STATEMENT OF GORDON HARTOGENSIS
DIRECTOR
PENSION BENEFIT GUARANTY CORPORATION

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

MARCH 20, 2024

Chairman Good, Ranking Member DeSaulnier, and Members of the Subcommittee, thank you for the opportunity to testify today about the important work of the Pension Benefit Guaranty Corporation to protect millions of workers in multiemployer pension plans who faced significant cuts to their benefits.

INTRODUCTION

Before enactment of the American Rescue Plan (ARP) Act of 2021, the Pension Benefit Guaranty Corporation (PBGC) Multiemployer Insurance Program was facing a solvency crisis. At that time, the failures of numerous and larger multiemployer plans were imminent, and those failed plans would have turned to PBGC for financial assistance. PBGC's Multiemployer Insurance Program had a small asset base and little premium income. Those insolvencies would have accelerated cash outflows from PBGC and would have exhausted our Multiemployer Insurance Program assets in 2026, leaving retirees in failed plans (including those plans currently trusteed by PBGC) with only pennies on the dollar.

Before ARP, workers and retirees participating in more than 200 severely underfunded multiemployer pension plans faced the prospect of not receiving the full benefits they earned and needed to support them and their families in retirement. These multiemployer plans cover millions of America's workers and retirees across the country in industries that include transportation, manufacturing, printing, services, construction, fishing, and hospitality. And these plans are headquartered in 31 states – including Michigan, Ohio, Missouri, Illinois, Texas, Wisconsin, Minnesota, Indiana, Florida, and Tennessee – plus the District of Columbia and Puerto Rico.

Today, thanks to the ARP's Special Financial Assistance (SFA) Program, the PBGC is providing crucial financial relief to struggling, eligible multiemployer pension plans and ensuring that millions of America's workers, retirees, and their families receive the pension benefits they earned through many years of hard work. Implementation of the SFA Program is our highest priority.

The urgency and magnitude of the multiemployer pension crisis set the stage for the inclusion of the SFA program in the ARP. The SFA Program is the most substantial policy to strengthen the solvency of our nation's multiemployer pensions since the enactment of the Employee Retirement Income Security Act (ERISA) in 1974. Every eligible multiemployer pension plan that faced near-term insolvency and benefit cuts that receives Special Financial Assistance is projected to remain solvent through at least 2051.

PBGC, working closely with PBGC's Office of Inspector General (OIG), moved expeditiously and rigorously to implement this unprecedented program. PBGC is committed to effective stewardship of taxpayer funds and has identified and implemented ongoing improvements to the SFA Program to further that goal.

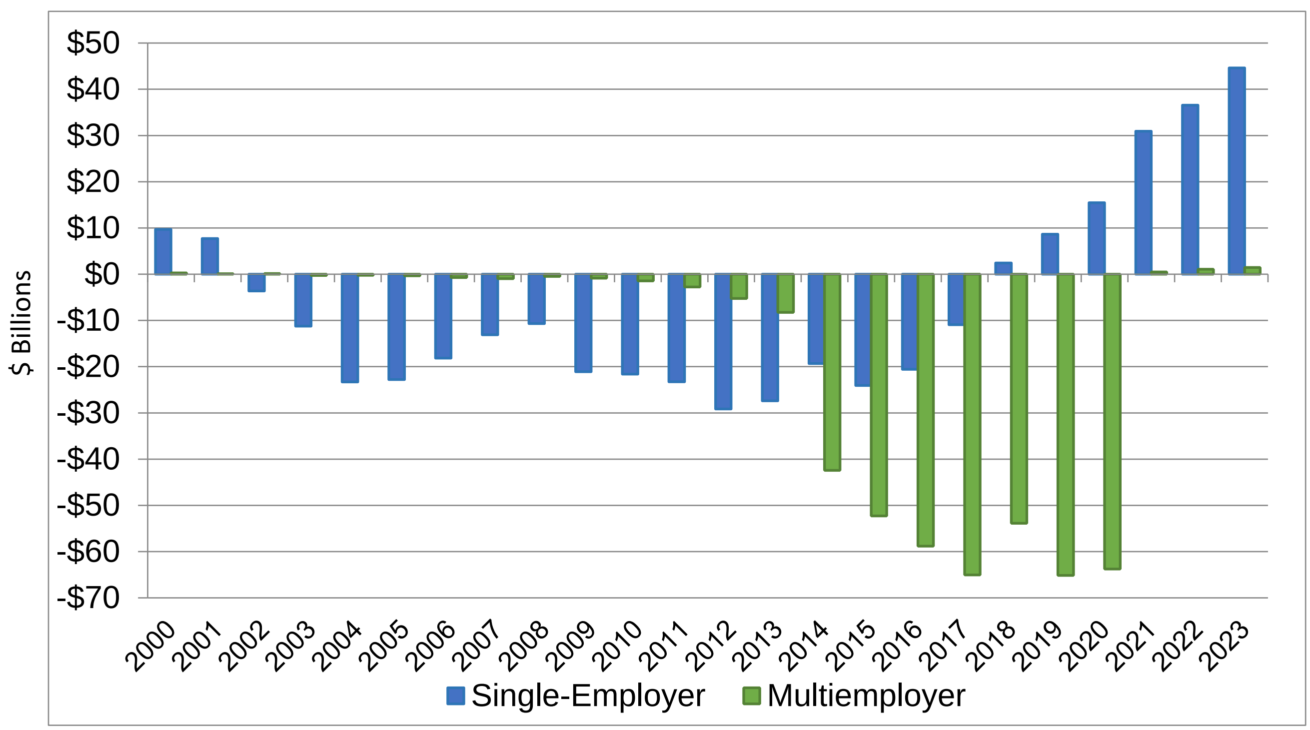
AMERICAN RESCUE PLAN ADDRESSED PBGC's MULTIEMPLOYER PROGRAM INSOLVENCY CRISIS

Prior to enactment of ARP, PBGC's Multiemployer Insurance Program had a *negative* net position of $63.7 billion and was projected to run out of money in fiscal year (FY) 2026.

As illustrated in Figure 1 below, focusing on the multiemployer green bars on the far right, the negative net position was at $63.7 billion at the end of FY 2020. That negative position became positive in FY 2021. This is a direct result of the American Rescue Plan.

Figure 1

PBGC Net Financial Position FY 2000-2023
($ in billions)



In March 2021, the Government Accountability Office (GAO) reported:

> *Absent additional steps to improve PBGC's finances, the long-term financial stability of the agency remains uncertain and the retirement benefits of millions of American workers and retirees could be at risk of dramatic reductions.*

ARP significantly extends the solvency of the Multiemployer Insurance Program. Our most recent projections report[1] shows a median projected insolvency date beyond 2061, the final year of the projection period.

On April 20, 2023, the Government Accountability Office removed PBGC's Multiemployer Insurance Program from its High-Risk List, stating that "Congress has provided funding to troubled multiemployer pension plans, which has led to an improved financial position for the PBGC multiemployer insurance program."[2]

PBGC Solvency

ARP significantly extends PBGC's Multiemployer Insurance Program solvency, but it was not designed to address structural issues and is not a permanent solution. While future reforms would help improve the long-term health and resilience of the multiemployer system, ARP has provided a multi-decade financial lifeline, and the effects of that are clear.

BUILDING A ROBUST SFA PROGRAM

When Congress charged us with rapidly implementing the SFA Program, PBGC's dedicated professionals stood up this multibillion-dollar effort within 120 days as directed by statute. Section 4262(c) of ERISA required PBGC to prescribe the requirements for SFA applications in regulations or other guidance within 120 days from March 11, 2021. PBGC met this deadline when it implemented the program with the issuance of its Interim Final Rule (initially effective as guidance on July 9, 2021).

PBGC began receiving and reviewing SFA applications in August 2021. The first SFA application was approved on December 21, 2021, and the first payment was issued January 18, 2022. After reviewing over 100 comment letters, on July 8, 2022, PBGC published a final rule (SFA Final Rule) that made changes to the program from the Interim Final Rule.

Consistent with its statutory charge, PBGC's SFA Program allows eligible plans to receive sufficient funds projected for plans to maintain their solvency through 2051. The SFA calculation requires measurement of current plan assets and long-term actuarial projections of future employer contributions to the plan, all plan benefits expected to be paid through 2051, withdrawal liability income, investment income, and plan expenses – an inherently complex and

---

[1] PBGC FY 2022 Projections Report. https://www.pbgc.gov/sites/default/files/documents/fy-2022-projections-report.pdf

[2] HIGH-RISK SERIES: Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas (GAO-23-106203) https://www.gao.gov/products/gao-23-106203

uncertain proposition. These projections rely heavily on economic and actuarial assumptions on which PBGC has provided guidance and conducts thorough reviews.

These projections necessarily require use of economic and actuarial assumptions, given the inherent uncertainties of future plan experience over a long period of years. As a result, the SFA calculation is largely an assumptions-driven calculation and PBGC's review therefore requires a thorough assessment of the reasonableness of the assumptions and methods plans use in the calculation. The actuarial projection of future benefit payments relies not just on the plan's current participant census, but on long-term assumptions regarding the level of future benefit accruals, the extent to which new entrants join the plan and their ages, mortality, the age at which participants retire, and other assumptions.

PBGC has processed applications according to six priority categories, with successive application windows into early 2023, based on the urgency of funding. For example, plans that were already insolvent or projected to become insolvent before March 11, 2022, were invited to apply under Priority Group 1 beginning July 9, 2021, through December 31, 2021. Beginning March 11, 2023, PBGC gave nonpriority plans with less urgent needs the opportunity to join a waiting list for submitting applications and to lock in their SFA application figures.

As of March 18, 2024, PBGC has approved approximately $53.6 billion in SFA to 71 plans that cover around 776,000 workers, retirees, and beneficiaries.

IMPACT OF SFA

The SFA Program provided much-needed immediate relief and restoration of benefits (including back payments of previously cut benefits) to participants and beneficiaries in eligible plans. This included 21 insolvent multiemployer plans covering 33,000 participants and 18 plans covering more than 80,000 workers and retirees that previously cut back benefits under the Multiemployer Pension Reform Act of 2014.

Figure 2 below shows the number of participants and SFA funding for the 71 SFA plans approved to date by state where the plan is headquartered.

Figure 2

SFA Approved Applications by Plan State Headquarters

SFA by State where plan is headquartered		
State	**Participants***	**Total SFA**
AK	744	$53.5 million
CA	30,144	$1.8 billion
DC	15,678	$586.4 million
IL**	388,771	$37.3 billion
MA	445	$13.4 million
MD	54,769	$1.6 billion
MI	2,051	$262.6 million
MN	1,075	$26 million
NJ	23,037	$2.6 billion
NY	74,459	$4.2 billion
OH	13,030	$608.9 million
OR	8,229	$330.2 million
PA	86,040	$2.5 billion
PR	2,624	$33.3 million
RI	1,512	$16.5 million
TN	73,051	$1.6 billion
TX	246	$20.7 million
TOTAL	775,905	$53.6 billion

* Plan participants may be located in additional states. Regional and national plans may have participants and employers in multiple states. Plan reporting includes no participant location and very limited employer location. **SFA approved for plans headquartered in IL includes over $35.7 billion approved for the Central States, Southeast & Southwest Areas Pension Plan, which covers over 357,000 participants in all 50 states and DC.

The SFA Program also addressed the risks and uncertainties confronting the employers who participate in financially troubled plans, many of which are small businesses.

WORKING WITH PBGC'S OFFICE OF INSPECTOR GENERAL

From the beginning of the SFA Program, PBGC has worked closely and cooperatively with the PBGC Office of Inspector General (OIG) to implement and improve this landmark program.

At the outset, it is important to note that PBGC did not make any payments to deceased individuals, and no OIG report has alleged that it has. PBGC has addressed OIG's concerns regarding census data by enhancing the Agency's review of census data for plans applying for SFA.

On August 12, 2022, the Central States, Southeast and Southwest Areas Pension Fund (Central States) submitted a revised application under PBGC's SFA Final Rule. The SFA Final Rule requires that plans with 350,000 or more participants, such as Central States, submit the census data the plan used in developing the cash flow projections included in the application. The SFA Final Rule also included a requirement for plans applying for SFA to provide documentation of a death audit performed by the applicant plan to identify deceased participants. The SFA Final Rule also required that plans certify that "…the application contains all the relevant facts relating to the application, and such facts are true, correct, and complete."

On December 5, 2022, PBGC approved the Central States' SFA application and authorized payment of $35.8 billion to Central States, providing the plan with sufficient assets to project solvency through 2051. Payments under SFA are made to plans, not to any individuals (whether living or deceased). The plan is responsible for administering plan benefits.

On March 22, 2023, the OIG issued its Report: PBGC Should Exclude Deceased Terminated Vested Participants from SFA Calculations (EVAL-2023-05).[3] The report addressed the PBGC's steps to ensure that deceased terminated vested participants were not included in the determination of the SFA amount used in the plan's projections of how much funding would be needed for the plan to remain solvent through 2051.

In response to the March 22, 2023, OIG report, and after consultation with the OIG, on April 21, 2023, PBGC began conducting independent death audits on census data for Terminated Vested (TV) participants using the Social Security Administration's full file of death information (SSA's full file) as part of its application review process for all new applications. PBGC also sent instructions to plans with pending applications that had 120-day review deadlines after May 15, 2023, requiring submission of TV census data, so PBGC could perform an independent death audit using SSA's full file.

As noted by the OIG in a November 1, 2023, Management Alert: Deceased Participants in the Central States' Special Financial Assistance Calculation (Report No. EVAL-2024-01)[4], "This recommendation did not apply to Central States due to the timing of the application."[5] After PBGC implemented these enhanced procedures, OIG closed its recommendation.

To reiterate, PBGC did not make any payments to deceased individuals, no OIG report has alleged that it has, and there are no allegations that any of the applicant plans intentionally misled PBGC. The OIG did not recommend PBGC take any further action with respect to the Central States application or the SFA payment.

As part of its ongoing collaboration with the OIG, PBGC took several other steps to reduce risk, including updating application instructions to include detailed guidance on how deceased

---

[3] Report: PBGC Should Exclude Deceased Terminated Vested Participants from SFA Calculations (EVAL-2023-05) https://oig.pbgc.gov/pdfs/EVAL-2023-05.pdf

[4] Management Alert: Deceased Participants in the Central States' Special Financial Assistance Calculation (Report No. EVAL-2024-01) https://oig.pbgc.gov/pdfs/EVAL-2024-01.pdf

[5] *Id. at n.7.*

participants should be handled by plans; and requiring applicants to certify that the results of death audits are reflected in SFA calculations.

On September 14, 2023, OIG provided PBGC with a draft management alert, which OIG formally issued on November 1, 2023, as the previously cited Management Alert. This alert recommended that PBGC expand the scope of its independent death audit to include all participant categories and that PBGC modify SFA application review procedures to include cross-checking the plan's census data against SSA's full file.

On October 17, 2023, PBGC agreed with the OIG's recommendation and implemented the change for all future SFA applications, as well as for all applications then under PBGC review. As a result, all PBGC SFA approvals made after November 7, 2023, (including for pending applications), incorporate the results of the expanded cross-checking with SSA's full file of each plan's census data and adjustment by the plan of the amount of SFA requested in its application to reflect any deceased participants identified by PBGC.

As of November 1, 2023, PBGC posted expanded census data requirements for all SFA applications enabling PBGC to perform an independent death match using the SSA's full file for all categories of participants on all groups of participants – active employees and retirees, as well as terminated vested participants. The results of the audit are used by plans to remove any deceased participants inadvertently included on plan censuses from calculations and make the necessary adjustments to the amount of SFA requested.

With respect to approvals made prior to November 7, 2023, the PBGC is conducting a full census data audit for each of those plans. We recently sent individual letters to all plans that received SFA, and for which we do not already have full census data, to collect and audit the census data used by the plans in their SFA applications. This excludes five plans, including Central States, for which the OIG has already collected census data. PBGC requested each plan provide the full census data of all participants in all categories that were included in the plan's SFA projections. PBGC has now received full census data for the plans.

With the data received, PBGC is undertaking the independent death audit using SSA's full file for each plan. After PBGC runs the analysis with SSA's full file for a plan, PBGC returns the results to the plan and provides instructions for the plan to verify the results and determine how beneficiaries of these deceased participants should be reflected in the amount of SFA to which the plan is entitled.

To date, PBGC has already returned match results with SSA's full file to all of the 62 plans contacted.

Once SFA amounts attributable to deceased participants are determined for a plan, we will work with that plan, and if necessary, with our colleagues in the executive branch, including the Civil Division of the Department of Justice, to recover any amount of SFA funds paid out as a result of inaccurate plan census data.

On March 14, 2024, the Department of Labor issued a "Statement of Enforcement Policy Regarding Return of Excess Special Financial Assistance Payments." As explained in more detail in the Statement, ERISA sections 403(c) and 404, and Code section 401(a)(2) do not prevent plans from refunding any excess payments received through the SFA program, and these provisions of ERISA and the Code do not excuse failures to return SFA funds to which the plans are not entitled. The Department of Treasury has confirmed its understanding with the Statement.

PBGC continues to value our strong partnership with the OIG. PBGC has worked closely with the OIG since enactment of ARP to improve data collection and accuracy and swiftly implement OIG recommendations. We will continue to coordinate with PBGC's OIG to further strengthen the stewardship of the SFA Program.

CONCLUSION

The Special Financial Assistance Program is the solution to the multiemployer pension crisis that threatens the retirement security of millions of workers and retirees. Now, through this program, the workers, retirees, and beneficiaries of SFA-eligible plans can rely on receiving their pension benefits for the next 30 years.

PBGC is committed to effective stewardship of taxpayer funds and has identified and implemented ongoing improvements to the SFA Program to further that goal.

Thank you again for the opportunity to appear before you today, and I look forward to your questions.