PBGC
Protecting America's Pensions
Pension Benefit Guaranty Corporation
445 12th Street SW, Washington, DC 20024-2101

February 9, 2024

The Honorable Virginia Foxx
Chairwoman
House Committee on Education and Workforce
Washington, DC

The Honorable Bob Good
Chairman
House Subcommittee on Health, Employment, Labor, and Pensions
Washington, DC

Dear Chairwoman Foxx and Chairman Good:

Thank you for your January 16, 2024, letter regarding the Pension Benefit Guaranty Corporation's (PBGC) Special Financial Assistance (SFA) Program. Your letter was forwarded to the Legislative Affairs Office for a response.

The American Rescue Plan (ARP) Act of 2021 created the Special Financial Assistance (SFA) Program to address a long-running insolvency crisis in the multiemployer pension plan system. The SFA Program will help ensure that millions of America's workers, retirees, and their families facing benefit cuts will receive the full pension benefits they earned through many years of hard work.

Prior to enactment of ARP, PBGC's Multiemployer Insurance Program had a *negative* net position of $63.7 billion and was projected to run out of money in FY 2026, when the cumulative effect of multiemployer plan insolvencies would have ultimately exhausted the PBGC's trust fund.

PBGC, working closely with its Office of Inspector General (OIG), moved expeditiously and rigorously to implement this unprecedented program. Consistent with its statutory charge, PBGC's SFA program allows eligible plans to receive sufficient funds such that they would project maintaining their solvency through 2051 – an inherently complex and uncertain proposition. PBGC's final rule provides consistent procedures for plans to apply and parameters for their application, including the actuarial analysis underlying the amount requested.

In addition to its collaboration prior to issuing the final rule, PBGC has continued to work closely and cooperatively with PBGC's OIG to identify and implement ongoing improvements to the SFA Program. For example, as discussed in more detail below, PBGC has addressed OIG's concerns by enhancing its review of the census data of plans applying for SFA by amending its agreement with the Social Security Administration (SSA) to take full advantage of SSA's proprietary Death Master File (DMF).

As further background, the SFA Final Rule was published in the Federal Register on July 8, 2022,[1] to which PBGC added a requirement for plans applying for SFA to provide documentation of a death audit performed by the applicant plan to identify deceased participants.

On August 12, 2022, the Central States, Southeast and Southwest Areas Pension Fund (Central States) submitted a revised application under PBGC's SFA Final Rule. The SFA Final Rule requires that plans with 350,000 or more participants, such as Central States, submit the census data the plan used in developing the cash flow projections included in the application.

On December 5, 2022, PBGC approved the Central States' SFA application and authorized payment of $35.8 billion to Central States, providing them with sufficient assets to project solvency through 2051. Payments under SFA are made to plans, not to any individuals (whether living or deceased). Central States then became responsible for paying benefits to its eligible participants and beneficiaries in accordance with its plan terms, using plan funds, including SFA assets.

On March 22, 2023, OIG issued its Report: PBGC Should Exclude Deceased Terminated Vested Participants from SFA Calculations (EVAL-2023-05) to assess whether SFA applications may have inadvertently included any deceased participants in the terminated vested populations (TVs) used in the plan's projections of how much funding they would require to remain solvent until 2051.

In response to the March 22, 2023 OIG Report, and after consultation with the OIG, in an effort to further refine its processes, on April 21, 2023 PBGC began conducting independent death audits on census data for TV participants using the SSA DMF as part of its application review process for all new applications. PBGC also sent instructions to plans with pending applications that had 120-day review deadlines after May 15, 2023, requiring submission of TV census data so that PBGC could perform an independent death audit using the SSA DMF. As noted by the OIG in a later, November 1, 2023 Report, "This recommendation did not apply to Central States due to the timing of the application." After PBGC implemented these enhanced procedures, OIG closed its recommendation.

As part of its ongoing collaboration with the OIG, PBGC then took several other steps to reduce risk, including updating application instructions to include detailed guidance on how deceased participants should be handled by plans; and requiring applicants to certify that the results of death audits are reflected in SFA calculations.

On September 14, 2023, OIG provided PBGC with a draft management alert, which OIG formally issued on November 1, 2023, as Management Alert: Deceased Participants in the Central States' Special Financial Assistance Calculation (Report No. EVAL-2024-01). This alert recommended that PBGC expand the scope of its independent death audit to include all participant categories and that PBGC modify SFA application review procedures by cross-checking the plan's census data against the SSA DMF.

[1] 87 Fed. Reg. 40968 (2022).

On October 17, 2023, PBGC agreed with the OIG's recommendation and implemented the change for all future SFA applications as well as for all applications then under PBGC review. As a result, all PBGC SFA approvals made after November 1, 2023, incorporate the results of the expanded SSA DMF cross-checking of the plan's census data and adjust the plan's application to reflect any deceased participants identified by PBGC when calculating the amount of SFA requested in its application. PBGC applied this recommendation to all pending applications at the time as well. Further, the OIG did not recommend PBGC take any further action with respect to the Central States application or SFA payment.

After consulting with the OIG about their response to the OIG's November 1, 2023, report, PBGC began running a death match on the participant census data for all SFA applications and requires plans to adjust their applications for identified deceased participants when calculating the amount of SFA requested in their applications. To be clear, PBGC did not make any payments to deceased individuals, and no OIG report has alleged that it has.

PBGC understands the importance of effective stewardship of taxpayer funds, and has made multiple improvements to the SFA program to further that goal. PBGC supports repayment of any material SFA amount that was paid based on inaccurate census data. While PBGC does not have authority under the SFA Program to recover funds paid based on the use of reasonable actuarial assumptions relying on the final rule, it continues to explore any potential mechanism for recovery with executive branch partners. PBGC would also support legislation to enhance its recovery authorities for the SFA program and stands ready to provide technical assistance on any such proposals.

PBGC continues to value our strong partnership with the OIG. PBGC has worked closely with the OIG since enactment of ARP to improve data collection and accuracy and swiftly implement OIG recommendations. We will continue to coordinate with PBGC's OIG to further strengthen the stewardship of the SFA Program.

Sincerely,

Gail Sevin

Gail Sevin
Manager, Legislative Affairs Division