



June 16, 2025

## Risk Advisory

**TO:** Alice Maroni  
Acting Director

**FROM:** Nicholas J. Novak  
Inspector General

**SUBJECT:** Recent Court of Appeals Ruling May Cost Taxpayers Approximately \$6 Billion More in Special Financial Assistance than Originally Projected

On April 29, 2025, the United States Court of Appeals for the Second Circuit reversed the decision of the U.S. District Court for the Eastern District of New York, which had affirmed PBGC's denial of the Special Financial Assistance (SFA) application for the Bakery Drivers Local 550 and Industry Pension Fund, a terminated pension plan. The decision by the Appeals Court allows over 100 other previously ineligible terminated multiemployer plans to apply for SFA. This potential influx of plans as the statutory deadline for applications looms could challenge PBGC's processes for a timely, thorough review and result in plans approval by default. Additionally, PBGC may pay an additional \$6 billion in unanticipated SFA.

The suggestions contained in this Risk Advisory do not constitute formal audit recommendations. Consequently, it does not require a PBGC management response.<sup>1</sup> However, if PBGC chooses to act on the issues this Risk Advisory presents, I respectfully request a written summary of those actions.

Also, in compliance with OIG responsibilities under the Inspector General Act to keep the Board, Congress, and the public fully and currently informed about problems and deficiencies related to the Corporation's programs and operations, please be advised our office will post this Risk Advisory on the OIG public website.

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<sup>1</sup> We are issuing this Risk Advisory under the authorities in the Quality Standards for Federal Offices of the Inspector General, August 2012.

## Summary

Management is responsible for identifying internal and external risks that may prevent the Corporation from meeting its strategic goals and objectives, assessing risks to determine their potential impact and applying the appropriate risk responses. One source of risk information is the Office of Inspector General (OIG).

The impact of the Court of Appeals ruling could result in over 100 pension plans applying for SFA, with an estimated cost to taxpayers of approximately \$6 billion. This additional cost for SFA was unanticipated and could lead to an influx of applications in the last 6 months of the SFA application window. PBGC will be challenged to meet the statutory requirement to make a determination on the applications within 120 days of applying. Additionally, while a portion of the payments would cover plan benefits and administrative costs, the larger portion would be repayment to PBGC for multiemployer plans which collected traditional financial assistance from PBGC after insolvency. Given these risks, PBGC should continue working with its oversight Board of Directors (Secretary of Labor, Secretary of Commerce, and Secretary of Treasury) to facilitate Congressional action to remediate the risk. Unless PBGC and its Board agencies take immediate action, the result could be a significant waste of taxpayer dollars and PBGC may not be able to meet its statutory obligation in regard to the SFA program.

## Background

In response to the COVID-19 global pandemic, American Rescue Plan Act (ARP) was enacted on March 11, 2021. ARP allows eligible multiemployer pension plans to apply to the PBGC for SFA. Further, ARP provides that eligible multiemployer plans are to receive lump sum payments meant to provide sufficient funding for benefit payments and administrative expenses for 30 years.

While ARP provided PBGC with an indefinite appropriation to carry out the SFA provisions, in the most recent Projections Report, PBGC projected it would pay an estimated \$80 billion in SFA to help save severely underfunded multiemployer pension plans that met certain criteria.<sup>2</sup>

PBGC received its first SFA application in August 2021 and the SFA application window will close for all plans, by statute, on December 31, 2025. As of March 31, 2025, PBGC

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<sup>2</sup> PBGC FY 2023 Projections Report, July 2024.

received 202 applications requesting a total of \$76.4 billion in SFA and approved 150 applications for \$68.6 billion.<sup>3</sup> PBGC is currently reviewing 24 SFA applications that will result in approximately \$1.8 billion in payments and has 48 plans remaining on the waiting list to apply for SFA that will be paid approximately \$1.3 billion in payments.

### *SFA Eligibility*

According to ARP, a multiemployer pension plan is eligible for SFA if it falls within one of the following four categories:<sup>4</sup>

1. "Critical and declining" status in any plan year beginning in 2020 through 2022,<sup>5</sup>
2. Suspension of benefits approved under the Multiemployer Pension Reform Act of 2014 (MPRA) as of March 11, 2021;
3. "Critical" status in any plan year beginning in 2020 through 2022, "modified" funded percentage of less than 40 percent, and ratio of active to inactive participants less than 2:3; or
4. Insolvent after December 16, 2014, remained insolvent, and not terminated as of March 11, 2021.

### *Bakery Drivers Pension Plan*

In September 2022, the terminated Bakery Drivers pension plan, which primarily benefits unionized bakery drivers in Floral Park, New York City, applied for SFA in the amount of \$132,250,472. The Plan was terminated by mass withdrawal on December 17, 2016. However, in order to qualify for SFA, the Plan stated it was no longer terminated and had restored itself to ongoing status. Although the Plan was terminated in 2016, one of its former employers resumed contributions to the Plan in September 2022, after ARP was passed on March 11, 2021. The Plan presents this resumption of the contributions to claim it was no longer terminated and restored as an on-going plan.

On January 20, 2023, PBGC issued a memorandum, which stated, Title IV of ERISA implicitly prohibits restoration of a multiemployer plan terminated by mass withdrawal.

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<sup>3</sup> The status of SFA applications is available on PBGC's [website](#).

<sup>4</sup> ERISA 4262(b)(1), 29 U.S.C. 1432; 29 C.F.R 4262.3(a).

<sup>5</sup> Given the specificity of the statute language, PBGC's position is that a plan that is terminated prior to 2020 is not eligible for SFA.

As a result, in January 2023, PBGC denied SFA to the Bakery Drivers Plan on the grounds that it is an ineligible terminated plan.

On March 1, 2023, the Plan sued PBGC in federal court under the Administrative Procedure Act (APA), seeking injunctive and declaratory relief to redress violations of ERISA and the APA. On October 26, 2023, the U.S. District Court for the Eastern District of New York affirmed PBGC's rejection of the Plan's SFA application.

On November 29, 2023, the Bakery Drivers Plan appealed the District Court's decision to the United States Court of Appeals for the Second Circuit. The Appeals Court held that, "Despite its connotation, a "termination" of this kind does not mark the end of a plan's operations." It concluded:

Because we do not read the pertinent provisions of the SFA statute to exclude plans based solely on a prior termination, we REVERSE the judgment of the district court and REMAND with instruction to (1) enter summary judgment for the Fund, (2) vacate the PBGC's denial of the Fund's SFA application, and (3) remand to the PBGC for reconsideration.

While the disposition of the case is still not resolved and PBGC is determining the course of action it will pursue, 12 terminated pension plans, which were previously not eligible to apply have initiated the first steps in applying for SFA, with approximately 100 more projected to follow. In addition, on May 30, 2025 the Bakery Drivers pension submitted its revised application in the amount of \$125,816,065. Per the stipulated order, PBGC has only 60 days (instead of the 120 days) to review this application.

## **Risk**

*Given the Appeals Court's decision that terminated plans are eligible for SFA, there is a significant risk that a majority of the 123 terminated/insolvent plans will apply for SFA, estimated to be \$6 billion, that PBGC and other government entities had not anticipated. Further, within these payments several billion dollars in taxpayer funds may be wasted on repayments to PBGC and PBGC also risks approval of plans' applications by default due to the volume and time needed to properly review applications.*

## Details

### *\$6 Billion in Unanticipated Expenditures of Taxpayer Dollars*

This decision by the Appeals Court allows terminated multiemployer plans to be eligible for SFA. A terminated multiemployer is similar to a “wasting trust,” i.e., plan operations will continue until all participants’ benefits are paid. However, under such a plan, participants do not accrue any additional benefits. In addition, most of these plans do not receive any employer contributions. At the inception of ARP, neither PBGC, the Congressional Budget Office (CBO), nor the Congressional Research Services (CRS) anticipated that terminated plans would be eligible for SFA. Also, such SFA payments were not included in the President’s FY2026 budget proposal. Based on OIG’s recent estimates, SFA payments to terminated plans will cost about \$6 billion in taxpayer funds.

### *Potential Waste of \$3.5 billion in Taxpayer Funds<sup>6</sup>*

For the terminated plans impacted by the Appeals Court decision, the OIG estimated this would result in additional SFA payments of \$6 billion, which breaks down into two parts: 1) about \$2.5 billion will go to the plans to pay for participant benefits and administrative expenses, and 2) about \$3.5 billion will go to PBGC for repayments of outstanding financial assistance previously paid to plans under ERISA section 4261.

For insolvent plans that received PBGC’s traditional financial assistance in the past, PBGC has determined that it is entitled to be reimbursed for these loans from SFA funds.<sup>7</sup> In prior SFA approvals, there were 21 insolvent plans that 1) received financial assistance loans from PBGC and 2) were approved for SFA. These plans approvals resulted in PBGC recouping approximately \$400 million from SFA for repayment of the traditional financial assistance loans. With the Court of Appeals ruling, approximately 91 insolvent plans that were terminated and have outstanding financial assistance loans

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<sup>6</sup> Waste is defined by the Government Auditing Standards as, “The act of using or expending resources carelessly, extravagantly, or to no purpose. Waste can include activities that do not include abuse and does not necessarily involve a violation of law.” (paragraphs 6.21, 7.23, and 8.120)

<sup>7</sup> Insolvent plans receiving traditional financial assistance from PBGC receive loan payments to cover the plan’s participants benefits and administrative costs. The traditional financial assistance program was established as a loan program; however, prior to SFA a repayment has only occurred once.

will now qualify for SFA.<sup>8</sup> The repayment portion for the 91 plans will be significantly higher than the amounts previously repaid. Specifically, for the terminated, insolvent plans, the amount to be repaid to PBGC is about \$3.5 billion or about 58 percent of the total SFA estimated for the terminated plans. The expected reimbursement amount of \$3.5 billion is much higher than the amount PBGC recouped from the earlier SFA approvals and is primarily due to 1) significantly more insolvent plans in this unexpected group and 2) some of the larger insolvent plans in this unexpected group have been insolvent for many years, 15 years on average. These two conditions result in significant amounts of financial assistance paid by the PBGC.

In our opinion, the repayment of \$3.5 billion to PBGC would be a waste of taxpayer funds due to the positive current and projected financial condition of the multiemployer program. In 2023, GAO removed PBGC from their High-Risk list because of improvement in the program's condition due to the SFA program. PBGC's multiemployer program is in the best financial condition it has been in for many years. PBGC's 2023 Projections Report states that PBGC's multiemployer program is projected to "likely remain solvent for at least 40 years." Due to the value of the \$3.5 billion repayment, which is estimated to be more than half of the funds needed by the terminated plans and with the improved financial position of the multiemployer program due to SFA, the \$3.5 billion repayment to PBGC could be viewed as a wasteful use of taxpayer funds.

#### *Application Review Deadline*

As of March 31, 2025, PBGC's inventory of multiemployer plans contained 123 terminated plans. This group of plans is comprised of 32 terminated, potentially insolvent plans and 91 terminated, insolvent plans. All of these plans could apply for SFA as a result of the Appeals Court ruling.

ARP requires PBGC to process all SFA applications within 120 days of receipt; specifically, ARP section 9704(b) added section 4262(g) to ERISA, which states that a plan's application for SFA that is timely filed:

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<sup>8</sup> There are 123 terminated plans impacted by the Appeals Court decision. Ninety-one plans are terminated and insolvent; and therefore, collected traditional financial assistance from PBGC. Thirty-two plans are terminated, but not insolvent; and did not collect traditional financial assistance from PBGC.

*...shall be deemed approved unless the corporation notifies the plan within 120 days of the filing of the application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is not eligible under this section.*

SFA applications are complex and properly reviewing and analyzing them takes time. Over the past four years, PBGC has been able to process about 200 applications. If a significant number of the unanticipated plans apply prior to December 31, 2025, when these plans are combined with the 48 plans on PBGC's waiting list to apply, it may prove difficult for PBGC to meet the 120-day statutory requirement for reviewing SFA applications. Any application that was not processed timely would automatically be approved.

## **Conclusion**

PBGC should continue to work with stakeholders to address the risk related to the Appeals Court decision impacting terminated multiemployer plans. The risk includes the unforeseen increase in SFA funded by taxpayer dollars, the estimated \$3.5 billion which would be repaid to PBGC, and concerns about the PBGC's ability to perform sufficient application reviews within the time constraints of the law.

## **Suggestions**

To mitigate the above risk, we offer the following suggestion to PBGC management:

1. Continue to work with PBGC's Board of Directors to facilitate Congressional action to remedy the impact of the Appeals Court ruling. Possible remedies could include:
  - Extending the December 31, 2025, and related deadlines to file and process an SFA application;
  - Waiving the repayment to PBGC for plans that received traditional financial assistance; and
  - Amending ARP so that terminated plans are either specifically included or excluded from applying for SFA.