PBGC Pension Benefit Guaranty Corporation

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September 11, 2025

Board of Trustees of the
Bakery Drivers Local 550
and Industry Pension Fund
99 Tulip Ave Suite 402
Floral Park, NY 11001

Re: Denial of special financial assistance to the Board of Trustees of the Bakery Drivers Local 550 and Industry Pension Fund

Dear Trustees:

On May 30, 2025, the Bakery Drivers Local 550 and Industry Pension Fund, EIN/PN 13-6626195/001 (the "Fund") filed a revised application for special financial assistance ("SFA") under section 4262 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and part 4262 of title 29 of the Code of Federal Regulations ("Revised Application").

The Revised Application supersedes the initial application filed by the Fund on September 28, 2022 ("Initial Application"). The Pension Benefit Guaranty Corporation ("PBGC") denied the Initial Application after determining the Fund was ineligible for SFA because the plan terminated by mass withdrawal in 2016.[1]

On March 1, 2023, the Fund sued PBGC in the United States District Court for the Eastern District of New York ("District Court"), requesting the District Court to set aside PBGC's denial of the Initial Application and find the Fund eligible for SFA as a multiemployer plan that had been restored as of September 1, 2022.

On October 26, 2023, the District Court issued its Order and held that the Fund is not eligible for SFA because the plan terminated by mass withdrawal, which means that it was no longer subject to the minimum funding standards and thus had no zone status.[2] The District Court also ruled that a multiemployer pension plan terminated by mass withdrawal cannot be restored under ERISA.

The Fund appealed the District Court Order to the United States Court of Appeals for the Second Circuit ("Second Circuit"), which ruled that under ERISA § 4262(b)(1)(A), a

[1] *Bakery Drivers Local 550 and Industry Pension Fund v. PBGC*, Case No. 2:23-cv-01595 (E.D.N.Y.). The Fund claimed to have been restored when an employer that had withdrawn from the Fund on December 17, 2016, agreed with the Fund in 2022 to resume making contributions on behalf 18 active workers. The Fund has not cited, and PBGC's own research has not revealed, any precedent to support its restoration claim.
[2] Dkt. No. 33, Case No. 2:23-cv-01595 (Oct. 26, 2023) ("District Court Order").

terminated multiemployer plan is not per se excluded from eligibility for SFA.[3] However, the Second Circuit noted that "[b]ecause we conclude that § 1432(b)(1)(A) does not exclude terminated plans per se, we need not decide whether ERISA permits a terminated multiemployer plan to be restored."[4] Thus, the Second Circuit opinion did not change the District Court's ruling that the Fund had not been restored and that it was not restorable under ERISA.[5]

On August 28, 2025, the District Court entered an order setting aside PBGC's denial of the Fund's Initial Application for ineligibility. Therefore, pursuant to the parties' April 11, 2023, stipulated order ("Stipulated Order"), September 12, 2025, is the relevant decision date under the Stipulated Order.[6]

To approve an application for SFA, PBGC must receive a complete application from an eligible multiemployer plan.[7] If the application is incomplete, PBGC is authorized to deny the application.[8] For example, a complete application must include the "[p]lan actuary's certification that identifies the requested amount of SFA and certifies that this is the amount to which the plan is entitled under section 4262(j)(1) of ERISA and § 4262.4 of PBGC's SFA regulation."[9] PBGC has provided instructions for SFA applicants that identifies required elements of such a certification ("Instructions").[10]

In connection with PBGC's consideration of the Revised Application, the Fund submitted a document entitled "Certification of the Amount of Special Financial Assistance" (the "Certification"). As explained below, the Certification includes inaccurate information and creates a material inconsistency that renders the Revised Application incomplete due to the following deficiencies, each of which would have to be eliminated before an SFA application of the Fund could be considered complete:

- The Certification contradicts the District Court ruling that the Fund cannot be restored to ongoing status under ERISA. As noted above, the District Court found that the Fund could not be restored to ongoing status under ERISA once it was terminated by mass withdrawal, and the Second Circuit did not alter this ruling of

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[3] *Bakery Drivers Local 550 and Industry Pension Fund v. PBGC*, 136 F.4th 26, 31 (2d. Cir 2025), ("Circuit Court Opinion").

[4] *Id.* at p. 13 n. 5.

[5] *Compare* Circuit Court Opinion, *with* District Court Order, Case No. 2:23-cv-01595.

[6] The District Court entered a stipulated order on April 11, 2023, stating that "if the Court issues an order setting aside [PBGC's] denial of the [Fund's] SFA application for ineligibility and such order is not stayed, then [PBGC] shall approve or deny the revised application by the later of ten business days after such order is issued... or 60 days after the revised application is filed."

[7] ERISA § 4262(g), 29 U.S.C. § 1432(g); 29 C.F.R. § 4262.11(a)(2)(i), 29 C.F.R. § 4262.11(b),.

[8] *Id.*

[9] PBGC General Instructions for Multiemployer Plans Filing for Special Financial Assistance, Section E(5), at PDF p. 23, 24 of 29, updated Mar. 24, 2025, https://www.pbgc.gov/sites/default/files/sfa/sfa-filing-instructions.pdf.

[10] *Id.*

the District Court. Nevertheless, the Certification asserts that the Fund is an ongoing plan.[11] The application must be revised to eliminate this contradiction and to provide an accurate Certification.

- The Certification does not provide information required under ERISA and the Instructions. Specifically, it does not state the amount of SFA "to which the plan is entitled under section 4262(j)(1) of ERISA and § 4262.4 of PBGC's SFA regulation."[12] Instead, it provides an amount to which the Fund would be entitled "if it were a terminated plan." Because any correction of the error requires a change to the amount of special financial assistance requested, the application is considered incomplete.[13] The Certification must be revised to provide the information required by the Instructions to correct the deficiency.

For the reasons discussed above, the Revised Application is incomplete and thereby denied as of the date of this letter. This decision on the Fund's Revised Application for SFA is a final agency action under 29 C.F.R. § 4003.22(b) for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. § 701 *et seq.*).

For more information, please refer to PBGC's website at *www.pbgc.gov/arp-sfa*. If you have any questions, please contact Emily Allender at allender.emily@pbgc.gov or 202.341.8302.

Sincerely,



Alice C. Maroni
Acting Director

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[11] The Certification states as follows:

> The Fund's position continues to be that it has been restored through the addition of a bargaining unit and is currently an active fund. Nonetheless, the Fund has asked Segal to provide this information solely for PBGC to use in calculating the SFA amount for which PBGC believes the Fund is eligible under the decision of the U.S. Court of Appeals for the Second Circuit in *Bd. of Trs. of the Bakery Drivers Loc. 550 v. Pension Benefit Guaranty Corporation*, No. 23-7868 (2d Cir. 2025). Accordingly, both this certification and the accompanying Templates 4a and 6a are calculated, solely for these purposes, as if the Fund were terminated.
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> By providing this information, the Fund expressly preserves, and does not waive, any argument that the Fund is an active fund and has been restored and reserves its rights to contend that the Fund has been restored in any legal or agency proceeding, including in the event that the PBGC petitions the U.S. Supreme Court for review of the Second Circuit's decision.

[12] PBGC General Instructions for Multiemployer Plans Filing for Special Financial Assistance, Section E(5), at PDF p. 23, 24 of 29, updated Mar. 24, 2025, https://www.pbgc.gov/sites/default/files/sfa/sfa-filing-instructions.pdf.

[13] ERISA § 4262(g), 29 U.S.C. § 1432(g); 29 C.F.R. § 4262.6.