PBGC Pension Benefit Guaranty Corporation

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VIA EMAIL

November 6, 2026

Board of Trustees of the California Winery Workers Pension Plan Trust
955 N Street
Fresno, CA 93721-2216

Re: Denial of application for special financial assistance filed by the California Winery Workers Pension Plan Trust, EIN/PN 94-6082915/001 (the "**Fund**")

Dear Trustees:

The Pension Benefit Guaranty Corporation ("**PBGC**") has completed its review of the Fund's application ("**Application**")[1] 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. Based on that review, PBGC has determined the Fund does not satisfy the statutory eligibility criteria for SFA and therefore denies the Application.

## Factual Background

The Fund, which has its principal office in California, terminated by the mass withdrawal of all contributing employers on December 31, 2008. The Fund became insolvent and began receiving traditional financial assistance from PBGC on October 1, 2021.

The Fund filed an SFA lock-in application on November 7, 2025, and filed its revised Application on August 21, 2026. Using an SFA measurement date of August 31, 2025, the Application seeks $259,880,605.

The Application includes, among other things, an eligibility certification ("**Eligibility Certification**") in which the Fund claims SFA eligibility as a plan in "critical and declining" status within the meaning of section 305(b)(6).[2] The Fund asserts that it meets both requirements of section 305(b)(6): it is in "critical" status under section 305(b)(2)(A), and it is "projected to become insolvent."[3]

PBGC's independent death-match audit of the census data submitted by the Fund revealed that deceased participants had been included in the census data.[4]

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1 California Winery Workers' Pension Plan Trust Special Financial Assistance Application (Aug. 21, 2026).

2 ERISA § 4262(b)(1)(A), 29 U.S.C. § 1432(b)(1)(A); *see also* 29 C.F.R. § 4262.3(a)(1); ERISA § 305(a)(3), 29 U.S.C. § 1085(a)(3).

3 ERISA § 305(b)(6), 29 U.S.C. § 1085(b)(6).

4 California Winery Workers' Pension Plan SFA IDA Data Listing (Sep. 11, 2026).

## Statutory Background

Section 9704 of Title IX, Subtitle H of the American Rescue Plan Act of 2021 amended ERISA to create the SFA program to extend the solvency of certain severely underfunded multiemployer plans that meet specified eligibility requirements.[5] Plans eligible for SFA receive a cash, lump-sum deposit of taxpayer monies in the amount projected for plans to pay benefits through 2051.[6]

### *SFA Eligibility*

Congress specified strict eligibility requirements to ensure that SFA is available only to plans that satisfy at least one of four statutory eligibility criteria.[7] The Fund claims eligibility under the first criterion, section 4262(b)(1)(A), which requires that "the plan is in critical and declining status (within the meaning of section [305(b)(6) of ERISA]) in any plan year beginning in 2020 through 2022."[8] That criterion relies on the Fund actuary's determination and certification of the Fund's funding status, a requirement established under section 305 of ERISA.[9] No plan that was terminated by mass withdrawal prior to its 2020 plan year can meet this condition.

### *Funding-Status Determination*

When Congress created the SFA program, it did not devise a new measure of plan health; it keyed SFA eligibility to an existing framework. The requirement to determine funding status long predates the SFA program. It originates in the Pension Protection Act of 2006, which amended ERISA to require multiemployer plans to file an annual certification of their funding status and projected financial condition.[10] The requirement brought greater transparency to funding levels in PBGC-guaranteed plans and gave troubled plans tools to improve those levels, such as adopting a rehabilitation plan.[11]

In the annual actuarial certification, the plan's status is determined based in part on the percentage of the plan's benefit liabilities that are funded, i.e., its "funded percentage."[12] Following further amendments to the funded-status categories in 2014,[13] troubled pension plans are sorted by their funded status into the following zones: critical and declining (crimson), critical (red), seriously endangered (orange), or endangered (yellow).[14] Plans that fall into none of these troubled categories are commonly referred to as green-zone plans.

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5 Pub. L. 117-2, 135 Stat. 4 (Mar. 11, 2021).

6 ERISA §§ 4262(a)(2), (j)(1), 29 U.S.C. §§ 1432(a)(2), (j)(1); 29 C.F.R. § 4262.12(g).

7 ERISA § 4262(b)(1), 29 U.S.C. § 1432(b)(1).

8 ERISA § 4262(b)(1)(A), 29 U.S.C. § 1432(b)(1)(A).

9 ERISA § 305(b), 29 U.S.C. § 1085(b).

10 Pub. L. No. 109-280, § 202(a), 120 Stat. 780, 901 (2006) (adding ERISA § 305(b)(3), 29 U.S.C. § 1085(b)(3)); *see also* Internal Revenue Code § 432(b)(3) (mirroring the requirement).

11 ERISA §§ 305(a)(2)(A), (e), 29 U.S.C. §§ 1085(a)(2)(A), (e).

12 ERISA §§ 305(b), (j)(2), 29 U.S.C. §§ 1085(b), (j)(2).

13 Multiemployer Pension Reform Act of 2014, Pub. L. No.113-235, Div. O, 128 Stat. 2130, 2774-2822 (2014).

14 ERISA § 305(b), 29 U.S.C. § 1085(b).

The actuarial certification is due "[n]ot later than the 90th day of each plan year."[15] It must set out the plan's funding status for the year and, during a funding improvement or rehabilitation period, whether the plan is making scheduled progress.[16] If the plan is certified in endangered or critical status, then the plan sponsor generally must, within 30 days, notify the participants and beneficiaries, the bargaining parties, the PBGC, and the Department of Labor; and the applicable funding improvement or rehabilitation plan generally must be adopted within 240 days after the certification deadline.[17]

Because SFA eligibility was layered onto this pre-existing framework, the annual funding-status certification is the mechanism that fixes a plan's status for SFA purposes.[18] A plan attains critical-and-declining, critical, or endangered status only by the actuary's attestation to that status on a funding-status certification. A plan that files no certification for a given year therefore has no funding status for that year. Because SFA eligibility turns on holding such a status in a plan year beginning in 2020 through 2022, a plan outside the certification framework cannot qualify.

### Consequences of *Termination by Mass Withdrawal*

A multiemployer plan terminates by mass withdrawal upon the withdrawal of every employer from the plan.[19] That event sets off a chain of statutory consequences that removes the very measures on which the SFA eligibility categories depend.

The minimum-funding rules in Part 3 of Title I of ERISA, which include the funding-certification requirement of section 305, apply to a multiemployer plan only until the last day of the plan year in which the plan terminates by mass withdrawal.[20] After that, the plan is no longer subject to the funding rules, and several consequences follow, including the three below.

First, the plan has no funding status. A funding status is assigned only by the plan actuary's annual certification under section 305(b)(3), a requirement that no longer applies to the plan. A plan that therefore files no certification holds no funding status in any year after its termination plan year.

Second, the plan no longer maintains a funding standard account. This is relevant for SFA eligibility because certain eligibility prerequisites require the plan to have, or be projected to have, an "accumulated funding deficiency."[21] An accumulated funding deficiency is a shortfall in the plan's "funding standard account," the bookkeeping account the minimum-funding rules require each covered plan to maintain; the deficiency arises when the

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15 ERISA § 305(b)(3)(A), 29 U.S.C. § 1085(b)(3)(A).

16 ERISA § 305(b)(3)(A), 29 U.S.C. § 1085(b)(3)(A).

17 ERISA §§ 305(b)(3)(D), (c)(1)(A), 29 U.S.C. § 1085(b)(3)(D), (c)(1)(A).

18 ERISA §§ 4262(b)(1)(A)-(D), 29 U.S.C. §§ 1432(b)(1)(A)-(D).

19 ERISA § 4041A(a)(2), 29 U.S.C. § 1341a(a)(2).

20 ERISA § 301(c), 29 U.S.C. § 1081(c); *see also* Internal Revenue Code § 412(e)(4) (mirroring the requirement).

21 ERISA §§ 305(b)(2)(B), (C), 29 U.S.C. §§ 1085(b)(2)(B), (C).

account's charges exceed its credits.[22] Because those rules no longer apply to the Fund, it maintains no funding standard account.

Third, the plan has no interest rate to use for the SFA amount calculation. In determining that amount, section 4262(e)(2)(A) requires the plan to "use the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021," provided the rate does not exceed the limit in section 4262(e)(3), which is tied to the month the SFA application is filed or the three preceding months.[23] A plan terminated by mass withdrawal before its 2020 plan year produced no qualifying certification from which such a rate could be drawn, so it has no usable interest rate. While this gap is not directly applicable to SFA eligibility criteria, it further illustrates that the SFA framework was not written with mass-withdrawal-terminated plans in mind.

In short, a plan that terminated by mass withdrawal before its 2020 plan year has, by operation of statute, no funding status, no funding standard account, and no accumulated funding deficiency for the 2020 through 2022 plan years. It therefore cannot make the showings that SFA eligibility under section 4262(b)(1) requires.

## Analysis

Since the enactment of the SFA program, PBGC has maintained that a multiemployer plan terminated by mass withdrawal before the 2020 plan year cannot satisfy the eligibility criteria for SFA under section 4262(b)(1)(A) of ERISA.[24] Because the Fund was terminated by mass withdrawal on December 31, 2008, it cannot satisfy those eligibility criteria, and its Application is therefore denied.

### *Funding-Status Determination*

As a mass-withdrawal-terminated plan, the Fund cannot establish that it reached the "critical and declining" status it claims in its Eligibility Certification. As the Fund concedes, it "does not have a zone [status] certification for 2020, 2021, or 2022," the very certifications that would otherwise have established whether it reached that required status.

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22 ERISA § 304(a), (b)(1), 29 U.S.C. § 1084(a), (b)(1).

23 ERISA § 4262(e)(2)(A), (e)(3), 29 U.S.C. § 1432(e)(2)(A), (e)(3).

24 *See* Special Financial Assistance by PBGC (Interim Final Rule), 86 Fed. Reg. 36598, 36600 (July 12, 2021) ("PBGC notes that a plan that terminated by mass withdrawal in a plan year that ended before January 1, 2020, is not eligible for SFA under section 4262(b)(1)(A) of ERISA and § 4262.3(a)(1) (plans that are in critical and declining status (within the meaning of section 305(b)(6) of ERISA) in any plan year beginning in 2020, 2021, or 2022)"); Special Financial Assistance by PBGC (Final Rule), 87 Fed. Reg. 40968, 40971 (July 8, 2022). The U.S. Court of Appeals for the Second Circuit rejected this view, *see Bakery Drivers Local 550 v. PBGC*, 136 F.4th 26 (2d Cir. 2025), but no other court has done so. And the Fund's claim that it "has two (2) participants that reside within New York" does not change that the Fund's principal office is in California. Application at PDF p. 4 of 16.

The Fund's termination in 2008 ended its obligation to file funding-status certifications.[25] It consequently has no certifications for the 2020, 2021, or 2022 plan years. The Fund actuary's belated effort to generate a funding-status certification for those years is contrary to the ERISA provisions governing the timing and issuance of such certifications, which, among other things, require the Fund actuary to issue the certification by the 90th day of each plan year.[26]

*Critical Status*

"Critical" status is condition precedent to "critical and declining" status. The Fund asserts that it is in "critical" status because it meets the first of four critical-status entry tests in subparagraphs (A) through (D) ("**Critical Status Entry Tests**").[27] But that test cannot be satisfied by a plan terminated by mass withdrawal.

*First Critical Status Entry Test*

The first Critical Status Entry Test has two subparts. The first subpart requires that "the funded percentage of the plan is less than 65 percent," a condition that does not apply to a mass-withdrawal-terminated plan.[28] "Funded percentage" in this context is a defined term under section 305(j)(2), used to calculate funding status and, for plans in endangered status, to set the benchmarks for a funding improvement plan.[29] It is, in other words, a product of the Pension Protection Act's minimum-funding regime that no longer governs the Fund. Therefore, the Fund cannot have a funded percentage compliant with section 305(j)(2).

As the Fund unequivocably states in its Forms 5500 for the 2020, 2021, and 2022 plan years (the "**Applicable 5500s**"), it "is no longer subject to the minimum funding standards under Section 412 of the Internal Revenue Code. Accordingly, the funding standards, certification, and notification requirements of Internal Revenue Code Section 432 are also inapplicable to the [Fund]."[30] Substantively identical minimum-funding, certification, and notification requirements appear in both Title I of ERISA and the parallel Internal Revenue Code provisions that are incorporated into Title II of ERISA.

The Fund's insolvency creates another barrier to "critical" status under the first subpart of first Critical Status Entry Test. Insolvent plans receive financial assistance from PBGC pursuant to section 4261, with no obligation to repay it while the corporation remains "insolvent" and is "unable to pay basic benefits when due."[31] The Fund's Applicable 5500s

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25 *See* ERISA § 301(c), 29 U.S.C. § 1081(c); ERISA § 305(b)(3), 29 U.S.C. § 1085(b)(3); *accord* Internal Revenue Code § 432(b)(3).

26 *See* ERISA § 305(b)(3), 29 U.S.C. § 1085(b)(3).

27 ERISA § 305(b)(2), 29 U.S.C. § 1085(b)(2); *accord* Internal Revenue Code § 432(b)(2).

28 ERISA § 305(b)(2)(A)(*i*), 29 U.S.C. § 1085(b)(2)(A)(*i*).

29 ERISA § 305(j)(2), 29 U.S.C. § 1085(j)(2).

30 2020 Form 5500 at PDF p. 32 of 58; 2021 Form 5500 at PDF p. 32 of 51; 2022 Form 5500 at PDF p. 26 of 31.

31 ERISA § 4261(a), 29 U.S.C. § 1431(a).

reflect this reality, booking PBGC's financial assistance payments as plan assets.[32] The Fund therefore cannot meet the condition that "the funded percentage of the plan is less than 65 percent."

The second subpart of the first Critical Status Entry Test was likewise never meant to reach a mass-withdrawal-terminated plan. By its terms, it measures employer contributions "assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years."[33] That language presupposes an ongoing plan still "maintained" under collective bargaining agreements in "the current plan year." A plan terminated by mass withdrawal, by definition, is not. Applying this subpart to such a plan would therefore require the statute to measure something it never contemplated.

The Fund's insolvency poses a further hurdle to meeting the second subpart of first Critical Status Entry Test. The subpart is satisfied only where the present value of nonforfeitable benefits exceeds the sum of plan assets and anticipated employer contributions—that is, where the plan faces a projected shortfall.[34] An insolvent plan cannot show such a shortfall. An insolvent multiemployer plan must suspend all benefits above the greater of its resource-benefit level or the level of basic (PBGC-guaranteed) benefits, and PBGC then provides financial assistance sufficient to pay those guaranteed benefits and reasonable administrative expenses.[35] By law, the plan's resources are kept sufficient to pay its reduced obligations, which is the opposite of the shortfall the subpart requires.

*The Remaining Critical Status Entry Tests*

Although the Fund has invoked only the first of four Critical Status Entry Tests, PBGC has also assessed whether the Fund could qualify for "critical" status under the other three and has concluded that it cannot.

The second Critical Status Entry Test requires *a* showing of an "accumulated funding deficiency," a defined term that presupposes the existence of a "funding standard account" and is reported on the Schedule MB to a Form 5500.[36] Because the Fund, as a mass-withdrawal-terminated plan, does not maintain a funding standard account and did not file a Schedule MB with any of the Applicable 5500s, it cannot satisfy this test.[37]

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32 2021 Form 5500 at PDF p. 33 of 51; 2022 Form 5500 at PDF pp. 27, 29 of 31. The Fund first received PBGC financial assistance payments in 2021, so the 2020 Form 5500 does not reflect any such payments.

33 ERISA § 305(b)(2)(A)(ii), 29 U.S.C. § 1085(b)(2)(A)(ii).

34 ERISA § 305(b)(2)(A)(ii), 29 U.S.C. § 1085(b)(2)(A)(ii).

35 ERISA § 4245(a), 29 U.S.C. § 1426(a).

36 ERISA §§ 305(b)(2)(B), (j)(3), 29 U.S.C. § 1085(b)(2)(B), (j)(3); *see also* ERISA § 103(d)(7), 29 U.S.C. § 1023(d)(7).

37 The Fund's last funding-status certification shows that its funding standard account was depleted in 2009 and its rehabilitation plan was not being maintained as of 2013. *See* Actuarial Certification Required Under Internal Revenue Code Section 432(b) (March 29, 2013) at PDF p. 2 of 3. Further,

The third Critical Status Entry Test requires a showing of not only an "accumulated funding deficiency" but also a "normal cost," another defined term, this time one used in maintaining a funding standard account.[38] As a mass-withdrawal-terminated plan, the Fund does not maintain a funding standard account and reports no "normal cost" in the Applicable 5500s. The "normal cost" in this context is a product of the Pension Protection Act's minimum-funding regime that no longer governs the Fund, so the third test does not apply to it.

The fourth Critical Status Entry Test requires that the present value of benefits payable exceed the sum of plan assets and anticipated employer contributions, "assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years."[39] As with the second subpart of first Critical Status Entry Test, that language presupposes an ongoing plan facing a projected shortfall. It does not apply to an insolvent, mass-withdrawal-terminated plan.

*Other Eligibility Criteria*

Even though the Fund's claimed SFA eligibility is based on being in "critical and declining" status, PBGC has also determined the Fund cannot meet any other SFA eligibility test.

Eligibility under section 4262(b)(1)(B) requires a "suspension of benefits" within the meaning of section 305(e)(9), which the Fund never implemented.[40]

Eligibility under section 4262(b)(1)(C) requires that, in a plan year beginning in 2020, 2021, or 2022, the plan actuary have certified the plan to be in critical status, a certification that the Fund never obtained.[41] That provision also requires a showing of the plan's "modified funded percentage," a measure defined by reference to the plan's "current liabilities."[42] Current liabilities, in turn, is a figure derived from the minimum-funding rules and reported on the Schedule MB to a Form 5500.[43] By pegging eligibility to a measure that exists only within the minimum-funding regime, the statute again presupposes a plan still subject to that regime, not a plan that has terminated by mass withdrawal and left the regime behind.

Finally, eligibility under section 4262(b)(1)(D) is available only to a plan that has not been terminated as of March 11, 2021, whereas the Fund remained terminated as of that date.[44] Accordingly, the Fund cannot satisfy any of the SFA eligibility tests.

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because the Fund's ability to determine a funded status within the meaning of section 305 ceased when the Fund terminated by mass withdrawal on December 31, 2008, the 2013 certification included in the application is invalid.

38 ERISA § 305(b)(2)(C), 29 U.S.C. § 1085(b)(2)(C); ERISA § 3(28), 29 U.S.C. § 1002(28); ERISA § 304(b)(2)(A), 29 U.S.C. § 1084(b)(2)(A).

39 ERISA § 305(b)(2)(D), 29 U.S.C. § 1085(b)(2)(D).

40 ERISA § 4262(b)(1)(B), 29 U.S.C. § 1432(b)(1)(B).

41 ERISA § 4262(b)(1)(C), 29 U.S.C. § 1432(b)(1)(C).

42 ERISA § 4262(b)(2), 29 U.S.C. § 1432(b)(2).

43 ERISA § 304(c)(6)(D), 29 U.S.C. § 1084(c)(6)(D); ERISA § 103(d), 29 U.S.C. § 1023(d).

44 ERISA § 4262(b)(1)(D), 29 U.S.C. § 1432(b)(1)(D).

*Non-Eligibility Basis*

While the primary basis for denial is ineligibility, PBGC also notes that the Fund, as a mass-withdrawal-terminated plan, faces an additional hurdle in calculating the amount of special financial assistance under section 4262(e). Subsection (e)(2)(A) requires the plan, in determining that amount, to "use the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021," provided the rate does not exceed the limit set in subsection (e)(3)—a rate tied to the month in which the SFA application is filed, or the three preceding months.[45] The Fund has no usable interest rate because it produced no qualifying certification of plan status from which such a rate could be drawn.

**Conclusion**

Based on its thorough review of the available information and the application of that information to the law, PBGC has determined the Fund is not and cannot be eligible for SFA under section 4262(b)(1) of ERISA.

PBGC's decision under section 4262.11 of PBGC's regulation on an 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.*).

If this denial is overturned by a final, nonappealable court order, PBGC will review and process the Application consistent with that determination and applicable law.

For more information, please refer to PBGC's website at *www.pbgc.gov/arp-sfa*. If you have any questions, please contact [redacted]

Sincerely,

Janet Dhillon
Director, Pension Benefit Guaranty Corporation

[45] ERISA §§ 4262(e)(2), (3), 29 U.S.C. §§ 1432(e)(2), (3).