

PBGC Update

National Coordinating Committee for Multiemployer Plans
Lawyers and Administrators Meeting, Washington D.C.
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All remarks are off-the-record and not for attribution.





**Multiemployer
Special Financial Assistance Program**

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Agenda

- SFA Program Overview
- Independent Death Audit
- Application Metering
- Application Resources
- Current Topics

- The SFA Program authorized under the American Rescue Plan (ARP) 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 September 17, 2024)

	Approved	Under Review	Withdrawn (not yet resubmitted)	Waiting List
Number of Applications	127	23	13	N/A
Number of Plans^a	92	23	13	68
Aggregate \$ SFA (approved or requested)	\$68.0 billion	\$2.5 billion	\$5.2 billion	N/A
Aggregate Participant Count^a	1,156,033	117,486	518,002	N/A

a) The number of plans and aggregate participant counts excludes 35 supplemented applications. One application was denied for \$132m with 1,122 participants.

Independent Death Audits

- Acting on a recommendation from the agency's Office of Inspector General, PBGC has adopted procedures ensuring that the participants listed in the Social Security Administration's Death Master File (DMF) are properly reflected in SFA calculations.
- The Independent Death Audit (IDA) procedure affects plans differently depending on whether their SFA application had been approved before or after November 8, 2023:
 - SFA applications approved after that date are conducting the IDA before the application is submitted.
 - Therefore, the SFA amount considered in the application review reflects IDA results.
 - SFA applications approved before that date are conducting the IDA retrospectively.

Independent Death Audit – General Process

1. PBGC requests a listing of names and SSNs for all records in the participant census data file used in the development of the SFA application.
2. PBGC matches the supplied SSNs supplied against the DMF and reports matching records back to the applicant.
3. The applicant then sorts the matching records into the following categories:
 - a) Participant death – known beneficiary
 - b) Participant death – no beneficiary
 - c) Participant death – beneficiary status unknown
 - d) Participant known to be alive
 - e) Participant does not match DMF
4. PBGC reviews the applicant's proposed categorization
 - a) Records identified as known beneficiary, known to be alive and does not match DMF are subject to verification

Independent Death Audit – Retrospective Process

For plans that were approved prior to November 8, 2023, SFA was paid on the basis of participant data that may include deceased participants. Such plans (recipients) are subject to a retrospective IDA which identifies the amount of SFA paid on the basis of deceased participants, as described below:

1. The recipient and PBGC conduct the IDA process described on the prior slide and arrive at a consensus about the proper treatment of DMF-matching records.
2. PBGC requests that the recipient redetermine the amount of SFA to reflect IDA results and submit that amount to PBGC along with supporting data.
3. PBGC reviews the redetermined SFA amount for reasonableness and may discuss any questions that arise in the course of that review with the recipient.
4. After finding that the redetermined SFA amount is reasonable, PBGC makes a written request for the recipient to pay any SFA found to be attributable to deceased participants to the United States Treasury.

SFA Retrospective Death Audits – Current Status

(as of September 15, 2024)

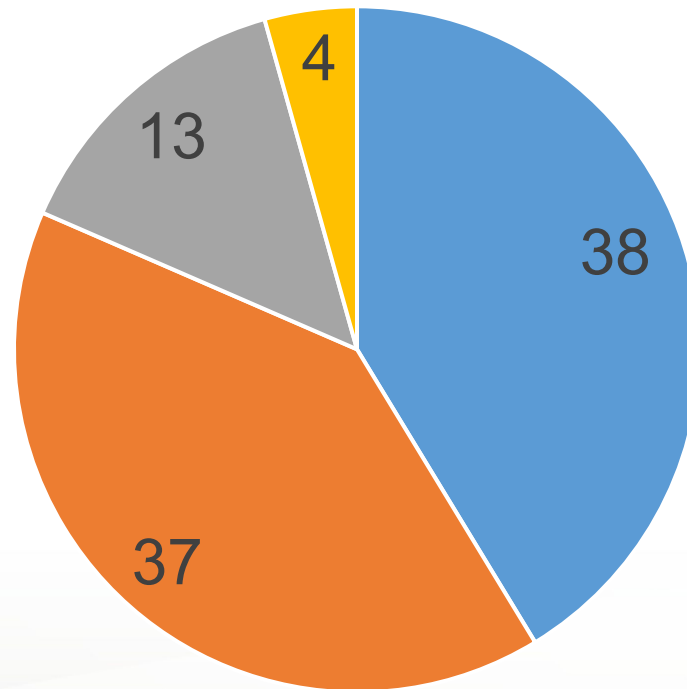
Applications Approved Prior to November 8, 2023	64
Recipient Has Provided Redetermined SFA Amount to PBGC	30
<ul style="list-style-type: none">• PBGC Is Reviewing Plan’s Redetermination of SFA• PBGC Has Found Redetermined SFA to be Reasonable and has Requested Payment to US Treasury• Recipient has Completed Payment	12 18 14
IDA Did Not Affect SFA Amount	4
Applicants with Retrospective Death Audits Under Review	30

SFA Application Metering Process

- Because of the extensive review process required for SFA applications, PBGC is limited in the number of applications it can review at any time, but statute requires reviews be complete within 120 days.
 - Metering system permitting temporary closure of SFA application part of e-Filing Portal built into SFA regulation.
- The first application period (for priority group plans) ended March 10, 2023.
- While the portal is closed, PBGC accepts requests to be placed on a waiting list for plans seeking to apply for SFA.
- Eligible plans that are insolvent or expected to be insolvent within one year retain ability to submit emergency filings when the e-Filing Portal is closed.

Less Than 50% of First Application Attempts Meet All Requirements for Approval

92 Plans Approved
as of 9/13/2024



■ 1st Attempt ■ 2nd Attempt ■ 3rd Attempt ■ 4th Attempt

SFA Application Preparation Resources

- [PBGC.gov/arp-sfa](https://pbgc.gov/arp-sfa)
 1. Application instructions and templates
 2. Assumptions guidance
 3. FAQs
 4. Recorded webinars
 5. Copies of all filed applications
 6. Summary of application status (updated weekly)
 7. Link to register for email updates
- Email to multiemployerprogram@pbgc.gov
 1. Ask questions
 2. Request informal consultation

- Eligibility
- Permissible Investments
- Annual Statement of Compliance
- Plan Mergers

Mergers Involving SFA Plans

- PBGC approval is required for a 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 specifies 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.



**Multemployer Program Traditional
Financial Assistance**

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Multiemployer Program – Highlights

- In fiscal year 2023 (FY 2023), PBGC paid \$175.8 million in traditional financial assistance to 100 insolvent multiemployer plans paying 80,421 participants.
- An additional 41,661 participants in the insolvent plans are eligible to receive benefits when they retire, as of 9/30/2023.
- 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 SFA payments made under ARP 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 receiving traditional financial assistance as of 9/30/2023 – 90 plans; \$1.6 billion liability.
- Plans that have terminated but have not yet become insolvent, so are not yet receiving traditional financial assistance as of 9/30/2023 – 32 plans; \$386 million liability.
- Ongoing plans (not terminated) that PBGC expects will require traditional financial assistance in the future as of 9/30/2023 – 1 plan; \$203 million liability.
- Total plans receiving and projected to receive traditional financial assistance as of 9/30/2023 – 123 plans; \$2.2 billion liability (this is down from 136 plans; \$2.4 billion for FY 2022).



Regulatory Agenda



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PBGC Regulatory Update – Multiemployer Program:

Multiemployer Plan Guaranteed Benefits, 29 C.F.R. 4022A

- Would clarify and codify policies on the determination of guaranteed benefits for participants in multiemployer plans.
- Proposed Rule Stage.

Valuation Assumptions and Methods: Interest and Mortality Assumptions for Asset Allocation in Single-Employer Plans and Mass Withdrawal Liability Determination in Multiemployer Plans, 29 C.F.R. 4044

- Updates the interest, mortality, and expense load assumptions used to determine the present value of benefits under the asset allocation regulation (for single-employer plans), for determining mass withdrawal liability payments (for multiemployer plans), and for other purposes.
- Multiemployer plans that receive SFA must use the interest assumption under 29 C.F.R. § 4044.54 to determine withdrawal liability for a prescribed period.
- 89 Fed. Reg. 48291, effective July 8, 2024.

- On October 14, 2022, PBGC published a proposed rule to provide interest rates that may be used in determining a withdrawing employer's liability to a multiemployer plan.
- The proposed rule would specifically permit the use of an interest rate anywhere in the spectrum from 4044 rates alone to funding rates alone.
- PBGC requested comments and received 28.
- We are continuing our work to review the comments received and provide a final rule.

PBGC's Multiemployer Plan Litigation

- *Board of Trustees of the Bakery Drivers Local 550 and Industry Pension Fund v. PBGC* (2d Circuit).
- *In Re Yellow Corp.* (Bankr. D. Del.).



Thank you!

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