Congress of the United States

Washington, D.C. 20515

September 7, 2022

Dr. Phillip L. Swagel
Director
Congressional Budget Office
Ford House Office Building, Fourth Floor
Washington, DC 20515-6925

Dear Director Swagel:

We request the Congressional Budget Office (CBO) provide a cost estimate of recent changes to the implementation of the Pension Benefit Guaranty Corporation's (PBGC) special financial assistance (SFA) program. Under the guise of COVID relief, the nearly $2 trillion *American Rescue Plan Act* (ARPA) included an uncapped taxpayer-funded handout to insolvent multiemployer pension plans. President Biden's recent announcement that his administration issued a final rule implementing ARPA's SFA program was a reminder that Congressional Democrats and the President cut this blank check. ARPA failed to address the structural failures of the multiemployer pension system or hold plan trustees accountable—encouraging further plan underfunding

Unsurprisingly, the cost of this program continues to exceed initial projections. In February 2021, CBO projected in its cost estimate of ARPA that PBGC would disburse a total of $86 billion in SFA to an estimated 185 plans.[1] Since then, PBGC projections indicate the total amount of SFA has escalated to nearly $100 billion.[2] These cost projections are especially concerning both because multiemployer plans are collectively underfunded by $756 billion, and because ARPA did not cap the total dollar amount of SFA.[3] It is necessary to uncover the delta between the projected cost and the actual cost to American taxpayers.

On July 6, President Biden announced that his administration completed a regulation implementing ARPA's SFA program. The final rule alters the method by which plans calculate the total amount of SFA when applying to PBGC, and it allows plans to invest a larger percentage of SFA assets in return-seeking assets.[4] Specifically, the final rule allows plans to use two separate interest rate assumptions: one for calculating non-SFA assets and one with a separate rate for SFA assets. We are concerned that the final rule's calculation of SFA assets disregards the statute's explicit interest rate limit, granting plans access to even more taxpayer dollars. We are also concerned that the Biden Administration's reinterpretation of ARPA contradicts CBO's understanding of the statute.

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[1] Congressional Budget Office, Cost Estimate, Reconciliation Recommendation of the House Committee on Ways and Means, (Feb. 17, 2021), https://www.cbo.gov/system/files?file=2021-02/hwaysandmeansreconciliation.pdf.
[2] In August 2021, PBGC estimated it would distribute $94 billion in SFA. In September 2021, PBGC estimated it would distribute $97 billion.
[3] 2019 PBGC Data Tables, Table M-13, Plans, Participants, and Funding of PBGC-Insured Plans by Funding Ratio (2018.).
[4] Special Financial Assistance by PBGC, 87 Fed. Reg. 40,968 (July 8, 2022).

CBO's February 2021 estimate stated as follows:

> "A special rule applies to the assumed interest rate: Plans could use the lower of the rate used in its status determination and a measure approximately equal to 2 percentage points above the third segment rate…. CBO expects the rate to be about 5.5 percent, which is lower than the rate used by most plans."[5]

Further, the Biden Administration regulation provides a special rule for calculating the amount of SFA for plans that reduced benefits pursuant to the *Multiemployer Pension Reform Act of 2014* (MPRA). It is concerning that plans which already received SFA will be able to supplement their application and request additional money from taxpayers. To date, PBGC has approved 28 SFA applications totaling $7.4 billion.[6] Under the final rule, these plans will be able to apply a second time for additional funds.

With PBGC's implementation of the program appearing to deviate from CBO's original assumptions, Congress and the American people deserve to know the true costs of the program. We therefore ask that CBO provide an estimate of the following under PBGC's final rule:

- The dollar amount of SFA to be paid to plans and the total number of plans that will receive SFA.

- Changes to the dollar amount of SFA attributable to the final rule's bifurcation of interest rates used to calculate SFA and non-SFA assets.

- Changes to the dollar amount of SFA attributable to the final rule's treatment of plans that suspended benefits under MPRA.

- Changes to the dollar amount of SFA attributable to the final rule other than the bifurcated interest rate and the MPRA calculation.

- Of plans that have already received SFA under the July 2021 interim final rule, the additional dollar amount of SFA they will receive because of the final rule's supplemental application process.

Additionally, we ask CBO to provide an analysis of the differences between CBO's original assumptions and PBGC's final rule as follows:

- Under ARPA as originally scored by CBO, was a bifurcated interest rate allowed?

- Under ARPA as originally scored by CBO, was there a special rule for calculating SFA for MPRA plans?

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[5] CBO Cost Estimate *supra* note 1, at 16.
[6] PBGC, SFA Application Status Current (July 29, 2022), https://www.pbgc.gov/documents/special-financial-assistance-current-applications.

- Under ARPA as originally scored by CBO, what are the estimated total liabilities and assets in 2052 for plans expected to receive SFA?
- What will the liabilities and assets of these plans be in 2052 under the final rule?

Thank you for your attention to our request. If you have any questions or would like to discuss our request further, please contact Ben Ridder with the Committee on Education and Labor at 202-225-7101 and Ansley Schoen with the Committee on the Budget at 202-226-8050.

Sincerely,

Virginia Foxx
Ranking Member
Committee on Education and Labor

Jason Smith
Ranking Member
Committee on the Budget