



August 6, 2021

Submitted via Email to reg.comments@pbgc.gov

Pension Benefit Guaranty Corporation
Regulatory Affairs Division
Office of the General Counsel
1200 K Street NW
Washington, DC 20005-4026

RE: Special Financial Assistance by PBGC (RIN 1212-AB53)

Ladies and Gentlemen:

John Hancock Life Insurance Company (U.S.A.) (collectively referred to along with its affiliates and subsidiaries as “John Hancock”) is pleased to respond to the request by the Pension Benefit Guaranty Corporation (“PBGC”) to comment on the interim final rule concerning Special Financial Assistance by PBGC, published in the Federal Register on July 12, 2021 (the “Interim Final Rule”). We write in support of changes to the Interim Final Rule that will allow troubled multiemployer plans to achieve long-term sustainability. If the Interim Final Rule is finalized without changes, the requirement that special financial assistance be invested in assets that yield historically low returns may result in a new solvency crisis for many multiemployer plans— notwithstanding Congress’ clear intent that special financial assistance be sufficient to allow troubled multiemployer plans to fulfill their benefit promises indefinitely. We respectfully request that the PBGC permit plan fiduciaries to use special financial assistance to craft diversified investment portfolios pursuant to strict fiduciary obligations under existing law, in order to provide long-term retirement security to millions of Americans.

John Hancock’s Interest in Providing Troubled Multiemployer Plans with the Resources and Tools to Achieve Long-Term Sustainability

John Hancock is deeply committed to helping American workers achieve a financially secure retirement. For nearly 50 years, we’ve helped Americans plan and invest for retirement; today, we’re one of the largest full-service providers in the United States.

Supporting multiemployer pension plans is a core part of our business. For decades, we have worked with unions and employers to design, manage, and administer these plans. Multiemployer pension plans provide retirement security to more than 10 million Americans. Throughout their careers, workers in multiemployer plans gave up a portion of wages to earn their pension benefits. We are proud to support multiemployer plans that provide these workers with pensions they earned so that they can retire with financial security.

John Hancock has long been a supporter of efforts to address the solvency crises that faced troubled multiemployer plans and the PBGC multiemployer plan insurance program. While the majority of multiemployer pension plans are financially sound, a relatively small, but significant, number of plans faced looming insolvency, and it has long been clear that Congress needed to act to prevent this result. When a seriously troubled multiemployer plan becomes insolvent, retirees face devastating benefit cuts—to the amount guaranteed by the PBGC multiemployer insurance program. For example, a retiree who worked thirty years to earn a yearly pension benefit of say \$30,000, \$40,000, or \$50,000 would have his or her benefits cut to \$12,870 a year. Upon the expected insolvency of the largest troubled plan in the mid-2020s, the PBGC insurance program would run out of money, resulting in retirees in insolvent plans having their benefits cut even further—to pennies on the dollar.

The multiemployer plan provisions in the American Rescue Plan Act signed into law on March 11, 2021 (“ARPA”) laid the groundwork for a lasting solution to these crises. We support this legislation, and we support changes to the Interim Final Rule to fulfill Congress’ intent in enacting it.

Restrictions Imposed by the Interim Final Rule Jeopardize the Long-Term Solvency of Multiemployer Pension Plans that Receive Special Financial Assistance

By authorizing special financial relief to troubled plans in lump-sum amounts designed to keep the plans solvent for the next 30 years, Congress made clear its intent that the multiemployer provisions in ARPA would allow once-troubled plans to achieve long-term sustainability. However, as recognized by the PBGC in its preamble to the Interim Final Rule, the substantial restraints in the Interim Final Rule concerning how special financial assistance may be invested may result in many plans falling considerably short of this goal—to devastating effect on retirees. John Hancock appreciates the PBGC’s attention to, and request for comments on, this issue.

Under the Interim Final Rule, the amount of financial assistance provided to each eligible plan is calculated based on the value today of future benefit promises over the next 30 years, less the amount of the plan’s existing assets and the value today of expected contributions to the plan. To calculate this present value of future benefit promises, ARPA requires use of a formula that for virtually all plans eligible for financial relief will yield a 5.5% interest rate.

This means that in the absence of additional funds from the PBGC, plans eligible for financial assistance must achieve investment returns in excess of 5.5% in order to fulfill their benefit promises beyond 2051. If all other assumptions used in calculating the amount of special financial relief are met, a long-term investment return of exactly 5.5% will result in plan insolvency 30 years after the plan receives financial assistance. Returns of less than 5.5% will guarantee insolvency sooner. Upon insolvency, retirees will once again face the prospect of crippling benefit cuts, and Congress will once again be called upon to fund a solution that prevents this outcome.

If finalized, the Interim Final Rule will set up many plans for failure by making it virtually impossible to achieve investment returns beyond this 5.5% threshold. The Interim Final Rule requires that plans invest special financial assistance in investment grade bonds and fixed income securities that may be expected to return only around 2%—far short of the amount needed to secure long-term solvency.

To make up the difference and to attempt to fulfill the plan trustees' obligations to maintain a diversified portfolio of investments, plans would have to invest preexisting plan assets in investments with the potential to yield high rates of returns. It may be possible for some plans with a small amount of financial assistance relative to their preexisting assets to construct prudent and diversified portfolios to achieve this result. However, other plans—with greater percentages of financial assistance relative to their preexisting assets—will be locked into investment portfolios that require an inordinate amount of investment grade bonds or fixed income securities that are well in excess of what would be advisable under generally accepted investment principles.

Fiduciary investment managers of such plans will be forced into a no-win decision. One option is to maintain an investment portfolio that is not properly diversified and almost certainly will run out of money before fulfilling the plan's benefit promises. The other is to invest non-financial assistance assets in highly risky investments that have the potential to generate sufficient returns but also may be subject to undue risk of loss. Neither of these options serve the best interests of workers, retirees, or American taxpayers—but forcing fiduciary investment managers to make one of these bad choices is a direct consequence of unnecessarily imposing substantial restrictions on how special financial assistance may be invested.

Recommendation to Permit Investment Managers to Use Special Financial Relief to Craft Prudent and Diversified Investment Portfolios Needed for Troubled Plans to Fulfill their Benefit Promises

The Interim Final Rule should be revised to allow fiduciary investment managers to invest special financial assistance in any manner necessary for the plan to construct a prudent and diversified portfolio that, taking into account existing assets, satisfies the investment manager's fiduciary obligations. ERISA's well-established diversification and prudence obligations imposed on fiduciary investment managers are the proper guardrails for protecting plan assets and empowering troubled plans to use special financial assistance to fulfill their long-term benefit promises.

Long-established law in the Employee Retirement Security Act of 1974 ("ERISA") requires that fiduciary investment managers craft prudent and diversified investment portfolios that maximize financial returns while at the same time minimizing the risk of large losses. Applying these principles, multiemployer plan fiduciaries may build diversified investment portfolios with appropriate mixes of fixed income, domestic and international equity, and other investments consistent with generally accepted investment principles. These portfolios regularly produce,

and may be expected to continue to produce, long-term investment returns between 6.5 and 7.5%—returns that may be sufficient for troubled plans to use lump-sum special financial assistance to achieve long-term sustainability. The PBGC’s final rules to implement ARPA should allow investment managers to continue to have the ability to build such investment portfolios in compliance with ERISA’s strict fiduciary requirements—without locking the plan into an inordinately high percentage of low-returning investments based on the happenstance of how much money the plan receives in special financial assistance relative to its preexisting assets.

The PBGC has authority to implement this recommendation. ARPA specifies that special financial assistance may be invested in investment-grade bonds and empowers the PGBC to authorize investments in “other investments as permitted by the [PBGC].” While the reference to investment-grade bonds indicates that at least a portion of the funds should be invested conservatively so as to preserve the plans’ ability to pay promised benefits, the statute clearly contemplates that the PBGC could allow other investments, and ERISA’s diversification and prudence standards provide the appropriate comprehensive strategy. In contrast, locking an inordinate percentage of plan assets in low-returning investments without regard to whether doing so is prudent under generally accepted investment principles will result in either guaranteed plan insolvency or the need to make highly risky investments with preexisting assets that may generate large losses and accelerate insolvency. These outcomes are neither compelled by statute nor outside of the PGBC’s power to prevent.

* * *

We appreciate the opportunity to submit this letter for your consideration, and we stand ready to work with the PBGC to provide troubled plans with the investment tools needed for special financial assistance to be used to achieve long-term financial success. We would welcome the opportunity to discuss the issues in this submission. If you have any questions concerning our comment, or if John Hancock can be of further assistance, please do not hesitate to contact Todd Cassler at TCassler@jhancock.com or Tom Samoluk at tsamoluk@jhancock.com.

Sincerely,



Todd Cassler
President of Institutional Distribution
John Hancock Investment Management