

# IRON WORKERS LOCAL NO. 16 PENSION FUND

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*Submitted by e-mail to [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov)*

August 11, 2021

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

Re: Comments on Pension Benefit Guaranty Corporation Interim Final Rule  
Special Financial Assistance by PBGC  
RIN 1212-AB53

Dear Ladies and Gentlemen:

This letter is submitted on behalf of the Board of Trustees of the Ironworkers Local No. 16 Pension Fund (“Local 16 Fund” or “Fund”). The Local 16 Fund is a multiemployer, defined benefit pension fund covering individuals who work under collective bargaining agreements requiring contributions to the Fund. These individuals work in the iron working industry in the Baltimore metropolitan area and several surrounding counties in the state of Maryland. After experiencing several years of decreasing work opportunities in the area, the Fund was certified in 2015 by its Actuary as a critical and declining plan. The Local 16 Fund filed an application with the United States Department of Treasury in December 2017 to suspend retiree benefits, pursuant to the Multiemployer Pension Reform Act of 2014, and more specifically, Internal Revenue Code Section 432(e)(9) and Revenue Procedure 2017-43.

On August 3, 2018, the U.S. Treasury Department approved the application to suspend benefits and the approval was not overturned by the participant vote that took place in September 2018. These benefit suspensions took effect on October 1, 2018. The Fund is in critical status and is currently not projected to become insolvent with the benefit suspensions in force, provided that recent levels of covered employment can be maintained over the long-term.

The Fund is in a unique position whereby it has a potential merging partner. Effective January 1, 2017, Ironworkers Local No. 16 was merged into Iron Workers Local No. 5 by their international union. While the Local Unions have merged, their Pension Funds have not. The Special Financial Assistance available from the PBGC may help facilitate a merger. However, the Interim Final Rule on Special Financial Assistance by PBGC (“IFR”), 86 Fed. Reg. 36598 (July 12, 2021) leaves many questions unanswered with respect to the effect of a merger on a plan that receives Special Financial Assistance (“SFA”) and the effect on the plan that does not receive such assistance but merges with the SFA plan. Accordingly, the Local 16 Fund’s comments are concentrated on the issue of merger.

Many of the merger provisions in the IFR address PBGC’s concern that a merger is not used to increase the amount of SFA for which a plan is eligible. Little is said, however, about the effect on the merged plans when one of them is an SFA plan. The IFR should include more information on how the receipt of SFA will affect a

plan into which an SFA plan is merged. Successful mergers are in the best interest of the plans, their participants, their retirees and beneficiaries, the PBGC and the taxpayers. Before trustees can evaluate the benefits of merger, they must have a clear understanding of the consequences of an SFA plan merging with a healthy plan. Without this understanding, mergers are likely to be discouraged as no prudent fiduciary, particularly a fiduciary of a healthy plan, can approve a merger without knowing the consequences.

Although the IFR states that an SFA-eligible plan may merge (either with another SFA-eligible plan or a non-SFA eligible plan), there is nothing that directly addresses how the resulting merged or consolidated plan must manage the pre-merger SFA-plan after the merger takes place. Some questions that arise include:

- Must the assets and liabilities of the two plans be held/invested separately after the merger?
- How would the benefit increase restrictions applicable to SFA-plans apply to the merged plan, if at all?
- Do any of the restrictions on SFA assets affect the operation and administration of the larger healthy non-SFA plan other than the portion that constituted the pre-merger SFA plan? For instance, would the merged plan need to set aside an amount sufficient to cover one-year of obligations in an allowable asset class, or would this restriction only apply to the SFA-plan?
- What, if any, aspects of the pre-merger SFA plan must continue to be administered or tracked separately?
- Will the mass withdrawal assumptions for an SFA plan apply to the merged plan?

The core question is to what extent must the merger of an SFA plan into a larger healthy non-SFA plan require the merged plan (the portion of the merged plan other than the pre-merger SFA plan) to apply any of the restrictions in the IFR? A precise and detailed answer to this question is crucial for trustees of a healthy non-SFA plan in performing their due diligence of evaluating a potential merger with a plan that has received SFA.

One question that trustees of a non-SFA plan would have when evaluating a potential merger with an SFA plan is whether the benefit increase restrictions would apply to any portion of the consolidated plan other than the pre-merger SFA plan and participants. Are participants in the larger consolidated plan unrelated to the SFA plan subject to the benefit increase restriction? The answer should be no. There is no benefit to a policy that would broadly restrict benefits for participants in the larger, healthy plan. The result of such a restrictive policy would be to effectively foil mergers of SFA plans into healthy plans.

Another question is to what extent the benefit restrictions continue to apply to the SFA plan participants, after the merger takes place. Provisions in the IFR concerning benefit increase are inconsistent and confusing. In the case of a merger, existing plan benefits must be preserved but the participants of the plan merging into a larger plan often participate prospectively in the benefits of the consolidated plan. Large plans could not operate efficiently if every merging group retained its own benefit design. We believe that upon the effective date of a merger, it is imperative that prospective benefits be accrued by all participants under the same formula.

We believe that mergers of SFA plans with healthy partners will not be viable unless restrictions on benefit increases no longer apply upon merger, or they apply only to the portion that constitutes pre-merger accrued benefits for participants in the pre-merger SFA plan. Because plans like the Local 16 Fund were required to take all reasonable measures before applying for a suspension of benefits to avoid insolvency, active employees participating in these plans have taken substantial cuts in future accruals in addition to a higher contribution rate burden. For the participants of the Local 16 Fund, it would be untenable for them to participate with their fellow Local Union members in one pension plan, working in many cases side-by-side on the same jobs, and yet be prevented from accruing benefits, prospectively, under the same formula as the other participants in the plan, with a commensurate increase in future accruals. Moreover, it would be unworkable for the SFA plan participants to accrue benefits under the same formula only if their contribution rate is increased commensurately.

Any rule that requires SFA plan participants to be treated differently than their fellow participants in a merged plan would eliminate the primary impetus to merge and would exacerbate the divide between the participants in the merged plan, with the SFA plan participants being treated inequitably in the merged plan. This would have the unintended consequence of motivating many SFA plan participants to leave the plan, which would condemn the plan to eventual insolvency.

Finally, what happens to new employees entering the merged plan? The plan cannot sustain itself by forcing new employees to accrue benefits under “restrictions” imposed on the SFA plan. The only viable solution is to impose none of the SFA benefit restrictions prospectively on any participant in the merged plan.

With respect to employer withdrawals from a merged plan, more guidance is needed. ERISA §4211(f) requires that for withdrawals in the first plan year following the merger of multiemployer plans, withdrawal liability is determined as if the plans remained separate. See also 29 CFR 4211.31 and 4211.37 which discuss the allocation of unfunded vested benefits (“UVB”). The IFR specifies that a plan must use the interest rate assumptions under 29 CFR §4281.13(a) (mass withdrawal assumptions) to determine withdrawal liability for withdrawals after the plan year in which the plan receives SFA and until the later of ten years after the end of the plan year in which the plan receives SFA or the last day of the plan year in which the plan no longer holds any SFA or earnings thereon in a segregated account as required by the IFR. See §4262.16(g).

What’s not clear is what happens for withdrawals after the initial plan year. We believe that the rule should clarify that the mass withdrawal rates for valuing the UVBs will not apply to the entire merged plan but be limited to calculating the present value of vested benefits under the SFA-plan as of the date of the merger. This would be in keeping with the PBGC’s stated reason for applying mass withdrawal rates (wanting to avoid the use of SFA assets to reduce the withdrawal liability of a withdrawing employer) without unduly increasing the withdrawal liability of other employers who were never contributing employers to the merged-in plan.

Lastly, what restrictions, if any, are placed on the merged plan with respect to the managing, tracking, and reporting of plan assets. A “de minimis” provision that takes into account the relative sizes of the pre-merged plans would be helpful.

In closing, the merger of SFA plans into healthy plans is a win-win situation for everyone, but only if the consolidated plan can segregate the SFA and operate as one plan prospectively, without SFA restrictions applying to the merged plan in a way that discourages mergers.

Sincerely,

A handwritten signature in black ink that reads "James Ayersman". The signature is written in a cursive style and is positioned above a horizontal line.

James Ayersman  
Secretary, Board of Trustees  
Ironworkers Local No. 16 Pension Fund

cc: Board of Trustees of the Ironworkers  
Local No. 16 Pension Fund