



LOCAL
707 WELFARE AND PENSION FUNDS
ROAD CARRIERS

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August 4, 2021

Via Electronic Mail (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: Comments on PBGC Interim Final Rule Related to Special Financial Assistance
(RIN 1212-AB53)

The following comment is submitted on behalf of the Road Carriers Local 707 Pension Fund ("707 Fund"):

The restrictions placed on the investment of Special Financial Assistance (SFA) will not allow many funds to justify the investment return assumption with which the SFA is calculated. This will cause many funds go insolvent prior to 2051 and is contrary to the intent of the statute.

The balance of this letter provides detailed supportive background and recommendations.

Background

The 707 Fund went insolvent in 2017 and under the Corporation's Interim Final Rule (IFR) is eligible to apply for (SFA) in priority group 1 of the application process.

The 707 Fund's Trustees believe that the Corporation's interpretation of the American Rescue Plan Act's ("ARPA") SFA provisions, as set forth in the IFR, is contrary to Congress' intent and the statutory mandate, that "the amount of financial assistance provided to a multiemployer plan eligible for financial assistance shall be the amount required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment and ending on the last day of the plan year ending in 2051, with no reduction in a participant's

or beneficiary's accrued benefit. " See Section 4262(j)(1) of the Employee Retirement Income Security Act ("ERISA"), as amended by ARPA. This is because as drafted, the 707 Fund, and other insolvent funds with limited or no non-SFA assets will not receive enough SFA to pay all benefits due through 2051, with no reduction in a participant's or beneficiary's accrued benefit.

The IFR at 29 CFR §4262.13(b)(4) provides that SFA assets must be invested in investment grade bonds or other investments as permitted in §4262.14. That section generally restricts the investment of SFA assets to fixed income investment grade investment vehicles.

Section 4262(k)(1)(C)(i)(I) of ERISA, in relevant part, provides that in determining the amount of SFA to be specified in its application, an eligible multiemployer plan shall use the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021, provided that such interest rate does not exceed the interest rate limit (emphasis added). For the 707 Fund, the interest rate used in the most recent certification of plan status is 5.75%.

Code Section 432(k)(1)(C)(ii) provides that "the interest rate limit is the rate specified in Code section 430(h)(2)(C)(iii) (disregarding modifications made under clause (iv) of such section) for the month in which the application for special financial assistance is filed by the eligible multiemployer plan or the 3 preceding months, with such specified rate increased by 200 basis points."

Under these provisions, an interest rate of approximately 5.5% (5.32% as of June 2021) would be used to determine the amount of SFA payable to the 707 Fund.

The Corporation's interim final rule at 29 CFR §4262.4(e)(1) does not track Section 4262(k)(1)(C)(i)(I) of ERISA. Rather, it mandates that the assumed interest rate to be used in calculating SFA is the lesser of the interest rate used for funding standard account purposes as projected in the plan's most recently completed certification of plan status before January 1, 2021 and the interest rate that is 200 basis points higher than the rate specified in section 303(h)(2)(C)(iii) of ERISA (disregarding modifications made under clause iv) for the month in which the plan's application for special financial assistance is filed or one of 3 preceding months, as selected by the plan.

The Corporation has interpreted the amount of SFA to which the 707 Fund is entitled to equal the present value of projected benefits and administrative expenses payable through the end of 2051, minus the plan assets (including receivable withdrawal contributions), minus the present value of projected employer contributions. The IFR requires all present values to be calculated using a discount rate that is 200 basis points higher than the IRS's third segment rate, which is currently approximately 5.5%. Unlike many other funds eligible for SFA, the 707 Fund has no assets to invest other than existing employer contributions. Almost all of the 707 Fund's assets will thus consist of SFA assets. Given the restrictions on how SFA assets must be invested, achieving an investment return of 5.5% on the SFA assets is next to impossible.

The 707 Fund's Trustees have determined that basing the calculation of the amount of SFA on the present values of cash flows using a rate 200 basis points higher than the IRS's third segment rate while requiring the SFA assets to be invested in investment grade fixed income vehicles will render the 707 Fund insolvent approximately a decade prior to 2051. This is true even if spending down the SFA money first to allow non-SFA asset to be invested more aggressively.

The third segment rate is the 24-month trailing average of the investment grade corporate bond yields for periods longer than 20 years and is currently approximately 3.5%. This means the discount rate for calculating the amount of SFA is currently approximately 5.5%. Since bond yields have fallen over the last 24 months the actual yields on the spot curve are currently all lower than 3.5%, and only reach 3% at the 30-year mark. This means that the SFA assets constrained by the investment options are unlikely to return the assumed discount of 5.5%. This "negative arbitrage" will doom the 707 Fund. While there are some funds that have sufficient existing non-SFA assets on which to potentially earn greater than 5.5% and which may keep such funds viable through 2051, the 707 Fund is guaranteed not to make it to 2051 based on the IFR as currently written.

Recommendations

The 707 Fund Trustees respectfully request that the Corporation revise the IFR to provide that the 707 Fund (and other similarly situated funds) be allowed to invest SFA assets in some combination of fixed income investments and equity or other investments that would allow them to earn an investment return of at least 5.5% (or a rate consistent with the application) on SFA assets. Unless the Corporation broadens the types of investments in which the 707 Fund and other funds in similar circumstances can invest, SFA assets will not allow these funds to pay all benefits through the end of 2051, despite the stated congressional intent set forth in ARPA. The 707 Fund's investment consultant advises that if the 707 Fund is permitted to invest up to 35% of SFA assets in domestic and international equities, the Fund could likely earn an investment return sufficient to allow the 707 Fund to pay benefits through the end of 2051, and perhaps beyond.

In addition to, or in the alternative to allowing SFA assets to be invested in vehicles other than investment grade fixed income investments, the 707 Fund Trustees respectfully request that the PBGC revise the IFR to calculate the amount of SFA to which the 707 Fund is entitled using a discount rate that is equal to the IRS's third segment rate, without adding the 200 basis points. The IFR prohibits the 707 Fund from proposing a different assumed interest rate. However, the 707 Fund submits that the Corporation has the authority to allow a Fund to use a different interest rate assumption so long as such rate does not exceed the interest rate limit. ARPA does not expressly prohibit the Corporation from adjusting the interest rate assumption as necessary to ensure that the statutory requirement that the 707 Fund receive sufficient SFA to pay full benefits through 2051. The 707 Fund Trustees believe that this would be consistent with the statutory language, which only requires that the discount rate not exceed the interest rate limit. As the interest rate limit is currently approximately 5.5%, using the third segment rate would

satisfy the statutory requirement. Allowing the 707 Fund to calculate the present values using the lower rate would allow the 707 Fund to remain solvent through 2051.

The 707 Fund Trustees respectfully request the PBGC give serious consideration to the issued raised herein and would be happy to discuss these matters in more detail at PBGC's convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "K. McCaffrey". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Kevin McCaffrey, Chair
On behalf of the Board of Trustees

cc: Board of Trustees
Larry Cary
Su Bruno
James Kimble
Craig Voelker
Vincent Regalbuto