

U.S. DEPARTMENT OF LABOR STATEMENT ON PBGC “SPECIAL FINANCIAL ASSISTANCE” INTERIM FINAL RULE FOR ELIGIBLE MULTIEMPLOYER PLANS

WASHINGTON, DC - The U.S. Department of Labor today released a statement supporting the Pension Benefit Guaranty Corporation’s (PBGC’s) issuance of its interim final rule on July 9, 2021, implementing a new Special Financial Assistance Program under the American Rescue Plan Act of 2021 for financially troubled multiemployer defined benefit pension plans. The statement from the Department of Labor's Employee Benefits Security Administration (EBSA) follows:

On March 11, 2021, Congress passed and President Biden signed the American Rescue Plan (ARP) Act of 2021, which authorized special financial assistance (SFA) through the Pension Benefit Guaranty Corporation (PBGC) to help save severely underfunded multiemployer plans and enabled over three million participants and beneficiaries to receive the pension benefits they earned through many years of hard work. Importantly, the multiemployer plans that cut their retirees’ pension benefits under the Multiemployer Pension Reform Act (MPRA) must reinstate those benefits if the plans are approved for SFA.

PBGC has issued an interim final rule implementing the program, which was published in the Federal Register on July 12, 2021. See, 86 FR 36598. The interim final rule sets forth what information a plan needs to file its application for SFA, the formula to determine the amount of SFA and the priority order for filing an application. The rule also outlines a processing system, which will accommodate the filing and review of many applications in a limited amount of time. In addition, it specifies permissible investments for SFA funds and establishes certain restrictions and conditions on plans that receive SFA.

PBGC estimates that ARP will provide an estimated \$94 billion in assistance to eligible plans that apply for SFA. SFA will not only protect the pension benefits of workers and retirees, but , in so doing, also will prevent the PBGC’s multiemployer insurance program from becoming insolvent in 2026, as previously projected.

The Department of Labor, in coordination with the Treasury Department, has the responsibility to ensure, following receipt of SFA, that MPRA and insolvent plans reinstate suspended benefits going forward and pay participants in pay status an amount equal to previously suspended benefit payments (make-up payments). In the Department of Labor’s view, ARP’s inclusion of plans that suspended benefits under MPRA and the prohibition against a future MPRA suspension for a plan receiving SFA reflects a clear legislative objective to allow plan fiduciaries to restore benefits that were previously suspended and to encourage all eligible plans to apply for SFA without raising potential fiduciary liability concerns about undoing current or precluding future MPRA suspensions.

EBSA intends to issue compliance assistance guidance for plans and plan fiduciaries that receive SFA addressing: (1) the impact of the SFA rule on the annual funding notice requirements of ERISA section 101(f); (2) summary plan description and summary of material modification disclosures to participants and beneficiaries; (3) maintenance of records related to reinstatement of suspended benefits and payment of the make-up payments; and (4) the interaction of the

ERISA section 203(a)(3)(B) suspension rules with the reinstatement and make-up payment provisions of the SFA rule and related Treasury Department guidance.

The Department of Labor is interested in learning about other areas in which eligible plans would benefit from compliance assistance guidance. To request information or assistance, members of the public may contact EBSA at askebsa.dol.gov or toll free at 1-866-444-3272. The Department of Labor will update its website at www.dol.gov/agencies/ebsa as information becomes available. For information about the SFA program, applications, and PBGC's interim final rule, please visit PBGC's dedicated webpage at <https://www.pbgc.gov/arp-sfa>. For information about the reinstatement of suspended benefits see IRS Notice 2021-38 <https://www.irs.gov/pub/irs-drop/n-21-38.pdf>.