

August 11, 2021

Pension Benefit Guaranty Corporation
Regulatory Affairs Division
Office of the General Counsel
1200 K Street NW,
Washington, DC 20005-4026

Re: RIN 1212-AB53 - Special Financial Assistance by PBGC

To Whom It May Concern:

The ERISA Industry Committee (ERIC) is pleased to respond to the request of the Pension Benefit Guaranty Corporation (PBGC) for feedback on the Interim Final Rule on Special Financial Assistance by the PBGC (the Interim Rule), which was published in the Federal Register on July 12, 2021.¹ This Interim Rule sets forth the requirements for special financial assistance applications and related restrictions and conditions pursuant to the American Rescue Plan Act of 2021 (ARPA).

ERIC is a national advocacy organization that exclusively represents large employers that provide health, retirement, paid leave, and other benefits to their nationwide workforces. Our member companies are leaders in every sector of the economy, with stores, warehouses, factories, and operations in every state. ERIC is the voice of large employer plan sponsors on public policies impacting their ability to sponsor benefit plans for active and retired workers, as well as families. Our member companies tailor retirement, health, and compensation benefits to meet the unique needs of their workforces. We have a strong interest in policies that impact the ability of large employers to provide effective and cost-efficient retirement and health care programs to millions of workers, retirees, and their families. As such, ERIC has a vested interest in the Interim Rule and is well-positioned to provide helpful information from the perspective of large plan sponsors most affected by the Interim Rule.

The purpose of ARPA was to ensure the solvency of the multiemployer pension plan system. One of the primary pieces of the legislation is the provision of Special Financial Assistance to allow eligible plans to remain solvent through 2051. We are concerned that some of the requirements in the Interim Rule will sabotage the ability of plans to remain solvent for the expected amount of time. Our recommendations are meant to bring the Interim Rule in alignment with the intended purpose of ARPA.

¹ 86 Federal Register 36598, July 12, 2021.

The Final Rule Should Remove Investment Restrictions on Special Financial Assistance. The Interim Rule generally restricts a plans' investment of special financial assistance to investment grade corporate bonds, which are currently approximately three percent less than the discount rate the PBGC intends to use (approximately 5.5 percent currently) to calculate the amount of assistance it would provide. Although the PBGC recognizes this difference is a problem, it asserts that it is required by ARPA to use the higher discount rate.

As a rule of thumb, actuaries estimate that a plan's liability increases 13-15 percent per each one percent decrease in the discount rate. Consequently, if the discount rate were decreased three percent so that the expected rate of return on the PBGC's financial assistance and the PBGC's discount rate was the same, a plan's liability would increase by 39-45 percent. This means PBGC's financial assistance would be 39-45 percent less than necessary to have a plan remain solvent through its 2051 plan year.

Therefore, the PBGC should amend the Interim Rule to permit plans to invest the PBGC's financial assistance with the objective of earning the discount rate it uses to calculate the amount of financial assistance it provides. This will not only increase the benefit of the financial assistance but also reduce the incentive for plans to take on additional risk in investing their own assets to try to remain solvent through 2051.

The Final Rule Should Provide a More Flexible Test for Requiring Documentation and Information Regarding Contributions. In the application for special financial assistance, a plan must use the same assumptions, aside from the interest rate assumption, that are used to certify the plan's zone status prior to January 1, 2021. The PBGC is required to accept a change in an assumption unless it determines the change is unreasonable. These assumptions include the amount of contributions the plan will receive through the 2051 plan year. Contributions are made up of the rate of contributions multiplied by the amount of contribution base units ("CBUs"). The Interim Rule permits the actuary to choose the assumptions for contribution rates and CBUs based on information provided by a plan's trustees in good faith.

However, the requirement for changing contribution assumptions under the Interim Rule may be difficult for plans to provide. Rather than looking at projections based on reasonable assumptions, the Interim Rule requires data based on historical information. The Interim Rule bases the default assumption for a contribution rate increase on the last contribution rate increase in the applicable collective bargaining agreement and assumes that it will apply each year through the 2051 plan year. Given the high cost of pension contributions, it is unreasonable to assume that pension contributions will keep increasing at the rate set in the last year of some collective bargaining contracts. Therefore, the Final Rule should allow more flexibility in contribution assumptions for plans.

The Final Rule Should Adopt a Reasonableness Standard for Documentation. We recommend that the PBGC use a reasonableness standard requesting to change assumptions, given the fact that plans and the PBGC will need to project what will occur in the next 30 years. The PBGC's failure to adopt a reasonableness standard will undermine Congress' mandate to provide sufficient assistance for eligible plans to remain solvent through their 2051 plan year.

ERIC appreciates the opportunity to provide comments on special financial assistance. If you have any questions concerning our comments or be of further assistance, please contact us.

Sincerely,

A handwritten signature in cursive script that reads "Aliya Robinson". The signature is written in a dark ink and is centered horizontally below the word "Sincerely,".

Aliya Robinson
Senior Vice President
Retirement and Compensation Policy