



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

B-334462

July 15, 2022

The Honorable Patty Murray
Chairwoman
The Honorable Richard Burr
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Bobby Scott
Chairman
The Honorable Virginia Foxx
Ranking Member
Committee on Education and Labor
House of Representatives

Subject: *Pension Benefit Guaranty Corporation: Special Financial Assistance by PBGC*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Pension Benefit Guaranty Corporation (PBGC) entitled “Special Financial Assistance by PBGC” (RIN: 1212-AB53). We received the rule on July 8, 2022. It was published in the *Federal Register* as a final rule with request for comment on July 8, 2022. 87 Fed. Reg. 40968. The effective date is August 8, 2022.

According to PBGC, the final rule makes changes to regulations promulgated in the previous interim final rule, 86 Fed. Reg. 36598 (July 12, 2021), including provisions for special financial assistance in a plan’s determination of withdrawal liability. PBGC stated that the prior interim final rule addressed requirements for special financial assistance applications and related restrictions and conditions pursuant to the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (Mar. 11, 2021).

The Congressional Review Act (CRA) requires a 60-day delay in effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). PBGC determined it had good cause to waive the delay in effective date because of the urgent need for the special financial assistance program and to get appropriate financial assistance to eligible plans quickly. PBGC stated an earlier effective date allows eligible plans to apply for and receive the special financial assistance under the terms of the final rule without unnecessary delay. PBGC further stated plans that already applied for, or received, the special financial assistance before the effective date of the final rule will be able to apply for any greater amount of the special financial

assistance under the final rule, and plans that have not yet applied will be able to submit applications using the methodology provided under the final rule.

Enclosed is our assessment of PBGC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is fluid and cursive, with "Shirley" on the top line and "A. Jones" on the bottom line.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Stephanie Cibinic
 Deputy Assistant General Counsel for Regulatory Affairs
 Pension Benefit Guaranty Corporation

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
PENSION BENEFIT GUARANTY CORPORATION
ENTITLED
“SPECIAL FINANCIAL ASSISTANCE BY PBGC”
(RIN: 1212-AB53)

(i) Cost-benefit analysis

The Pension Benefit Guaranty Corporation (PBGC) estimated the aggregate special financial assistance (SFA) to be approximately \$94 billion in assistance payments paid to more than 200 plans and \$150 million to PBGC to administer the SFA program. PBGC further estimated that plans that received financial assistance from PBGC in the form of loans will repay PBGC in aggregate approximately \$200 million. PBGC also estimated the expected cost to administer the SFA program remains unchanged from the \$150 million estimate under the interim final rule, and total loan repayments are estimated to be \$385 million. PBGC included a table summarizing the estimated transfers and costs expected as a result of the implementation of the SFA program.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

PBGC did not perform a regulatory flexibility analysis because a general notice of proposed rulemaking was not issued. Thus, PBGC concluded the requirements of the RFA do not apply.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

PBGC did not address the Act in the final rule. In its submission to us, PBGC indicated it considered the requirements of the Act to be not applicable.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On July 12, 2021, PBGC published an interim final rule setting forth the requirements for special financial assistance applications and related restrictions and conditions pursuant to the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (Mar. 11, 2021). 86 Fed. Reg. 36598 (July 12, 2021). PBGC waived the normal notice and comment procedures for good cause but still accepted comments on the interim final rule. PBGC received over 100 comment letters from multiemployer plans and associations representing multiemployer plans, contributing employers and associations representing employers, labor organizations, actuarial consulting firms and practitioners, financial services firms, other plan professionals, participants, Members of Congress, and other individuals. PBGC responded to the comments in this final rule. PBGC is holding a comment period on certain provisions until August 8, 2022.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

PBGC determined the final rule contains information collection requirements (ICRs) subject to the PRA. The ICRs are associated with Office of Management and Budget (OMB) Control Number 1212-0074. PBGC estimated the ICRs will impose an hour burden of 1,042.73 hours and a cost of \$2,648,134.

Statutory authorization for the rule

PBGC promulgated the final rule pursuant to sections 1302 and 1432 of title 29, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

PBGC stated OMB had reviewed the final rule and determined it was economically significant.

Executive Order No. 13132 (Federalism)

PBGC did not address the Order in the final rule. In its submission to us, PBGC indicated that it considered the requirements of the Order to be not applicable.