COMMITTEE ON
EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

April 20, 2023

The Honorable Gordon Hartogensis
Director
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005

Dear Director Hartogensis:

We write to express our serious concerns with the Pension Benefit Guaranty Corporation's (PBGC) implementation of the special financial assistance (SFA) program for multiemployer pension plans following the Office of Inspector General's (OIG) September 8, 2022, risk advisory.[1] We are deeply troubled by PBGC's response to the advisory, which failed to address the OIG's warnings and recommendations. It appears PBGC is ignoring the serious nature of the risk advisory by continuing to approve supplemented SFA applications without a contingency plan if the agency is found to be making improper payments.

On December 7, 2022, the OIG made public a risk advisory from September on PBGC's final rule implementing the SFA program for failing and insolvent multiemployer pension plans. The risk advisory informed PBGC that the OIG had requested a legal opinion from the Government Accountability Office (GAO) on the agency's authority to bifurcate the interest rate for projecting investment returns on the assets that plans use in their SFA applications and that GAO will issue an opinion on the matter. The OIG also warned that "[i]f GAO's decision were to contradict PBGC's position in its Final Rule, SFA payments, made while the decision was pending, risk being deemed improper payments and raise a reputational risk for PBGC."[2] The OIG recommended that PBGC develop a contingency plan that takes into consideration potential outcomes from GAO's decision, evaluates risks, and implements operation changes.

As you may recall, Committee Republicans raised similar concerns with PBGC regarding the SFA final rule last year. On September 30, 2022, Committee Republicans wrote to you expressing disappointment with PBGC's implementation of the SFA program, stating, "The final rule's calculation of SFA assets disregards [the *American Rescue Plan Act*'s] statutory interest rate limit for determining the amount of SFA, granting plans access to additional federal dollars than originally estimated."[3] At the time, we also promised that as

---

[1] PBGC OIG, SR-2022-12, OIG Special Report: Pension GAO Opinion on PBGC's Final Rule that Adopted a Bifurcated Interest Rate for Certain SFA Applications (2022), https://oig.pbgc.gov/pdfs/SR-2022-12.pdf.
[2] *Id.* at 3.
[3] Letter from Reps. Virginia Foxx & Rick W. Allen to Gordon Hartogensis, Director of PBGC (Sept. 20, 2022), https://edworkforce.house.gov/uploadedfiles/09.30.22_-_letter_to_hartogensis_re_wv_vs_epa.pdf.

the committee of jurisdiction overseeing PBGC, the Committee on Education and the Workforce would continue to exercise robust investigative and legislative powers to ensure executive branch agencies do not continue to exceed congressional authorizations. Since then, the Congressional Budget Office confirmed that the changes made in the SFA final rule by PBGC, including the use of bifurcated interest rates, will increase the total amount of SFA that plans will receive by $4.5 billion.[4]

Since the OIG issued the risk advisory, PBGC has been accepting and approving supplemented SFA applications from plans that already received SFA under the interim final rule. PBGC's apathetic statement in response to the risk advisory reiterated the commitment of the agency and its Board agencies (Departments of Labor, the Treasury, and Commerce) to implementing the SFA program under the final rule.[5] This is unacceptable. The statement ignores the OIG's concerns and suggested actions. Forcing American taxpayers to send billions of additional dollars in potentially improper SFA payments is a very serious issue that PBGC should not take lightly and which we do not take lightly. PBGC's response is inadequate, and the American public deserves a thorough explanation.

It is imperative that Congress and the American public be informed of PBGC's plans to address the OIG's concerns about possible improper payments. Accordingly, please respond to the following questions in writing no later than May 4, 2023:

1. Has PBGC developed, or is it in the process of developing, a contingency plan taking into consideration potential outcomes from a future GAO decision?

2. If GAO finds that PBGC's final rule resulted in improper payments, how does the agency plan to rectify the misuse of taxpayer dollars?

3. Since the OIG issued the risk advisory, has PBGC evaluated the reputational risk to the agency of continuing to process and approve supplemented applications for SFA under the terms of the final rule?

4. As suggested by the OIG, has PBGC implemented operational changes to minimize PBGC's adverse exposures and undesired outcomes? If so, what are they? If not, please provide an explanation of why no action has been taken.

Sincerely,

Virginia Foxx
Chairwoman

Bob Good
Chairman
Subcommittee on Health, Employment, Labor, and Pensions

---

[4] Letter from Phillip L. Swagel, Dir., Cong, Budget Off., to Reps. Virginia Foxx & Jason Smith (Sept. 30, 2022), https://www.cbo.gov/system/files/2022-09/58540-PBGC.pdf.
[5] PBGC, STATEMENT ON PBGC OIG RISK ADVISORY ON SPECIAL FINANCIAL ASSISTANCE FINAL RULE (Dec. 7, 2022), https://www.pbgc.gov/news/statements/st07.