

BRIAN K. FITZPATRICK
1ST DISTRICT, PENNSYLVANIA

SELECT COMMITTEE ON
INTELLIGENCE

COMMITTEE ON FOREIGN AFFAIRS

COMMISSION ON SECURITY AND
COOPERATION IN EUROPE

COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE



271 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4276

1717 LANGHORNE-NEWTOWN RD.
SUITE 225
LANGHORNE, PA 19047
(215) 679-8102

Congress of the United States
House of Representatives
Washington, DC 20515

August 3, 2021

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

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

Dear Secretary Yellen and Director Hartogensis:

I am writing to express my concerns with certain elements of the Pension Benefit Guaranty Corporation's (PBGC) recently published Interim Final Rule (IFR) to implement the requirements under section 9704 of the American Rescue Plan Act (ARPA), "Special Financial Assistance for Financially Troubled Multiemployer Plans."

As a strong supporter of the special financial assistance provision of ARPA, I am troubled that the PBGC, by its own admission, has designed an assistance program that will not support multiemployer pension plans for the long term as Congress intended. ARPA specifically requires the PBGC to provide assistance to and assure solvency for eligible plans that is projected to enable those plans to remain solvent through the plan year ending in 2051.¹ For the reason described below, the PBGC's interim regulations will fall well short of the intended target of enabling the plans to remain solvent through the plan year ending in 2051.

The income the plans would be able to earn on the financial assistance under the PBGC's proposed restrictions on the plans' investment of the assistance, generally limited to investment grade corporate bonds,² is currently approximately 3% less than the discount rate the PBGC intends to use (approximately 5.5% currently) to calculate the amount of assistance it would provide.³ The PBGC has recognized this is a problem, but asserts it is bound by ARPA to use the higher discount rate in its interim regulations.⁴

¹ See Section 4262(j)(1) of ERISA, American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9704(b), 135 Stat. 4, 190 (2021).

² See 86 Fed. Reg. 36623 (July 12, 2021)

³ See Section 4262(e)(2)-(3) of ERISA, American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9704(b), 135 Stat. 4, 190 (2021).

⁴ See 86 Fed. Reg. 36603 (July 12, 2021)

As a rule of thumb, actuaries estimate that a plan's liability increases 13-15% per each 1% decrease in the discount rate. Consequently, if the discount rate were decreased 3% so that the expected rate of return on the PBGC's financial assistance and the PBGC's discount rate were the same, a plan's liability would increase by 39-45%. This means PBGC's financial assistance would be 39-45% less than necessary to have a plan remain solvent through its 2051 plan year.

In its commentary on its interim regulations, the PBGC specifically asked for input on its proposed restrictions on plans' investment of PBGC's financial assistance.⁵ One possible solution to this shortcoming is for the PBGC to amend the IFR to permit plans to invest the PBGC's financial assistance with the objective of earning the discount rate it uses to calculate the amount of financial assistance it provides. This will not increase the cost of financial assistance. It will also reduce the incentive for plans to take on additional risk in investing their own assets (i.e., assets not provided by the PBGC) to attempt to remain solvent through 2051.

I urge you to take this recommendation under consideration.

Sincerely,



Brian Fitzpatrick
Member of Congress

⁵ See 86 Fed. Reg. 36609 (July 12, 2021)