

Conversation With the PBGC

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International Foundation
OF EMPLOYEE BENEFIT PLANS 

Discussion Topics

- Special Financial Assistance Program
 - Overview and current status
 - Lessons learned
 - Post-SFA reminders
- PBGC Financial Condition
- Regulatory Agenda
- Other PBGC Activity
 - Notable litigation
 - Alternative and special withdrawal liability requests

Special Financial Assistance

SFA Overview

- The SFA Program authorized under the American Rescue Plan Act ensures that millions of America's workers, retirees, and their families receive the pension benefits they earned through many years of hard work.
- Additionally, it assists plans by providing funds to reinstate suspended benefits and addresses the solvency of PBGC's Multiemployer Insurance Program, which was projected to become insolvent in 2026.

SFA Overview

- PBGC's final rule implements the program and establishes conditions to keep multiemployer plans sustainable long into the future.
- PBGC Final Rule 87 FR 40968
<https://www.govinfo.gov/content/pkg/FR-2022-07-08/pdf/2022-14349.pdf> (effective 8/8/2022).
(Amended [Federal Register Special Financial Assistance by PBGC-Withdrawal Liability Condition Exception](#) effective January 26, 2023).

The Pre-SFA Multiemployer Landscape

- In early 2021, the multiemployer pension system was in crisis. More than 90 multiemployer plans covering almost 100,000 participants were insolvent.
- Another 101 plans covering 1.1 million participants were projected to become insolvent within 10 years.
- PBGC's insurance fund was projected to become insolvent by 2026.

SFA—Expected Reach

The American Rescue Plan Act provides for special financial assistance to enhance retirement security for millions of Americans.



SFA Applications— Current Status (as of September 10, 2024)

	Approved	Under Review	Withdrawn (not yet resubmitted)	Waiting List
Number of Applications	127	23	13	N/A
Number of Plans	92	23	13	68
Aggregate \$ SFA (approved or requested)	\$68.0 billion	\$2.5 billion	\$5.2 billion	N/A
Aggregate Participant Count	1,156,033	117,486	518,002	N/A

SFA Application Metering Process

- The priority group application period ended March 10, 2023.
- PBGC has temporarily closed its e-filing portal due to its capacity to effectively review SFA applications having been reached.
- While the portal is closed, PBGC accepts requests to be placed on a waiting list for plans seeking to apply for SFA.

SFA Application Metering Process

- PBGC will provide updates of the intended date the e-filing portal will be re-opened and will provide advance notice to the plans at the top of the waiting list that will be allowed to apply at that time.
- Eligible plans that are insolvent or expected to be insolvent within one year of an application retain the ability to submit emergency filings when the e-filing portal is closed.
- Plans may “lock-in” base data when the e-filing portal is closed by submitting a pro-forma initial application.
 - Base data includes the SFA measurement date, interest rates and participant census date.

Waiting List Update

- For plans on the waiting list, as you near the top, expect to be contacted at least 7 days in advance of the portal opening. We try to give the plans as much notice as we can.
- Once a plan is invited to apply, we will then give at least 7 days for the plan to submit their application to PBGC.
- The PBGC website is updated every Friday. To track an application's status and/or check a plan's location on the waitlist, visit: [American Rescue Plan \(ARP\) Special Financial Assistance Program | Pension Benefit Guaranty Corporation \(pbgc.gov\)](https://www.pbgc.gov/american-rescue-plan-arp-special-financial-assistance-program-pension-benefit-guaranty-corporation)

Application Preparation

- Plans are encouraged to contact PBGC to request an informal preapplication consultation on any question that may arise in preparing the application for SFA, including development of projection assumptions.
- PBGC initially posted Special Financial Assistance Assumptions Guidance on its website on July 11, 2021, and has updated the guidance four times since then (latest posted November 30, 2023).
 - While this guidance is nonbinding, it informs the public of PBGC's current thinking on this topic.
 - It is intended to help SFA applicants assess the PBGC's thinking on the "reasonableness of projections assumptions used to determine the amount of SFA, particularly with regard to the amount of data/analysis/rationale that should be included in SFA applications in support of proposed assumptions.

Application Process Changes

- PBGC has implemented an expedited reapplication process for applicants that only need to make minor changes.
 - The goal is to complete the review process as close to the previous submission's 120-day deadline.
- With the advent of the waiting list to submit an SFA application, applicants will be limited to two revisions before being required to go to the end of the waiting list.

Lessons Learned: Actuarial

The SFA Measurement Date

- Many plans locked in measurement dates in 2022. As you approach the top of the waitlist, these plans should review their subsequent experience to ensure the assumptions track with actual experience. Our review teams may ask for that subsequent experience during the review of the application.

Lessons Learned: Actuarial

The SFA Measurement Date

- Note that significant events (such as the withdrawal of a major contributing employer) that occur after the measurement date always need to be reflected in the SFA projections.
- Similarly, please ensure the assets as of the SFA measurement date are correct. Incorrect asset values will require withdrawal of the application. Most plans have a measurement date of 12/31/2022. Plans should have the correct asset value, if it's a calendar year plan. PBGC will ask for audited assets statements and/or account statements for each asset category in the plan's portfolio.

Lessons Learned: Actuarial

- Check for double counting benefits in the development of a new entrant profile.
- It's best to set up an informal preapplication consultation call with PBGC to discuss key assumptions, novel approaches, or complicated plan issues. Provide Template 10 in advance to get the most out of a discussion.

Lessons Learned: Legal

- When submitting the executed amendment regarding compliance as required by 29 C.F.R. Part 4262.6(e)(1), refer to the updated filing instructions for guidance on the Board of Trustees signature requirements [General Instructions for Multiemployer Plans Applying for Special Financial Assistance \(pbgc.gov\)](https://www.pbgc.gov/General-Instructions-for-Multiemployer-Plans-Appling-for-Special-Financial-Assistance).
 - The Compliance Amendment must follow the procedures as stated in the Trust Agreement for amending the Plan Document.
- For plans on the waiting list that submitted a lock-in application, the filing instructions were updated in November 2023, and we may require additional documentation or a revised amendment. If you have questions about the sufficiency of your amendment pre-application, please contact us to set up a pre-application conference.

Death Audit Updates

- Applicants are now required to submit a listing of all participants (name, SSN and participant category only) to facilitate an independent death audit which identifies participants with SSNs that appear in the Social Security Administration's Death Master File.
 - Plans are encouraged to submit data in advance of finalizing their SFA application.
 - PBGC will provide plans with the listing of SSNs that appear in the Death Master File and request that plans submit their proposed treatment of records with matching SSNs.
 - PBGC will review the plan's proposal and either request additional clarification or advise that the plan may proceed to prepare its application on the basis of its proposal.

Death Audit Updates

Applications Approved Prior to November 8, 2023

64

Recipient Has Provided Redetermined SFA Amount to PBGC

30

- **PBGC Is Reviewing Plan's Redetermination of SFA**
- **PBGC Has Found Redetermined SFA to be Reasonable and has Requested Payment to US Treasury**
 - **Recipient has Completed Payment**

12

18

14

IDA Did Not Affect SFA Amount

4

Applicants with Retrospective Death Audits Under Review

30

Death Audit Updates

- Plans can submit their census data for our independent death audit review at any time, regardless of where they are on the waiting list.
- Many plans have already done this but for those that do not submit on their own, we try to contact plan representatives at least one month before they might be contacted about the portal opening to ensure enough time for our review. By not submitting in advance of the application, it becomes very likely the plan will have to withdrawal and resubmit the application to reflect found matches.
- The amount of time it takes for PBGC to complete a plan's independent death audit in advance of their application can vary depending on the size of the plan, the number of deaths found, and the completeness of the records provided.

Lessons Learned: Post-SFA Annual Compliance

- **SFA and legacy (Non-SFA) account statements**
 - Some plans only provide their SFA bank account statements and omit their legacy (non-SFA) account statements within their ASOC filing. PBGC requires all of the plan's account statements to confirm that SFA funds were properly segregated from legacy assets during the review period.
 - For SFA accounts, some plans only submit an "annual summary statement," which typically shows only year-end activity. In these cases, we request monthly account statements to review the assets held by the plan throughout the entire review period.

Lessons Learned: Post-SFA Annual Compliance

- **SFA account statements in excel format (SFA holdings worksheet)**
 - Plans are required to submit their SFA assets data in Excel format, as PBGC needs this information to conduct the SFA investment permissibility testing. Common issues include:
 - Incomplete CUSIP codes provided by the plan (e.g. an incomplete 8-digit code versus a complete 9-digit code). We need the full CUSIP code to run our permissibility tests via S&P Global's CapIQ plug-in.
 - Discrepancies between the monthly ending account balances in the plan's SFA Holdings Worksheet and their account statements, which aren't explained by price/timing differences or accrued income.

Lessons Learned: Post-SFA Annual Compliance

- **Segregation of SFA funds**
 - In some cases, when plans receive their SFA funds, their SFA is temporarily deposited into their legacy (non-SFA) account, as they might need additional time to establish a separate SFA account. If the funds are not segregated into their separate SFA account in a timely manner (within 60 days of receipt of SFA), PBGC considers this to be a potential instance of non-compliance (PNC).
- **Updated cash flow projections (in template 4a Excel format)**
 - Some plans' updated cash flow projections do not match their projections in their latest zone certification or actuarial valuation report. When this occurs, we may need to reach out to the plan for an explanation of the discrepancy.

SFA Permissible Investments

- What does “investment grade” mean in the context of SFA?
 - “Investment grade” is defined in § 4262.14 of the SFA regulation as “securities for which the issuer (or obligor) has at least adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure.”
- Will PBGC identify whether a particular investment strategy is permissible before a plan invests?
 - No, it is not anticipated that PBGC will provide upfront advice about, or confirmation of, whether a particular asset class, sub-asset class, fund structure or investment strategy is permissible. However, upon review of a plan’s Annual Statement of Compliance or an audit, PBGC may determine that a particular asset is not permissible.
- PBGC posted an update to our permissible investments FAQ page on July 16, 2024: [American Rescue Plan Act FAQs | Pension Benefit Guaranty Corporation \(pbgc.gov\)](https://www.pbgc.gov/american-rescue-plan-act-faqs)

Mergers Involving SFA Plans

- Like every merger of multiemployer plans, the transaction must comply with the requirements of ERISA section 4231. But there are additional requirements.
 - Unlike in a merger *not* involving a plan that receives SFA, where the plans *may* request a compliance determination, the plans *must* obtain PBGC approval.
 - The transaction must not unreasonably increase PBGC's risk of loss respecting any plan involved in the merger; and
 - Must not reasonably be expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans involved in the transaction.

Mergers Involving SFA Plans

- SFA final rule specifies how the conditions on SFA plans apply to a plan following a merger.
 - Some conditions, including prospective benefit increases, do not apply to a merged plan. Special withdrawal liability rules apply to the surviving plan.
 - Plan meeting specified requirements may request a waiver of one or more listed conditions, including retrospective benefit increases, at the time the plan seeks approval for the merger.
- PBGC approval is required for a multiemployer plan merger involving a plan that receives SFA.



Multiemployer Program Financial Condition

Multiemployer Program—Highlights

- In fiscal year (FY 2023), PBGC paid \$175.8 million in traditional financial assistance to 100 insolvent multiemployer (ME) plans paying 80,421 participants.
- An additional 41,661 participants in the insolvent plans are eligible to receive benefits when they retire.
- Cumulative results of operations improved from \$1.06 million, as of 9/30/2022, to \$1.5 million, as of 9/30/2023.
- Due to Special Financial Assistance (SFA) payments made under the American Rescue Plan (ARP) Act in FY 2023, the number of participants relying on traditional financial assistance has decreased by 7,483 for participants receiving guaranteed benefits and by 5,383 for participants eligible to receive benefits once they retire.

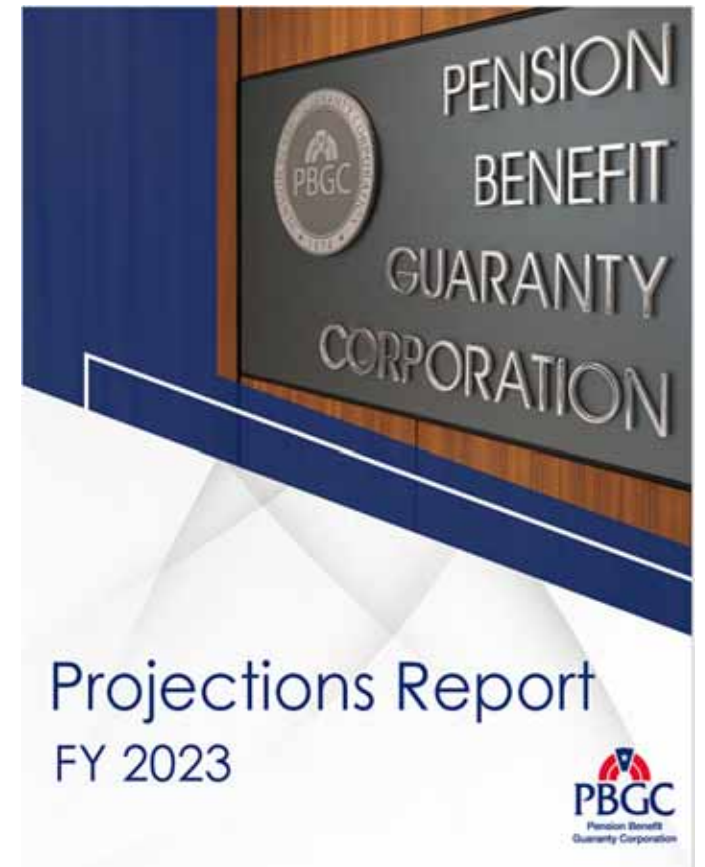
Multiemployer Traditional Financial Assistance—FY 2023

- Plans currently receiving financial assistance—90 plans; \$1.6 billion.
- Plans that have terminated but have not yet become insolvent, so are not yet receiving financial assistance—32 plans; \$386 million.
- Ongoing plans (not terminated) that PBGC expects will require financial assistance in the future—1 plan; \$203 million.
- Total plans receiving and expected to receive regular financial assistance—123 plans; \$2.4 billion (this is down from 136 plans; \$2.3 for FY 2022).

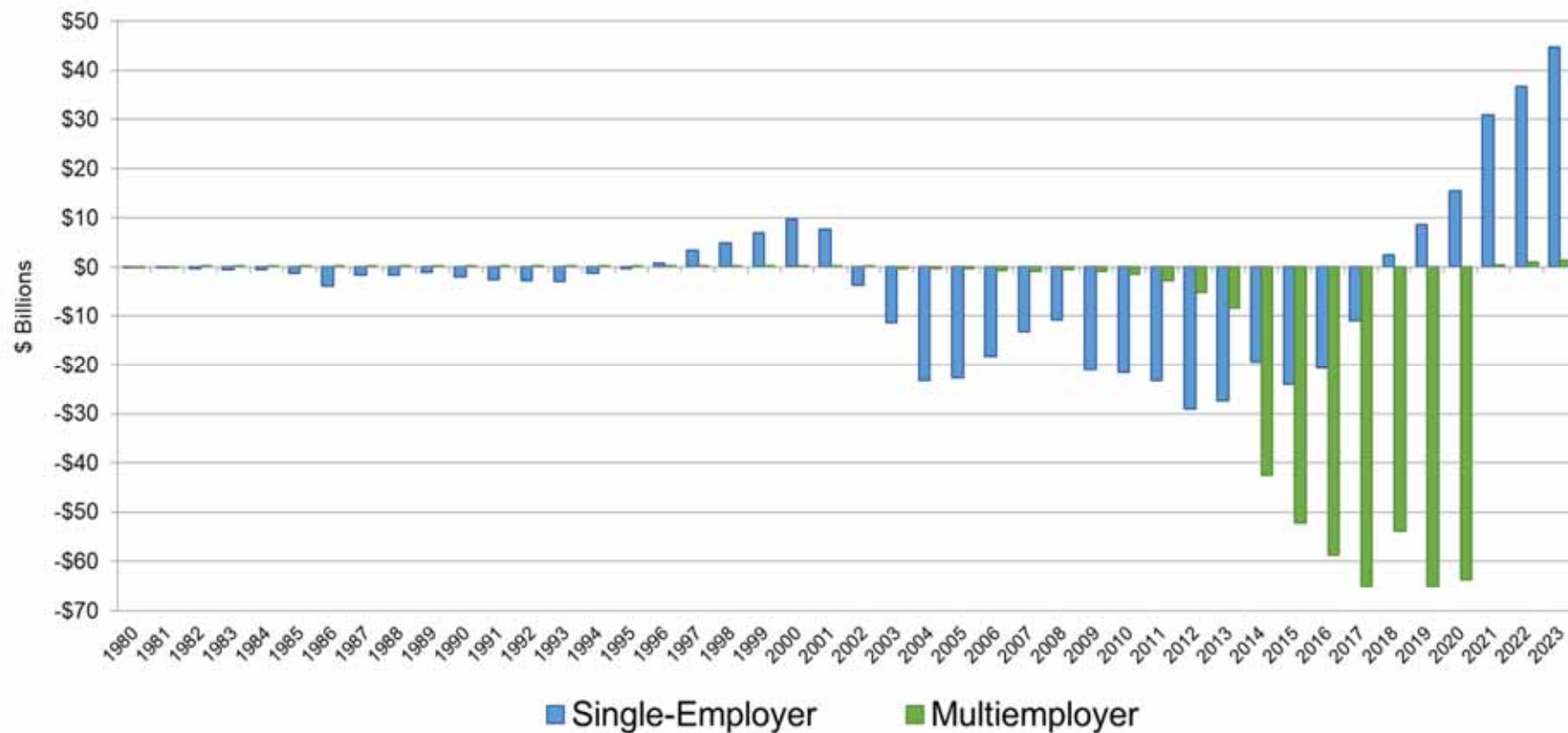
2023 Projections Report

Projections Report

- Provides financial projections under a range of possible outcomes based on stochastic modeling, and includes:
 - Annual 10-year projection of PBGC's financial position
 - 40-year projection of multiemployer program solvency
 - Stress test of single-employer program
 - The report can be found at: [FY 2023 Projections Report \(pbgc.gov\)](https://www.pbgc.gov/fy-2023-projections-report)



Fiscal Year 1980—2023 Net Financial Position



Key Results—Multiemployer Program

Likely to remain solvent beyond FY 2063

- Insolvent by FY 2026 prior to American Rescue Plan Act

Mean financial position is a deficit of \$4.7B in FY 2032

- But >50% of scenarios result in a positive 10-year net position

Total mean SFA payments now projected to be \$79.6B, down from \$82.7B

- Final amount still uncertain until all applications received

Regulatory Agenda

PBGC Regulatory Agenda— Multiemployer Program

- Multiemployer Plan Guaranteed Benefits, 29 C.F.R. § 4022A
 - Would clarify and codify policies on the determination of guaranteed benefits for participants in multiemployer plans: Proposed Rule Stage.

PBGC Regulatory Agenda— Multiemployer Program

- Valuation Assumptions and Methods: Interest and mortality assumptions for asset allocation in single-employer plans and mass withdrawal liability determination in multiemployer plans, 29 C.F.R. § 4044
 - Updates the interest, mortality, and expense load assumptions used to determine the present value of benefits under the asset allocation regulation (for single-employer plans), for determining mass withdrawal liability payments (for multiemployer plans), and for other purposes.
 - Multiemployer plans that receive SFA must use the interest assumption under 29 C.F.R. § 4044.54 to determine withdrawal liability for a prescribed period.
 - 89 Fed. Reg. 48291, effective July 8, 2024.

29 C.F.R. Part 4213

- On October 14, 2022, PBGC published a proposed rule to provide interest rates that may be used in determining a withdrawing employer's liability to a multiemployer plan
- The proposed rule would specifically permit the use of an interest rate anywhere in the spectrum from 4044 rates alone to funding rates alone.
- PBGC requested comments and received 28.
- We are continuing our work to review the comments received and provide a final rule.

PBGC Regulatory Agenda— Single Employer Program

- On January 23, 2024, EBSA, IRS, Treasury, and PBGC published a request for information on the agencies' review of reporting and disclosure requirements for retirement plans
 - Review required by SECURE 2.0
 - PBGC's disclosure requirements summarized at www.pbgc.gov/prac/reporting-and-disclosure/requirements
 - Comment period ended May 22, 2024 (28 comment letters received).
- Improvements to rules on recoupment of benefit overpayments
 - The proposed rule would improve PBGC's recoupment of benefit overpayment rules under the single employer program.

Other PBGC Activity

Notable and Recent PBGC Litigation

- *Board of Trustees of the Bakery Drivers Local 550 and Industry Pension Fund v. PBGC* (2d Circuit)
- *In Re Yellow Corp.* (Bankr. D. Del.)

Withdrawal Liability Rule Requests

- **Alternative Withdrawal Liability Rules:**
PBGC rules provide a procedure for approval of plans' alternative methods for allocating unfunded vested benefits to employers that withdraw
 - Two pool methods—To attract or retain participating employers.
 - Deemed contributions—Allocation of UVBs reflect contribution obligations suspended while plan relatively well funded.
 - Special contribution by employer—Plan rules enabling a sizable employer contribution in excess of CBA requirements that does not increase the employer's potential withdrawal liability.

Withdrawal Liability Rule Requests

- **Special Withdrawal Liability Rules:**
 - PBGC has authority to approve plan withdrawal liability rules comparable to the construction and entertainment industry rules if certain characteristics and conditions are met.
 - The rules must not pose a significant risk to PBGC's multiemployer insurance program.
 - PBGC publishes notices of plan requests in the Federal Register.

Key Takeaways

- Good progress on SFA application review and approval—Working with plans and their practitioners
- We are mindful of the work ahead in completing the application submission and review process before the statutory deadlines in 2025 and 2026
- Strengthened stewardship of program resources

Key Takeaways

- Improved solvency outlook for the multiemployer program
- We appreciate the opportunity to speak at the International Foundation and thank you for helping to deliver pension benefits to 11 million individuals and their families

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Session Evaluation

