

Multiemployer Program Update

National Coordinating Committee for Multiemployer Plans

Annual Conference, Hollywood, FL

March 7 – 10, 2024

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All remarks are off-the-record and not for attribution.





SFA Update

PBGC

- The SFA Program authorized under the American Rescue Plan Act ensures that millions of America's workers, retirees, and their families receive the pension benefits they earned through many years of hard work.
- Additionally, it assists plans by providing funds to reinstate suspended benefits and addresses the solvency of PBGC's Multiemployer Insurance Program, which was projected to become insolvent in 2026.
- PBGC's final rule implements the program and establishes conditions to keep multiemployer plans sustainable long into the future.
- PBGC Final Rule 87 FR 40968 - <https://www.govinfo.gov/content/pkg/FR-2022-07-08/pdf/2022-14349.pdf> (effective 8/8/2022). (Amended [Federal Register Special Financial Assistance by PBGC-Withdrawal Liability Condition Exception](#) effective January 26, 2023)

Special Financial Assistance Expected Reach

The American Rescue Plan Act provides for special financial assistance to enhance retirement security for millions of Americans.



SFA Applications -- Current Status (as of March 7, 2024)

	Approved	Under Review	Withdrawn (not yet resubmitted)	Waiting List
Number of Applications	105	15	23	N/A
Number of Plans^a	70	15	23	85
Aggregate \$ SFA (approved or requested)	\$53.6 billion	\$7.0 billion	\$13.1 billion	N/A
Aggregate Participant Count^a	775,376	273,730	683,869	N/A

a) The number of plans and aggregate participant counts exclude supplemented applications.

SFA Application Metering Process

- The priority group application period ended March 10, 2023.
- PBGC will temporarily close its e-Filing portal when its capacity to effectively review SFA applications is reached.
- While the portal is closed, PBGC accepts requests to be placed on a waiting list for plans seeking to apply for SFA.
- PBGC has provided updates of the intended date the e-Filing portal will be re-opened and has provided advance notice to the plans at the top of the waiting list that will be allowed to apply at that time.
 - To date, 28 plans on the waiting list have been allowed to submit applications, and 27 of those plans have done so.

SFA Application Metering Process (continued)

- Eligible plans that are insolvent or expected to be insolvent within one year of an application retain the ability to submit emergency filings when the e-Filing portal is closed.
- Plans may “lock-in” base data when the e-Filing portal is closed by submitting a pro-forma initial application
 - Base data includes the SFA measurement date, interest rates and participant census date
 - 112 plans have submitted lock-in applications to date.

SFA Application Process Changes

- PBGC has implemented an expedited reapplication process for applicants that only need to make minor changes.
 - The goal is to complete the review process within 120 days of submission of the previous application.
- With the advent of the waiting list to submit an SFA application, applicants will be limited to two revisions before being required to go to the end of the waiting list.

SFA Application Process Changes (continued)

- Applicants are now required to submit a listing of all participants (name, SSN and participant category only) to facilitate an independent death audit which identifies participants with SSNs that appear in the Social Security Administration's Death Master File.
 - Plans are encouraged to submit data in advance of finalizing their SFA application.
 - PBGC will provide plans with the listing of SSNs that appear in the Death Master File and request that plans submit their proposed treatment of records with matching SSNs.
 - PBGC will review the plan's proposal and either request additional clarification or advise that the plan may proceed to prepare its application on the basis of its proposal.

Application Preparation

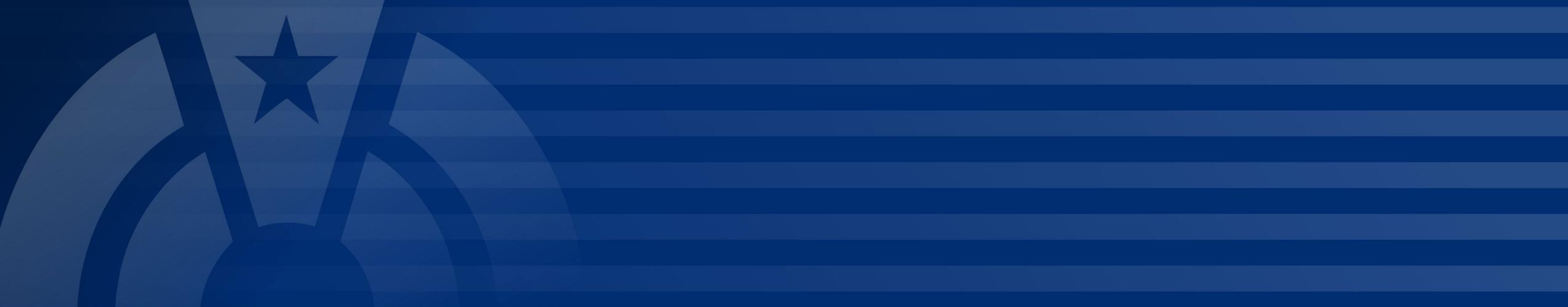
- Plans are encouraged to contact PBGC to request an informal preapplication consultation on any question that may arise in preparing the application for SFA, including development of projection assumptions.
- PBGC initially posted Special Financial Assistance Assumptions Guidance on its website on July 11, 2021 and has updated the guidance four times since then
 - While this guidance is nonbinding, it informs the public of PBGC's current thinking on this topic.
 - It is intended to help SFA applicants assess the “reasonableness” of projections assumptions used to determine the amount of SFA, particularly with regard to the amount of data/analysis/rationale that should be included in SFA applications in support of proposed assumptions

SFA Permissible Investments

- What does “investment grade” mean in the context of SFA?
 - “Investment grade” is defined in § 4262.14 of the SFA regulation as “securities for which the issuer (or obligor) has at least adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure.”
- Will PBGC identify whether a particular investment strategy is permissible before a plan invests?
 - No, it is not anticipated that PBGC will provide upfront advice about, or confirmation of, whether a particular asset class, sub-asset class, fund structure or investment strategy is permissible. However, upon review of a plan’s Annual Statement of Compliance or an audit, PBGC may determine that a particular asset is not permissible.

Mergers Involving SFA Plans

- PBGC approval required for multiemployer plan merger involving a plan that receives SFA.
- Like every merger of multiemployer plans, the transaction must comply with the requirements of ERISA section 4231. But there are additional requirements.
 - Unlike in a merger *not* involving a plan that receives SFA, where the plans *may* request a compliance determination, the plans *must* obtain PBGC approval.
 - The transaction must not unreasonably increase PBGC's risk of loss respecting any plan involved in the merger; and
 - Must not reasonably be expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans involved in the transaction.
- SFA final rule clarifies how the conditions on SFA plans apply to a plan following a merger.
 - Some conditions, including prospective benefit increases, do not apply to a merged plan. Special withdrawal liability rules apply to the surviving plan.
 - Plan meeting specified requirements may request a waiver of one or more listed conditions, including retrospective benefit increases, at the time the plan seeks approval for the merger.



4213 Proposed Rule

Actuarial assumptions for determining an employer's withdrawal liability



PBO

4213 Proposed Rule

- Published Oct. 14, 2022.
- Comment period ended December 13, 2022.
- PBGC received 28 comment submissions from 26 commenters.
- Comments available at pbgc.gov/prac/pg/other/guidance/pending-proposed-rules.

Section 4213(a) of ERISA

- Authorizes PBGC to provide actuarial assumptions that may be used to determine withdrawal liability.
- Requires that withdrawal liability be determined using actuarial assumptions and methods that either:
 - (1) are “in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations)” and “in combination, offer the actuary’s best estimate of anticipated experience”
 - or
 - (2) are permitted by PBGC regulation.

4213 Proposed Rule

- Would authorize use of either:
 - the interest assumption prescribed by PBGC under ERISA section 4044, which is based on annuities prices,
 - the actuary's funding interest assumption, or
 - a rate in between.
- Would require that all other assumptions:
 - each be reasonable (taking into account the experience of the plan and reasonable expectations), and
 - in combination, offer the actuary's best estimate of anticipated experience.

Bankruptcy of Yellow Corp.

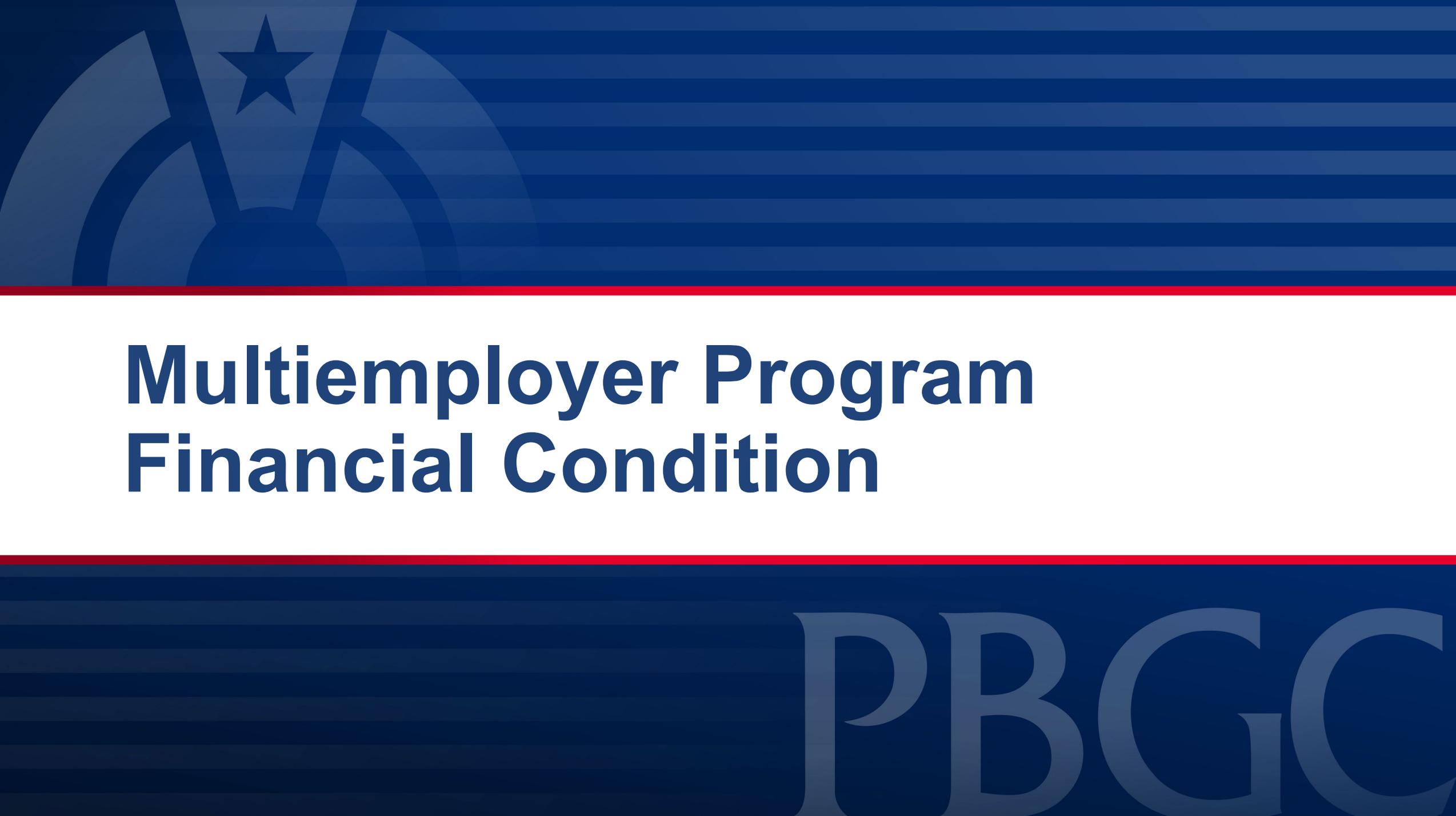
Bankruptcy of



PBGC

- Last summer, Yellow—contributor to many multiemployer plans—ceased operations and filed bankruptcy.
- 12 plans that filed withdrawal liability claims received SFA. Yellow objected to 11 claims for an aggregate \$6.4 billion. Arguments:
 - The claims don't reflect the plans' post-SFA UVBs.
 - 2 plans assumed in SFA application they would recover nothing in a bankruptcy of Yellow, so should get nothing.
- PBGC's SFA reg requires a recipient plan determining UVBs to recognize SFA an asset over the years it would take to exhaust SFA were SFA spent first.

- On January 23, 2024, EBSA, IRS, and PBGC published a request for public input on the agencies' review of reporting and disclosure requirements for retirement plans
 - Review required by SECURE 2.0
 - PBGC's disclosure requirements summarized at www.pbgc.gov/prac/reporting-and-disclosure/requirements
 - Comment period ends April 22.
- On February 1, 2024, PBGC launched an improved e-filing portal with two-factor authorization for security.



Multiemployer Program Financial Condition

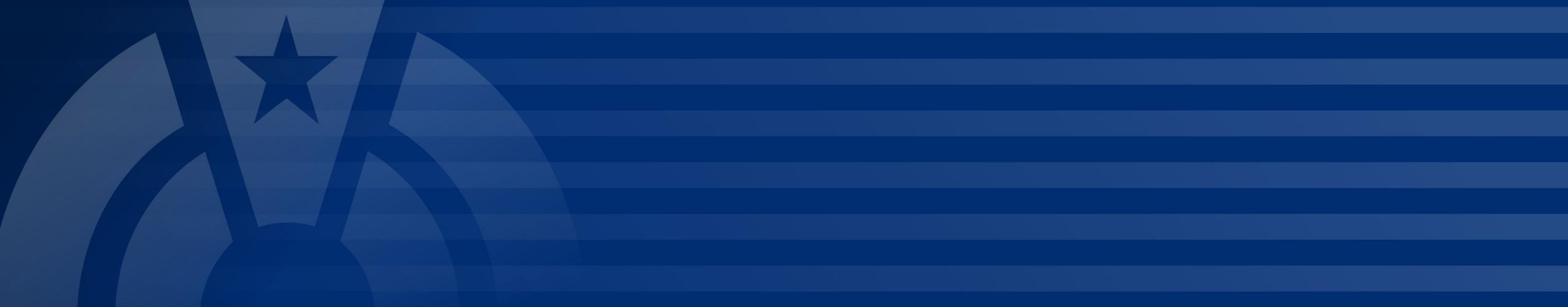
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Multiemployer Program – Highlights

- In fiscal year (FY 2023), PBGC paid \$175.8 million in traditional financial assistance to 100 insolvent multiemployer (ME) plans paying 80,421 participants.
- An additional 41,661 participants in the insolvent plans are eligible to receive benefits when they retire.
- Cumulative results of operations improved from \$1.06 million, as of 9/30/2022, to \$1.5 million, as of 9/30/2023.
- Due to Special Financial Assistance (SFA) payments made under the American Rescue Plan (ARP) Act in FY 2023, the number of participants relying on traditional financial assistance has decreased by 7,483 for participants receiving guaranteed benefits and by 5,383 for participants eligible to receive benefits once they retire.

Multiemployer Traditional Financial Assistance – FY 2023

- Plans currently receiving financial assistance – 90 plans; \$1,622 million net liability.
- Plans that have terminated, but are not yet receiving financial assistance – 32 plans; \$386 million net liability.
- Ongoing plans (not terminated) that PBGC expects will require financial assistance in the future – 1 plan; \$203 million net liability.
- Total – 123 plans; \$2,211 million net liability (this is down from 136 plans; \$2,390 for FY 2022).



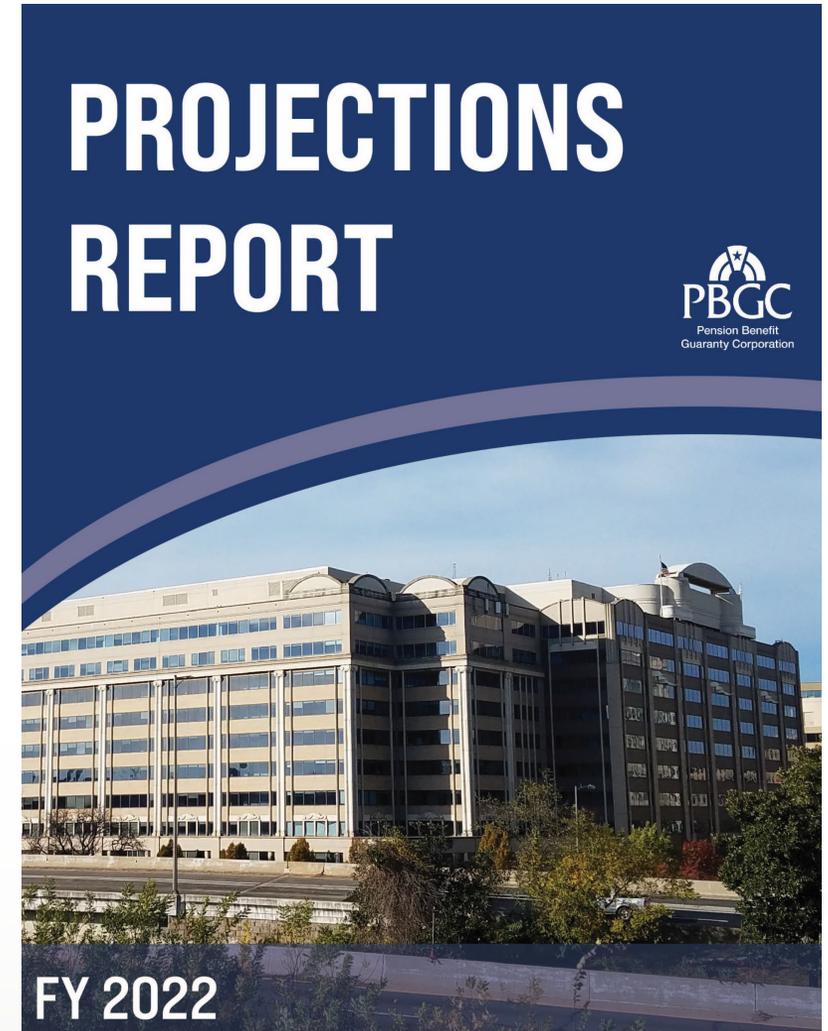
2022 Projections Report



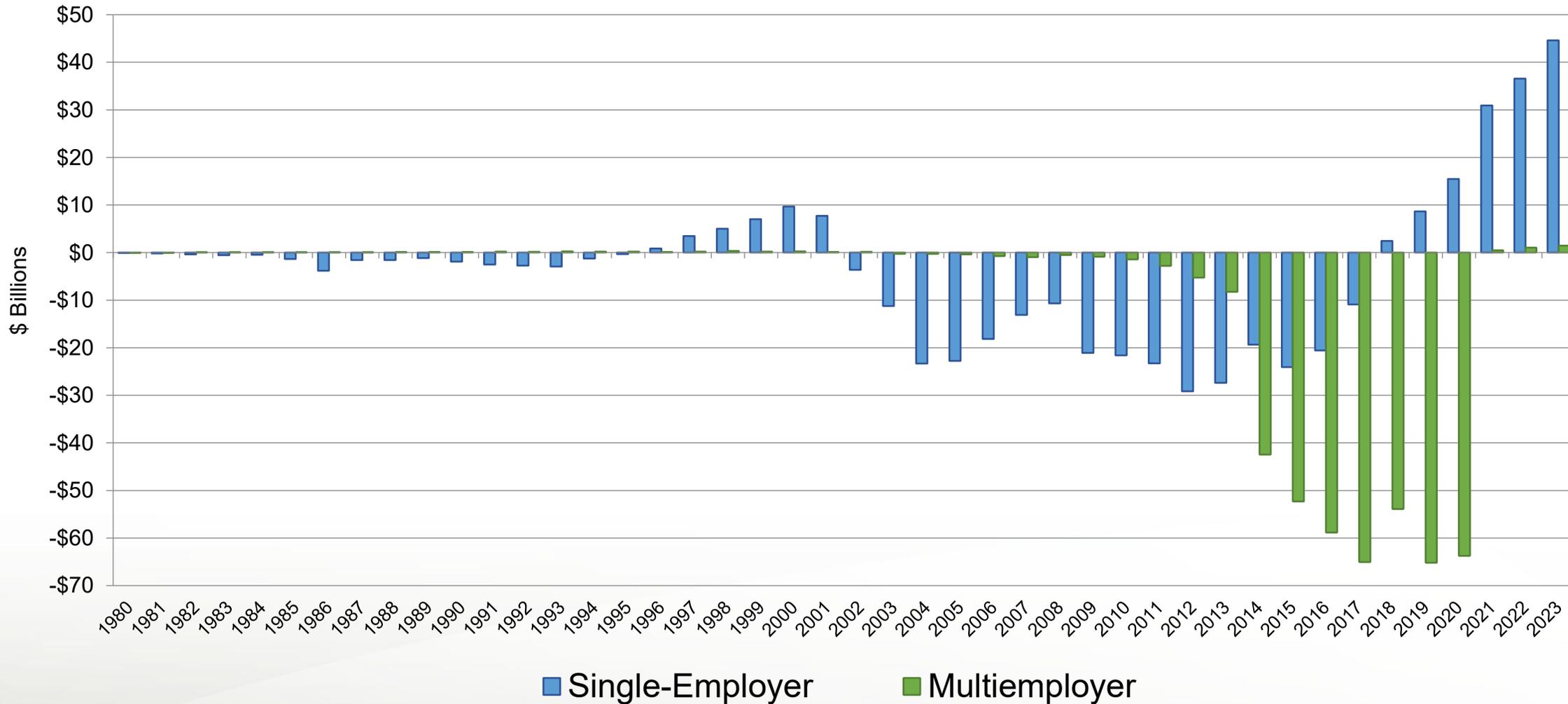
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Provides financial projections under a range of possible outcomes based on stochastic modeling, and includes:

- Annual 10-year projection of PBGC's financial position
- 40-year projection of Multiemployer Program solvency
- Stress test of Single-Employer Program
- The report can be found on our website [FY 2022 Projections Report \(pbgc.gov\)](https://www.pbgc.gov)



Fiscal Year 1980-2023 PBGC Net Financial Position



Key Results – Multiemployer Program

Likely to remain solvent beyond FY 2062

- Insolvent by FY 2026 prior to American Rescue Plan Act

Mean financial position is a deficit of \$7.1B in FY 2032

- But >50% of scenarios result in a positive 10-year net position

Total mean SFA payments now \$79.7B, down from \$82.7B

- Final amount still uncertain until all applications received

Estimated SFA: Range of Projected Outcomes

- Final amount of SFA is dependent on data in applications and may be outside the range shown in the table below

Figure 5 – Stochastic Range of Projected SFA Distributions
(Stochastic variations based on economic assumptions only)

	Estimated Number of Plans^a	Estimated Total SFA (\$ billions)^{b,c}
99th Percentile	234	\$81.9
85th Percentile	225	\$80.6
Mean	211	\$79.7
50th Percentile (Median)	211	\$79.5
15th Percentile	195	\$78.9
1st Percentile	184	\$78.6

^a The estimated number of plans excludes plans that may be eligible for SFA but do not require additional funds to be able to pay all benefits and expenses through 2051.

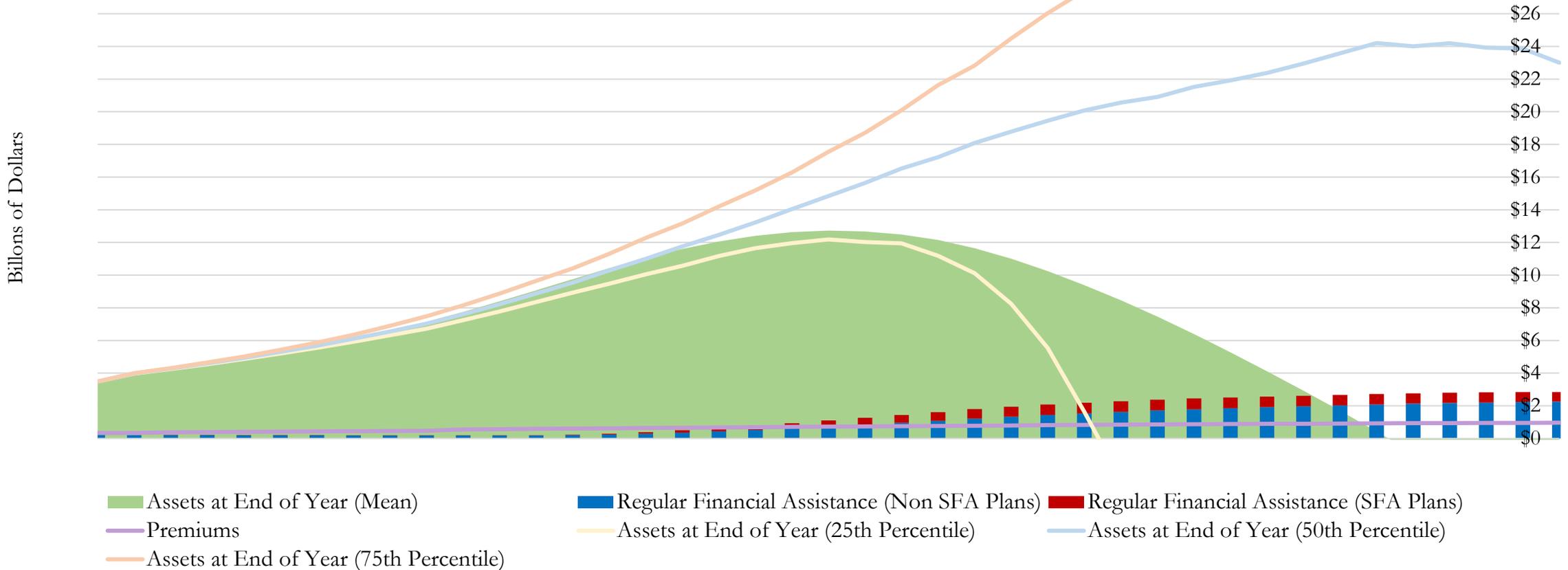
^b The estimated SFA includes \$70.0 billion attributable to applications submitted to PBGC as of March 11, 2023 (including withdrawn applications), which includes estimated interest and financial assistance loan repayments, that does not vary by scenario. The stochastic variation shown is for non-priority group plans only and ranges from \$8.6 billion at the 1st percentile to \$11.9 billion at the 99th percentile.

^c The range of results only captures the variability of potential economic outcomes and does not capture unexpected differences in plan data and assumptions used in plan applications for SFA.

PBGC's Insolvency Date is Further Extended

Figure 6 – PBGC Multiemployer Fund Assets, Traditional Financial Assistance Payments and Premiums by Fiscal Year

(Results in Nominal Dollars)



Note: Figure does not show SFA payments but reflects their impact on PBGC assets and traditional financial assistance payments.



King v. USA

PBGC

King v. USA – U.S. Court of Claims

- In 2018, plaintiffs filed suit against the USA in the Court of Claims alleging that the USA violated their Fifth Amendment rights by approving the NY State Teamsters suspension application which on average reduced participant benefits by approximately 29%.
- After years of litigation, the court granted the USA's motion for summary judgment in 2023.
- The court ruled that no taking in violation of the Fifth Amendment had occurred.

King v. USA – U.S. Court of Claims

- There are two tests used to determine whether a taking has occurred – the Physical Takings Test and the *Penn Central* test.
- The court held that the Physical Takings Test does not apply. Supreme Court precedents reject the application of the Physical Takings Test to ERISA amendments applicable to multiemployer plans when the government takes nothing for its own use.
- Case on appeal at the Court of Appeals for the Federal Circuit.



Thank you!

For official PBGC statements, please contact
PBGC Public Affairs at 202-229-4343 or
PBGCExternalAffairs@PBGC.gov.