Summary of Special Financial Assistance Guidelines for *Troubled Multiemployer DB Pension Plans*

On July 9, 2021, the PBGC and IRS issued interim final rules addressing the Special Financial Assistance ("SFA") provisions from the American Rescue Plan Act ("ARPA") of 2021. Government funding of the SFA is anticipated to *provide* an estimated $94 billion in assistance to more than 100 eligible plans covering more than 3 million participants and *address* the solvency of the PBGC's Multiemployer Insurance Program.

For Troubled Multiemployer DB Pension Plans, these **interim rules** provide the necessary details for determining:

- **SFA eligibility and priority groups**
- The **amount of SFA funding** to request from the PBGC
- When and how to restore and refund any **benefit suspension amounts**
- **Filing for SFA**
- **How SFA funds can be invested and used**
- The **restrictions and conditions** that apply if SFA funds are received

Rael & Letson's summary of these interim rules and our observations follow.

SFA Eligibility and Priority Groups

Eligible Plans include those that satisfy any of the following criteria (using the 2020 PPA certification interest rate and other reasonable assumptions):

1. Plans in Critical & Declining Status in any plan year beginning in 2020 through 2022,

2. Plans that were approved for a benefit suspension pursuant to the MPRA application process as of March 11, 2021,

3. Plans certified in Critical Status in any plan year beginning in 2020, 2021 or 2022 with a current liability funded percentage of less than 40% as of the beginning of the plan year in 2020, 2021 or 2022 (per Form 5500 Schedule MB), and with an active to inactive participant ratio of less than ⅔ at plan year end in 2020, 2021 or 2022 (per Form 5500). Criteria can be met in different plan years, or

4. Plans that became insolvent after December 16, 2014 that remain insolvent but have not yet terminated as of March 11, 2021.

There is limited flexibility to change assumptions for the 2021 or 2022 certifications to influence eligibility. The PBGC has a list of pre-approved assumption changes; any other changes will need strong data support to be approved by the PBGC. The actuary is, however, permitted to select any current liability discount rate in the permissible range. Use of the lower end of the range will help some Critical Status plans meet the 40% current liability funded percentage requirement in criteria #3 above.

Rael & Letson Observations: Plans that are only Critical because of an election into that status are not eligible. Most all plans that are otherwise Critical for at least one of the three years will be eligible because of the ability to use different years to satisfy the other two criteria and to select the lower end of the current liability interest rate range.

The PBGC has created 6 *priority* filing groups for the most troubled plans and a 7th category for any similarly situated plans. The lower the priority group, the earlier a plan may file for SFA. The PBGC has established an earliest filing date for each priority group but applications may not be accepted if the PBGC queue would delay review of the application beyond 120 days. Priority group descriptions and target application dates follow:

Priority Group	Priority Group Description	Target Date Plan May First Apply for SFA
1	Insolvent plans or plans projected to be insolvent before March 11, 2022	July 9, 2021
2	Plans that implemented a benefit suspension by March 11, 2021 or are expected to be insolvent within one year of the date an application for SFA is filed	January 1, 2022 (PBGC may list an earlier date on its website)
3	Plans in Critical and Declining Status with 350,000 or more participants	April 1, 2022 (PBGC may list an earlier date on its website)
4	Plans projected to become insolvent between March 11, 2022 and March 10, 2023	July 1, 2022 (PBGC may list an earlier date on its website)
5	Plans projected to become insolvent between March 11, 2023 and March 10, 2026	TBD but at least 21 days in advance of a date no later than February 11, 2023
6	Plans the PBGC projects will need more than a present value exceeding $1 billion in financial assistance payments unless SFA is ordered	TBD but at least 21 days in advance of a date no later than February 11, 2023
7	Other plan types with similar circumstances that are added by the PBGC	TBD with date posted on PBGC website no later than March 11, 2023

Plans that are eligible for SFA that are not in these priority categories (i.e., eligible Critical Status plans) will not be eligible to file until after plans in the first 7 categories have an opportunity to file.

Rael & Letson Observations: Category 3 appears to only apply to Central States Teamsters. Plans that are eligible to file ahead of Category 3 should consider whether to do so or wait until after Central States has filed. Applications for Critical Status plans will not likely be accepted until as early as 2023.

<u>Amount of SFA Funding</u>

Under ARPA, the PBGC will receive special funding from the Treasury Department to be disbursed to Eligible Plans that complete the required application process. For Eligible Plans, the amount of SFA granted from the PBGC is the amount necessary to enable the plan to pay benefits to participants, without reduction, through the plan year ending in 2051. For plans that suspended benefits, the SFA amount must include the suspension make-up payments and future benefit restorations to pre-suspension levels.

The <u>amount of assistance</u> will generally be determined by the plan actuary using the 2020 certification assumptions except that the interest rate must be no greater than a defined bond rate for the month of the application filing date (or one of the 3 prior months) plus 2% (“SFA discount rate”). It is important to note that the SFA discount rate is the rate used in the initial application and will not change for any revision or re-filing. The PBGC may authorize requested changes to other 2020 assumptions (other than the discount rate) that are demonstrated to be no longer reasonable at the time of the application.

The SFA amount is equal to the discounted value as of the last day of the calendar quarter preceding the application date ("measurement date") of the annual cash shortfall from each future year through the plan year ending in 2051. Put another way, it's the difference between the present value of future benefit payments and expenses, reduced by the plan's assets and the present value of future contributions and withdrawal liability payments. The initial amount will be based on the actuary's asset projection starting with the market value of assets at the measurement date and projecting contributions, withdrawal liability payments, assumed investment income (using the SFA discount rate), benefit payments and operating expenses through the plan year ending in 2051. The final SFA amount will include interest from the SFA measurement date to the PBGC payment date using the SFA discount rate with adjustment for any loans owed to the PBGC for ERISA 4261 financial assistance.

Plans are not required to repay the financial assistance they receive from the PBGC.

Rael & Letson Observations: Application timing could greatly influence the SFA amount received largely due to market performance and SFA discount rate changes. The lower the SFA discount rate, the higher the SFA amount. Plans filing for SFA will want to review the accuracy of their assumptions for projecting each element of cashflow to obtain the fairest result and satisfy PBGC assumption standards. Preliminary indications are that scheduled Rehabilitation Plan contribution increases that were not reflected in the 2020 PPA certification of status are not reflected in SFA amount projections … a good result for plans that have deferred corrective actions. Examining a range of possible results is recommended to best analyze funding effects. Plans in the first 7 Priority Groups will likely find that SFA funds will improve the plan's funded position, but for some it may not be enough to forestall insolvency beyond 2051. The amount available to some eligible Critical Status plans may be little or nothing. Critical plans with this outcome are likely those that have *already established* corrective action that is projected to return the plan to the Green Zone. In contrast, Critical plans that have deferred contribution increases to the future and/or have plans that only Forestall Insolvency should find that SFA is available.

Benefit Suspension Amounts

Plans choosing to file for SFA that implemented benefit suspensions are required to restore benefits to their pre-suspension level and refund all previously suspended amounts (without interest). Make-up payments must commence within 3 months of the date SFA is received and can be made in either one lump sum or equal monthly installments over a period not exceeding 5 years (again without interest). Only make-up payments offered as a lump sum are eligible for rollover to a qualified retirement plan if the amount exceeds the greater of $750 or 10% of the annual annuity payment (after restoration to the pre-suspension benefit level). Amounts not rolled over are subject to withholding (20% for federal).

Rael & Letson Observations: The option offered by the Board for make-up distributions should consider the potential effects on plan funding and participants. It is not clear whether participants can be given the choice between lump sum or monthly make-up payments.

Filing for SFA

Applications for SFA must be submitted to the PBGC no later than December 31, 2025, and revisions requested by the PBGC must be submitted by December 31, 2026. Filings will require significant resources from plan professionals to meet PBGC filing requirements. Once filed, the PBGC has 120 days to determine if any application is incomplete or ineligible. If neither occurs an application is deemed approved at the end of any 120-day PBGC review period. PBGC funding is required to be provided in one lump sum within 90 days of application approval and all funding must be transferred from the PBGC to Eligible Plans by September 30, 2030.

Rael & Letson Observations: Boards from most plans in the first seven priority categories, especially those at or nearing insolvency or plans that will be restoring and refunding suspended benefits will likely feel pressure from participants to file and file early. In any event, starting the SFA viability evaluation early is recommended so that filing timing will be the choice of the Board.

How SFA funds can be invested and used

SFA funds must be segregated from other assets and can only be used to fund benefit payments and operating expenses. SFA funds must be invested in investment grade fixed income securities denominated in US dollars or other securities approved by the PBGC. Permissible vehicles include exchange traded funds, mutual funds, pooled trusts or other commingled securities. Leverage or derivatives are not generally permitted.

Rael & Letson Observations: SFA fixed income returns are likely to be less than the assumed rate of return on other assets. Also, plan funding is improved by the amount of SFA assets that are distributed to pay benefits and expenses. Finally, for plans that are required to restore previously suspended benefits, their funded ratio will decline as they will recognize increased liabilities immediately but will likely improve from there as SFA funds are used. For these reasons, it is likely that plans will choose to use up all or nearly all SFA funds as fast as possible to prioritize funding improvement.

Restrictions and Conditions

There are several other restrictions and conditions that accompany an approved SFA application:

- Any plan that receives special financial assistance will be considered to be in Critical Status until the plan year ending in 2051. Critical Status rules generally prohibit employer contribution decreases and benefit improvements.
- Mergers and transfers will only be possible during the SFA coverage period ending in 2051 if approved by the PBGC.
- Plan assets including SFA funds must have a minimum of investment grade fixed income equal to projected benefit payments and expenses for one year.
- SFA assets will count as plan assets for withdrawal liability purposes, but vested benefit liability is required to use mass withdrawal interest rates for at least the first 10 plan years after the plan year in which SFA funds are received (if later, until the end of the plan year following SFA fund expiration).
- An application that includes a suspension reversal will no longer be eligible to suspend benefits under MPRA and will still be subject to PBGC premium payment rules and insolvency rules if SFA relief is ultimately unsuccessful.
- Within 90 days after the end of each plan year after the plan year in which SFA is received, plans are required to electronically file a compliance statement demonstrating compliance with the SFA rules.

Rael & Letson Observations: SFA plans may progress to a well-funded position but because of the Critical Status restrictions, they can only increase benefits if they fund them with contribution increases (new money) through 2051. Because withdrawal liability payment amounts are unaffected and payment periods are likely already at the 20-year limit for affected employers of these plans, the net changes in plan unfunded vested benefit liability may do little to change employer withdrawal patterns over the short term.

Final Rael & Letson Observations About These Rules

Under these interim rules, it appears that SFA will likely be an attractive option for the *most troubled plans* that have been prioritized under these rules. For some of these most troubled plans, ongoing solvency is possible while for others projected insolvency will be deferred for some 25 to 30 years. Some *eligible Critical plans* are likely to find SFA amounts to be too small to justify SFA restrictions through 2051 while others will find SFA amounts more than compensate for the SFA restrictions. As a result, it is hard to view this relief as a permanent fix for the multiemployer system but a strong first step that will greatly strengthen the system.