

Multiemployer Review

Update on issues affecting multiemployer plans

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Special financial assistance under the American Rescue Plan Act of 2021

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The American Rescue Plan Act of 2021 (ARP) was signed into law by President Biden on March 11, 2021. It established a special financial assistance (SFA) program that provides one-time cash payments to eligible multiemployer defined benefit plans. The Pension Benefit Guaranty Corporation (PBGC) estimates the SFA program will provide approximately \$94 billion to over 200 plans, impacting more than 3 million participants.

On July 9, 2021, the PBGC issued an interim final rule and the IRS issued Notice 2021-38 related to the SFA program. This Multiemployer Review describes the new guidance.

Comments on the interim final rule may be submitted to the PBGC through August 11, 2021. The provisions contained in the interim final rule and this Multiemployer Review may change when the final rule is issued.

Eligibility for assistance

Plans are eligible for the special financial assistance program if they meet any one of the following four eligibility criteria:

1. Plans in critical and declining status in any plan year beginning in 2020 through 2022.
2. Plans with an approved suspension of benefits under the Multiemployer Pension Reform Act of 2014 (MPRA) as of March 11, 2021.
3. Plans in critical status in any plan year beginning in 2020 through 2022, with a **current liability** funded percentage below 40%, and which have an active to inactive participant ratio of less than 2 to 3.
 - The three criteria for critical status plans do not need to be satisfied in the same plan year.
4. Plans that became insolvent after December 16, 2014 and have not terminated as of March 11, 2021.

What the guidance covers:

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A plan's **current liability** is measured using an interest and mortality table prescribed by the IRS. The prescribed interest rates for the last three years have been in a range of 2% to 3%, likely much lower than the discount rate plans are using for determining their PPA funded percentage. Using a lower interest rate may increase a plan's current liability significantly, resulting in a lower funded percentage.

Plans not eligible for SFA, based on their 2020 PPA certifications, may need to redetermine their zone status for the 2021 or 2022 plan years using the 2020 plan year¹ PPA certification assumptions for SFA eligibility purposes, unless those assumptions (excluding the interest rate) are unreasonable. Plans may propose alternative assumptions as described [below](#).

Plans that are not eligible for SFA include:

- Plans that terminated by mass withdrawal unless they met one of the above criteria prior to plan termination.
- Plans that elected to enter critical status and do not otherwise meet one of the criteria above.

Application content and timeline

The interim final rule lists the information that is required to be submitted with the SFA application, including historical information for the past 10 years, projected cash flows, assumptions used for determining the plan's eligibility for the SFA and the SFA amount, and documentation supporting any proposed changes in assumptions. More information is required for plans that reinstate suspended benefits or plans that have been partitioned. Applications for SFA must be filed electronically through the PBGC's [e-Filing portal](#).

Eligible plans may apply for SFA during the applicable SFA application period (see the table in Figure 1). The window for initial applications closes on December 31, 2025. The PBGC has discretion to temporarily close the filing window if it does not have the capacity to process additional applications.

FIGURE 1: PLANS GRANTED PRIORITY STATUS AND SFA APPLICATION PERIOD

PRIORITY GROUP	DESCRIPTION OF PRIORITY GROUP	SFA APPLICATION PERIOD
1	Insolvent plans or plans projected to be insolvent before March 11, 2022	July 9, 2021, through December 31, 2025
2	Either: <ul style="list-style-type: none"> ▪ Plans that implemented MPRA benefit suspensions as of March 11, 2021 ▪ Plans expected to be insolvent within one year of the SFA application filing date 	January 1, 2022,* through December 31, 2025
3	Plans in critical and declining status with 350,000 or more participants	April 1, 2022,* through December 31, 2025
4	Plans projected to become insolvent before March 11, 2023	July 1, 2022,* through December 31, 2025
5	Plans projected to become insolvent before March 11, 2026	February 11, 2023,* through December 31, 2025
6	Plans PBGC determines would need more than \$1 billion in financial assistance (absent SFA)	February 11, 2023,* through December 31, 2025
7	Additional plans PBGC identifies as a priority	March 11, 2023,* through December 31, 2025
N/A	All other eligible plans not in priority groups 1-7 above	March 11, 2023,* through December 31, 2025

* Or an earlier date specified on the PBGC's [website](#).

IRS Notice 2021-38 provides that the plans in priority groups 1-7 in Figure 1 are also required to submit their SFA applications to the Treasury Department. This requirement will be met by submitting the application to the PBGC and the PBGC will send the application to the Treasury on behalf of the plan.

¹ The assumptions must be those from the plan's most recently completed PPA certification before January 1, 2021, which for most plans are the PPA certification assumptions for the 2020 plan year.

Upon receipt of a complete application, the PBGC has 120 days to approve or deny the application. If the PBGC fails to act on an application within the 120-day review period, then it is deemed approved. If an application is approved or deemed approved, the plan will receive its SFA payment within 90 days. The PBGC can deny applications for incomplete or missing information, unreasonable assumptions, and/or not meeting the eligibility requirements.

Plan sponsors may withdraw an application at any time before or after an application is denied but not after an application is approved. They may submit a revised application after withdrawing the initial application. The revised application can differ from the initial application except the plan's base data (i.e., SFA measurement date, participant census data, and interest rate used for determining the SFA amount) must remain fixed based on the initial application. If the PBGC denies an application and the plan sponsor submits a revised application, the revised application cannot differ from the initial application except for the changes needed to address the reasons for the PBGC's denial. Revised applications go through the same review process as an initial application. Revised applications must be submitted by December 31, 2026.

- Observation. Because the SFA measurement date is fixed once an application is submitted, plan sponsors will not be able to withdraw their application and submit a revised application to reflect adverse investment experience after the SFA measurement date.

Amount of assistance

The SFA amount is measured as of the last day of the calendar quarter preceding the application filing date (the SFA measurement date). The SFA amount considers a plan's obligations and resources from the SFA measurement date through the plan year ending in 2051 (the SFA coverage period).

$$\text{SFA amount} = \text{Value of Plan Obligations} - \text{Value of Plan Resources}$$

in which:

- Value of Plan Obligations is the present value of projected benefit payments and administrative expenses during the SFA coverage period, including reinstated benefits that were suspended under MPRA or due to plan insolvency. For insolvent plans, administrative expenses exclude repayments owed to the PBGC for pre-SFA financial assistance.
- Value of Plan Resources is the market value of assets plus the present value of future contributions, withdrawal liability payments, and other payments expected to be made to the plan during the SFA coverage period. For insolvent plans, pre-SFA financial assistance expected to be received from the PBGC is excluded.

Assumptions: The interest rate used for the present value calculations is the lesser of

- The plan's long-term funding rate used for its 2020 PPA certification
- The unadjusted third segment rate published by the IRS for the month of the SFA application or any of the three preceding months, plus 2%.
 - Observation: Based on IRS segment rates² as of the date of this Multiemployer Review, the interest rate used for present value calculations would be limited to about 5.5%.

² The unadjusted third segment rates are found on Funding Table 3: [Funding Yield Curve Segment Rates | Internal Revenue Service \(irs.gov\)](#).

The default assumptions (other than the interest rate) for determining the present values are the assumptions that were used for a plan's 2020 PPA certification.³ The PBGC will accept these assumptions unless the agency determines they are "clearly erroneous." If a plan determines that any of the 2020 PPA certification assumptions are now unreasonable, it may propose changes, which will be reviewed by the PBGC and Treasury. The application will need to include a description of why the assumptions are no longer reasonable and demonstrate that the proposed assumptions are reasonable. The PBGC has issued additional [guidelines](#) for certain assumption changes related to contribution base units, administrative expenses, mortality, contribution rates, and new entrant profiles.

- **Observation:** Many plans will need to extend their assumptions because the projection period to determine the SFA amount is longer than the projection period required for the PPA certification.

Certain events: The SFA amount will be limited to the amount determined as if certain events that happen between July 9, 2021, and the SFA measurement date had not occurred. Such events include mergers, transfers of assets or liabilities (including spinoffs), certain increases in accrued or projected benefits (except for suspended benefits that have been reinstated), and certain reductions in contributions.

SFA payment: The SFA one-time payment to a plan will include interest to reflect the passage of time between the SFA measurement date and the date the PBGC sends payment. For insolvent plans, the payment amount will be increased for amounts owed to the PBGC for pre-SFA financial assistance and reduced for pre-SFA financial assistance with interest. No SFA payments will be made after September 30, 2030.

Restoration of suspended benefits

Any plan that receives SFA and either previously suspended benefits under MPRA or reduced benefits to the PBGC maximum benefit level due to plan insolvency must reinstate those benefits effective as of the first month the SFA is paid to the plan.

In addition, the plan must provide a makeup payment equal to the benefits that were suspended, to all participants and beneficiaries in pay status as of the date the SFA is paid to the plan. This payment must commence within three months of receiving SFA and can be made either in the form of a lump sum, or in equal monthly installments over a five-year period without any interest adjustment.

A plan amendment is required to reinstate the benefits and pay the previously suspended amounts, and a notice of reinstatement must be sent to all affected participants and beneficiaries.

IRS Notice 2021-38 provides that a makeup payment for a previously suspended benefit is only eligible for rollover if it is paid in a lump sum and the payment is more than the greater of \$750 or 10% of the individual's annual benefit.

How the assistance is invested and used

The following restrictions apply to the investment and use of the SFA amount.

1. The SFA may only be used to pay plan benefit payments and administrative expenses.
2. The SFA may be used before other plan assets.
3. The SFA and earnings on the SFA must be segregated from other plan assets.
4. The SFA and SFA earnings must be invested in investment grade bonds or other investments permitted by the PBGC (permissible investments).

³ The assumptions must be those from the plan's most recently completed PPA certification before January 1, 2021, which for most plans are the PPA certification assumptions for the 2020 plan year.

Permissible investments: In general, the SFA can only be invested in fixed income securities denominated in U.S. dollars. Investments can be held in individual bonds, securities, and/or investment vehicles such as exchange-traded funds (ETFs), mutual funds, pooled trusts, and other commingled securities. A plan fiduciary such as an investment consultant must deem the investments to be investment grade as defined by ERISA regulations. Up to 5% of SFA assets may be held in investments that are initially considered investment grade and subsequently downgraded. Derivatives and leveraging strategies are permitted but on a limited basis.

- **Observation:** There is a potential disconnect between the interest rate used for calculating the amount of the SFA and the expected return on the SFA portfolio. Because the SFA is invested in a fixed income investment grade portfolio, the expected return may be less than the interest rate used for calculating the SFA amount (which is currently capped at around 5.5%). As a result, the SFA may not be sufficient for the plan to cover all the benefit payments and administrative expenses through the 2051 plan year. However, using the SFA asset pool to pay benefits and expenses first may provide plans an opportunity to grow non-SFA assets. This may increase the likelihood that plans can pay benefits and administrative expenses beyond the 2051 plan year.

Conditions for plans that receive assistance

Plans that receive SFA are subject to the following conditions. Unless otherwise noted, these conditions apply during the SFA coverage period (which expires at the end of the 2051 plan year):

- **Benefit increases.** Benefit increases attributable to past service are prohibited, with an exception for the required restoration of suspended benefits as discussed above.
- Benefit increases attributable to future service are permitted if the actuary certifies such increase is fully paid for by contribution increases not utilized in the determination of the SFA amount.
- **Asset allocation.** Plan assets, including any SFA, must be invested in the acceptable investment grade assets described above, sufficient to pay at least one year (or less if insolvency is projected within one year) of projected benefit payments and administrative expenses.
- **Contribution decreases.** Contribution rates may not be reduced and the definition of contribution base units may not be changed from those set forth in the collective bargaining agreement in effect on March 11, 2021, unless the plan sponsor determines that the reduction and/or change lessens the risk of loss to plan participants. If the reduction in annual contributions is over \$10 million and affects over 10% of total employer contributions, PBGC approval is also required.
- **Income/expense allocation practices.** Changes to the allocation of income and expenses between two plans, where the allocation to the plan receiving SFA is decreased, is prohibited. However, certain exceptions for good faith allocations may apply.
- **Transfer or merger.** Transfer of assets or liabilities or a merger requires PBGC approval.
- **Withdrawal liability.** Withdrawal liability must be determined using prescribed PBGC mass withdrawal interest rates, for withdrawals after the plan year in which the plan receives SFA and until the later of (a) 10 years after the end of the plan year in which the plan receives SFA, or (b) the last day of the plan year in which the SFA segregated account is depleted.
PBGC approval is required for any proposed settlement of withdrawal liability exceeding \$50 million.
- **Annual reporting.** Statement of compliance with the terms and conditions of the SFA must be filed with the PBGC every year, beginning with the plan year after receipt of the SFA through the 2051 plan year.

The PBGC may conduct periodic audits of plans that receive SFA to review compliance with the conditions outlined above.

Certain other provisions apply to plans that receive SFA.

- The SFA is not capped by PBGC benefit guarantees.
- Plans that receive SFA continue to pay PBGC premiums.
- Plans that receive SFA are deemed to be in critical status through the 2051 plan year.
- IRS Notice 2021-38 provides that the SFA received by a plan is disregarded for determining its minimum funding requirements, including the determination of the market value of assets and the actuarial value of assets.
 - **Observation:** Over time, plans that use the SFA to pay benefits and expenses before non-SFA assets may see a gradual improvement in their funding measurements (e.g., PPA funded percentage and credit balance or funding deficiency) if all actuarial assumptions are met.
- Plans that receive SFA and subsequently become insolvent will be subject to the rules of insolvent plans in effect at the time of insolvency.
- Plans that receive SFA are no longer eligible to apply for benefit suspensions under MPRA.
 - **Observation:** Plans may want to analyze whether it is in their best interest to apply for the SFA and forfeit the opportunity to apply for benefit suspensions in the future or forgo the SFA and retain the possibility of benefit suspensions if needed later.
- Plans that receive SFA could still become eligible for a plan partition in the future.

For more information

For more information on how the new law may impact your multiemployer pension plan(s), please contact your Milliman consultant.



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