

January 20, 2023

Board of Trustees  
Bakery Drivers Local 550 and Industry Pension Fund  
99 Tulip Ave Suite 402  
Floral Park, NY 11001

Re: Denial of special financial assistance to the Bakery Drivers Local 550 and Industry Pension Fund due to ineligibility

Dear Trustees:

On September 28, 2022, the Pension Benefit Guaranty Corporation received an application for Special Financial Assistance (“SFA”) for the Bakery Drivers Local 550 and Industry Pension Fund, 13-6626195/001 (the “Plan”) under section 4262 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and PBGC’s regulation on SFA at part 4262 of title 29 of the Code of Federal Regulations (the “Application”). The Application requested \$132,250,472.00 in SFA determined as of June 30, 2022.

Based on the information provided, PBGC has determined that the Plan is ineligible for SFA. The Application asserts the Plan meets the eligibility criteria under section 4262(b)(1)(A) of ERISA and section 4262.3(a)(1) of PBGC’s regulation, under which a plan is eligible for SFA if it is in critical and declining status in any plan year beginning in 2020 through 2022. The Application asserts that the Plan was in critical and declining status for the 2021 plan year beginning November 1, 2021.

The Plan terminated by mass withdrawal in plan year 2016. The zone-status rules under section 432 of the Internal Revenue Code do not apply to a multiemployer plan terminated by mass withdrawal after the plan year of termination.<sup>1</sup> Such a plan has no zone status in subsequent plan years. Therefore, the Plan was not in critical and declining status in plan year 2021 and has had no zone status since plan year 2016, when the Plan terminated by mass withdrawal.

The zone-status certification accompanying the Application says that the Plan became subject to zone-status rules on September 1, 2022, “as a result of a bargaining unit joining the Plan.” Title IV of ERISA only provides for restoration of a single-employer plan terminated (or in the process of being terminated) under section 4041 or 4042 of ERISA. ERISA contains no provision allowing a multiemployer plan that terminated by mass withdrawal under section 4041A to be restored.

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<sup>1</sup> 29 C.F.R. § 4262 n.10.

PBGC's decision under section 4262.11 of PBGC's regulation on an application for SFA is a final agency action under 29 C.F.R. § 4003.22(b) for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. § 701 *et seq.*).

For more information, please refer to PBGC's website at [www.pbgc.gov/arp-sfa](http://www.pbgc.gov/arp-sfa). If you have any questions, please contact Erika Bode at [bode.erika@pbgc.gov](mailto:bode.erika@pbgc.gov) or 202-229-6365.

Sincerely,

Gordon

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Director, Pension Benefit Guaranty Corporation