



# CWA/ITU Negotiated Pension Plan

Arthur DeIanni, Chairman • Theodore Rilea, Secretary  
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**VIA ELECTRONIC MAIL (reg.comments@pbgc.gov)**

Regulatory Affairs Division  
Office of the General Counsel  
Pension Benefit Guaranty Corporation  
1200 K Street, NW  
Washington, DC 20005  
Attn: Daniel S. Liebman, Esq., Deputy General Counsel

**Re: Comments on PBGC Interim Final Rule Concerning Special Financial Assistance to Financially Troubled Pension Plans (RIN 1212-AB53)**

Dear Mr. Liebman:

The Board of Trustees (“Board”) of the CWA/ITU Negotiated Pension Plan (“NPP”) submits its comments to PBGC’s Final Interim Rule published in the Federal Register on July 12, 2021 in connection with the special financial assistance (“SFA”) provisions of the American Rescue Plan Act of 2021 (“ARPA”) for financially troubled multiemployer pension plans. For the reasons set forth below, the Board respectfully submits that in issuing the Interim Final Rule the Corporation has misconstrued the language and statutory intent of Section 4262(j)(1) of the Employee Retirement Income Security Act of 1974, (“ERISA”), as amended by ARPA, by limiting the amount of SFA available to an eligible pension plan through the inclusion of a plan’s existing resources. In addition, the Board respectfully submits that in issuing the Interim Final Rule, the Corporation has too narrowly limited the investment options for plans receiving SFA given the broad investment mandate set forth in ERISA Section 4262(l), Congress’ grant of wide discretion to the Corporation in the statute to permit plans receiving SFA to invest such monies in “other investments” as determined by the Corporation, and the significant disconnect between the discount rate required for calculating the present value of an eligible plan’s SFA and the investment return rates available to plans under the Corporation’s unduly restrictive interpretation of permissible investments of SFA funds.

The NPP is a multiemployer defined benefit pension plan covering approximately 26,400 retirees, terminated vested participants and active employees who worked or continue to work primarily in the printing, publishing and media sectors across the United States. The NPP is a “critical and declining” status plan under the Pension Protection Act of 2006 and is projected to be insolvent in 2031. The NPP is an eligible multiemployer plan within the meaning of Section 4262(b)(1).

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1. The Interim Final Rule improperly requires the inclusion of an eligible plan's existing plan resources in calculating the amount of SFA available under ARPA.

Congress' goal in enacting ARPA was clear: to provide special financial assistance to financially troubled multiemployer pension plans to allow such plans to survive on a long-term basis. And the statutory language crafted by Congress to achieve that objective is equally clear, i.e., eligible plans shall receive the amount of financial assistance that is "required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment under this section and ending . . . in 2051, with no reduction in a participant's or beneficiary's accrued benefits . . . ." ERISA Section 4262(j)(1). This statutory language unambiguously directs that the amount of SFA available to an eligible plan shall be equal, on a present value basis, to each plan's benefit obligations over the next thirty (30) years, without reduction of any accrued benefits.

The Interim Final Rule establishes a significant and unjustified limitation on the amount of SFA Congress intended to provide to eligible plans. In its preamble to the Interim Final Rule, the Corporation introduces, without any support in the statute, the concept that the calculation of SFA must consider "the amount by which a plan's resources fall short of its obligations, taking all plan resources and obligations into account." See Interim Final Rule, 29 CFR §4262, Supplementary Information – *Amount of Special Financial Assistance*. While the Corporation asserts that this limitation is supported by "the requirement that SFA be 'the amount necessary' or 'required for the plan to pay all benefits due,'" that interpretation cannot be reconciled with the language or the intent of the statute. First, nothing in Section 4262(j) of ERISA states or implies that the amount of an eligible plan's SFA shall be "net" of its available resources. Rather, the statute directs that in determining the amount of SFA to which an eligible plan is entitled, the focus must be on the "amount required to pay all benefits due" through the 2051 plan year. Section 4262(j) does provide certain qualifiers in computing an eligible plan's SFA. First, the statute expressly states that the calculation of an eligible plan's SFA shall not include any reduction in accrued benefits. Second, the statute permits a reduction for adjustable benefits adopted under ERISA Section 305(e)(8) prior to the plan's application of SFA. Finally, the statute directs that the calculation of SFA shall take into account a reinstatement of benefits that had been suspended pursuant to ERISA Section 305(e)(9). The statute, however, makes no provision for a reduction in the calculation of a plan's SFA to account for its existing resources. Thus, while Section 4262(j) contains certain conditions and exceptions that must be factored into the calculation of a plan's SFA, that statutory text does *not* provide for a reduction in SFA for available plan resources, and the Corporation should not read that limitation into this statutory scheme.

The Corporation's inclusion of all available plan resources in the calculation of a plan's SFA fails to address the long-term needs of financially troubled plans and will ultimately result in the demise of the pension plans that Congress has sought to strengthen. There is no indication that in enacting ARPA, Congress intended that financially troubled plans should be eligible for only enough SFA to become insolvent within thirty (30) years (or less), which is a significant risk under the Corporation's unduly restrictive interpretation of Section 4262(j). Indeed, even if all of an eligible plan's anticipated

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assumptions and projections are realized over the next thirty (30) years, the Corporation's interpretation would effectively leave most eligible pension plans with virtually no assets in 2051 to pay future benefits, a non-sensical result that Congress never intended in passing this massive pension relief law. Since the Corporation's interpretation that all of an eligible pension plan's available resources must be included in calculating the amount of its SFA would inevitably result in plan failures in the future, this "kick the can down the road" approach it is not a reasonable interpretation of the law and must be reconsidered. Accordingly, the Board respectfully requests that the Corporation amend the Interim Final Rule to expressly disregard an eligible plan's available resources in calculating the SFA to which it is entitled under ERISA Section 4262(j).

2. The Interim Final Rule too narrowly limits the investment options for plans receiving SFA given the broad investment mandate set forth in ERISA Section 4262(l).

The Interim Final Rule provides that a plan that receives SFA may invest those monies "only in fixed income securities denominated in U.S. dollars and in accordance with this section." 29 CFR §4262.14(a). This aspect of the Interim Final Rule too narrowly limits the investment options for plans receiving SFA and, if not modified, will likely cause eligible plans to become insolvent well in advance of 2051.

ERISA Section 4262(l) provides that SFA "shall be invested by plans in investment-grade bonds or other instruments as permitted by the corporation." The statute's reference to "or other instruments as permitted by the corporation" represents a broad grant of regulatory authority to the PBGC that should be utilized in a manner that is consistent with Congress' goal of providing troubled plans with the means to achieve long-term financial security. The Corporation must enlarge the scope of permissible investments under the Interim Final Rule so as to provide eligible plans the opportunity to meet the investment assumptions that are embedded within the calculation of the SFA available to those plans under ARPA.

ERISA Section 4262(e)(2)(A) requires an eligible plan to value the amount of SFA to which it is entitled using an interest rate that is equal to "the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021," subject to an interest rate limit that is equal to third segment rate for single-employer plans, plus 200 basis points. For most eligible plans, including the NPP, this statutory provision will effectively require the use of a 5.5% interest rate in valuing the SFA. However, if an eligible plan is limited to investing SFA funds in investment-grade bonds or similar fixed income securities, that plan will likely achieve significantly less than a 5.5% investment return on those assets. In that event, many eligible plans will likely exhaust their SFA sooner than necessary and will likely become insolvent well before 2051.

We understand that the Corporation is seeking public comments on the issue of permissible investments under Section 4262.14(a) to design a regulatory framework that places important restrictions on a plan's unbridled use of SFA monies while providing sufficient flexibility to allow such plans to achieve investment returns that are aligned with the statutory intent to provide funding relief for eligible

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plans through 2051. The NPP's Board respectfully submits that this balance can only be achieved by eliminating the narrow limitations on permissible investments that currently exists in Section 4262.14(a) of the Final Interim Rule and by providing eligible plans with sufficient investment flexibility to make prudent and diversified investment decisions with respect to SFA monies that are consistent with the overall goals of providing the pension relief intended by Congress in enacting ARPA.

The NPP's Board appreciates the opportunity to address these concerns directly with the Corporation and would be available to discuss any of these points in greater detail upon request.

Respectfully submitted,



Arthur DeIanni, Chair  
On behalf of the NPP Board of Trustees

cc: NPP Board of Trustees  
Kyle Flaherty, FisherBroyles, LLP  
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