

ALERTS

PBGC Issues Final Rule for Special Financial Assistance Program

July 11, 2022

The American Rescue Plan Act (“ARPA”) created a special financial assistance program (the “SFA Program”) to assist struggling multiemployer pension plans to remain solvent through 2051. In July 2021, following ARPA’s passage, the Pension Benefit Guaranty Corporation (“PBGC”) issued an interim final rule (the “Interim Rule”) establishing the method for multiemployer plans to determine eligibility and apply for special financial assistance (“SFA”) under the SFA Program.

On July 8, 2022, the PBGC published its final rule implementing changes to the SFA Program (the “Final Rule”). The Final Rule was issued in response to public comments the PBGC received last summer from various stakeholders, including SRZ clients, identifying concerns with the Interim Rule. The Final Rule will take effect on Aug. 8, 2022. The Final Rule’s most significant changes to the Interim Rule are discussed below.[1]

Certain requirements and conditions under the Interim Rule created a misalignment between the projected needs of plans applying to the SFA Program, and the actual investment returns plans would be able to receive from SFA assets. This misalignment was primarily attributable to restrictions imposed under the Interim Rule requiring plans to use one interest rate assumption for both SFA and non-SFA assets, while limiting investments of SFA assets to investment grade, fixed income investments. Consequently, the projections in plan SFA Program applications and the returns that plans would realistically realize from SFA assets were misaligned.

The Final Rule changes the interest rate assumptions that plans are required to use in calculating the amount of SFA such plans are eligible to receive. Under the Final Rule, plans will be permitted to utilize two different interest rate assumptions: one for calculating expected returns on the investment of a plan's non-SFA assets,[2] and another for calculating expected returns on the investment of a plan's SFA assets.[3]

The Final Rule also changes the investment restrictions the Interim Rule placed on SFA Program assets. Under the Final Rule, plans will now be able to invest up to 33 percent of their SFA assets in return-seeking investments, including publicly traded common stock and equity funds that invest primarily in public shares.

The Final Rule substituted the plan phasing in SFA assets over the SFA payout period in calculating withdrawal liability, instead of recognizing all of the SFA as plan assets immediately, so as not to encourage withdrawals. The Final Rule includes a request for additional public comments with respect to this change. The phase-in condition is subject to change. The Final Rule maintained the Interim Rule's provision mandating use of the PBGC's annuity-based interest rate for calculating withdrawal liability.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] Other changes include special provisions (i) to allow possible retroactive benefit improvements in 10 years, (ii) for plans that had reduced benefits and (iii) for plans that merge with plans that do not receive SFA.

[2] The interest rate assumption for non-SFA assets is the interest rate used by the plan in its most recently completed certification of plan status before Jan. 1, 2021.

[3] The new interest rate assumption for SFA assets is the lower of (1) the interest rate used by the plan in its most recently completed certification of plan status before Jan. 1, 2021, and (2) the average of the three segment rates (24-month average) determined under section 430(h)(2) of the Internal Revenue Code, plus 67 basis points.

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