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OFFICE OF THE INTERNATIONAL PRESIDENT

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Submitted via email to reg.comments@pbgc.gov

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

RE: Interim Final Rule on Special Financial Assistance by PBGC
Regulation Identifier Number 1212-AB53

To Whom It May Concern at the Pension Benefit Guaranty Corporation,

The International Association of Machinists and Aerospace Workers (IAMAW), a trade union representing over 600,000 active and retired members, appreciates the timeliness and consideration that the Pension Benefit Guaranty Corporation (PBGC) has given to publishing the Interim Final Rule (IFR) on the Special Financial Assistance (SFA) program that was established under the American Rescue Plan Act of 2021 (ARPA). As a trade union that is affiliated with seven multiemployer plans in the United States, two of which are currently eligible for the SFA program, we would like to submit comments on the IFR.

Overall, there are a few points in the interim regulations that we find positive, but also several areas of concern that we strongly hope that the PBGC will consider amending in its Final Rule.

SFA Calculation—Benefits and Liabilities

The IFR stipulates that the SFA is calculated as the amount by which the value of all plan obligations exceeds the value of all plan resources, as of the plan's SFA measurement date, and limited to the period through the plan year ending in 2051. Specifically:

- Obligations are calculated to include benefit payments to all current and future beneficiaries, administrative expenses, amounts to make up payments for participants with previous suspensions due to MPRA or insolvency, and prepayments for PBGC loans, through 2051.
- Plan resources include all current assets, future contribution payments, investment earnings, and future withdrawal liability payments.

The IAMAW is very concerned that the amount of each plan's SFA, under this calculation, will be insufficient to ensure long-term solvency, or even solvency through the year 2051. This is because the SFA calculation includes, on the resource side, all current assets plus all future contributions, but on the obligation side, future benefits only through 2051. Thus, there will likely be insufficient assets left in the fund to pay benefits beyond 2051.

The IAMAW believes that the PBGC should consider other ways to calculate the SFA amount, in order to better position plans for solvency through 2051 and later. Changes to the calculation could include:

- **Use a solvency projection beyond the year 2051.** This will help keep plans on a path toward greater long-term solvency after the calendar year 2051.
- **Disregard current plan assets in calculating the amount of SFA assistance.** This would give plans the ability to achieve greater investment earnings on their current assets, while using the SFA money to pay for current benefits and expenses.
- **Disregard future employer contributions in the SFA calculation.** Similar to disregarding current plan assets, this would give plans the ability to invest the future contributions and achieve more investment earnings over time. In addition, this would help plans maintain solvency in the event that employers choose to withdraw from the plan before 2051 (as the SFA calculation will have essentially already taken into account a zero contribution from these employers).

The IAMAW believes that it is well within the PBGC's authority to make these changes. The ARPA statute states that "The amount of financial assistance provided to a multiemployer plan eligible for financial assistance under this section shall *be such amount required for the plan to pay all benefits due* during the period beginning on the date of payment of the special financial assistance payment under this section and ending on the last day of the plan year ending in 2051…" [emphasis added]. There are no further restrictions on how to calculate the SFA delineated in the law.

SFA Calculation—Interest Rate and Interest Earnings

The IFR stipulates that, for purposes of determining the amount of SFA, the assumed interest rate is the lesser of: (1) the long-term interest rate used for funding standard account purposes in the most recent pre-2021 plan certification; and (2) the "third segment rate" in ERISA Section 303(h) plus 200 basis points, for one of three months preceding the plan's application.

The IFR also states that SFA money must be segregated from other plan assets and be invested in investment-grade bonds, fixed-income securities, or other commingled assets. (There is an exception that plans may hold up to 5 percent in investments that were considered investment grade at the time of purchase, but are no longer investment grade quality.) In addition, a plan receiving SFA money must hold at least one year of plan benefits and expenses in fixed income investments through 2051.

The IAMAW is highly concerned that a very large discrepancy exists between the interest rate assumed to be achieved when calculating the amount of SFA money a plan will receive (roughly 5.5% for most plans), and the interest that can actually be achieved on this money, once it is invested in these very restrictive asset classes (likely no more than 2.5% per year for most plans). If plans fail to meet their investment return assumptions year over year indefinitely—as is almost certain to occur, due to this discrepancy—then they will likewise be all but certain to be driven to insolvency well before 2051.

The intent of Congress in passing the ARPA was to ensure plans' solvency through 2051. The IAMAW is gravely concerned that this discrepancy between the interest rate assumption and actual earnings that can be achieved will all but ensure that plans will *not* be able to stay solvent until 2051.

It should be noted that it is highly possible that this discrepancy between the interest rate assumption and the achievable interest on SFA assets will have the most detrimental effect on plans most in need of assistance. That is, plans that are most in need are generally those for which the SFA funds will represent a larger proportion of total plan assets—and thus, these plans will have less of an ability to achieve the assumed (higher) investment returns, all else being equal. Surely the intent of Congress was to provide assistance to the most troubled plans first; and yet, the opposite could occur due to this interest rate discrepancy.

Indeed, the PBGC acknowledges concerns that its restrictions on investing SFA could have adverse impacts on plans' overall financial health, especially given historically low interest rates on fixed income securities. The PBGC writes in the IFR that it considers the investment restrictions set forth to be a "starting point," and is specifically seeking public input on refining these rules.

Given the PBGC's own concern about the adverse impact of this discrepancy on plans' health, the IAMAW strongly believes PBGC should consider two or both of the changes suggested below.

First, the Final Rule can modify the allowable interest rate to be used in the SFA calculation to something that more accurately matches with the actual investment earnings that are likely to occur. For example, a "Bifurcated Interest Rate" assumption—one rate for current assets in the plan (such as the pre-2021 certification rate), and a separate (lower) rate for the SFA assets—can be utilized. This will make plans better positioned to achieve their assumptions, and maintain better financial health.

The IAMAW believes that the PBGC has the authority to allow this. While the statute stipulates that pre-2021 certification assumptions should be used, it is also true that in their pre-2021 certifications, plans did not have SFA money, or any similar type of account, in which assets were mandated to be segregated and limited to certain asset classes. Thus, it is appropriate for the PBGC to allow a different investment return assumption for this new and unprecedented pool of money.

Second, the Final Rule can ease the restrictions on investments, so that plans have a greater ability to achieve a higher rate of return over time.

The IAMAW believes that the PBGC has clear and direct authority to do this, as PBGC discretion on this matter is clearly allowed in the language of the ARPA statute: "Special financial assistance shall be invested by plans in investment-grade bonds *or other investments as permitted by the corporation*" [emphasis added].

SFA Calculation—A Significant Unintended Consequence for MPRA Plans

The IAMAW has additional concerns for plans that have implemented MPRA cuts. As a result of the likely insolvency either before or soon after 2051, as discussed above, the regulations as written may result in plans that have suspended benefits under MPRA deciding they are better off ***not*** requesting the SFA. This is because plans that apply for the SFA must retroactively, and in perpetuity, restore all benefit cuts. However, if they go insolvent at a later date due to insufficient SFA funds, they will then be forced to cut benefits to the PBGC guaranteed level—which is a lower level than the MPRA cuts. Plans that maintain their MPRA suspension, on the other hand, may be able to pay the reduced level of benefits indefinitely, without SFA intervention.

The IAMAW believes this is highly problematic for two reasons. First, this was assuredly ***not*** the intent of Congress, who explicitly wrote provisions in the statute to reinstate the cut benefits. Second, and perhaps even more importantly, this could place plan trustees in a serious fiduciary quandary. Essentially, they may be forced to choose between reinstating current retiree benefits at the expense of longer term solvency (thereby potentially prioritizing current retirees over future retirees, who could see even more severe benefit cuts in the future), versus maintaining the MPRA cuts for current retirees in order to ensure longer term solvency (thereby potentially prioritizing future retirees over current retirees).

For all of these reasons stated above, the IAMAW strongly encourages the PBGC to reevaluate: (1) both the assets and liabilities to be used in the SFA calculation, (2) the investment assumptions that may be utilized, and (3) the allowable asset classes for SFA money to be invested, so that plans will be better equipped to maintain solvency through and beyond 2051.

Withdrawal Liability

Regarding calculations of withdrawal liability, the IFR stipulates the following:

- Future withdrawal liability calculations may include the SFA balance in the plan's assets (which will decrease the withdrawal liability calculation, all else equal).
- Future withdrawal liability calculations must be calculated using the mass withdrawal interest assumptions (i.e., a low interest rate, which will increase the withdrawal liability calculation, all else equal).
- Withdrawal liability settlements of more than $50 million require PBGC approval.

The IAMAW believes that the use of the mass withdrawal interest rate is a reasonable assumption, that will hopefully disincentivize employers from withdrawing.

We also believe that PBGC requiring approval of transactions over $50 million is a reasonable application of the PBGC's oversight authority.

However, it is concerning to the IAMAW that the PBGC would allow future withdrawal liability calculations to include SFA assets. This will artificially reduce the withdrawal liability amount that employers would owe, which could incentivize future withdrawals. In addition, ideologically, the IAMAW believes that it is an inappropriate use of taxpayer dollars to allow the SFA money to go toward employers reducing their obligations to plans that they have agreed to participate in—especially since withdrawing is to the detriment of both the affected workers and the remaining participants in the plan. Indeed, the PBGC affirmatively states in the IFR that "Payment of SFA was not intended to reduce withdrawal liability or to make it easier for employers to withdraw."

Overall, while we acknowledge that the PBGC's mandated low interest rate required for the calculation will increase the withdrawal liability amount (all else equal), it is not remotely certain that this will entirely offset the "savings" to employers for using SFA assets in the calculation as well.

Therefore, we urge the PBGC to disallow the use of SFA assets in the withdrawal liability calculation.

Timeliness of Applications

ARPA stipulates that the PBGC must make a determination of approval within 120 days from the date of application. The PBGC's IFR presented a prioritization schedule for application processing, the goal of which is to process the largest number of expected applications within the mandated 120 days, while avoiding both "floods" and droughts" in receiving applications. The PBGC states that the prioritization schedule is meant to prioritize the most impacted plans and participants first.

The IAMAW believes that the prioritization schedule makes sense, and commends the PBGC for thoughtfully making these considerations. However, we are a bit concerned that some plans may not be able to receive assistance until 2023. The longer that plans go without assistance, the worse financial position they are likely to be in. We encourage the PBGC to do all it can to increase staffing or devote more resources to this program to ensure more timely application processing.

Positive Rules that Should Remain

Finally, three points in the interim regulations that we find to be very positive are:

1. ***Future Employer Contributions.*** The IFR states that employer contribution rates must remain, for the full SFA period, at the rates per collective bargaining agreements in effect on March 11, 2021. Contribution decreases are only allowed if they reduce the risk of loss to participants and beneficiaries (for example, obviating a larger future benefit reduction). Changes of more than $10 million and 10% of contributions are subject to PBGC approval.

The IAMAW believes that this strong limitation on employer contribution decreases will help to ensure that SFA money is not inappropriately used to artificially save employers money. We also believe that, ideologically, it makes sense that employers must continue to pay for promised and future benefits per the terms that they have already agreed to in their collective bargaining agreements.

2. ***Timing of SFA payment.*** The IFR states that once applications are approved, SFA money will be paid within 60 days. The statute only requires that the money be distributed "as soon as practicable."

   Thus, the IAMAW appreciates the PBGC's effort to give itself a strict and timely deadline in this regard, as the quick turnaround on payments will help plans move toward a better financial position more quickly.

3. ***SFA Use.*** The IFR stipulates that SFA money can only be used to pay plan benefits and expenses. (It cannot, for example, be used to reduce future employer contributions.) It may be used before other plan assets for these purposes.

   The IAMAW believes that this will allow plans to stay more heavily invested in diverse asset classes, and hopefully receive a higher rate of return, especially in light of the fact that, as the IFR is currently written, SFA money can only be allowed in investment-grade bonds, fixed-income securities, or other commingled assets, which are likely to bear less interest, as we have previously discussed.

The IAMAW thanks the PBGC in advance for seriously considering these comments and suggestions, and hopes that changes will be made in the Final Rule in order to better equip plans to maintain solvency through and beyond 2051.

Sincerely,

Robert Martinez, Jr.
IAMAW INTERNATIONAL PRESIDENT