Special Financial Assistance Program:
Implications of PBGC Interim Final Rule

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ARPA Section 9704

- Key Legislative History:
  - Statement by Leader Schumer:

    I will be watching how the administration implements this new program very closely to ensure plans receiving financial assistance under the new program are not placed in a worse long- term funding position than they are today or are projected to be into the future. This new program is intended to be a long-term solution for these ailing plans, a solution that protects retiree benefits as well as the health of the plans themselves.

  Cong Rec (Daily Ed. March 5, 2021) S1270.

  - Committee Report

    The Committee believes that implementing a special financial assistance program for the most financially troubled multiemployer plans and increasing PBGC premiums for multiemployer plans will (1) permit these plans to restore their solvency; (2) protect pension benefits of the participants and beneficiaries in these plans; and (3) lessen the financial impact of these plans upon the PBGC's multiemployer plan program.

  American Rescue Plan Act of 2021, Report of the Committee on the Budget, House of Representatives, Report 117-7 (Feb. 24, 2021), p. 850.

- CBO scored at $86 billion, but unlimited 10-year appropriation.
- Enacted March 11, 2021.

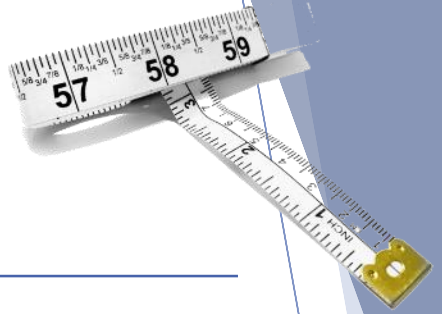
Regulations and Guidance

- PBGC
  - Final Interim Regulations released July 9, 2021 – 86 Fed. Reg. 36598-36631 (July 12, 2021).
  - Estimated cost $94 billion.
  - Additional PBGC Guidance:
    - General Instructions
    - Special Instructions following spinoffs, benefit increases, or contribution reductions.
    - Instructions for Notice of Reinstatement of Suspended Benefits.
    - SFA Assumptions, PBGC SFA 21-02 (July 9, 2021).
- Treasury Guidance – Issues Related to SFA; Notice 2021-38.
- DOL Statement - https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/arp/dol-statement-on-pbgc-special-financial-assistance-interim-final-rule.pdf (July 9, 2021)
  - Formal guidance to follow on:
    - (1) Annual Funding Notice requirements; (2) SPD and SMM Disclosures; (3) Record Requirements for Reinstatement and Make-up of Suspended Benefits; and (4) interaction of the MPRA Suspension Rules with Reinstatement and Make-up payments under the SFA rule and Treasury Guidance.
  - Opinion: Taking SFA is not a fiduciary breach.

PBGC Interim Final Rule

Topic	Commentary
Eligibility Criteria	• PBGC added flexibility for plans in critical (not declining) status to show eligibility • But many eligible plans will receive zero in SFA
Amount of SFA	• PBGC went with “low end” approach • Eligible plans will receive only enough SFA to remain solvent through 2051, taking into account all other existing and expected assets
Interest Rate Assumption	• Most eligible plans will use interest rate of about 5.5% to determine SFA. • SFA assets must be invested in bonds yielding 2% to 3% • As a result, many plans will likely become insolvent several years before 2051

PBGC Interim Final Rule Continued



Topic	Commentary
Investment Issues	• No significant restrictions on investment of non-SFA assets • Generally limited investment of SFA proceeds to investment grade bonds and bond equivalents • PBGC seeks input on investments, goal of providing further guidance
Priority Groups	• PBGC spaces out priority applications in 2021 and 2022 • Plans without priority status will likely have to wait until 2023 to apply
Withdrawal Liability	• No provision to disregard SFA assets in determining withdrawal liability • Plans must use PBGC mass withdrawal interest rates for at least 10 years

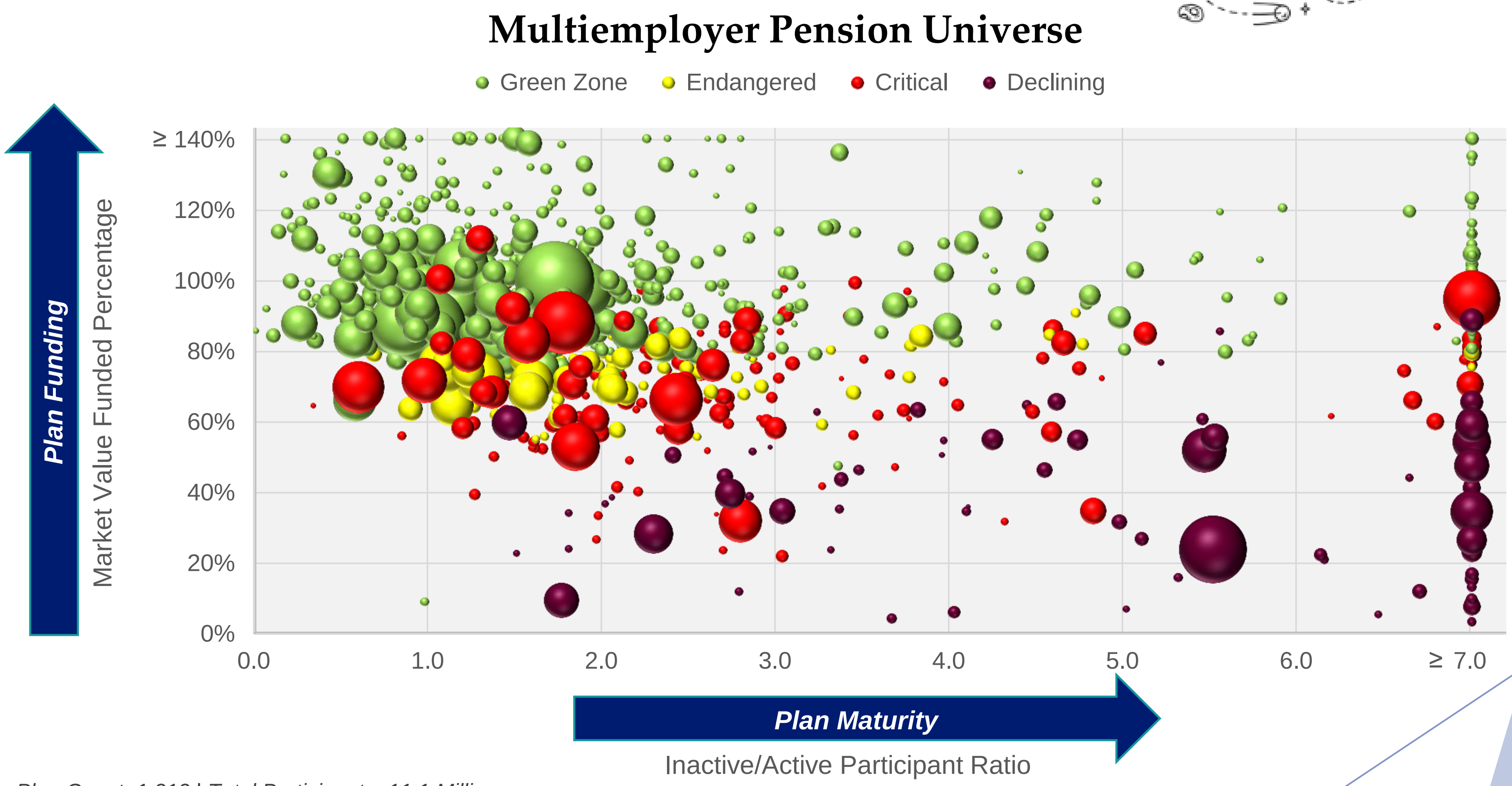
Eligibility

Criteria		Est. # Plans
1. Critical and declining	In critical and declining status in any plan year beginning in 2020, 2021, or 2022	~ 110
2. Suspension approved	Suspension of benefits under MPRA approved as of APRA enactment (March 11, 2021)	18
3. Critical status and other criteria	In critical status in any plan year beginning in 2020, 2021, 2022, *and* - Current liability funded percentage < 40%; - Ratio of active to inactive participants < 2 to 3	~ 100
4. Insolvent after MPRA	Plan that became insolvent after passage of MPRA (December 16, 2014), has not terminated	~ 20

Notes

- PBGC estimates more than 200 plans will be *eligible* for SFA
- PBGC noted that some eligible plans will receive *zero* SFA

Multiemployer Universe



Plan Count: 1,212 | Total Participants: 11.1 Million

Source: Segal analysis of Form 5500 data for plan years ending in 2019. Zone status applies to plan years ending in 2020. The size of each "bubble" is based on the total number of participants covered by the plan.

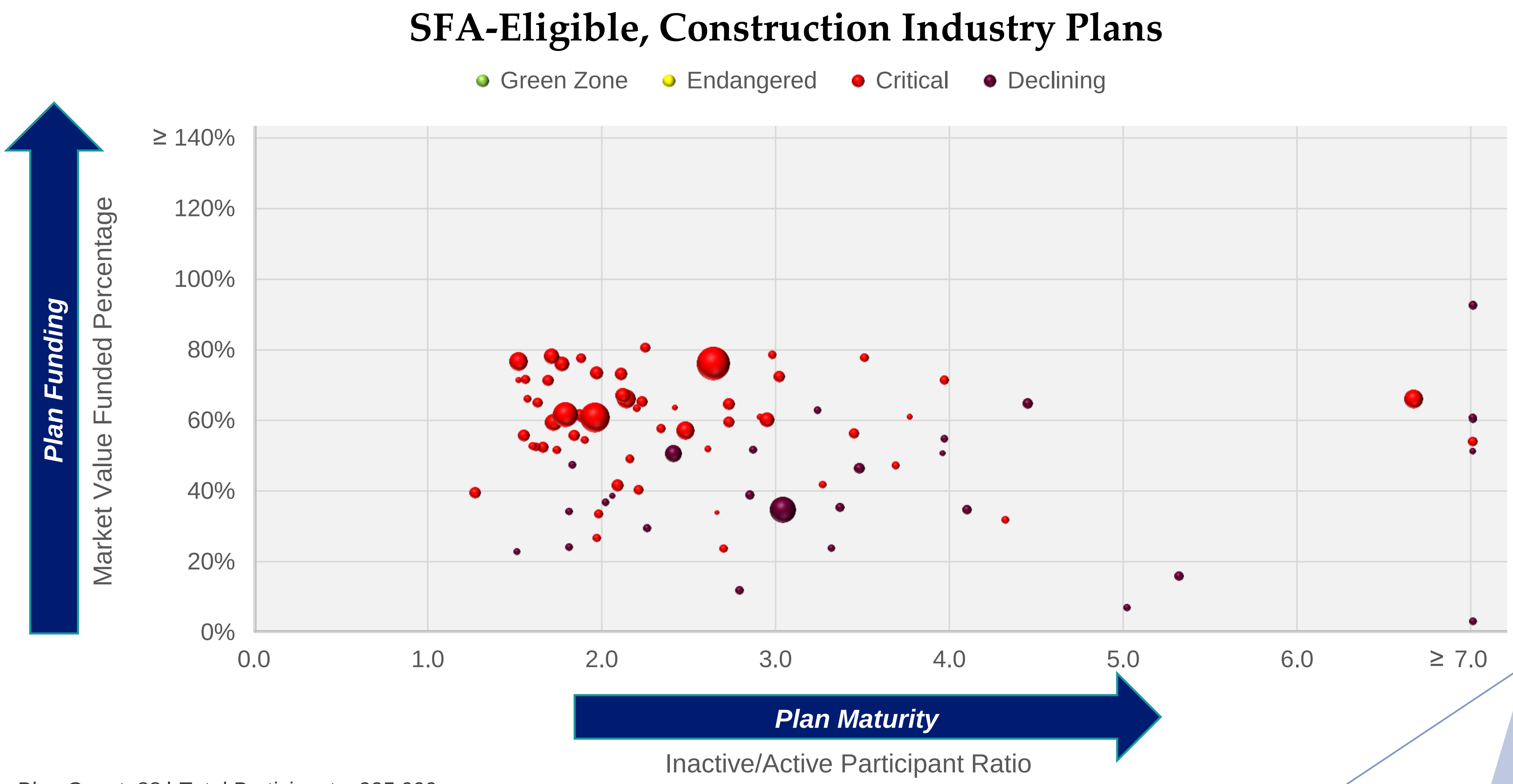
SFA-Eligible Plans

Exhibit does not include insolvent plans eligible for SFA.

Plan Count: 208 | Total Participants: 2.2 Million

Source: Segal analysis of Form 5500 data for plan years ending in 2019. Zone status applies to plan years ending in 2020. The size of each "bubble" is based on the total number of participants covered by the plan.

SFA-Eligible Plans: Construction Industry

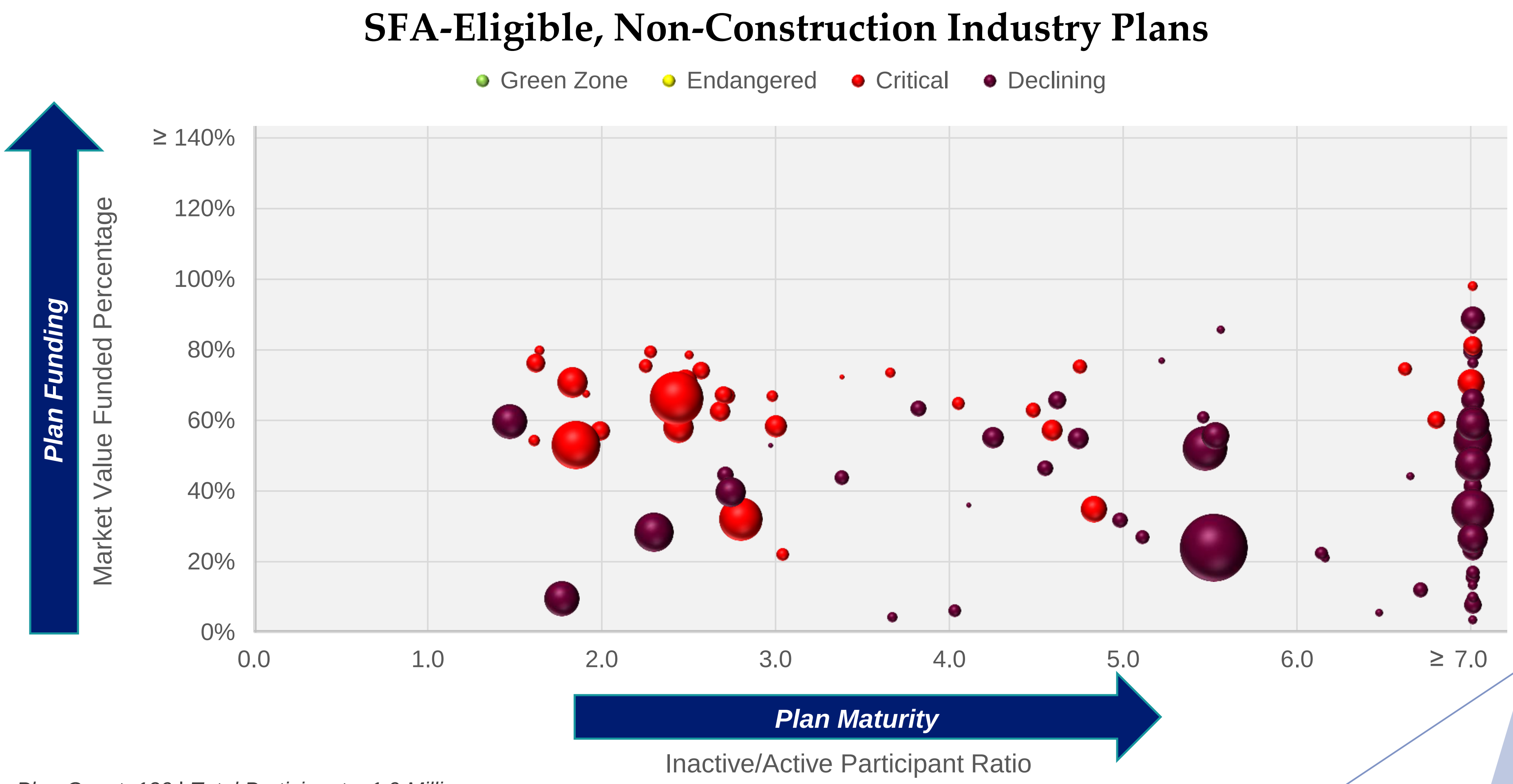


Plan Count: 88 | Total Participants: 225,000

Exhibit does not include insolvent plans eligible for SFA.

Source: Segal analysis of Form 5500 data for plan years ending in 2019. Zone status applies to plan years ending in 2020.
The size of each "bubble" is based on the total number of participants covered by the plan.

SFA-Eligible Plans: Other Industries



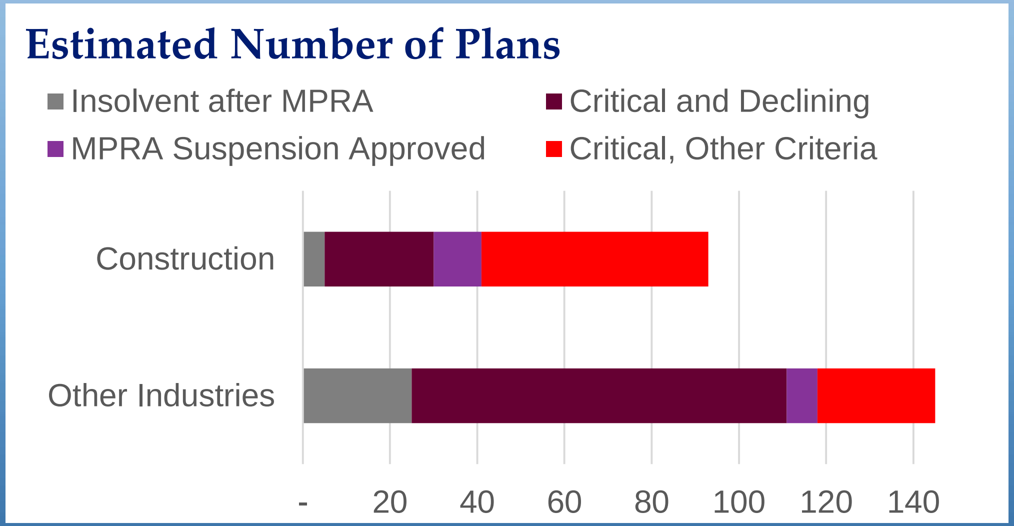
Plan Count: 120 | Total Participants: 1.9 Million

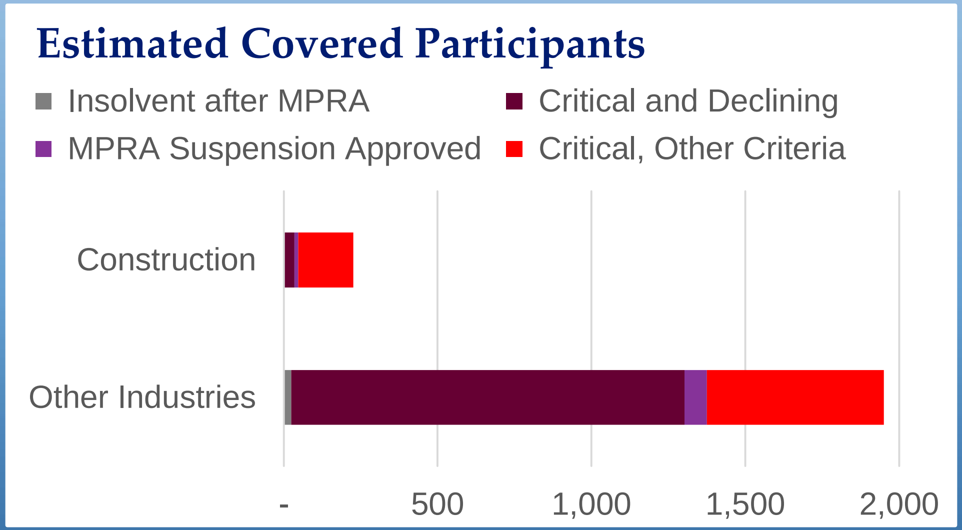
Exhibit does not include insolvent plans eligible for SFA.

Source: Segal analysis of Form 5500 data for plan years ending in 2019. Zone status applies to plan years ending in 2020. The size of each "bubble" is based on the total number of participants covered by the plan.

Special Financial Assistance Program

Impact on plans in different industries





- Most eligible construction industry plans are relatively small, while some eligible plans outside the construction industry are very large.
- Eligible construction industry plans are much more likely to be in critical but not declining status.

NCCMP Response to PBGC IFR

Other Concerns

SFA Priority Group		Application Date	Est. # Plans
1	Already insolvent; or projected to be insolvent by March 11, 2022	Immediately	25
2	Implemented a MPRA suspension as of March 11, 2021; or expected to be insolvent within one year of their application	Jan 1, 2022	18
3	In critical and declining status with more than 350,000 participants	Apr 1, 2022	1
4	Projected to be insolvent by March 11, 2023	Jul 1, 2022	3
5	Projected to be insolvent by March 11, 2026	By Feb 11, 2023	22
6	Represents over $1 billion in liability to PBGC	By Feb 11, 2023	11
N/A	**No priority**	After Mar 11, 2023	**100+**

NCCMP Response to PBGC IFR

Discussion of Comments

Comments (Paraphrased)

1. Many eligible plans in critical status will not receive any SFA
2. For vast majority of plans, SFA will only forestall insolvency, with many plans becoming insolvent well before 2051
3. Trustees of "MPRA plans" are in a fiduciary bind
4. PBGC's present value approach ignores cash flow timing issues

NCCMP Response to PBGC IFR

Recommendations

A. Determining amount of SFA

- PBGC should interpret the law to provide enough SFA so plans will have assets that are projected to increase by the end of the 2051 period
- Would provide enough SFA to restore solvency without providing a windfall
- SFA should recognize “shared sacrifices” over these bargained benefits and provide SFA to enable plans to continue beyond 2051

NCCMP Response to PBGC IFR
Recommendations

B. Permissible investments and SFA discount rate

- Recognize disconnect between interest rate used to determine SFA and permitted investments on SFA assets
- Statute states that permissible investments for SFA assets may include "other investments as permitted by" PBGC
- PBGC should permit SFA assets to include investments that are US-denominated public debt or equity securities to achieve returns of at least interest rate limit

NCCMP Response to PBGC IFR
Other Concerns

C. PBGC metering of applications

- PBGC should consider time to prepare applications
- Plans should be able indicate their intent to file

D. Retroactive benefit increases

- Absolute prohibition is counterproductive

E. PBGC review of actuarial assumptions

- PBGC should adopt deferential approach in its reviews
- Unreasonably high level of scrutiny by Treasury in reviewing MPRA applications

Other Comments Received on IFR

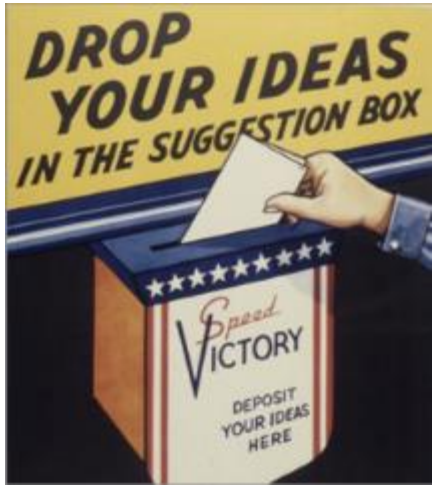
- 102 Unique Comments Received
  - 35 by Individuals
  - 30 by Plans
  - 10 by Investment Managers or Advisers
  - 7 by Employers or Employer Associations
  - 7 by Actuaries
  - 6 by Unions
  - 3 Congressional
  - 2 by Multiemployer Plan Advocacy Groups or other Associations
  - 1 by Law Firms (Excluding firms writing on behalf of individual plans)
  - 1 by Public Interest Groups

Subjects of Comments

- Mismatch between discount rate and investment return for SFA assets – 51
  - Bifurcate Rates – 19
  - Expand SFA Investment Options – 42
  - Treat investment expenses as an obligation rather than netting from return – 2
- 2051 Insolvency Target – 22
  - Eligible plans will receive no SFA – 3
  - Ignore all assets and resources – 8
  - Ignore assets necessary for solvency after 2051 – 15
- MPRA Solvency Issue – 20
  - MPRA Plans may not elect SFA – 14
  - Request fiduciary relief – 8

Subjects of Comments (cont.)

- Relax standards for benefit increases – 3
- Relax prohibition against retroactive benefit increases – 4
- Relax standards for contribution relief for employers – 5
- Withdrawal liability relief for employers – 5
- Increase withdrawal liability by ignoring or phasing in recognition of SFA – 8
- Revise priorities filing priorities – 10
- Modify metering of applications – 2



SFA Methodology Scenarios
Overview and Assumptions

Overview

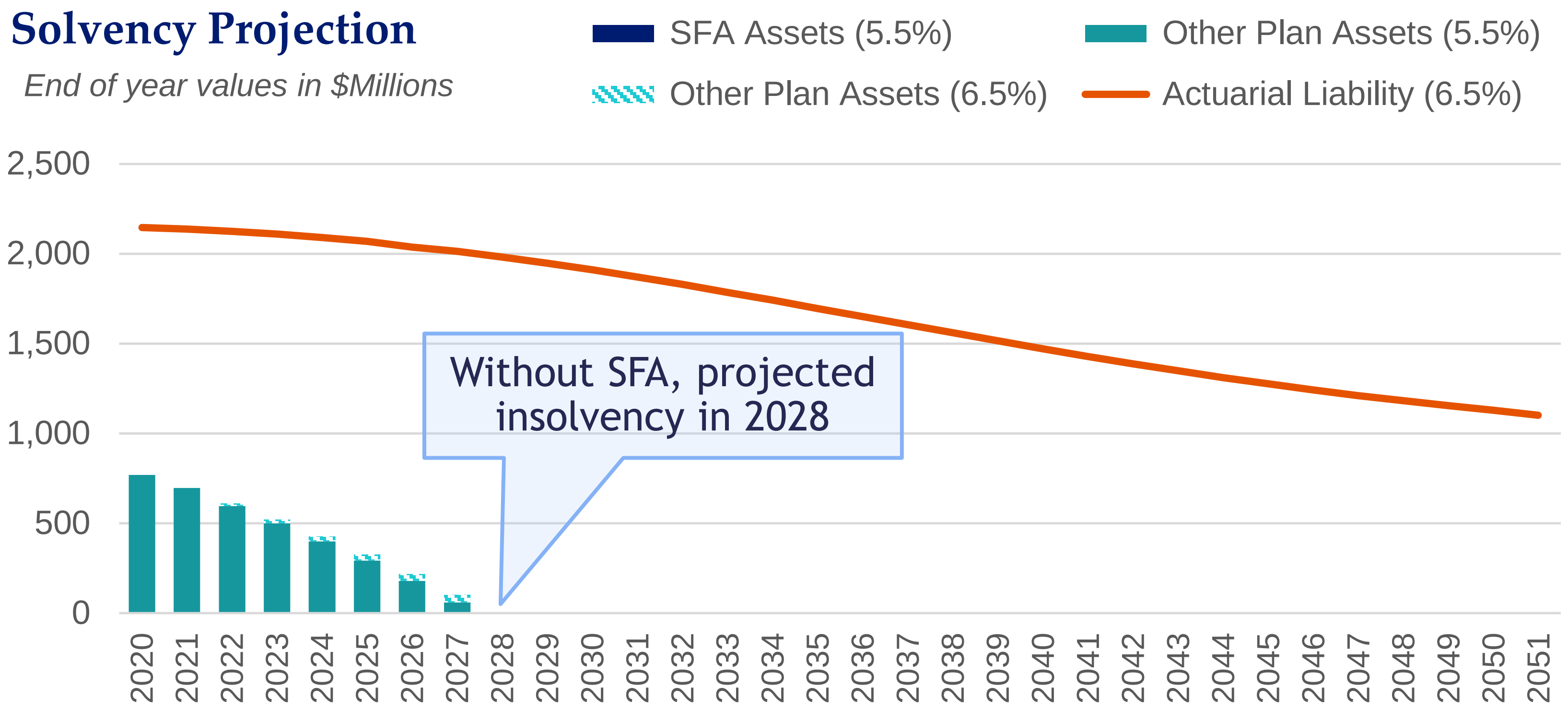
- Projections are for illustration, to show orders of magnitude
- Based on publicly-available information for an plan
- Results are scaled and adjusted to de-identify the plan

Assumptions (Simplified)

- Assume SFA determined based on 5.5% interest rate
- Assume returns on total plan assets are 5.5% per year
- For sensitivity, returns of 6.5% on plan assets, 2.0% on SFA assets
- For illustration, actuarial liability interest rate is 6.5%

Baseline Scenario

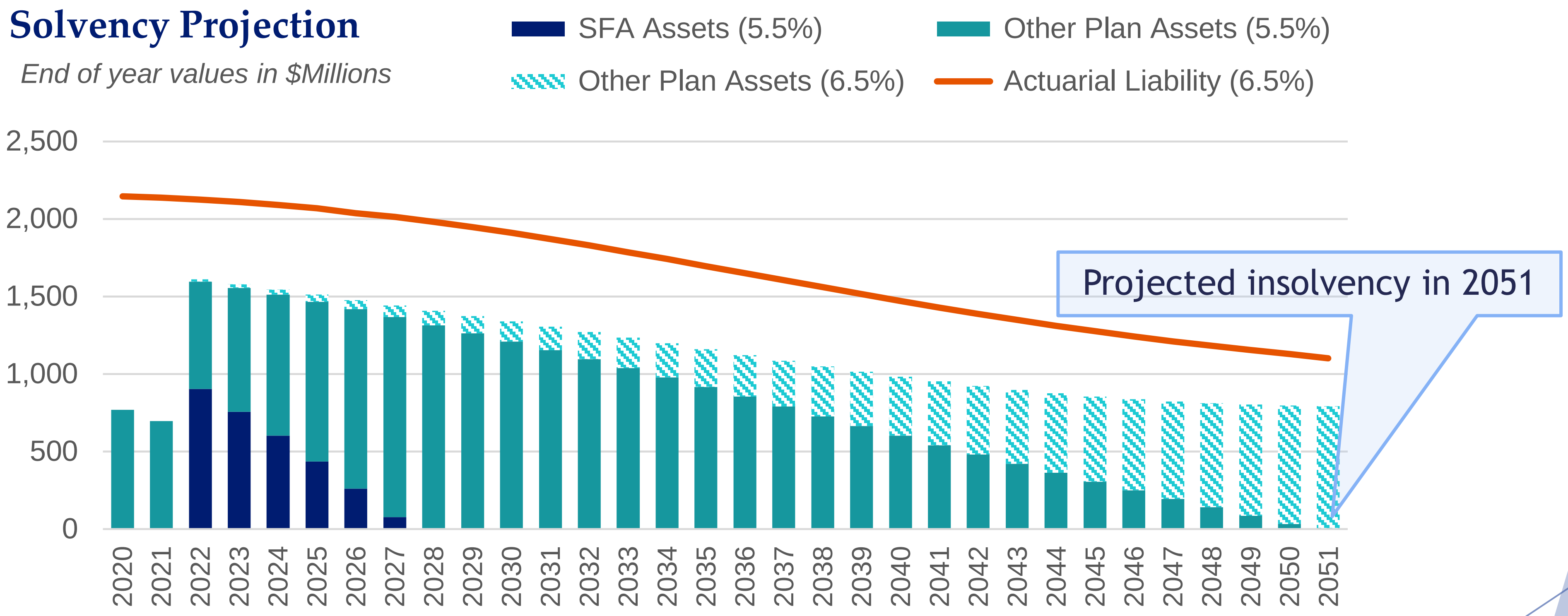
No SFA, projected insolvency in 2028



- Without SFA, plan assets are projected to be depleted in 2028

SFA Scenario 1

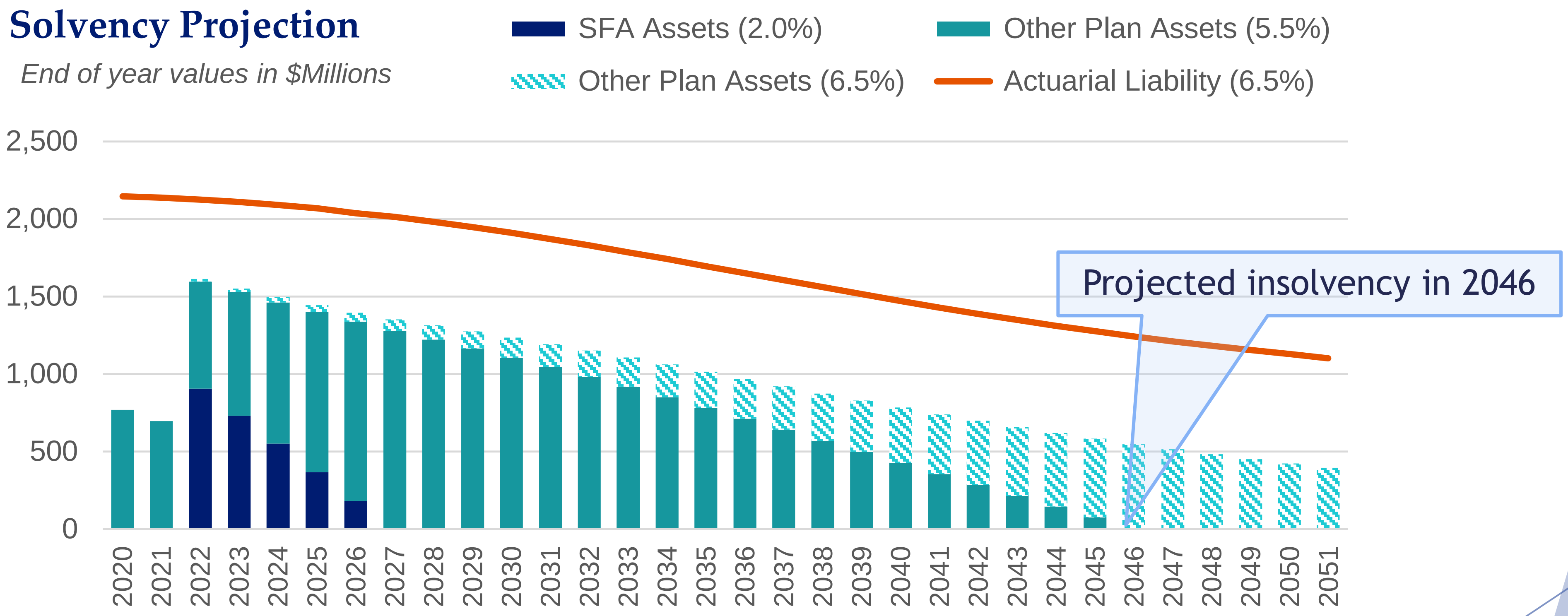
SFA based on IFR methodology | SFA = $1,000



- Based on PBGC IFR, if total returns on plan assets are 5.5%, SFA will enable the plan to remain solvent only through 2051

SFA Scenario 1A

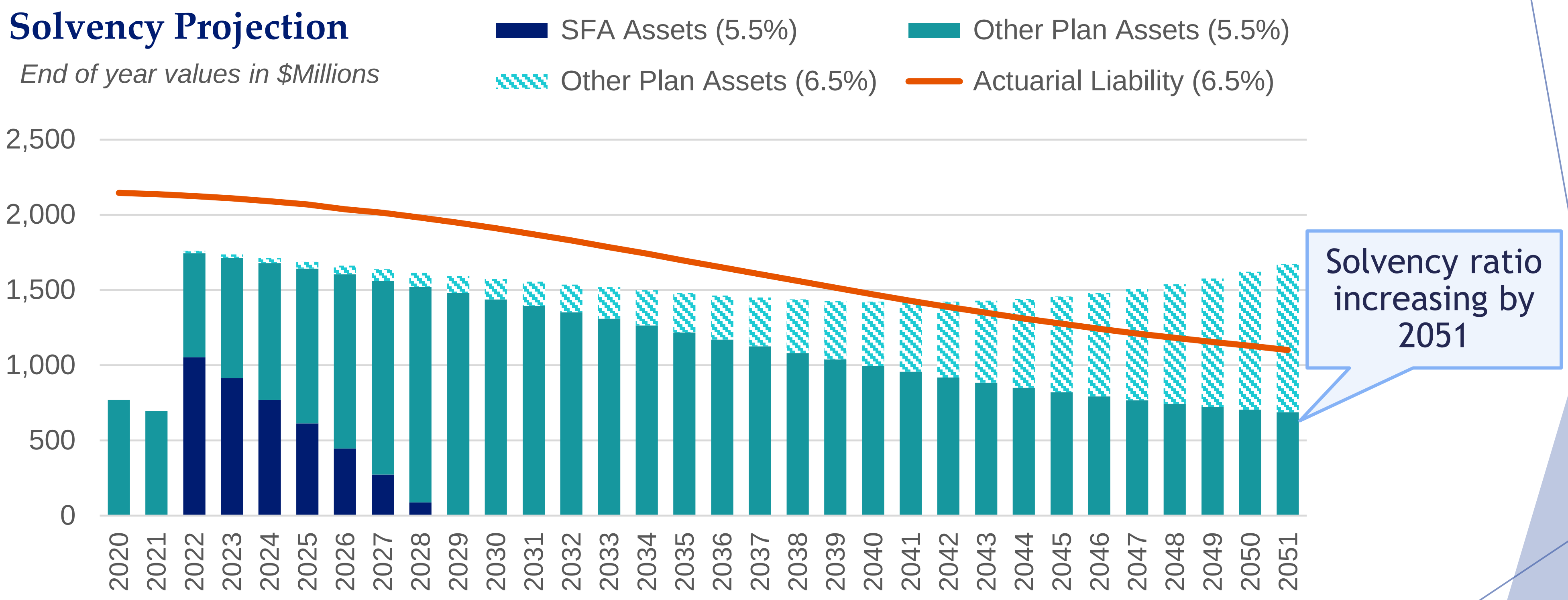
Recognizing the interest rate disconnect



- If SFA assets return 2.0% instead of 5.5%, the plan is projected to become insolvent in 2046 instead of 2051

SFA Scenario 2

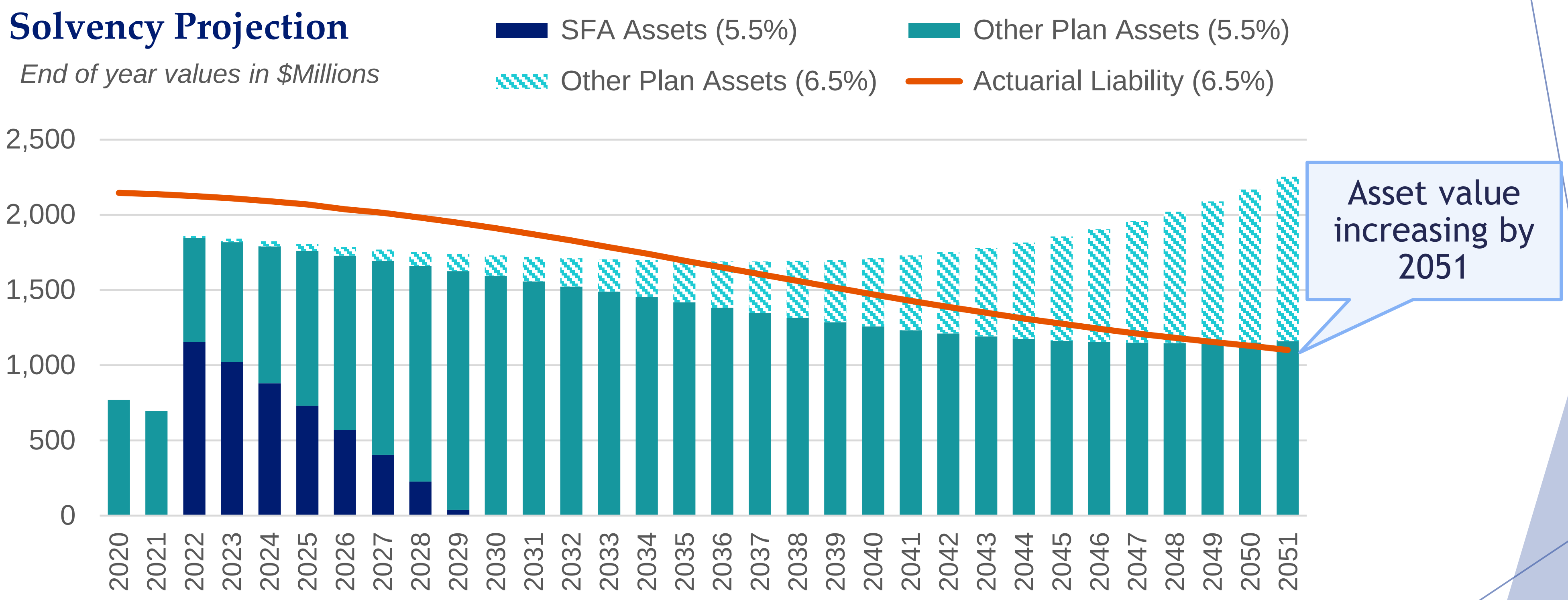
Target increasing solvency ratio by 2051 | SFA = $1,150



- For this purpose, solvency ratio is plan resources divided by plan benefits in each plan year (same as in MPRA regulations)

SFA Scenario 3

Target increasing asset value by 2051 | SFA = $1,250



- SFA targets increasing asset value (not just solvency ratio)

SFA Calculation Methodology

Summary

SFA Scenario	SFA	% Change
1. SFA based on IFR methodology Insolvency projected in 2051; years sooner with restrictions on SFA assets	$1,000	N/A
2. SFA targets increasing solvency ratio Also, more flexibility with SFA assets	$1,150	+15%
3. SFA targets increasing asset value Also, more flexibility with SFA assets	$1,250	+25%

- Results will vary significantly based on the specific situation for each SFA-eligible plan

Dilemma Facing MPRA Plans

“MPRA Plans”

- 18 plans have implemented suspension of benefits under the Multiemployer Pension Reform Act of 2014, approved by Treasury
- MPRA plans are automatically eligible for SFA
- To receive SFA, MPRA plans must reinstate suspended benefits

The Dilemma

- Most MPRA plans are projected to remain solvent indefinitely if they leave the suspension in place
- If the plan unwinds its suspensions and receives SFA, it may be projected to become insolvent in the future
- IFR methodology effectively reduces amount of SFA for any investment gains since benefits were suspended

MPRA Plan Example
Overview and Assumptions

Overview

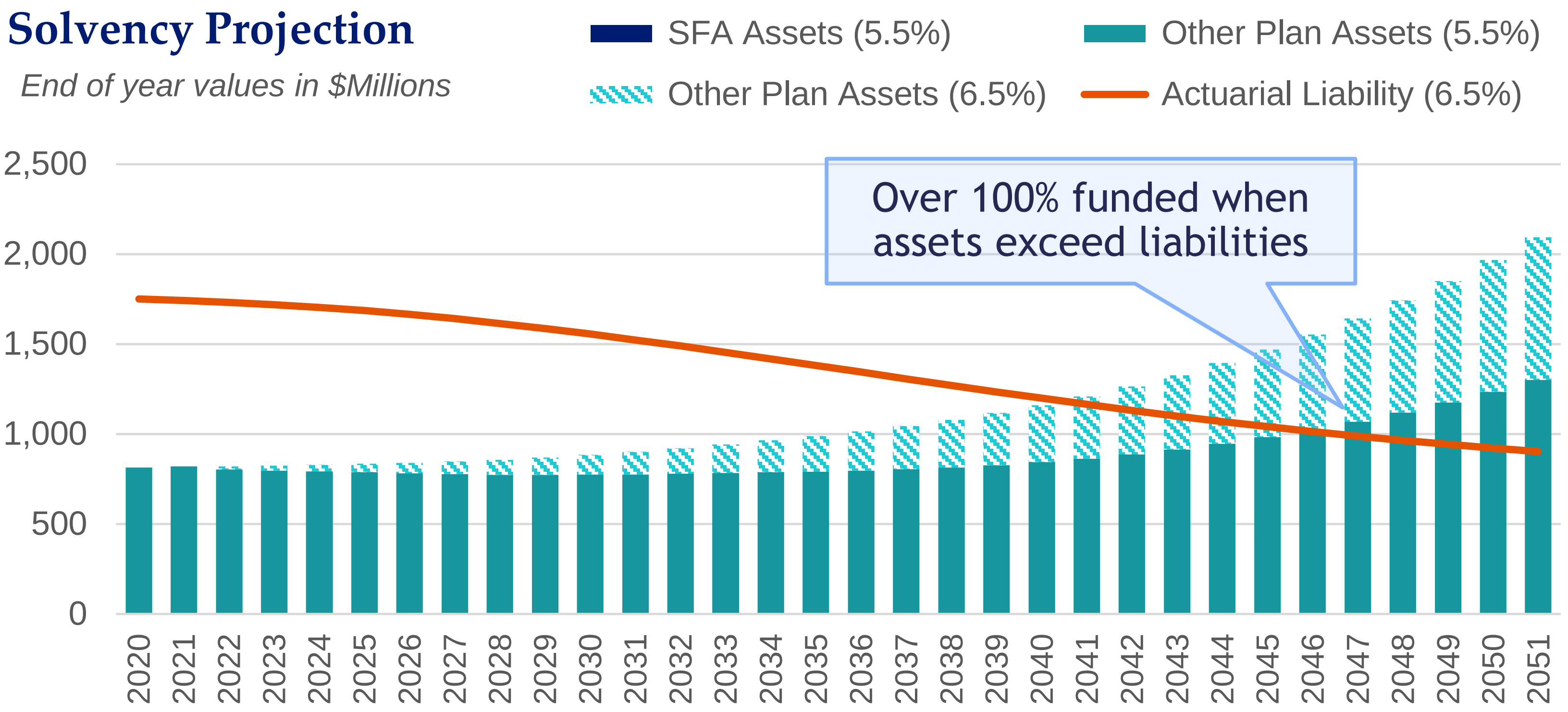
- Projections are for illustration, to show orders of magnitude
- Based on publicly-available information for an actual MPRA plan
- Results are scaled and adjusted to de-identify the plan

Assumptions (Simplified)

- Assume SFA determined based on 5.5% interest rate
- Also assume returns on total plan assets are 5.5% per year
- For sensitivity, show returns of 6.5% on plan assets
- For illustration, actuarial liability interest rate is 6.5%

MPRA Plan Baseline Scenario

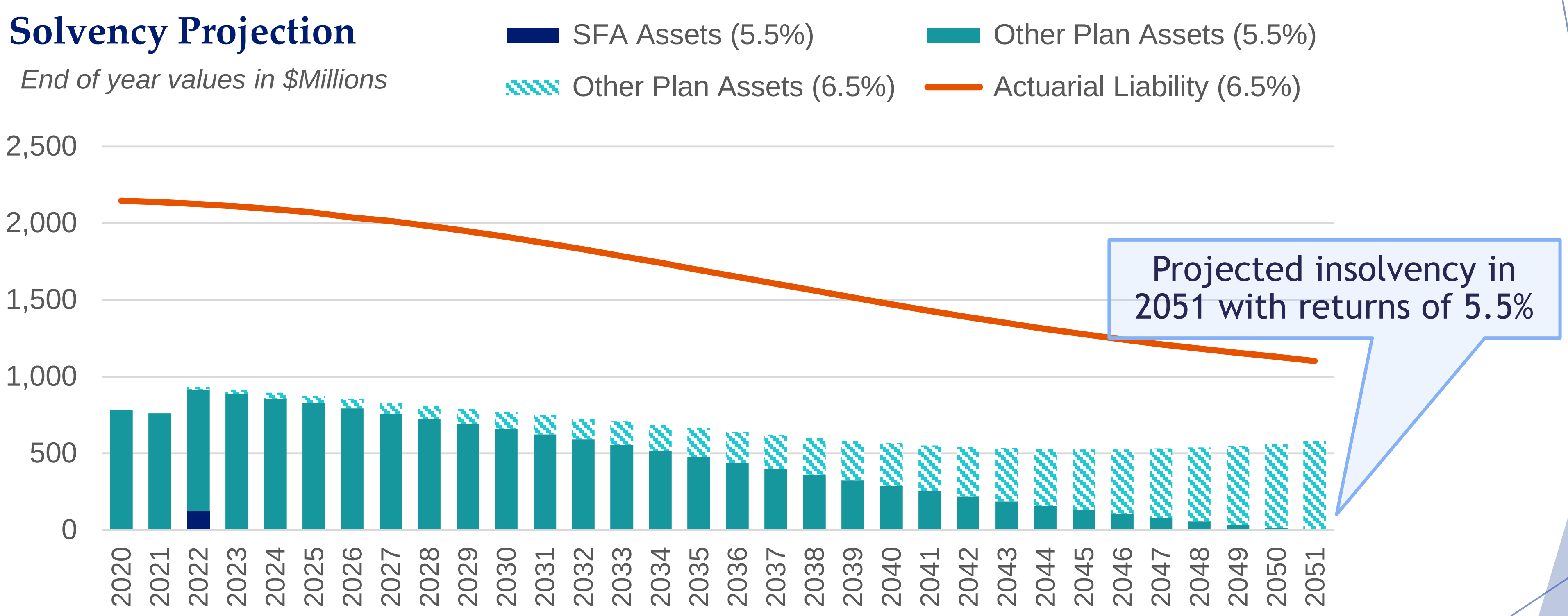
Benefits suspension remains intact, no SFA



- With the suspension intact, the Plan is projected to remain solvent indefinitely, and exceed 100% funding

MPRA Plan Scenario 1

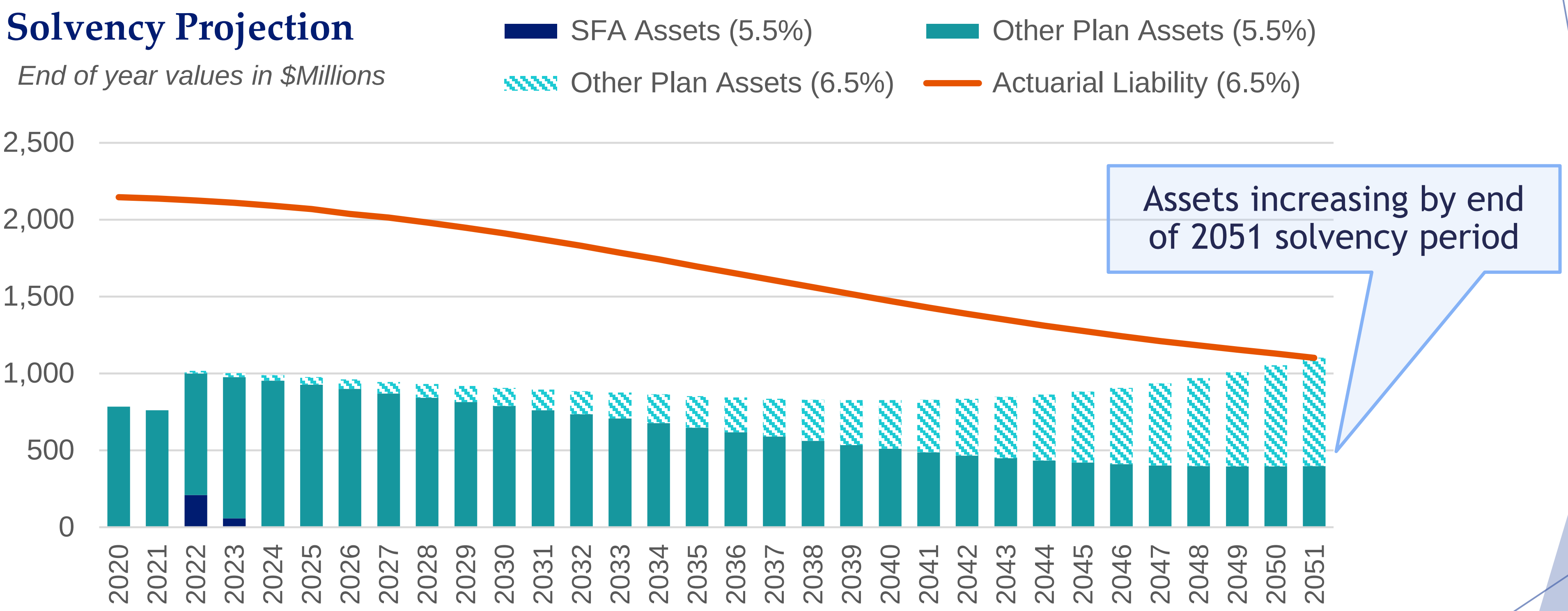
SFA based on IFR methodology | SFA = $200



- After unwinding the suspension, the Plan would receive a relatively small amount of SFA under the IFR methodology

MPRA Plan Scenario 2

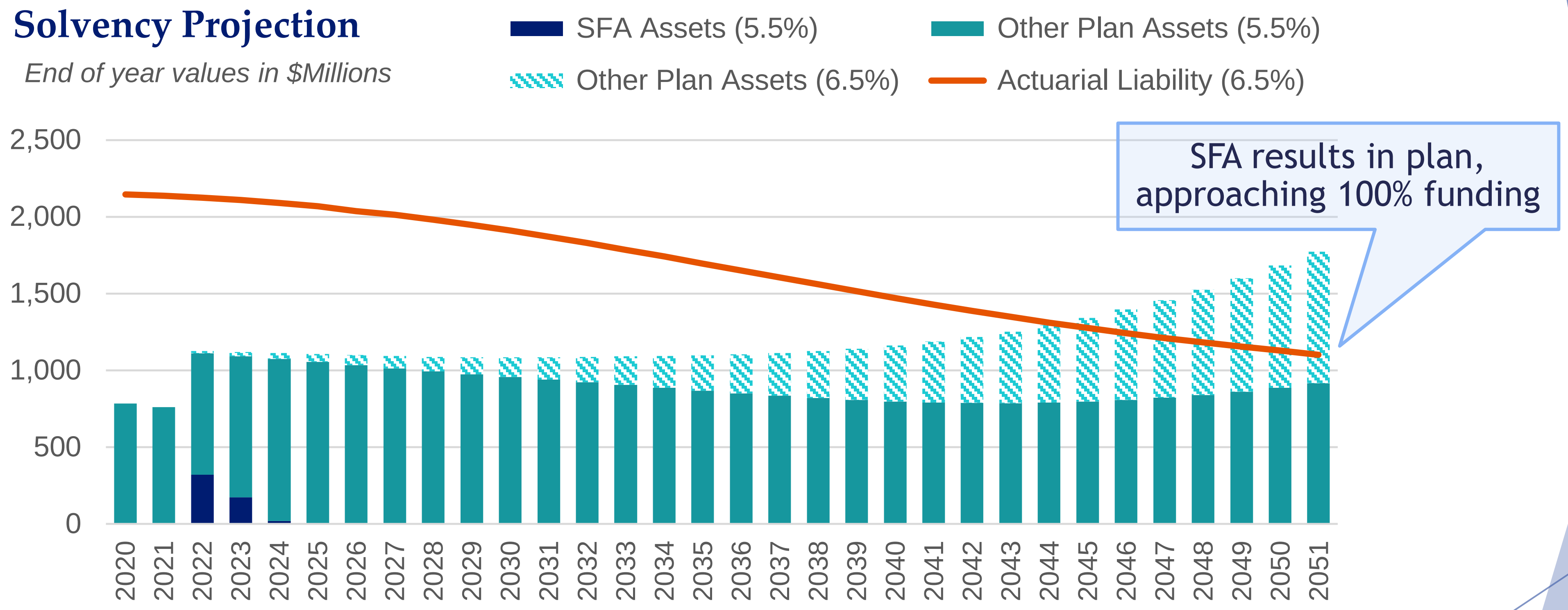
SFA targets ongoing solvency after 2051 | SFA = $290



- Even if SFA targets ongoing solvency, plan funding would not be as strong as it was before restoring benefits and receiving SFA

MPRA Plan Scenario 3

SFA also disregards asset gains | SFA = $400



- If the SFA is further adjusted to disregard investment gains after the suspension, plan funding almost as strong as in the baseline

MPRA Plan Example

Summary

SFA Scenario	SFA	% Change
1. Benefits reinstated, receive SFA based on IFR methodology	200	N/A
2. Benefits reinstated, SFA targets ongoing solvency after 2051	290	+45%
3. Benefits reinstated, SFA targets ongoing solvency, also disregards asset gains	400	+100%

- Percentage increases are large, but SFA is relatively small compared to plan assets
- Results will vary significantly based on the specific situation for each MPRA plan

Questions?