higher negative net cash flow as a percent of assets will generally find it harder to recover from market downturns.

If the PBGC decides to implement restrictions on investments for plan assets in the final regulations, then we would suggest that the PBGC consider basing those restrictions on a plan's net cash flow position and not negative cash flow alone. Otherwise, the PBGC may place unnecessary investment restrictions on plans that end up in a strong positive cash flow position.

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The American Academy of Actuaries' Multiemployer Plans Committee appreciates the opportunity to submit this comment letter. We would be happy to discuss any of the issues raised in this letter at your convenience. Please contact Philip Maguire, the Academy's pension policy analyst (202-785-7868 or maguire@actuary.org) if you have any questions or would like to discuss these issues further.

Sincerely,

Christian Benjaminson, MAAA, FSA, EA
Chairperson, Multiemployer Plans Committee
American Academy of Actuaries