Rael & Letson

Summary of Special Financial Assistance Guidelines

For Troubled Multiemployer DB Pension Plans

Key Changes from Interim Final Rule

On July 8, 2022, the Pension Benefit Guarantee Corporation ("PBGC") issued its Final Rule relating to the Special Financial Assistance Program for Financially Troubled Multiemployer Plans; a program that was part of the American Rescue Plan Act of 2021 ("ARP"). In doing so, the PBGC adopted the provisions of the Interim Final Rule published on July 9, 2021, with some additional modifications that respond to the comments received after the Interim Final Rule was published.

Generally, the Special Financial Assistance Program allows multiemployer pension plans that meet certain criteria to file for a grant of money to help the plan avoid or delay a projected insolvency and reinstate suspended benefits for participants of plans that reduced benefits pursuant to an approved application under MPRA. The program is expected to payout $74 billion to $91 billion in assistance to eligible multiemployer plans to pay retirement benefits.

The following is a summary of the key modifications that have been made in the Final Rule, with some commentary regarding the impact of the modifications in comparison with the Interim Final Rule. Some of the Final Rule modifications affect the calculation of the Special Financial Assistance ("SFA") amount, and others impact the ongoing restrictions a plan faces after receiving SFA funding.

The Final Rule generally goes into effect on August 8, 2022. Plans filing for SFA funding before that date will need to follow the Interim Final Rule procedures and calculations. All plans that receive(d) SFA based on the Interim Final Rule have the ability to submit a supplemental application based on the Final Rule provisions and receive any additional amounts owed and have the revised Final Rule restrictions apply.

Calculation of the Special Financial Assistance Amount

A. SFA Measurement Date

The SFA measurement date is now the last day of the 3rd month prior to the SFA filing date. For example, a filing date in August 2022 would use a SFA measurement date of May 31, 2022. Under the Interim Final Rule, the measurement date was the last day of the quarter preceding the SFA filing date.

- **Rael & Letson Observations**: The revision to the measurement date allows plans more points in time to consider for a potential measurement date for the calculation of the SFA amount. This will allow plans some additional flexibility in timing their SFA application for a date in time when the SFA amount produces a more favorable result for the plan, which is extremely important for plans eligible for SFA amounts that are not facing near-term insolvency.

B. Interest Rate

The interest rate used to calculate the amount of SFA a plan receives has been modified. The final rule prescribes the use of two different rates, one rate for SFA assets and a separate rate for non-SFA assets.

The interest rate used to project non-SFA assets (i.e. assets the plan has as of the measurement date along with future employer contributions received) is the same as was the case in the Interim Final Rule. It is equal to the third PPA segment rate plus 200 basis points. Based on published rates for June 2022, the non-SFA interest rate is 5.38% (3.38% + 2.0%).

A different interest rate is used to project SFA assets (i.e. the SFA amount the plan receives) and is equal to the average of the three PPA segment rates plus 67 basis points. The three PPA segment rates are designed to approximate points along the yield curve for long-term corporate bonds. Based on the published rates for June 2022, the SFA interest rate is 3.07% (2.40% + 0.67%)

Rael & Letson Observations: For most plans, this update will result in a lower interest rate being used for part of the SFA amount calculations, thereby producing a higher amount of SFA for the plan. For plans facing insolvency in the near term, the impact of change in the interest rates is more impactful than for a plan where the projected insolvency is many years in the future.

This revision also addresses one of the concerns highlighted by comments the PBGC received after publishing the Interim Final Rules . . . where the interest rate used in the calculations was unattainable based on the restrictions imposed on allowable investment options of SFA assets.

C. SFA Amount for MPRA Plans

For plans that suspended benefits under MPRA, the amount of SFA is the greater of three amounts (all calculated after MPRA benefit suspensions are restored):

1. 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. This is the same calculation under the Interim Final Rules, but updated to reflect the dual interest rate methodology described above.
2. The amount needed such that the plan is projected to have increasing assets in 2051.
3. The present value of reinstated MPRA benefits (retroactive and prospective).

Rael & Letson Observations: This change helps to address the concern that applying for SFA and restoring MPRA benefit suspensions could increase the likelihood of future insolvency v. leaving the MPRA benefit suspensions in place.

Restrictions for Plans Receiving SFA Funding

A. Investment Options

Consistent with the Interim Final Rule, SFA assets will need to be segregated from other plan assets and separately tracked going forward. However, the Final Rule has formally expanded the permissible investments of SFA assets to include return-seeking investments (i.e. equities). Based on the Final Rule, up to 33% of SFA assets can be invested return-seeking investments.

▶ **Rael & Letson Observations**: Allowing a portion of the SFA assets to be invested in return seeking investments gives plans greater investment allocation flexibility and could boost returns for SFA assets. This, coupled with the lower assumed interest rate on SFA assets in the SFA amount calculation, makes it more likely that a plan could achieve the return levels needed to push off potential future insolvency past the 2051 date targeted by the SFA program.

B. Withdrawal Liability

Mass withdrawal rates must be used for the later of the 10th year after the plan receives SFA, or end of the plan year by which the plan is projected to exhaust SFA assets based on the plan's SFA application. The number of years that mass withdrawal rates apply is fixed based on the SFA application.

The inclusion of SFA assets in the calculation of Unfunded Vested Benefits ("UVB") is phased in over the expected SFA payout period (the period beginning when the Plan receives SFA assets and ending when SFA assets are projected to be exhausted).

PBGC has provided a 30-day comment period for additional input related to the withdrawal liability provisions in the Final Rule.

▶ **Rael & Letson Observations**: SFA assets were fully included in the calculation of UVB in the year after the SFA funding was received under the Interim Final Rules. There was concern that fully reflecting the SFA funding immediately could result in a rash of employer withdrawals for certain plans. The phase-in approach of recognizing the SFA funding received by the plan relieves some of that concern.

C. Benefit Improvements

Plans that receive SFA are subject to benefit improvement restrictions until after the plan year ending in 2051:

- Retroactive benefit improvements are not allowed,
- Prospective benefit improvements are allowed as long as the plan actuary certifies that employer contribution increases sufficient to pay for the benefit improvements have been adopted, and those contribution increases were not included in the plan's SFA application.

Request for exception. No earlier than 10 years after the end of the plan year in which the plan receives payment of SFA, the plan may request approval from PBGC for an exception from the conditions above by demonstrating to the satisfaction of PBGC that, taking into account the value of the proposed benefit or benefit increase, the plan will avoid insolvency.

- **Rael & Letson Observations**: These revisions provide plans that receive SFA funding with some flexibility to provide benefit improvements if the plan has favorable experience after receiving SFA funding.

D. Plan Mergers

Under the Final Rule, if a plan receives SFA and is later merged into a plan that did not receive SFA, the portion of the merged plan that received SFA prior to the merger will continue to be subject to various conditions and restrictions related to the receipt of SFA as if the merger did not occur (such as contribution and benefit restrictions, and mandatory withdrawal liability methods and assumptions). The SFA restrictions and conditions generally do not impact the portion of the merged plan that did not receive SFA, and the post- merger plan will determine is PPA Status based on the merged plan's financial situation.

- **Rael & Letson Observations**: Under the Interim Final Rule, the restrictions for a plan that received SFA were transferred to the merged plan. This would have resulted in a healthy merged plan being saddled with a Critical Status certification thru 2051, along with the associated benefit improvement restrictions and Withdrawal Liability requirements around the use of mass withdrawal interest rates. The Final Rule approach is more precise in its application of restrictions; only applying those restrictions to the portion of the merged plan that received SFA funding. This will remove a significant barrier to potential mergers for plans that receive SFA funding.