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February 10, 2023

The Honorable Bernard Sanders
Chairman
The Honorable Bill Cassidy
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Virginia Foxx
Chairwoman
The Honorable Bobby Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Pension Benefit Guaranty Corporation: Special Financial Assistance by PBGC—
Withdrawal Liability Condition Exception*

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—Withdrawal Liability Condition Exception” (RIN: 1212-AB53). We received the rule on January 26, 2023. It was published in the *Federal Register* as a final rule on January 26, 2023. 88 Fed. Reg. 4900. The effective date is January 26, 2023.

According to PBGC, this final rule concerns the requirements for special financial assistance (SFA) applications and related restrictions and conditions pursuant to the American Rescue Plan (ARP) Act of 2021.¹ PBGC stated that the rule provides a 30-day comment period on the condition requiring a phased recognition of SFA in a plan's determination of withdrawal liability. Additionally, PBGC stated that it is amending its SFA regulation in order to add an exception process for the conditions relating to withdrawal liability.

The Congressional Review Act (CRA) requires a 60-day delay in the 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 issued rule. 5 U.S.C. § 808(2). In this final rule, PBGC stated that because of the urgent need for the SFA program to distribute appropriate financial assistance to eligible plans quickly, PBGC determined that the rule must take effect on January 26, 2023. According to PBGC, this effective date allows eligible plans to apply for an exception from the withdrawal liability conditions and apply for SFA without unnecessary delay. Under these circumstances,

¹ American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4, 4–245, (Mar. 11, 2021).

PBGC stated that it has determined that the public interest is best served by making the rule effective on January 26, 2023. Additionally, PBGC stated that it does not want to unduly delay providing financial assistance to plans.

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 written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

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

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—
WITHDRAWAL LIABILITY CONDITION EXCEPTION”
(RIN: 1212-AB53)

(i) Cost-benefit analysis

The Pension Benefit Guaranty Corporation (PBGC) assessed the potential benefits, costs, and transfers associated with this final rule. In its assessment of the rule’s estimated impact, PBGC stated that it estimates the rule could decrease overall special financial assistance (SFA) program transfers by \$1 to \$2 billion. Additionally, PBGC stated that the rule will enhance the ability of plans, based on their specific facts and circumstances, to retain employers and minimize the likelihood that the receipt of SFA could induce employers to withdraw from these plans.

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

PBGC stated that because it is not publishing a general notice of proposed rulemaking under 5 U.S.C. § 553(b), 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

In its submission to us, PBGC indicated that the Act was not applicable to this final rule.

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

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

The Act provides that notice and comment requirements do not apply when an agency, for good cause, finds that they are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. § 553(b). PBGC stated that good cause exists for making this final rule effective without complying with the Act’s notice and comment requirements because the public interest is best served by issuing the rule expeditiously. PBGC noted that Congress expressed a clear urgency for PBGC to implement an SFA program to get appropriate assistance to eligible plans as quickly as possible.

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

PBGC determined that this final rule contains information collection requirements under the Act. In the rule, PBGC stated that it is submitting changes to the collection of information, previously approved under Office of Management and Budget (OMB) Control Number 1212-0074, to OMB for review and approval under the Act. PBGC estimated the aggregate average annual hour burden for the next 3 years to be 878.6 hours for employer and fund office administrative,

clerical, and supervisory time. Additionally, PBGC estimated the aggregate average annual cost burden for the next 3 years to be \$2,130,400, for approximately 5,326 contract hours assuming an average hourly rate of \$400 for work done by outside actuaries and attorneys. PBGC noted that the actual hour burden and cost burden per plan may vary depending on plan size and other factors.

Statutory authorization for the rule

PBGC promulgated this final rule pursuant to sections 1302(b)(3) and 1432 of title 29, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

PBGC stated in this final rule that OMB has determined that the rule is economically significant under the Order and has therefore reviewed the rule under the Order.

Executive Order No. 13132 (Federalism)

In its submission to us, PBGC indicated that the Order is not applicable to this final rule.