



August 11, 2021

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

Comments of the Construction Employers of America on the Pension Benefit Guaranty Corporation’s Request for Comments on the Interim Final Rule for the implementation of “Special Financial Assistance by PBGC” (RIN 1212–AB53)

To Whom it May Concern:

The Construction Employers of America (CEA) respectfully submits the following comments on the PBGC’s Interim Final Rule (IFR) for the Special Financial Assistance (SFA) by the PBGC and the impact this rule would have on contractors who are signatory to construction industry collectively bargained multiemployer plans.

The CEA is a coalition of the seven leading, national construction employer associations that collectively represent 15,000 signatory contractors employing more than 1.4 million skilled building and construction industry trades employees. The CEA works to strengthen the construction industry and advocates for the interests of construction employers who provide the best value to project owners through a highly productive, highly skilled workforce that earns fair wages and benefits.

Background

The efforts of many CEA employer associations to work with Congress, the federal pension regulators, and our labor partners to improve the stability of the multiemployer system pre-date the Pensions Protection Act of 2006. We have consistently emphasized that plans cannot exist unless contributing employers are viable. CEA member firms are contributing employers to hundreds of national and local multiemployer pension plans providing defined benefit pensions

to their employees. Many of our members serve as trustees to these plans. They have first-hand knowledge of the challenges facing these plans and the impact of these challenges on plan participants, contributing employers, and the construction industry.

Our members are committed to maintaining lifetime retirement security for their workers, while improving stability of the overall multiemployer pension system, and ensuring their businesses remain viable in the highly competitive construction market. Even before Congressional action, CEA members and their building and construction trade union partners worked together to improve the status of many multiemployer pension plans. These efforts have resulted in significant increases in employer pension contributions, lower retirement benefits of active plan participants, and the consolidation of some plans. These aggressive actions taken jointly by labor and management have also helped place many plans on the path to long-term sustainability. Undoubtedly, these actions have strengthened the retirement benefits of many plan participants. Yet multiemployer pension plan participants and contributing employers – even in healthy plans—face challenges to their long-term viability.

That is why we supported the inclusion of the SFA program in the American Rescue Plan (ARP) Act of 2021 (P.L. 117-2). The SFA is designed to provide troubled multiemployer pension plans a lifeline to restore plan solvency and protect the pension benefits of all multiemployer pension plan participants. We applaud the PBGC for moving quickly with this interim final rule and beginning the process of considering applications from severely underfunded pension plans. Implementation of the SFA should provide retirement security for participants in the more than 200 troubled plans in need of assistance and their more than 3 million participants. Aiding these plans will help stabilize the entire multiemployer system.

Concerns

While the SFA is an important tool for addressing the crisis facing many multiemployer pension plans, it will not solve all the problems facing the multiemployer pension system. The CEA will continue to advocate for additional Congressional action, such as the enactment of an alternative plan design option, to fully address the structural issues that created the need for the Special Financial Assistance program.

It is important that the SFA work for CEA members who contribute to insolvent plans but also for members who contribute to other plans and pay PBGC premiums. If the SFA does not work as intended, the consequences are dire for employers and participants in both failing and other plans that do not qualify for SFA.

CEA urges the PBGC to provide trustees flexibility to address the needs of plans and to carefully weigh the impact of the rules on all plan participants – both retirees and active participants. Specifically, we request that the PBGC not unduly limit the flexibility and options available to plan trustees to address plan deficiencies and solvency. This is especially true for trustees of MPRA-suspended plans under the conditions of the interim final rule. PBGC must give these plan trustees flexibility to avoid a situation where signatory contractors will be paying into plans on behalf of active participants that will likely experience funding shortfalls and become

insolvent before 2051. If trustees do not have the flexibility to avoid such scenarios, many employers will seek to withdraw from these plans. These withdrawals will hurt the active participants and the employers that remain in these plans. Therefore, we urge the PBGC to ensure that the final rule provides trustees the flexibility to address the interests of both current retirees and active participants, while ensuring that contributing employers and their active employees view it as rational to remain in these plans.

We also urge the PBGC to reconsider the IFR's interpretation limiting the SFA to the amount necessary to forestall plan insolvency only through 2051. This conservative approach will impact the long-term ability of plans to remain solvent and impact the multiemployer pension system as a whole. While the vast majority of construction industry plans will be able to meet their pension obligation and likely will not require SFA to remain solvent, even these healthy plans and their participants and signatory contractors could be negatively impacted by this interpretation.

The SFA was designed to address the projected insolvency of PBGC's Multiemployer Insurance Program by preventing failure of troubled plans and through the PBGC premium increases contained in the ARP. Unfortunately, the interpretation in the IFR to limiting the amount of SFA that can be provided to troubled plans, combined with discount rate assumptions and investment restrictions on SFC funds, could undermine the legislative intent of this program to provide eligible plans the amount of assistance necessary to provide all benefits for the next 30 years. Failure to provide the necessary amount of SFA to restore the most financially troubled plans to solvency will make it very unlikely that the PBGC's Multiemployer Insurance Program can remain solvent over this 30-year period, and the PBGC premium increases contained in the ARP will not be sufficient to address the solvency of the Multiemployer Insurance Program.

This could result in signatory contractors who pay into plans that are currently healthy on behalf of their employees to assume a substantial share of the cost of addressing the multiemployer pension crisis. Contractors have been and continue to be willing to provide a portion of the solution to this crisis but shifting a substantial portion of the risk and cost onto employers and plan participants will lead to the collapse of the entire multiemployer pension system. If this were to occur, the crisis would expand, and the Federal Government will end up bearing more costs.

Finally, the CEA urges the PBGC to provide additional clarity and guidance on the merging of SFA-eligible plans into healthier non-SFA plans. While plan mergers can be a way to protect the retirement security of participants in SFA-eligible plans, the lack of clarity in the IFR on how the SFA restrictions would apply to the merged plans could be an impediment to consideration of such mergers. Additional guidance on how the SFA requirements and conditions will apply to the non-SFA plans post-merger would be particularly helpful.

On behalf of the signatory contractors who provide employee retirement benefits through multiemployer pension funds, the CEA appreciates the PBGC expeditiously issuing this IFR implementing the SFA program. It is critical that the SFA be implemented to restore the most financially troubled multiemployer pension plans to solvency and strengthen the entire multiemployer pension system.

Thank you for your consideration and the opportunity to submit these comments.

Sincerely,

The Construction Employers of America

FCA International

International Council of Employers of Bricklayers and Allied Craftworkers

Mechanical Contractors Association of America

National Electrical Contractors Association

Sheet Metal & Air Conditioning Contractors National Association

Signatory Wall and Ceiling Contractors Alliance

The Association of Union Constructors

www.constructionemployersofamerica.com