NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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Mr. Jack Lund, General Counsel
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Office of the General Counsel
Pension Benefit Guaranty Corporation
445 12th Street SW
Washington, DC 20024–2101

Submitted Electronically Through www.regulations.gov

Re: Notice of Proposed Rulemaking, PBGC Technical Amendments: Special Financial Assistance (RIN 1212-AB61)

Dear Mr. Lund:

The National Coordinating Committee for Multiemployer Plans ("NCCMP") appreciates this opportunity to comment on the Notice of Proposed Rulemaking issued by the Pension Benefit Guaranty Corporation ("PBGC") entitled Technical Amendments: Special Financial Assistance, published at 91 Fed. Reg. 36100 (June 16, 2026) ("NPR").

The NCCMP is a non-partisan, nonprofit, tax-exempt social welfare organization established under Internal Revenue Code ("IRC") Section 501(c)(4), with members, plans, and contributing employers in every major segment of the multiemployer universe. These industries include airline, agriculture, building and construction, bakery and confectionery, entertainment, health care, hospitality, longshore, manufacturing, mining, office employee, retail food, service, steel, and trucking/transportation. The NCCMP's purpose is to assure an environment in which multiemployer plans can continue their vital role in providing retirement, health, training, and other benefits to America's workers and their families.

The NCCMP is the only national organization devoted exclusively to protecting the interests of the job-creating employers of America, their labor partners, and the more than twenty (20) million active and retired American workers and their families who rely on multiemployer retirement and health and welfare plans. As such, the NCCMP is uniquely positioned to advocate on behalf of multiemployer plans, associated employers and unions, participants and beneficiaries, and plan professionals to strengthen and preserve the multiemployer benefits system.

Summary of Comments

The NCCMP generally supports the changes proposed in the NPR regarding permitted investments by plans that have received Special Financial Assistance ("SFA Plans"). We agree that these changes will streamline and simplify the process of making certain investment decisions without compromising the safety and security of plan investments. Nevertheless, the NCCMP requests additional clarification on what constitutes an "investment grade" security. The NCCMP also supports the PBGC's selection of the relevant date for determining whether a withdrawal liability settlement exceeds the threshold for requiring PBGC approval. The NCCMP does, however, have concerns with the elimination of the ability of plans to reallocate contributions towards health coverage under limited circumstances, as determined by the PBGC.

Background

NCCMP was instrumental in the passage of the Multiemployer Pension Reform Act of 2014 and served as a resource to Congress for many years leading up to the enactment of the Special Financial Assistance ("SFA") Program because of its depth of knowledge regarding multiemployer pension plans. NCCMP provided technical support to members of Congress and their staffs in their efforts to enact the SFA Program. Since its enactment, NCCMP has also provided its recommendations, advice, and support to the agencies charged with the implementation of the SFA Program, and continues to support the efforts of the agencies, most notably of the PBGC, to continue to administer the Program in the manner that Congress intended. Because of the hard work of the PBGC and the care it has taken in the administration of the Program, the hard-earned benefits of over 1.8 million participants and their dependents and survivors have been protected.[1]

To date, the PBGC has paid or committed approximately $78 billion in distributions to the SFA Plans, with applications for an additional $568.75 million under review. Even under the most extreme scenario, the total amount distributed under the program will come in at approximately $84.15 billion.[2] This is nearly $2 billion less than the amount originally estimated to be distributed under the program, as scored by the Congressional Budget Office ("CBO"),[3] and $6.25 billion less than the revised CBO estimate of $90.4 billion prepared following the adoption by the PBGC of its final regulations.[4] These numbers do not reflect that a portion of this amount—several hundred million dollars—was or will be retained by the PBGC as reimbursement for amounts previously

1 *Full List of Applications*, August 7, 2026, downloaded August 7, 2026, from https://www.pbgc.gov/sites/default/files/documents/sfa-application-status-current.xlsx.

2 This figure includes the estimated $6 billion dollars that could potentially result from the awarding of SFA to all plans that terminated by mass withdrawal prior to 2020, reduced by the amount requested by the Bakery Drivers Local 550 and Industry Pension Fund, which is included in the Amounts under Review. *Ibid.; Recent Court of Appeals Ruling May Cost Taxpayers Approximately $6 Billion More in Special Financial Assistance than Originally Projected,* PBGC Office of Inspector General, June 16, 2025, downloaded August 7, 2026, from https://www.oversight.gov/sites/default/files/documents/reports/2025-06/SR-2025-09.pdf.

3 *Reconciliation Recommendations of the House Committee on Ways and Means,* Congressional Budget Office, February 17, 2021, p.17, downloaded August 8, 2026, from https://www.cbo.gov/system/files/2021-02/hwaysandmeansreconciliation.pdf.

4 Letter from Phillip L. Swagel, Director, Congressional Budget Office, to Hon. Virginia Foxx and Hon. Jason Smith, *Effect of the Pension Benefit Guaranty Corporation's Final Rule on Special Financial Assistance* (September 30, 2022), downloaded August 8, 2026, from https://www.cbo.gov/system/files/2022-09/58540-PBGC.pdf.

expended under the Financial Assistance Program.[5] In exchange for this investment, significantly greater losses have been prevented. In addition to saving the benefits of the affected participants as well as their continued payment of federal and state taxes on their benefits, the thoughtful implementation and ultimate success of the SFA Program has prevented thousands of corporate bankruptcies and other insolvencies of the contributing employers that would have resulted from the failure of the troubled plans rescued by the SFA Program. The resulting loss of tax revenues, the state and federal public assistance costs that would have resulted from the 98% loss of pension income to the participants in the recipient plans, as well as the governmental financial impacts from the unemployed former workers of the insolvent employers, was estimated in 2019 to exceed \$330 billion (net present value 2018-2048) to the U.S. government alone.[6]

Specific Comments on Rule

1. <u>Permitted Investments</u>

The PBGC's decision to codify in its regulations the guidance it has issued on permissible investments is welcome. It has provided SFA Plans with a greater level of certainty than could be provided through sub-regulatory guidance. Nevertheless, serious ambiguities remain. Most notably, although the requirement that permitted investments be "investment grade" is consistent with the language of the statute,[7] it is also inherently ambiguous. As the PBGC noted in its earlier guidance:

> *What do terms like "investment grade," fixed rate," "debt security," "leverage," and "common stock" mean in the context of permissible investments for SFA?*

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[5] *Full List of Applications*, SFA Approved Page, cell J3 ("Final SFA Amount Approved Including Interest and FA Loan Repayments") (Footnote omitted); *PBGC 2023 Annual Report*, pp. 39, 65, downloaded August 8, 2026, from https://www.pbgc.gov/sites/default/files/documents/pbgc-annual-report-2023.pdf ("For an insolvent, but not yet terminated, plan that has an obligation to repay traditional financial assistance under Section 4261 of ERISA, PBGC will issue two disbursements. The first disbursement will be a transfer to the plan to cover future benefit payments requested in the plan's SFA application. The second disbursement reimburses PBGC for the loan amount of traditional financial assistance (includes premium waivers and interest) previously provided.").

[6] *The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis*, Hearing of the U.S. House Committee on Education and Labor, Subcommittee of Health, Employment, Labor and Pensions, March 7, 2019, Mariah M. Becker, MAAA, EA, ACA on Behalf of The National Coordinating Committee for Multiemployer Plans. See https://edworkforce.house.gov/uploadedfiles/mariah_becker_-_testimony.pdf.

[7] As stated in the statute:

Special financial assistance shall be invested by plans in investment-grade bonds or other investments as permitted by the corporation.

Section 4262(l) of the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"), 29 U.S.C. § 1432(l).

> In general, PBGC believes the meaning of these terms is well understood by sophisticated investors. However, "investment grade" is defined in particular in § 4262.14 of the SFA regulation as "securities for which the issuer (or obligor) has at least adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure." ***The definition of "investment grade" is not based on credit ratings because the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) prohibits the use of credit ratings in federal regulations.***[8]

The definition of "investment grade," which remains unchanged from the original final regulation, is:

> Investment grade means securities for which the issuer (or obligor) has at least adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure. For purposes of this paragraph (f), adequate capacity to meet financial commitments means that the risk of default by the issuer (or obligor) is low and the full and timely repayment of principal and interest on the security is expected.

29 C.F.R. § 4262.14(f). Although this definition is consistent with the definitions adopted by other U.S. government agencies and instrumentalities, it is imprecise. For this reason, the provision of examples by the PBGC is particularly useful, perhaps using the well understood meaning of investment grade by sophisticated investors through the common investment grade ratings employed the Nationally Recognized Statistical Rating Organizations ("NRSRO's") registered with the U.S. Securities and Exchange Commission. Additionally, an example of split ratings where one NRSRO maintains a well understood definition of an investment grade rating on a particular security while a second NRSRO maintains a well understood definition of a non-investment grade rating on that same security would be helpful. That example would express the PBGC's view on whether every NRSRO's rating of a particular security must be investment grade or if one is sufficient. In any event, we would encourage the PBGC to work with the other regulatory agencies, particularly those that regulate securities or banking, to establish clearer definitions of what constitutes an investment grade security.

As the PBGC correctly notes, investment in certain unregistered securities by pension plans is not uncommon. Therefore, The PBGC's decision to permit SFA Plans to invest in specified types of unregistered securities, provided they are investment grade, is beneficial. Similarly, as the PBGC notes, derivatives (*i.e.,* futures and similar instruments), when used without leverage and fully supported by cash or cash equivalents, are a common method for mimicking the performance of the actual securities. The use of such derivatives during transitional periods *(e.g.* when a large

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[8] PBGC American Rescue Plan Act ("ARPA") FAQs, Permissible Investments, https://www.pbgc.gov/arp-sfa/faqs#permissibleinvestments, viewed August 7, 2026 (emphasis added); *see* Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (July 21, 2010) ("Dodd-Frank"), 15 U.S.C. § 78o-7 note.

holding of permissible securities is sold in order to buy replacement securities) is a safe, effective, and common means of remaining fully invested and avoiding periods of being out of the market. The modification of the existing regulation to explicitly permit SFA Plans to engage in this practice will remove any remaining ambiguity in the law regarding its use.

2. Conditions on Withdrawal Liability Settlements

The PBGC's decision to use the last day of the plan year preceding the year of an employer's withdrawal as the measurement date for determining whether a withdrawal liability settlement exceeds the $50 million threshold requiring PBGC approval also makes sense on several levels. First, as noted by the PBGC in the preamble to the NPR, this date coincides with the latest measurement date for determining the amount of an employer's withdrawal liability. Thus, using the same date for both purposes simplifies the process of determining the valuations relating to the settlement since the data underlying the calculation should be readily available.

Perhaps more importantly, as also noted by the PBGC, selecting a later date could delay the determination as to whether PBGC permission is required. There will be some cases where the timing of a settlement is critical, and unnecessary delay may scuttle what may be a favorable settlement for the SFA Plan.

For the same reason, in those cases where PBGC permission is required, it is important that the PBGC issue its determinations regarding such settlements expeditiously. We suggest that the PBGC adopt a 60-day timeline for issuing these determinations.

3. Reallocation of Contributions

As the PBGC noted in the preamble to the final regulation, there are circumstances where unanticipated increases in medical costs may call for a reallocation of pension contributions from a pension plan to a related health plan.[9] For that reason, the final regulation permitted a *limited* reallocation of pension contributions under specified conditions designed to prevent harm to both the SFA Plan and to the PBGC guarantee fund. Furthermore, no such reallocation could occur without the PBGC's express authorization. We believe that the PBGC's original determination was meritorious and ask that this very limited exception to the prohibition on the reallocation of contributions be retained.

Summary and Conclusion

The NCCMP generally supports the changes to the SFA regulations proposed by the PBGC in the NPR. As discussed above, we ask, for more clarity on what constitutes an "investment grade" security, including the issue presented by split ratings. We also ask that the PBGC adopt a timeline for making determinations regarding large settlements of withdrawal liability, and that it retain the

[9] 87 Fed. Reg. 40993 (July 8, 2022).

existing limited, conditional exception to the general prohibition on the reallocation of contributions.

In making these comments, the NCCMP wishes to acknowledge the hard work and dedication by the PBGC and its leaders and other personnel in implementing the SFA program. We look forward to continuing to work with the PBGC on these matters.

Regards,

Michael D. Scott
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