



PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4262

RIN 1212-AB61

Technical Amendments: Special Financial Assistance

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is proposing technical corrections, clarifications, and improvements to the restrictions and conditions in its regulation on special financial assistance. These changes would clarify (a) the permissibility of investing special financial assistance in certain securities and (b) the condition requiring PBGC approval for settling withdrawal liability claims. The amendments also would repeal a provision that enabled plans that received special financial assistance to request the reallocation of employer contributions to pay for health benefit costs.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], to be assured of consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments. If you are reading this document on [federalregister.gov](https://www.federalregister.gov), you may use the green “SUBMIT A PUBLIC COMMENT” button beneath this rulemaking’s title to submit a comment to the [regulations.gov](https://www.regulations.gov) docket.

- *Email:* reg.comments@pbgc.gov. Refer to 1212-AB61 in the subject line.

- *Mail or Hand Delivery:* Legislative and Regulatory Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024-2101.

Commenters are strongly encouraged to submit comments electronically. Commenters who submit comments by mail should allow sufficient time for mailed comments to be received before the close of the comment period.

All submissions must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and the Regulation Identifier Number (RIN) for this rulemaking (RIN 1212-AB61). Comments received will be posted without change to PBGC's website, *www.pbgc.gov*, including any personal information provided. Do not submit comments that include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments may be submitted anonymously.

Copies of comments may also be obtained by writing to Disclosure Division (*disclosure@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024-2101 or calling 202-326-4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services. You may also follow the search instructions on *https://www.regulations.gov* to view public comments.

FOR FURTHER INFORMATION CONTACT: Abigail Davidow

(*davidow.abigail1@pbgc.gov*), Deputy Assistant General Counsel, Legislative and Regulatory Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024-2101; 202-229-6418. If you are deaf or hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose and Authority

This proposed rule would make technical corrections, clarifications, updates, and improvements to PBGC's regulation on Special Financial Assistance by PBGC (29 CFR

part 4262) (PBGC's SFA regulation) to improve and facilitate the operation of PBGC's special financial assistance (SFA) program.

PBGC's legal authority for this rulemaking is derived from (a) section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and (b) section 4262 of ERISA (Special Financial Assistance by the Corporation), which (1) permits PBGC to provide for how SFA and earnings thereon are to be invested and (2) permits PBGC, in consultation with the Secretary of the Treasury, to impose reasonable conditions by regulation or other guidance on an eligible multiemployer plan that receives SFA.

B. Major Provisions

The major provisions of this proposed rulemaking would amend PBGC's SFA regulation to:

- Clarify the permissibility of investing SFA in certain assets:
- Clarify the condition, imposed on a plan that receives SFA requiring PBGC approval for a proposed settlement of withdrawal liability; and
- Eliminate a provision that enables a plan that receives SFA to request the reallocation of employer contributions to pay for health benefit costs.

II. Background

PBGC administers the SFA program for eligible financially distressed multiemployer plans under section 4262 of ERISA and PBGC's SFA regulation. The amendments in this proposed rule would apply to the SFA program.

The proposed amendments and improvements to PBGC's SFA regulation are discussed below. PBGC invites comment on these proposals.

III. Permissible Investments of Special Financial Assistance

Section 4262(l) of ERISA requires that SFA received, and any earnings thereon (SFA funds), be used to make benefit payments and pay plan expenses, and that such SFA funds be

held separately from other plan assets. Section 4262(l) also requires that SFA funds be invested in investment grade bonds or other investments permitted by PBGC. Section 4262.14 of PBGC's SFA regulation describes the permitted investments for SFA funds, referred to as permissible investments. Section 4262.14(b) of PBGC's SFA regulation identifies permissible investments as either investments in return-seeking assets or investments in investment grade fixed income securities and cash.

While administering the SFA program, PBGC has received practitioner questions on, or otherwise uncovered uncertainty about, whether certain investments are permissible investment grade fixed income securities and the nature of permitted derivative exposure. PBGC issued guidance to address the questions, which PBGC is now proposing to codify in its SFA regulation. The following discussion covers the questions, PBGC's guidance, and the proposed changes to the SFA regulation.

A. Commonly Held Fixed Income Investments

Under § 4262.14(d)(1) of PBGC's SFA regulation, investments in investment grade fixed income securities and cash include “[a] bond or other debt security that pays a fixed amount or fixed rate of interest, is denominated in U.S. dollars, sold in an offering registered under the Securities Act of 1933, and is investment grade” These criteria are very similar to those used for inclusion in large aggregate bond indexes used as benchmarks by a broad spectrum of investors. Practitioners expressed uncertainty about whether certain Total Loss Absorbing Capacity (TLAC) bonds are permissible. Many TLAC bonds are commonly held and included in large aggregate bond indexes. In some circumstances, TLAC bonds may convert to equity, raising the question of whether they are a “bond, or other debt security.” Other TLACs may change the interest paid for certain periods, under certain circumstances, creating uncertainty about whether they “pay a fixed amount or fixed rate of interest.” One example of such an instrument is a fixed-to-float security. Fixed-to-float securities pay a fixed interest rate for a period of time before switching to a variable rate. These bonds may be called in by the issuer

before switching to a variable rate, but would otherwise drop out of the index and simultaneously would no longer be considered permissible.

On July 16, 2024, PBGC updated a set of frequently asked questions (FAQs) about the SFA program to provide examples of securities included in large, aggregate U.S. bond indexes that meet the criteria for permissible investment grade fixed income securities under the statute and regulation. Examples of securities included in large, aggregate U.S. bond indexes that may meet the criteria for permissible investment grade fixed income securities are U.S. Treasury bonds, U.S. Government Agency bonds, U.S. Corporate bonds, asset-backed debt securities, mortgage-backed debt securities, commercial mortgage-backed debt securities, fixed-to-float securities during the fixed rate period, and step-up bonds, which pay an initial interest rate that increases according to a predetermined schedule. The FAQs also provided examples of securities that do not meet the definition of permissible investment grade fixed income, including fixed-to-float securities during any period when they pay a variable rate interest, high yield bonds, traditional convertible bonds, preferred stock, collateralized loan obligations, annuity purchases, and contingent capital securities, such as contingent convertible bonds, which typically have a mechanical trigger based on capital ratios for conversion or write down of value.

PBGC now seeks to codify this guidance in its SFA regulation. For that reason, PBGC's proposed rule would amend the definition of permissible investment grade fixed income in § 4262.14(d)(1) of PBGC's SFA regulation to make clear that a bond or other debt security that pays a fixed amount or fixed rate of interest during the entire period that it is owned or that pays predetermined interest according to a schedule is permissible. A security that is convertible to equity will be considered a debt security (and therefore eligible to be a permissible investment) if it is convertible to equity solely by action of a Federal agency or other regulator.

B. Investments Exempt from Registration in Fixed Income

Several plans and practitioners have asked PBGC about whether SFA funds may be invested in certain fixed income securities that are exempt from registration requirements under

the Securities Act of 1933. Of particular interest are securities issued or guaranteed by banks (exempt under section 3(a)(2) of the Securities Act of 1933) and securities issued by nonprofits (exempt under section 3(a)(4) of the Securities Act of 1933).

PBGC understands that, though exempt securities typically make up a small portion of fixed income investments, they are relatively common in portfolios of pension plans and are included in large, aggregate U.S. bond indexes. As discussed earlier, PBGC FAQs have clarified that bonds included in these indexes generally will be considered permissible investment grade fixed income investments. Further, upon evaluating various illustrative SFA asset investment portfolios, PBGC accepts that not all securities have a readily available method to verify the security's registration status under the Securities Act of 1933 and that the costs to plans to determine such status may be unduly burdensome.

Taking into consideration the requirements imposed on plans and the risks associated with holding the identified securities, PBGC is proposing to amend the definition of permissible investment grade fixed income in section 4262.14(d)(1) of PBGC's SFA regulation to permit investment in a bond or other debt security that is exempt from registration under sections 3(a)(2) or 3(a)(4) of the Securities Act of 1933 if it is investment grade.

C. Permissible Derivative Exposure

Section 4262.14(h) of PBGC's SFA regulation covers permissible derivative exposure for SFA plans and states that "[p]ermissible investments must not be supplemented by, and permissible fund vehicles cannot include, derivatives or otherwise be leveraged in a way that could increase the risk of the permissible investment beyond the risk associated with the market value of the un-leveraged permissible investment." In addition, § 4262.14(h) of PBGC's SFA regulation currently states that "[a]ny notional derivative exposure, other than exposure gained through a permissible fund vehicle described under paragraph (g) of this section, must be supported by liquid assets that are cash or cash equivalents denominated in U.S. dollars."

On November 4, 2024, PBGC posted an updated FAQ covering the types of derivative exposure, outside of permissible fund vehicles, that are permissible in portfolios of SFA funds. In doing so, it provided examples. The guidance states that SFA funds should generally not be invested in derivatives but that permissible derivative exposure includes, for a short period of time, derivative positions that substitute for and closely replicate permissible physical securities when those physical securities are not immediately available in the market. Further, the FAQ clarifies that derivative positions intended to change the risk related to potential future events, such as changes in interest rates, yield curve shape, or bond and equity prices, are not permissible.

PBGC is proposing to amend § 4262.14(h) of PBGC’s SFA regulation to clarify the intended application of the provision, consistent with its FAQ.

IV. Condition on Withdrawal Liability Settlements

To ensure that SFA is used to pay benefits and the expenses related to those benefit payments, section 4262(m)(1) of ERISA expressly authorizes PBGC, in consultation with the Secretary of the Treasury, to impose reasonable conditions, relating to certain aspects of plan terms or operations, on any eligible multiemployer plan that receives SFA. These conditions are specified in § 4262.16 of PBGC’s SFA regulation.

PBGC’s SFA regulation imposes a condition on settling withdrawal liability.¹ More specifically, § 4262.16(h)(1) requires that, for a certain period of time (what is referred to as the SFA coverage period), a plan “must obtain PBGC approval for a proposed settlement of withdrawal liability if the amount of the liability settled is greater than \$50 million.” This \$50 million amount is calculated as the lesser of “(i) The allocation of unfunded vested benefits to the

¹ Withdrawal liability represents a withdrawing employer’s proportionate share of the plan’s unfunded benefit obligations and is an important source of funding for the plan. To assess withdrawal liability, the plan sponsor must determine the withdrawing employer’s: (1) allocable share of the plan’s unfunded vested benefits (UVBs) (the value of nonforfeitable benefits that exceeds the value of plan assets) as of the end of the plan year before the employer’s withdrawal, or as otherwise provided under section 4211 of ERISA, and (2) annual withdrawal liability payment and amortization period under section 4219.

employer under section 4211 of ERISA; or (ii) The present value of withdrawal liability payments assessed for the employer discounted using the interest assumptions under § 4044.54 of this chapter.”

Thus, if a plan wishes to settle a withdrawal liability claim during its SFA coverage period, it must make a present value determination in accordance with § 4262.16(h)(1)(ii) of PBGC’s SFA regulation to determine if the value of the proposed settlement exceeds \$50 million. Doing so involves an actuarial calculation to determine the value of future withdrawal liability payments to the plan as of a specific date referred to as the determination date, using the plan’s interest assumption in effect on that date.

Practitioners have asked PBGC questions about how to determine the determination date under § 4262.16(h)(1)(ii) of PBGC’s SFA regulation. Because the calculation is sensitive to the interest assumption in effect on the determination date,² the determination date can be determinative of whether the amount of liability settled is greater than \$50 million.

After considering alternatives, PBGC is proposing to fix the determination date as of the last day of the plan year preceding the withdrawal. This date coincides with the most recent date benefits are valued to determine the employer’s share of unfunded vested benefits in the withdrawal liability calculation under section 4211 of ERISA.

One alternative PBGC considered was the “first day of the plan year following the plan year in which the withdrawal occurs,” which is the date the withdrawal liability payment schedule is calculated under section 4219(c)(1)(A)(i) of ERISA. PBGC decided against this alternative because this date can be well after the date of withdrawal (*i.e.*, when an employer withdraws early in a plan year). Also, because the value of withdrawal liability payments as of that date may be unknown until sometime after that date, plans could be prevented from

² This is because the value of a future withdrawal liability payment discounted using a higher interest rate will be lower than if it were discounted using a lower interest rate, all else being equal.

expediently determining whether a withdrawal liability settlement offer exceeds \$50 million, which determines whether PBGC approval would be required for the settlement.

For these reasons, this proposed rule would amend § 4262.16(h)(1)(ii) of PBGC's SFA regulation to require that the value of withdrawal liability payments assessed be determined as of the last day of the plan year preceding the withdrawal.

V. Condition on Reallocation of Contributions

PBGC's SFA regulation imposes a condition relating to the allocation of contributions. Under § 4262.16(e)(1), broadly speaking and not including certain good-faith practices enumerated in paragraphs (e)(1)(i) through (iv), during the SFA coverage period, a decrease in the proportion of income (contributions, investment returns, etc.) or an increase in the proportion of expenses allocated to a plan that receives SFA is prohibited. This prohibition applies to written or oral agreements or practices (other than a written agreement in existence on March 11, 2021, to the extent not subsequently amended or modified) under which income or expenses are divided or to be divided between a plan that receives SFA and one or more other employee benefit plans. This condition is to ensure that plan trustees do not inappropriately reallocate contributions away from the plan that receives SFA to other benefit programs or inappropriately reallocate expenses from other benefit programs to the plan.

The regulation also includes a procedure to request an exception to this prohibition under narrow circumstances. The exception was intended to accommodate circumstances arising after March 11, 2021, beyond the control of the plan sponsor and the bargaining parties (*e.g.*, health benefit cost increases due to legislative changes) that would justify a good faith reallocation of income or expenses between employee benefit plans. Thus, § 4262.16(e)(2) of PBGC's SFA regulation currently states that, beginning 5 years after the end of the plan year in which a plan receives payment of SFA, a plan may apply for an exception by demonstrating to the satisfaction of PBGC that, taking into account the value of any proposed reallocation, the plan that received

SFA will avoid insolvency and that the reallocation is needed due to a significant increase in health benefit costs due to a change in Federal law.

PBGC has determined that this exception procedure, which could allow SFA funds to be diverted to welfare plans, is inconsistent with the best reading of the underlying statute,³ which clearly contemplates that SFA should be used to make benefit payments from, and pay expenses for, eligible multiemployer pension plans. It is also inconsistent with PBGC's statutory purposes to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their *participants* and to provide for the timely and uninterrupted payment of pension benefits to participants. Accordingly, PBGC proposes to remove the exception procedure in current § 4262.16(e)(2) and to reorganize § 4262.16(e).

VI. Compliance With Rulemaking Guidelines

A. Executive Orders 12866, 13563, and 14192

The Office of Management and Budget (OMB) has determined that this proposed rule is not a "significant regulatory action" under Executive Order 12866. Accordingly, OMB has not reviewed the proposed rule under Executive Order 12866.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic and policy implications of this proposed rule and has concluded that there will be no significant economic impact as a result of these amendments to PBGC's SFA regulation. Many of the amendments codify clarifications already issued by PBGC in sub-regulatory guidance. Making these clarifications more transparent will decrease uncertainty among plan sponsors and their service providers. The clarifications will also prevent delays of

³ American Rescue Plan (ARP) Act of 2021 (Pub. L. 117-2).

withdrawal liability settlements and unnecessary divestment. In addition, some cost savings will be realized through simpler annual statement of compliance filings and elimination of exception filings.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing their regulatory program for rules that “may be outmoded, ineffective, insufficient, or excessively burdensome.” These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified the amendments in this final rule as consistent with the principles for review under Executive Order 13563. PBGC believes codifying its previously issued guidance provides further clarity to the public and that the amendments will improve and clarify its existing regulations.

Executive Order 14192 requires agencies to identify at least ten existing regulations to be repealed when the agency issues a new regulation and that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with prior regulations. As OMB explains in its memorandum, “Guidance Implementing Section 3 of Executive Order 14192, Titled ‘Unleashing Prosperity Through Deregulation,’” an “Executive Order 14192 regulatory action” is a significant regulatory action (as defined in section 3(f) of Executive Order 12866) that would impose total costs greater than zero. Because this proposed rule is not a significant regulatory action under Executive Order 12866, it is not an Executive Order 14192 regulatory action. However, PBGC believes this rule, if finalized, qualifies as an “Executive Order 14192 deregulatory action” (as defined in M-25-20) because of expected cost savings associated with both removing restrictions on investments and eliminating the option to reallocate employer contributions to health care.

PBGC estimates that easing investment restrictions on fixed-to-float securities and securities exempt from registration would result in annualized cost savings of approximately \$18.4 million. This estimate reflects PBGC’s observation of typical market practice regarding benchmark construction and advisory fee differentials for non-standard mandates, applied to the

projected SFA asset base and an estimated proportion of affected plans (((\$10 million for one-time setup costs + \$450 million for ongoing advisory fee impact) × 0.6 (reflecting an estimated 60 percent of the 200 plans expected to receive SFA) ÷ 15 (reflecting a straight-line decline in advisory-fee impacts to \$0 over 15 years)). Furthermore, PBGC estimates that eliminating the procedure to grant an exception to the condition prohibiting the reallocation of contributions would result in fewer expected determination requests submitted to PBGC. PBGC estimates there would have been at least 10 requests for an exception from the condition prohibiting the reallocation of contributions, and by eliminating this procedure, PBGC estimates a total annual cost savings of \$250,000 (10 x \$25,000 per request). Therefore, this rulemaking, if finalized, would result in \$18.65 million in total annual cost savings.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act⁴ (RFA) imposes certain requirements respecting rules that are subject to the notice-and-comment requirements of section 553(b) of the Administrative Procedure Act, or any other law,⁵ and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seek public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.⁶

For purposes of the RFA requirements with respect to this proposed rule, PBGC considers a small entity to be a plan with fewer than 100 participants.⁷ This is substantially the

⁴ 5 U.S.C. 601 *et seq.*

⁵ The applicable definition of “rule” is found in section 601 of the RFA. *See* 5 U.S.C. 601(2).

⁶ The applicable definitions of “small business,” “small organization,” and “small governmental jurisdiction” are found in section 601 of the RFA. *See* 5 U.S.C. 601.

⁷ PBGC consulted with the Small Business Administration’s Office of Advocacy before making this determination. Memorandum received from the U.S. Small Business Administration, Office of Advocacy on March 9, 2021.

same criterion PBGC uses in other regulations⁸ and is consistent with certain requirements in title I of ERISA⁹ and the Code¹⁰, as well as the definition of a small entity that PBGC and the Department of Labor (DOL) have used for purposes of the RFA.¹¹

PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requests comments on the appropriateness of the size standard used in evaluating the impact on small entities of this proposed rule.

Based on its proposed definition of small entity, PBGC certifies under section 605(b) of the RFA that the amendments in this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above under “Executive Orders 12866 and 13563,” the proposed amendments offer clarifications or conform the regulation to statutory changes and thus are neutral in their impact. For instance, the clarification of the date as of which the value of withdrawal liability payments is calculated does not impose any new requirements, and, by choosing a date on which the sponsor is already determining present value amounts for purposes of determining withdrawal liability, should simplify the process of determining the present value. While it is possible that individual small plans would be impacted by this change, the overall effect on small plans, or plans of any size, would not be significant. Accordingly, as provided in section 605 of the RFA, sections 603 and 604 do not apply.

⁸ See, e.g., special rules for small plans under part 4007 (Payment of Premiums).

⁹ See, e.g., section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

¹⁰ See, e.g., section 430(g)(2)(B) of the Code, which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

¹¹ See, e.g., PBGC’s proposed rule on Reportable Events and Certain Other Notification Requirements, 78 FR 20039, 20057 (Apr. 3, 2013) and DOL’s final rule on Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications, 89 FR 4662, 4690 (Jan. 24, 2024).

C. Paperwork Reduction Act

This proposed rule contains collections of information that PBGC has submitted to OMB for review and approval under the Paperwork Reduction Act (PRA). OMB's decision regarding these information collection requests will be available at www.reginfo.gov. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Many of the changes PBGC expects to make are revisions to filing instructions, where necessary or helpful, to incorporate the clarifications in the proposed rule. Therefore, PBGC estimates that the proposed rule will have a small reduction on the hour and cost burden of reporting as described below.

The collection of information under part 4262 is approved under OMB control number 1212-0074 (expires May 31, 2027). The current information collection requirements have an estimated annual hour burden of 864 hours and a cost burden of \$1,931,800.

PBGC's Annual Statement of Compliance instructions would be updated to reflect the changes in this proposed rule to make clear that plans need not attempt to evaluate the registration status of a security exempt from registration under sections 3(a)(2) or 3(a)(4) of the Securities Act of 1933. The clarifications incorporated into the instructions would replace or augment existing language but would not create additional filing burden. The proposed elimination of the procedure to grant an exception to the condition prohibiting the reallocation of contributions would result in fewer expected determination requests submitted to PBGC. PBGC estimates it would have received at least 10 requests for an exception from the condition prohibiting the reallocation of contributions at an estimated total cost savings of \$250,000 (10 x \$25,000 per request).

List of Subjects in 29 CFR Part 4262

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, PBGC proposes to amend 29 CFR part 4262 as follows:

PART 4262 — SPECIAL FINANCIAL ASSISTANCE BY PBGC

1. The authority citation for part 4262 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1432.

2. Amend § 4262.14 of PBGC’s SFA regulation by revising paragraphs (d)(1) and (h) to read as follows:

§ 4262.14 Permissible investments of special financial assistance.

* * * * *

(d) * * *

(1) A bond or other debt security that pays a fixed amount or fixed rate of interest during the entire period that it is owned or that pays predetermined rates of interest according to a schedule, is denominated in U.S. dollars, is a security registered under the Securities Act of 1933 or is a security exempt from registration under section 3(a)(2) or 3(a)(4) of the Securities Act of 1933 that does not include embedded features that result in returns or risks that differ materially from those of a fixed-rate or predetermined-rate debt security, and is investment grade as described under paragraph (f) of this section. For the purposes of this paragraph, a security that is convertible to equity will be considered a debt security only if it is convertible solely by action of a Federal agency or other regulator.

* * * * *

(h) Permissible investments must not be supplemented by, and permissible fund vehicles cannot include, derivatives or otherwise be leveraged in a way that could increase the risk of the permissible investment beyond the risk associated with the market value of the un-leveraged permissible investment. Outside of a permissible fund vehicle, permissible exposure to derivatives includes, for a short period of time, derivative positions that substitute for and closely replicate permissible physical securities when those physical securities are not immediately

available in the market. The relevant facts and circumstances will determine the appropriate length of time that the plan may hold such derivative positions. Any notional derivative exposure, other than exposure gained through a permissible fund vehicle described under paragraph (g) of this section, must be supported by liquid assets that are cash or cash equivalents denominated in U.S. dollars. Derivative positions that are intended to change the risk related to potential future events are not permissible.

(i) *Example.* The following example provides an illustration of appropriate exposure to otherwise impermissible derivatives.

(1) At the time a pension plan receives SFA, a fixed income manager does not identify enough investible corporate bonds that are consistent with the plan's investment objectives and that are available on the market. For a few weeks after the plan's receipt of SFA, the investment manager accesses fixed income exposure through long positions in exchange traded Treasury futures. The notional value of Treasury futures plus the market value of physical securities in the plan's SFA account do not exceed the total market value of physical securities, had they been available. This example would constitute permissible exposure.

* * * * *

3. Amend § 4262.16 of PBGC's SFA regulation by:

a. Revising paragraphs (e) and (h)(1)(ii);

b. Adding new subparagraph (h)(1)(iii).

The revisions read as follows:

§ 4262.16 Conditions for special financial assistance.

* * * * *

(e) *Allocating contributions and other practices—(1) In general.* During the SFA coverage period, a decrease in the proportion of income or an increase in the proportion of expenses allocated to a plan that receives special financial assistance pursuant to a written or oral agreement or practice (other than a written agreement in existence on March 11, 2021, to the

extent not subsequently amended or modified) under which the income or expenses are divided or to be divided between a plan that receives special financial assistance and one or more other employee benefit plans is prohibited.

(2) The prohibition in this paragraph (e) does not apply to a good faith allocation of:

(i) Contributions pursuant to a reciprocity agreement;

(ii) Costs of securing shared space, goods, or services, where such allocation does not constitute a prohibited transaction under ERISA or is exempt from such prohibited transaction provisions pursuant to section 408(b)(2) or 408(c)(2) of ERISA, or pursuant to a specific prohibited transaction exemption issued by the Department of Labor under section 408(a) of ERISA;

(iii) The actual cost of services provided to the plan by an unrelated third party; or

(iv) Contributions where the contributions to a plan that receives special financial assistance required for each base unit are not reduced, except as otherwise permitted by paragraph (d) of this section.

* * * * *

(h) * * *

(1) * * *

(ii) The present value of withdrawal liability payments assessed for the employer, discounted to the last day of the plan year preceding the plan year in which the withdrawal occurs, using the interest assumptions under § 4044.54 of this chapter that applied as of that date.

(iii) For purposes of paragraph (h)(1)(ii), that present value must be aggregated with the present value of withdrawal liability payments assessed that are the subject of any prior or contemporaneous settlement or proposed settlement during the SFA coverage period involving the same employer or any trade or business (whether or not incorporated) treated as a single employer with that employer under section 4001(b)(1) of ERISA, to the extent arising from the same withdrawal or from a series of related withdrawals (including partial withdrawals),

transactions, or arrangements. Settlements, transactions, or arrangements undertaken with a principal purpose of avoiding the approval requirement under this paragraph are treated as related for purposes of this paragraph (h)(1)(ii).

* * * * *

Jack Lund,

General Counsel,

Pension Benefit Guaranty Corporation.

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