

Alaska Ironworkers Trust Funds

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Administered by
Labor Trust Services, Inc.

August 11, 2021

VIA ELECTRONIC MAIL: reg.comments@pbgc.gov

Regulatory Affairs Division
Office of the General Counsel
1200 K Street, NW
Washington DC 20005-4026

Re: Comments on PBGC Interim Final Rule – Special Financial Assistance by PBGC, RIN 1212-AB53

To Whom It May Concern:

Please consider these comments on the above-referenced Interim Final Rule (IFR or Rule) on behalf of the Alaska Ironworkers Pension Plan (AIW).

For background, AIW is a multiemployer defined benefit pension plan that provides benefits for approximately 800 participants of which over 500 are already in pay status. Like many multiemployer funds, AIW has experienced significant funding issues primarily due to asset losses sustained during the financial crisis coupled with a shrinking contribution base. When the Plan was certified as critical in 2010 the Trustees implemented an aggressive Rehabilitation Plan that cut all adjustable benefits, cut future benefit accruals, and ratcheted up contributions. Despite these measures the Plan was still facing projected insolvency. In order to preserve the solvency of the Plan, the Trustees made the painful decision to implement a 26.5% reduction in benefits for all participants in 2018, as provided for in the Multiemployer Pension Reform Act of 2014 (MPRA). The suspension in benefits was approved by the Department of the Treasury on June 8, 2018. Implementing the suspension of benefits has meant significant sacrifices for all participants in AIW.

These comments regarding the American Rescue Plan Act of 2021 (ARP) demonstrate the potential impact the IFR will have for plans, such as AIW, that have suspended benefits under MPRA. As discussed below, we believe that the position taken by the PBGC in the IFR will make it unlikely that AIW will request special financial assistance.

The PBGC’s interpretation of the amount of special financial assistance (SFA) will force insolvency on plans that otherwise are projected to remain solvent.

Section 9704 (ERISA Section 4262(j)(1)) states, “the amount of financial assistance provided to a multiemployer plan eligible for financial assistance under this section shall be 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 ...”.

In the IFR, the PBGC has interpreted the statutory language to mean that “[t]o the extent that a plan has other means available to pay benefits, it does not require or need SFA for that purpose” and states that “the statutory language, by requiring the payment of all benefits due, mandates by clear implication the considerations of all plan obligations and resources in determining the amount of SFA that is needed or is “necessary.” {86 Fed. Reg. 36598, 36601 (July 12, 2021)}.

The PBGC’s interpretation of the how the amount of SFA must be calculated effectively anticipates that plans that receive SFA will become insolvent by 2051, if not before. This is recognized in the preamble to the IFR in which the PBGC states “While not a permanent solution” APRA was passed “to address the immediate crisis facing severely underfunded multiemployer plans and the solvency of PBGC, **and to assist plans by providing funds to reinstate suspended benefits.**” {86 Fed. Reg. 36599 emphasis added}. Since most plans are eligible for SFA based on an impending insolvency, even under the interpretation in the IFR the SFA will provide at least a temporary delay in their projected insolvency.

However, as noted in the IFR preamble and throughout the legislation, a primary goal of this legislation is to reinstate suspended benefits. For plans like AIW that have taken the difficult steps afforded by MPRA to suspend benefits in order to protect their long-term solvency, the PBGC’s interpretation of the amount of SFA will be a significant setback if a plan chooses to apply for relief. The amount and terms of the SFA will set these plans on a path towards insolvency once again. This has the potential to create a serious fiduciary dilemma for boards of trustees of plans that have suspended benefits such as AIW.

Do the trustees apply for SFA and restore benefits knowing that the plan will be projected to become insolvent before 2051, or should they maintain the current MPRA cuts and not apply for SFA? Keeping the current plan structure with suspended benefits may be preferable to trustees who have already taken difficult steps in order achieve projected solvency. In addition, if a plan receives SFA, it will not be eligible for MPRA cuts in the future. Assuming a plan becomes insolvent down the road, the participants’ benefits will be cut even further to PBGC-guaranteed levels. For AIW, the benefits after the suspension of benefits exceed the amount of benefits guaranteed by the PBGC. It therefore may be better to preserve the reduced level of benefits past 2051 rather than becoming insolvent well before that year.

The reality is that plans subject to MPRA suspensions may reasonably decide not to apply for SFA. Such a result would be directly contrary to the goal Congress intended in the legislation

of reinstating suspended benefits. We propose that the regulation can be modified so that plans with MPRA suspensions can receive just enough assistance to restore suspended benefits without the certainty of insolvency after 2051.

Suggested Changes in the SFA Regulation

We suggest two options for how the Interim Final Rule could be modified to allow benefit restorations for plans with MPRA suspensions, but preserve projected insolvency past 2051. The two options could be applied only to the small number of plans that are eligible to apply based on having MPRA suspensions. The options appear to meet any fiduciary concerns so that such plans can apply for SFA and reinstate benefits as intended in ARP.

Option 1: A minimum amount of SFA should be provided for plans that are reinstating benefits which have been cut due to MPRA suspensions. This minimum amount should be the present value of benefit cuts restored as a result of ARP through 2051. This would ensure that these plans would not be in a worse financial position if they choose to take the SFA. This also would not change the calculation of SFA for plans that did not suspend benefits under MPRA and so would not have a significant impact on the total amount of SFA provided under §4262.

Option 2: The definition of resources under §4262.4(c) should be reduced by the present value of the lesser of:

1. The projected Market Value of Assets as of the first day of the plan year after the SFA period,
or
2. The projected Actuarial liability as of the first day of the plan year after the SFA period.

Each amount would be calculated prior to any application of SFA. Again, this would not change the calculation of SFA for plans that are applying based on projected insolvency since their projected MVA on the first day of the plan year after SFA period would be \$0.

We respectfully request that the regulations be modified with regard to plans that have implemented benefit suspensions under MPRA in order to meet the stated objective of reinstating suspended benefits. Such a change will allow the small number of impacted plans such as AIW to restore benefits and be projected to be in no worse a financial position in 2051 than they would otherwise be without restoring benefits.

The AIW appreciates the opportunity to submit these comments.

Allan Harding
Chairman of the Board

Anthony Ladd
Secretary of the Board