Comments on Special Financial Assistance: Proposed Amendments to 29 CFR Part 4262
Docket No. PBGC-2026-0133 | RIN 1212-AB61

While I support the PBGC's efforts to improve clarity and administrative efficiency, I request several technical refinements and clarifications to ensure consistent application and avoid unintended compliance challenges. Clear and workable rules are essential for administrative efficiency and for protecting participant benefits and supporting long-term plan stability.

Clarification of Permissible Fixed-Income Investments (§ 4262.14(d)(1))

The proposed revisions to § 4262.14(d)(1) are intended to clarify the definition of permissible investment-grade fixed-income securities. However, the phrase "predetermined rates of interest according to a schedule" is not defined, leaving uncertainty about whether standard commercial structures such as step-up bonds or rating-linked coupon adjustments qualify. The rule also excludes securities with embedded features that "materially" alter returns or risks but does not specify how materiality should be measured. Because many widely held investment-grade securities include call features or other common structural elements, additional clarity is needed to ensure consistent interpretation.

I recommend that the final rule define "predetermined rates of interest" to include standard step-up structures and rating-linked adjustments commonly found in investment-grade corporate bonds. I also suggest adopting a quantitative safe harbor for determining when an embedded feature "materially" alters risk or return, or alternatively confirming that ordinary callable corporate bonds are permissible.

Treatment of TLAC Instruments and Convertible Features (§ 4262.14(d)(1))

The proposed rule provides that a security convertible to equity is treated as debt only if conversion occurs solely through regulatory action. Many Total Loss-Absorbing Capacity (TLAC) instruments include both regulatory and contractual triggers. The proposal does not indicate whether the presence of any non-regulatory trigger renders the instrument impermissible, even when the regulatory trigger is the primary mechanism. Because TLAC instruments are widely included in major investment-grade bond indexes, clarification is needed to avoid forcing plans to deviate from standard benchmarks.

I recommend clarifying that a TLAC instrument remains permissible if its primary conversion mechanism is regulatory, or if contractual triggers are limited to insolvency-related events. Alternatively, PBGC could provide a safe-harbor list of TLAC instruments that align with widely used commercial bond indexes.

Standards for Permissible Derivative Exposure (§ 4262.14(h))

The proposed amendments to § 4262.14(h) codifies PBGC's FAQ guidance on derivatives. The rule permits derivative positions "for a short period of time" when they substitute for and closely replicate permissible physical securities, but it does not define what constitutes a short period.

The preamble states that "facts and circumstances" will determine the appropriate duration, which may leave plans uncertain about compliance.

I recommend replacing the open-ended "facts and circumstances" standard with a defined safe harbor, such as a fixed period of 90 or 180 days. I also request clarification that derivatives used solely to hedge existing portfolio exposures—such as interest-rate or currency hedges that match underlying physical assets—are permissible.

Determination Date for Withdrawal Liability Settlements (§ 4262.16(h)(1)(ii))

The proposal would fix the determination date for valuing withdrawal liability payments at the last day of the plan year preceding the withdrawal. Although this aligns with the valuation date for unfunded vested benefits, it produces outdated valuations when withdrawals occur late in a plan year or during periods of significant interest-rate volatility. Because the $50 million threshold determines whether PBGC approval is required, reliance on a potentially stale valuation date may lead to inconsistent results or create incentives for strategic timing. A valuation framework that reduces opportunities for strategic timing helps ensure that withdrawal liability outcomes reflect genuine economic conditions rather than tactical behavior.

I suggest allowing plans to use either the last day of the prior plan year or a more current valuation date when interest-rate movements or other macroeconomic conditions have caused material changes in unfunded vested benefits since the prior plan year-end.

Aggregation of Related Settlements (§ 4262.16(h))

The proposal retains and expands the requirement to aggregate settlements arising from related withdrawals, transactions, or arrangements. The term "related" is not defined, and the anti-avoidance clause introduces a subjective standard that may be difficult to apply. The proposal leaves open how aggregation should work in practice, including the relevant look-back period and how to treat settlements involving different entities within a controlled group.

I recommend defining the scope of "related" transactions and establishing a reasonable look-back period, such as 12 or 24 months. The final rule should also clarify that settlements with separate entities within a controlled group are not aggregated when they arise from distinct operational events or independent bargaining outcomes.

Elimination of the Reallocation Exception (§ 4262.16(e)(2))

The proposal would eliminate the existing procedure allowing plans to request an exception to the prohibition on reallocating contributions between pension and health plans. Multiemployer bargaining arrangements often involve longstanding integrated contribution structures. When federal mandates or market conditions significantly increase health-plan costs, trustees may face competing obligations under ERISA, collective bargaining agreements, and health-fund solvency requirements. Eliminating the exception entirely removes a mechanism for addressing such circumstances. In bargaining environments where contribution structures are integrated, the

absence of any exception process could unintentionally strain health and welfare funds, which would ultimately affect workers and retirees.

I recommend retaining a narrowly tailored exception process that allows plans to request approval for contribution reallocations only in extraordinary circumstances, such as preventing imminent insolvency of a related health plan, and only when the pension plan can demonstrate that the reallocation will not jeopardize its long-term solvency.

Unintended Operational and Market Effects

Some parts of the proposal may also have other impacts. I raise these points simply to flag them and to ask PBGC to address them in the final rule or preamble so plans can apply the regulation with confidence. These effects matter because they influence not only investment outcomes but also the stability of contribution arrangements that workers and employers rely on.

One concern is that uncertainty about the permissibility of common fixed-income instruments—such as TLAC securities, callable bonds, or step-up structures—may push SFA portfolios away from standard investment-grade benchmarks. That shift could increase tracking error and advisory costs. It would be helpful for PBGC to acknowledge this possibility and offer examples or safe harbors that allow plans to stay aligned with widely used benchmarks.

Another issue is the fixed valuation date for withdrawal liability settlements. Using the prior plan-year end may give employers an incentive to time withdrawals based on interest-rate movements rather than business needs. Additional flexibility or clarification could reduce that risk.

A third concern involves the derivative standard. Because the rule does not define what counts as a "short period of time," plans may avoid derivatives altogether, even when they are the safest way to maintain exposure during transitions. Clarifying the intended duration or providing examples would help plans manage this area without unnecessary caution.

Economic Analysis and Underlying Assumptions

The economic analysis accompanying the proposal projects \$18.65 million in total annual cost savings, but the underlying methodology relies on assumptions that are not supported by data in the record. PBGC's estimate of \$18.4 million in investment-related savings is based on an assumption that exactly 60 percent of the approximately 200 plans expected to receive SFA will be affected, and it applies a 15-year straight-line decline to advisory-fee impacts. The proposal does not provide empirical data, historical asset-allocation information, or modeling results to justify either the 60 percent baseline or the 15-year linear reduction. In addition, the projected \$250,000 in savings from eliminating the contribution-reallocation exception assumes a constant volume of 10 determination requests per year at an estimated cost of \$25,000 each, but the proposal does not cite historical filing data or prior-year experience to support this frequency.

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