

New York State Teamsters Conference Pension and Retirement Fund

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Via Electronic Mail (reg.comments@pbgc.gov)

Regulatory Affairs Division
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005
Attn: Daniel S. Liebman, Esq., Deputy General Counsel

Re: Comments on PBGC Interim Final Rule Related to Special Financial Assistance
(RIN 1212-AB53)

Dear Mr. Liebman:

The following comments concerning PBGC's Interim Final Rule Related to Special Financial Assistance (RIN 1212-AB53) (the "IFR") are submitted on behalf of the Board of Trustees ("Trustees") of the New York State Teamsters Conference Pension and Retirement Fund ("New York State Fund"). The Trustees are particularly concerned with the following: (1) the manner in which special financial assistance ("SFA") is calculated for funds that have implemented benefits suspensions under the Multiemployer Pension Reform Act of 2014; (2) the Interim Final Rule's requirement that funds receiving SFA invest one year of benefit payments and administrative expenses in "permissible investments"; and (3) the PBGC's apparent determination that the restoration of benefits for dependents of deceased participants will not include the deceased participant's suspended benefit. The Trustees respectfully submit the following for the PBGC's consideration.

Background

The New York State Fund is a multiemployer defined benefit pension plan covering approximately 34,000 participants, most of whom are located across upstate New York. The New York State Fund was certified as being in critical and declining status for the 2016 plan year under the Pension Protection Act of 2006 ("PPA") and at the time was projected to go insolvent by 2026 or 2027. The New York State Fund subsequently applied, pursuant to Section 305(e)(9) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Multiemployer Pension Reform Act of 2014 ("MPRA"), for benefit suspensions designed to prevent that insolvency. The U.S. Department of Treasury, in consultation with the U.S. Department of Labor and PBGC, approved the application, which provided for benefit reductions of 29% for retirees and terminated vested

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participants and 18% for active participants effective October 1, 2017. The New York State Fund is the largest fund to have received approval for benefit suspensions under MPRA.

These benefit suspensions were intended to promote the long-term solvency of the New York State Fund and, combined with positive investment returns, have had that effect. Indeed, the New York State Fund no longer is projected to go insolvent and has had a positive financial trajectory since the suspensions went into effect. The New York State Fund has emerged from critical and declining status and, as of January 2020, was more than 56% funded. The Trustees recognize, however, that the impact of the benefit suspensions on participants has been significant.

Calculation of SFA for MPRA Suspension Funds

The New York State Fund Trustees believe it is imperative that funds with MPRA suspensions in effect not be placed in a worse or more vulnerable financial position by virtue of accepting SFA and restoring benefits. In developing their MPRA applications, the New York State Fund and other funds that suspended benefits under MPRA worked arduously, utilizing the process established by the Department of Treasury, to implement benefit reductions that were the minimum necessary to avoid insolvency. Because of the hard decisions the Trustees made in applying for and implementing MPRA suspensions, the New York State Fund is now on the road to long-term solvency.

In passing the American Rescue Plan Act (“ARPA”), Congress made clear its intent to enable the restoration of benefits for those participants and beneficiaries affected by MPRA suspensions. This is a laudable purpose that the New York State Fund’s Trustees have advocated for and fully supported. The New York State Fund does not believe, however, that Congress intended for benefit restorations to come at the expense of the financial stability and long-term financial health of the fund. Nor was the receipt of SFA intended to put a fund in a worse financial position.

Unfortunately, calculating SFA in the manner set forth in the IFR would have this result for many – if not all – funds with MPRA suspensions in place. The New York State Fund is no exception and anticipates being eligible for an SFA amount that is less than the present value of the benefits it would be required to restore by accepting relief. This will put the New York State Fund in a worse financial position than it is in today, with increased long-term solvency risk and less ability to withstand unfavorable market conditions. This risk to MPRA suspension funds’ long-term solvency is exactly what MPRA and the benefit suspensions approved thereunder were designed to avoid.

The New York State Fund’s approved MPRA application projected that the Fund would be solvent in 2051 and beyond. Treasury approved the benefit suspensions in the amounts needed to obtain that result. The calculation of SFA outlined in the IFR disregards this prior determination and focuses instead on the amount necessary for funds to pay benefits through 2051, without regard to whether it is solvent at the end of 2051. This

approach ignores the unique circumstances facing MPRA suspension funds like the New York State Fund, which already are on the road to long-term financial stability.

The trustees of MPRA suspension funds will be placed in an exceedingly difficult position as a result. Specifically, trustees will have to choose between taking SFA and implementing near-term benefit restorations or declining SFA to better preserve a fund's long-term financial health. The New York State Fund Trustees do not believe that Congress intended for ARPA to put trustees in such a predicament, potentially pitting the interests of retirees against those of active participants. Funds that have implemented benefit suspensions should be permitted to restore benefits to those participants and beneficiaries who have had their benefits suspended without jeopardizing the fund's financial health and long-term solvency.

Accordingly, the New York State Fund Trustees encourage the PBGC to provide SFA to funds that have implemented MPRA benefit suspensions in an amount at least equal to the value of the benefit restorations on a present value basis. This approach effectively would at a minimum substitute SFA for the MPRA suspensions on a one-for-one basis, keeping these funds at least whole in the process and promoting their long-term solvency.

Restrictions on the Investment of Plan Assets

Under § 4262.16(c) of the IFR, funds would be required during the SFA coverage period to invest plan assets, including SFA, sufficient to pay one year of projected benefit payments and administrative expenses in "permissible investments." This generally is defined under § 4262.14 as investment grade fixed income securities. This requirement will exacerbate the "negative arbitrage" issue identified by other commentators, where liabilities are valued for purposes of calculating SFA at a rate that currently is just under 5.5% and where "permissible investments" are expected to generate returns of less than 3%. Investment grade bonds are, for example, projected to return less than 2% over the next 20 years according to some projections. This in turn will negatively impact the ability of funds receiving SFA to withstand market down-turns and to remain solvent long term.

This problem is particularly acute for the New York State Fund, which would be required under the IFR to maintain more than \$300M in fixed income securities in some years. This represents a meaningful increase in the Fund's portfolio allocation to that type of investment, and will only increase on a percentage basis over time as the Fund's overall balance declines. The result would be an ongoing reduction in overall portfolio investment returns and would hamper the New York State Fund's ability to recover from market fluctuations.

PBGC specifically has requested comment on whether "an alternative condition, or modification of the condition under § 4262.16(c), would better achieve the objective of preventing excessive risk-taking by plans while allowing plans to meet their investment objectives." The requirement under § 4262.16(c) is likely to encourage more, not less,

risk-taking among the unrestricted portions of investment portfolios, as trustees attempt to structure investments that will at least provide funds a chance to avoid insolvency. As such, the effect of § 4262.16(c) is likely to be the opposite of its intended consequence. The requirement also will diminish the ability of many funds to secure long-term solvency in connection with the receipt of SFA. Accordingly, the Trustees encourage the PBGC to abandon the requirement under § 4262.16(c).


Benefit Restorations for Surviving Spouses & Dependents

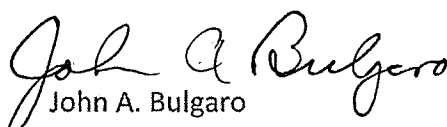
In connection with § 4262.15 of the IFR, it appears that PBGC has taken the position that the restoration of “previously suspended benefits” for surviving spouses (or other dependents) of a deceased participant will not include a make-up payment of the deceased participant’s suspended benefit. If a participant whose benefits were suspended under MPRA dies before benefits are reinstated, the surviving spouse or other dependent of the participant will only be entitled to reinstated benefits on a prospective basis. The surviving spouse or other dependent will not be entitled to payment of the suspended portion of the deceased participant’s benefit.

This would be an inequitable result for the families of participants who have suffered the effects of benefit suspensions and is inconsistent with ARPA’s goals. The Trustees therefore urge PBGC to include the full retroactive payment of suspended benefits to participants’ surviving spouses (or other dependents) as part of any reinstatement and/or confer with the Secretary of the Treasury to clarify the guidance on this issue set forth in IRS Notice 2021-38.

Thank you for your consideration and attention to these important issues.

Sincerely,


Michael S. Scalzo, Sr.
Employer Co-Chairman


John A. Bulgaro
Labor Co-Chairman