

July 28, 2022

Regulatory Affairs Division  
Office of the General Counsel  
Pension Benefit Guaranty Corporation  
1200 K Street NW  
Washington, DC 20005

**Re: Special Financial Assistance by PBGC (RIN 1212-AB53)**

To Whom It May Concern:

I write regarding PBGC's final rule 1212-AB53, posted on July 8, 2022, regarding certain restrictions associated with special financial assistance (SFA) applications made pursuant to the *American Rescue Plan Act of 2021*.

As written, PBGC's final rule stipulates that under 29 C.F.R. § 4262.16(g)(2), the receipt of SFA funds cannot immediately be taken into account for the purpose of calculating an employer's withdrawal liability from a pension fund. This condition serves to deter employers from withdrawing from those funds and offering alternative retirement plans for their workforce.

Significantly, this portion of the final rule is an attempt to do through administrative regulation what could not be accomplished legislatively. The *American Rescue Plan Act* said nothing about how SFA payments would impact the calculation of withdrawal liability for employers exiting pension plans. That was because, during the legislative process, the Senate parliamentarian ruled that language adjusting the calculation of employers' withdrawal liability could not be included in the bill, pursuant to the "Byrd Rule" governing what provisions may be included in budget reconciliation legislation.

Since the *American Rescue Plan Act* was enacted, the Biden administration and its allies in Congress have made no efforts to pass this change to withdrawal liability calculations as a separate piece of legislation. Instead, PBGC has simply done it unilaterally. This is wrong: regulatory changes like this one that will have sweeping impacts on American businesses should be deliberated in the halls of Congress, not pushed through by administrative fiat.

I urge PBGC to change course regarding these aspects of the final rule. Due regard for separation-of-powers principles requires no less.

Thank you for your consideration.

Sincerely,



Josh Hawley  
United States Senator