

**RADIO, TELEVISION AND RECORDING ARTS PENSION
FUND**

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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: Comment to Interim Final Rule Regarding the Special Financial Assistance under ARPA.

Dear Mr. Liebman:

The Radio, Television and Recording Arts Pension Fund (“Pension Fund”) is a multiemployer defined benefit pension plan covering approximately 577 participants who work, or have retired from work, in the radio and recording arts industry in New York City.

On behalf of the Pension Fund’s Board of Trustees, we provide the following comments on the interim final rule (“Rule”) issued by PBGC and published in the Federal Register on July 12, 2021 relating to the special financial assistance provisions for financially troubled multiemployer pension funds under the American Rescue Plan Act of 2021 (“ARPA”).

While there are a number of uncertainties regarding ARPA’s provisions relating to the multiemployer special financial assistance, the law’s intent and stated mandate are clear. Under Section 4262(j)(1) of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended by ARPA, multiemployer pension funds eligible for special financial assistance shall receive “such 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 under this section and ending . . . in 2051, with no reduction in a participant’s or beneficiary’s accrued benefit” However, the Rule is inconsistent with that goal and Congressional mandate.

Specifically, the interaction of the discount rate assumptions that the Rule mandates be used to calculate the amount of special financial assistance that a plan is eligible to receive, and the limited investment options available with respect to the special financial assistance under the Rule, are incompatible with the requirement that the special financial assistance be sufficient to pay all benefits through 2051. Therefore, PBGC should change either provision, or both, to satisfy that requirement.

As an example of the disconnect created by the Rule’s interest rate assumption provisions when coupled with its investment restrictions, the Pension Fund’s actuary has projected that the

amount of special financial assistance payable to the Fund, as determined under Section 4262.4 of the Rule, is unlikely to enable the Fund to remain solvent through 2051. Specifically, the Fund actuary has projected that if the SFA that the Fund is eligible to receive returns 2% on average and the remaining plan assets return the current assumed rate of 6%, the Fund is likely to become insolvent in 2048, almost four years earlier than Congress mandated. If those SFA assets receive returns 1.5% on average and the remaining plan assets return the current assumed rate of 6%, the Fund is likely to become insolvent in 2044, almost eight years earlier than Congress mandated. This result is directly contrary to the express purpose and direction of ARPA.

Consequently, the Pension Fund's Trustees respectfully request that PBGC revise the Rule's limited investment options and interest rate assumption provisions applicable to calculating the amount of special financial assistance such that, when implemented in combination with the other sections of the Rule, the special financial assistance amount will be projected to maintain the Pension Fund's solvency through the end of 2051.

1. Actuarial Assumptions Applicable to Determining Amount of Financial Assistance.

ARPA imposes restrictions on the ability of a multiemployer plan to change assumptions, which are apparently designed to prevent a plan from manipulating the assumptions to maximize the amount of special financial assistance to which it will be entitled. This is a reasonable goal and there are appropriate restrictions. As PBGC notes in its preamble to the Rule, Section 4262(e)(4) of ERISA, as amended by ARPA, prohibits **the plan** from proposing a change to the interest rate assumption applicable to the determination of the special financial assistance amount. However, the statute is silent on the PBGC's authority regarding this interest rate assumption; it certainly does not expressly prohibit PBGC from adjusting this interest rate assumption as necessary to ensure that the core purpose of the statute, namely providing eligible financially distressed multiemployer pension funds with the amount necessary to pay full benefits through 2051, is met. Further, as the agency responsible for implementing the special financial assistance provisions of ARPA, PBGC has not only the authority but also the mandate to harmonize the various sections of the statute in a manner designed to satisfy its overarching purpose.

As discussed above, as a result of the discord created by the Rule's interest rate assumption provisions when coupled with its investment restrictions, the Pension Fund and many other plans seeking SFA are unlikely to remain solvent through 2051.

2. Investment Options Available for Special Financial Assistance.

If PBGC believes that it does not have authority to adjust the interest rate assumption applicable to the calculation of the special financial assistance amount, then the Pension Fund alternatively requests that the Rule be revised to provide special financial assistance recipients with greater flexibility to select a wider variety of investment options for the special financial assistance.

Section 4262(l) of ERISA, as amended by ARPA, clearly grants PBGC discretion to expand the scope of investment options applicable to special financial assistance amounts, stating that the special financial assistance may be invested in investment grade bonds "or other investments as permitted by the corporation." In the preamble to the Rule, PBGC notes its

agreement with commenters' concerns that limiting the scope of investment options for special financial assistance amounts to investment grade bonds could result in recipient pension funds becoming insolvent well in advance of 2052. However, the questions that PBGC poses in the preamble about expanding the available investment options are limited and appear to be focused on investment options that resemble the risk and return profile of investment grade fixed income. The Pension Fund believes that a better approach to determining the appropriate investment options is to consider which options are most likely to assist recipient funds in achieving ARPA's stated goal of enabling such funds to pay full benefits through 2051, considering the assumptions required under the Rule for calculating the lump sum special financial assistance amount.

Put another way, the Rule must function holistically -- the provisions regarding assumptions and permissible investments must work in tandem to satisfy the Congressional mandate that the special financial assistance be sufficient for eligible pension plans to pay benefits through 2051. While the calculation of the special financial assistance, and the investment returns on such amounts, are subject to actuarial and investment projections and there can be no guarantee that the special financial assistance will last through 2051, the Rule's design at the outset must reasonably be expected to result in the special financial assistance lasting through 2051. Of course, consistent with ARPA's apparent reasonable intent to prevent unreasonable speculation with the financial assistance that is received, PBGC should still restrict permissible asset allocations and investments, but the goal should be to allow asset allocations and investments that are designed to achieve the assumed rate of return but not those that are designed to greatly exceed it.

Finally, if PBGC does not believe that it can mandate assumptions as we suggest, given that different recipient funds will be subject to different interest rate assumptions when calculating the amount of special financial assistance, it would be reasonable to revise the Rule such that it allows the permissible investment options under the Rule to vary depending on the specific assumptions applicable to each recipient fund. For example, the Rule could permit recipient funds to develop an investment policy designed to achieve long-term investment returns that target the interest rate assumption each such fund is required to apply when calculating the amount of special financial assistance under the Rule. In this way, there would be a greater likelihood their special financial assistance would provide for the full payment of benefits through 2051.

The Board of Trustees of the Pension Fund thanks PBGC for its consideration of the above suggestions and would be happy to discuss these matters in more detail at PBGC's convenience.

Sincerely,



Ralph Avigliano, Chair
On behalf of the Board of Trustees
Radio, Television and Recording Arts
Pension Fund

cc: Board of Trustees