

# JUST THE FACTS

## Special Financial Assistance Guidance Issued by the PBGC

### Background

The PBGC administers a Multiemployer Insurance Program under Title IV of ERISA. In recent years, the sustainability of this insurance program became challenged as many multiemployer plans faced the prospect of insolvency.

The American Rescue Plan Act of 2021 (the “Act”) creates a Special Financial Assistance (“SFA”) program to ensure the solvency of severely underfunded multiemployer plans by providing a lump-sum payment allowing plans to pay all benefits through the plan year ending in 2051. This funding is not a loan and there is no requirement to pay back any financial assistance received by the plans. However, there are restrictions on how this money can be invested.

The PBGC published its Interim Final Rule on July 9, 2021, and established a 30-day comment period. The rules outline who is eligible for assistance, when plans can file for assistance, how much assistance will be provided, etc. The following is a summary of these interim final rules.

### Eligibility

A multiemployer plan must satisfy one of the following to be eligible for SFA:

- Plan certified as “Critical and Declining” status in any plan year beginning in the period 2020 through 2022;
- Plan had been approved for a suspension of benefits under MPRA as of the Act’s effective date (March 11, 2021);
- Plan (a) certified as “Critical” in any plan year beginning in the period 2020 through 2022, (b) has a current liability funded percentage of less than 40%, and (c) has a ratio of active to inactive participants less than 2:3; or
- Plan became insolvent after December 16, 2014, remains insolvent, and has not been terminated as of the Act’s effective date (March 11, 2021).

Plans that terminated by mass withdrawal prior to March 11, 2021, are not eligible for SFA.

The Act also allows the PBGC to give priority consideration to certain plans. The PBGC established the following priority groups for filing their applications to receive SFA.

<b>Priority Group</b>	<b>Description of Priority Group</b>	<b>Date Plans May Apply for SFA</b>
1	Plans already insolvent or projected to become insolvent before March 11, 2022	Beginning on July 9, 2021
2	Plans that implemented a benefit suspension under section 305(e)(9) of ERISA as of March 11, 2021 Plans expected to be insolvent within 1 year of the date an application for SFA is filed	Beginning on January 1, 2022, or earlier date specified on PBGC's website
3	Plans in critical and declining status that had 350,000 or more participants	Beginning on April 1, 2022, or earlier date specified on PBGC's website
4	Plans projected to become insolvent before March 11, 2023	Beginning on July 1, 2022, or earlier date specified on PBGC's website
5	Plans projected to become insolvent before March 11, 2026	Date to be specified on PBGC's website at least 21 days in advance of such date, but no later than February 11, 2023
6	Plans for which PBGC computes the present value of financial assistance under section 4261 of ERISA to be in excess of \$1 billion (in the absence of SFA)	Date to be specified on PBGC's website at least 21 days in advance of such date, but no later than February 11, 2023
7	Additional plans that may be added by PBGC based on other circumstances similar to those described for priority groups 1-6	Date to be specified on PBGC's website no later than March 11, 2023

### Amount of Special Financial Assistance

An eligible plan will receive a one-time SFA payment from the PBGC within 90 days after its application is approved, equal to the amount necessary to ensure that the plan can pay all benefits due through the last day of its plan year ending in 2051.

The amount of SFA to be provided to a plan is generally equal to:

1. The amount of plan obligations, which is equal to the present value of benefits, including reinstatement (retrospective and prospective) of any MPRA-

suspended benefit amounts, restatement of any reductions (retrospective and prospective) from original plan benefits to PBGC-guaranteed benefit levels under plans currently receiving PBGC financial assistance, and the present value of administrative expenses; minus

2. The amount of plan resources, which is the current market value of assets and associated expected investment returns, plus the present value of future expected contributions, and including expected withdrawal liability receipts.

In addition, for multiemployer plans that have already received financial assistance from the PBGC (technically, in the form of loans), the SFA amount will include the amount of such loans owed to the PBGC.

The SFA amount will be adjusted for interest for the period from the filing date to the date SFA is received by the plan.

In determining the present value of the amounts above, the actuary will generally use the same assumptions as were used in the certification of the plan's status. However, the discount rate used is limited to the unadjusted IRS "third segment rate" for single-employer pension funding with respect to the month in which the application is filed or the three preceding months, plus 200 basis points in either case. Based on the current IRS segment rates, this would yield an interest rate of about 5.50%.

#### *Restrictions on the use of Special Financial Assistance*

The special financial assistance received must be segregated from other plan assets and must be invested in investment-grade bonds or other investments approved by the PBGC.

**FACT Insight:** Using a bond rate plus 200 bps to determine the amount of financial assistance and then requiring the investment to be invested in bonds may result in a long-term shortfall and the plan may run out of money prior to 2051 due to the inability to earn the bond rate plus 200 bps.

Also, the PBGC regulations do not address, and will therefore allow, plans to spend SFA money first, leaving their pre-existing assets to be invested untouched. Given the requirement that SFA must be invested in high-quality bonds, trustees may want to revise their overall investment allocations to account for this addition of fixed-income assets, although the regulations do not seem to require trustees to do so.

### PBGC Review of Plan Assumptions

In general, the PBGC will accept the assumptions used by a plan to determine eligibility for financial assistance unless the PBGC determines that such assumptions are clearly erroneous.

The PBGC will accept a plan's change in assumptions (other than the interest rate) unless the PBGC determines that a changed assumption is individually unreasonable or the proposed changes cause the assumptions to be unreasonable in the aggregate. If an assumption is changed, the application must describe why the original assumption is no longer reasonable and demonstrate that the proposed assumption is reasonable.

### Reinstatement of Benefits Previously Suspended

A plan that receives SFA must reinstate any benefits that were suspended for participants and beneficiaries effective as of the first month in which the SFA is paid to the plan. In addition, the plan must make payments equal to the amounts of benefits previously suspended to any participants or beneficiaries who are in pay status as of the date the SFA is paid.

The payment of previously suspended payments may be made in either:

1. A single lump sum paid no later than 3 months after the date the SFA is paid; or
2. Equal monthly installments over a period of 5 years, with the first installment paid no later than 3 months after the date the SFA is paid

**FACT Insight:** Regulations require a refund of prior suspended amounts to participants or beneficiaries who are in pay status on the date the SFA is received. So, if a participant (with no survivor benefits) had benefits suspended and died prior to the receipt of the plan's SFA award, that participant's estate would not receive any additional benefits. Any deaths of participants with survivor benefits that occurred between the time of a benefit suspension and an SFA award will require careful attention as to restoration of benefit payments over the months in between.

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