AMERICAN ACADEMY of ACTUARIES

January 11, 2023

The Honorable Gordon Hartogensis
Director, Pension Benefit Guaranty Corporation (PBGC)
445 12th Street SW
Washington, DC 20024-2101

RE: Special Financial Assistance Applications for Non-Priority Plans

Dear Director Hartogensis:

The Multiemployer Plans Committee of the American Academy of Actuaries[1] ("the committee") has carefully reviewed the Special Financial Assistance (SFA) application process for non-priority plans and offers some suggestions as you navigate the expiration of the priority group period on March 11, 2023.

As you are aware, over 200 plans will be eligible to apply for SFA on March 11, 2023. With a 120-day review period and limited resources, it is clear that not all plans will be able to apply at the same time. PBGC has been clear in the guidance that the filing portal will be closed once capacity is reached. The portal will almost certainly close immediately on March 11 and will leave plans having to decide whether to lock in their application or wait. The lock-in application is a welcomed approach and gives plans the option to prepare the application once, which reduces cost. The lock-in application sets the SFA measurement date, asset amount, participant data, and interest rates. However, plans have expressed concerns over locking in without knowing how long they may have to wait, all the while spending down non-SFA assets (a fact that is not considered in the final application). This spend-down during the waiting period could lead to plans not receiving enough SFA to maintain solvency through 2051.

Alternatively, plans can choose not to lock in, leaving them to balance asset volatility with rising interest rates. However, plans have expressed equal concern over this option because there is no guarantee when the portal will reopen and how much time plans will have to prepare an application that is tied to a specific calendar month by regulation. And, if PBGC again reaches capacity and the portal is closed, the cycle repeats.

[1] The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

With the challenges defined, the focus now turns to possible solutions, fully recognizing some are more robust than others. Further, some may be constrained by the Final Rule, but they are offered for completeness in hopes that elements may be used in some capacity.

1. **Establish a non-priority plan metering system after a lock-in application is filed:** This sets expectations for an approximate wait time. With that approximate benchmark, plans can then consider the alternatives of locking in or waiting to apply at a later date. Possible options (or any combination) for metering include:
    a. projected plan solvency; addressing the earlier insolvent plans first
    b. the number of plan participants or the amount of SFA requested
    c. Pension Protection Act (PPA) status; with the Critical & Declining Plans given priority over Critical Plans
    d. the ratio of active to inactive participants; priority to plans with the lower ratio
    e. the plan's modified funded percentage; priority to plans with a lower percentage
    f. random priority, such as using the last 3 digits of the Employer Identification Number (EIN) or alphabetical by Plan Name
    g. original priority group status

    Further, it is the committee's understanding that PBGC does not want plans filing applications shortly after 12:01 a.m. EST on Saturday, March 11, 2023, in an effort to be first in line before the portal closes. Given that, it is recommended that PBGC announce that only lock-in applications will be accepted on March 11, 2023, and that plans that locked in may file full applications based on a non-priority metering system as described above.

2. **Broaden lock-in application rules:** The committee estimates PBGC's review of all 200 plans to take around two years. If 100% of plans submitted a lock-in application, plans at the end of the line would face a two-year wait during which the continued spending down of non-SFA assets and future market volatility would not be considered as part of their final SFA amount. This would potentially leave plans at the end of the line in a worse position than plans at the beginning. PBGC could consider allowing plans that must wait for a certain period (e.g., six months or longer) to adjust non-SFA assets for the SFA waiting period by the actual returns during that time period.

3. **Change the rate of interest paid on the SFA amount:** Currently the SFA amount is adjusted from the SFA measurement date to the date paid using the SFA rate in 4262.4(e)(2). Instead, consider using the non-SFA rate in 4262.4(e)(1) at least from the time a plan submitted a lock-in application until the time it was accepted by PBGC. This adjustment would be consistent with how non-SFA assets are valued in the determination of SFA and help offset the potential harm plans would experience.

4. **Treatment for plans that withdraw and refile:** Plans should be encouraged to submit their best initial application; however, it should also be recognized there are instances where revised applications are warranted. With this in mind, consider a separate process to refile a revised application (regardless of any non-priority metering system or priority group) and that these plans not be affected by the possible closure of the portal.

5. **Additional resources:** It is the committee's understanding that PBGC has expanded staff to devote to this process and expect that efficiencies will emerge as more applications are reviewed. PBGC's educational efforts through webinars and conferences to offer lessons learned and best practices for an application are appreciated, and it is recommended these continue regularly. The committee also recommends that a list of common issues/concerns be available for plans to review before submitting an application. The committee would be happy to help in this effort.

   Further, PBGC may consider providing analysis for approximately how long the processing of all non-priority plans would take. This could be helpful for plans in setting expectations and deciding whether to submit a lock-in application or wait. Finally, does PBGC envision a scenario in which plans are not able to file their initial application before the statutory period closes (12/31/2025)?

6. **Additional considerations for lock-in applications:** The committee recommends that PBGC consider a process to prioritize plans that submit a lock-in application, but suggests a more robust approach than simply the date/time the lock-in application was received. PBGC may consider all lock-in applications received on the same day as being received concurrently (or potentially all lock-in applications received in the same month, given that they all use the same SFA measurement date). Further, plans with lock-in applications could be given priority over new applications when the portal reopens. In fact, consider that the portal should remain closed to new non-lock-in applications if there are plans with lock-in applications waiting to submit their initial application. Finally, it is advisable that plans know at least a month in advance when the portal will open so they can begin finalizing their complete application.

The challenge PBGC faces in reviewing 200+ applications beginning March 11, 2023, is acknowledged. Each plan eligible for SFA has different risks based on their demographic makeup and asset values, which must be evaluated prior to submitting a full application or a lock-in application. Plans and practitioners seek transparency in the process to best manage these risks both during and after the lock-in waiting period.

The American Academy of Actuaries Multiemployer Plans Committee is available to work with PBGC to expand on the ideas provided above or to offer input and feedback on other options PBGC may be considering. Please contact Philip Maguire, the Academy's pension policy analyst (202-785-7868 or maguire@actuary.org), if you have any questions or would like to discuss these issues further.

Sincerely,

Joseph F. Hicks, Jr., MAAA, FCA, EA
Chairperson, Multiemployer Plans Committee
American Academy of Actuaries