

Review of Final SFA Regulations

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Today's presenters



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Caveats

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Background

- American Rescue Plan Act of 2021 established Special Financial Assistance (SFA) program
- Provides lump sum payment to eligible multiemployer pension plans intended to fund benefit payments and expenses through plan year ending in 2051
 - PBGC estimates approximately \$74B-\$91B to over 200 eligible plans impacting 3 million participants
- Interim Final Rule published by PBGC on July 9, 2021
 - 28 applications have been approved for over \$7 billion in SFA

Background

- On July 8, 2022, PBGC published Final Rule
 - Addresses comments provided on Interim Final Rule released in July 2021
 - Makes substantial changes to Interim Final Rule
 - Effective for applications filed on or after August 8, 2022
- **Most plans eligible to receive more SFA under Final Rule**
- Plans that have already received or will receive SFA under Interim Final Rule may file “supplemented application” to:
 - Request additional SFA
 - Invest portion of SFA in return seeking assets
 - Apply Final Rule on recognition of SFA for withdrawal liability purposes



Changes from Interim Final Rule

- SFA Measurement Date
- Permissible investments
- Interest rates
- Plans with MPRA suspensions
- Reflection of SFA in withdrawal liability assets
- Supplemented applications
- Lock-in applications
- SFA conditions
- Post-SFA mergers

Eligibility requirements

Satisfy any one of four

1

Critical and declining status in any plan year 2020 through 2022

2

Approved suspension of benefits under MPRA as of March 11, 2021

3

In any plan year 2020 through 2022, certified critical status with current liability funded percentage below 40%, and active to inactive participant ratio of less than 2 to 3

4

Became insolvent after December 16, 2014, and have not terminated as of March 11, 2021

Priority groups and application period

Priority Group	Description of Group	Beginning of Application Period
1	Insolvent or projected insolvency before 3/11/2022	7/9/2021
2	<ul style="list-style-type: none"> Projected insolvency within 1 year of application, or Implemented MPRA suspension as of 3/11/2022 	<ul style="list-style-type: none"> 12/27/2021 for 1st category 1/1/2022 for 2nd category
3	Critical & declining status and ≥ 350,000 participants	4/1/2022
4	Projected insolvency before 3/11/2023	7/1/2022
5	Projected insolvency before 3/11/2026	2/11/2023*
6	Present value of traditional financial assistance > \$1 billion	2/11/2023*
7	Additional plans PBGC identifies as priority	3/11/2023*
N/A	All non-priority plans meeting eligibility	3/11/2023*

*Application period could begin earlier than date shown.

→ Application period ends 12/31/2025 for initial applications and 12/31/2026 for revised or supplemented applications

Final Rule did not change the priority groups or application period

SFA Measurement Date

- Date as of which SFA is calculated
 - Value of plan assets (and certain other parameters) determined as of SFA Measurement Date
 - Part of “base data”, which is fixed based on initial application and does not change for resubmitted or supplemented applications
- Interim Final Rule: last day of calendar quarter preceding application filing date
- **Final Rule: Last day of third calendar month preceding application filing date**

SFA Measurement Date

Application Filed In	SFA Measurement Date Interim Final Rule	SFA Measurement Date Final Rule
January 2023	December 31, 2022	October 31, 2022
February 2023	December 31, 2022	November 30, 2022
March 2023	December 31, 2022	December 31, 2022
April 2023	March 31, 2023	January 31, 2023
May 2023	March 31, 2023	February 28, 2023
June 2023	March 31, 2023	March 31, 2023

Permissible investments

- Interim Final Rule: 100% of SFA must be invested in investment grade fixed income securities
- **Final Rule: Allows for up to 33% of SFA to be invested in “return seeking assets”;**
requires at least 67% in investment grade fixed income securities
- Examples of return seeking assets
 - Common stock
 - Mutual funds
 - Exchange traded funds

For plans that applied and received SFA under the Interim Final Rule the wider range of permissible investments does not apply until the plan submits a supplemented application; otherwise SFA must be kept 100% in investment grade fixed income securities.

Interest rates - Interim Final Rule

- Interest rate assumption used to project SFA and non-SFA assets for determining SFA amount
- Interim Final Rule: Single rate for SFA and non-SFA assets
 - Lesser of pre-2021 certification funding assumption and third segment rate plus 2%
 - Many commented on misalignment between interest rate and expected returns on permissible investments allowed for SFA assets

Interest rates – Final Rule

- **Final Rule: Separate rates for SFA and non-SFA assets**
 - SFA interest rate lower than non-SFA interest rate resulting in more SFA
 - Recognizes investment restrictions on SFA assets
 - SFA interest rate: lesser of pre-2021 certification funding assumption and average of first, second and third segment rates plus 0.67%
 - Non-SFA interest rate: lesser of pre-2021 certification funding assumption and third segment rate plus 2%
 - Use lowest rate produced by segment rates applicable for month in which initial application is filed and preceding three months

Interest rates – Final Rule

- Example of interest rate calculations if initial SFA application filed on August 8, 2022
- Plan's pre-2021 certification funding assumption was 7.0%

Month	(a) 1 st Segment	(b) 2 nd Segment	(c) 3 rd Segment	Average [(a)+(b)+(c)] ÷ 3
May 2022	0.93%	2.72%	3.32%	2.32%
June 2022	1.02%	2.80%	3.38%	2.40%
July 2022	1.14%	2.89%	3.44%	2.49%
Aug. 2022	N/A*	N/A*	N/A*	N/A*

SFA rate = Lesser of 7.0% and 2.32% + 0.67% = 2.99%

Non-SFA rate = Lesser of 7.0% and 3.32% + 2.00% = 5.32%

*August 2022 segment rates will not be available until mid-late August 2022.

Impact of Final Rule on SFA and Solvency

Interim Final Rule

- Interest rate for SFA calculation:
 - 5.32% for non-SFA assets
 - 5.32% for SFA assets →
- Expected return:
 - 7.00% on non-SFA assets
 - 4.00% on SFA assets →
- Estimated SFA: \$281M →
- Projected insolvency: 2048* →

* If all actuarial assumptions are met.
Actual experience may result in a different outcome.

Final Rule

- Interest rate for SFA calculation:
 - 5.32% for non-SFA assets
 - **2.99% for SFA assets**
- Expected return:
 - 7.00% on non-SFA assets
 - **5.00% on SFA assets**
- Estimated SFA: **\$340M**
- Projected insolvency: **2090***

Plans with MPRA suspensions

- **Under Final Rule, plans with MPRA suspensions calculate SFA amount three different ways and entitled to largest amount**
 - **Basic method:** Minimum SFA amount such that projected assets ≥ 0 at end of 2051 (same as non-MPRA plans)
 - **Increasing assets method:** Minimum SFA amount such that there is projected increase in assets from 2050 to 2051
 - **Present value method:** Present value of suspended benefits through 2051 plus makeup payments
- Under increasing assets method, SFA amount intended to keep plan solvent indefinitely similar to MPRA suspension
- These changes help mitigate fiduciary concern under the Interim Final Rule about probable insolvency after receiving SFA and restoring suspensions versus not applying for SFA, maintaining the suspensions, and potentially remaining solvent

Reflection of SFA in withdrawal liability assets

- Interim Final Rule: 100% of SFA included in withdrawal liability assets
- **Final Rule: SFA phased in withdrawal liability assets over expected years to SFA depletion**
 - Reduces benefit of SFA to withdrawing employer
- Final Rule did not change requirement that mass withdrawal interest rates are to be used in calculating withdrawal liability for the greater of 10 years and the expected years to SFA depletion

For plans that applied and received SFA under the Interim Final Rule this withdrawal liability phase in condition does not apply until the plan submits a supplemented application; otherwise 100% of SFA is included in withdrawal liability assets.

Reflection of SFA in withdrawal liability assets

(a) Withdrawal liability measurement date	(b) Phase in fraction	(c) SFA excluded from assets = \$10 million x (1- (b))
12/31/2023	0%	\$10 million
12/31/2024	10%	\$9 million
12/31/2025	20%	\$8 million
12/31/2026	30%	\$7 million
12/31/2027	40%	\$6 million
12/31/2028	50%	\$5 million
12/31/2029	60%	\$4 million
12/31/2030	70%	\$3 million
12/31/2031	80%	\$2 million
12/31/2032	90%	\$1 million
12/31/2033	100%	\$0 million

Example: A calendar year plan receives \$10 million in SFA in 2023 under terms of Final Rule.

The \$10 million is expected to last until 2032. Phase in schedule shown at left.

Phase in schedule is fixed and does not change even if SFA is exhausted earlier or later than expected in the SFA application.

Reflection of SFA in withdrawal liability assets

- **Example (continued):** Employer withdraws from plan in 2030
 - Total plan assets (non-SFA and SFA) at 12/31/2029= \$40 million
 - Withdrawal liability assets at 12/31/2029 = \$40 million - \$4 million = \$36 million
 - Unfunded vested benefit liability at 12/31/2029 is \$4 million higher due to phase in condition

(a) Withdrawal liability measurement date	(b) Phase in fraction	(c) SFA excluded from assets = \$10 million x (1- (b))
12/31/2028	50%	\$5 million
12/31/2029	60%	\$4 million
12/31/2030	70%	\$3 million

Supplemented applications

- Plan that received or will receive SFA under terms of Interim Final Rule may submit supplemented application to:
 - Request additional SFA using calculations/assumptions prescribed by Final Rule
 - Invest up to 33% of SFA in return seeking assets
 - Phase in SFA for withdrawal liability
- Eligible to file supplemented application later of August 8, 2022 and date SFA is received
- 120-day review period applies to supplemented applications
- However, permissible investments and withdrawal liability phase in effective upon filing supplemented application

Lock-in applications

- Not available under Interim Final Rule
- **Final Rule allows eligible plans to file a lock-in application**
- Locks in “base data”
 - SFA Measurement Date
 - Participant census data
 - Interest rates
- Before March 11, 2023, a plan in priority group 5 or higher may file a lock-in application if the filing window for its priority group is open and the PBGC e-Filing Portal is temporarily closed
- On or after March 11, 2023, any eligible plan may file a lock-in application regardless of whether the e-Filing Portal is open or temporarily closed
- Provides more flexibility to plan sponsors and eliminates possibility of harm to plan sponsor in case e-Filing Portal is closed temporarily

SFA conditions

- All conditions in the Final Rule (other than permissible investments and withdrawal liability phase in) are effective August 8, 2022 for any plan that receives SFA
- Most conditions are applicable through plan year ending in 2051
 - Exception: withdrawal liability interest rate and phase in
- Plans may request exception from PBGC on certain conditions
 - Retroactive and prospective benefit improvements (new exception added in Final Rule)
 - Contribution decreases
 - Allocation of contribution and other income (new exception added in Final Rule)
- PBGC states SFA conditions are in addition to those imposed on critical status plans by IRS
 - Currently unclear how some of the SFA conditions interact with IRS rules

Post-SFA mergers

- Requires PBGC approval
- Conditions that apply to merged plan
 - SFA asset segregation and investment limitations, withdrawal liability settlements of \$50+ million, annual compliance and periodic audits
- Conditions that do not apply to merged plan
 - Prospective benefit increases, allocation of plan assets and allocating expenses
- Conditions that only apply to plan that received SFA, its participants and employers
 - Retroactive benefit increases, contribution decreases, allocation of contributions and other income and withdrawal liability interest rate and phase in
 - Merged plan may request an exception or waiver from any of the above conditions except for the conditions related to withdrawal liability
- IRS Ruling 2022-13: If an SFA plan merges into a non-SFA plan and the non-SFA plan is the remaining plan, then the merged plan will not be deemed critical solely due to the merger

Key Takeaways

- Dual interest rates expected to provide more SFA
- Expanded investment options for SFA
- MPRA plans may have easier decision to apply for SFA and rollback suspensions
- Supplemented applications available for plans approved under Interim Final Rule
- Lock-in applications provide increased flexibility to plan sponsors

Helpful resources

- PBGC SFA website <https://www.pbgc.gov/arp-sfa>
- SFA Final Rule <https://www.govinfo.gov/content/pkg/FR-2022-07-08/pdf/2022-14349.pdf>
- IRS Notice 2021-38 <https://www.irs.gov/pub/irs-drop/n-21-38.pdf>
- IRS Ruling 2022-13 <https://www.irs.gov/pub/irs-drop/rr-22-13.pdf>
- Milliman Multiemployer Review <https://us.milliman.com/en/insight/multiemployer-review-sfa-under-the-arp>



Thank you

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