No.

In the Supreme Court of the United States

PENSION BENEFIT GUARANTY CORPORATION,
PETITIONER

v.

BOARD OF TRUSTEES OF THE BAKERY DRIVERS
LOCAL 550 AND INDUSTRY PENSION FUND

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4, established the Special Financial Assistance program to provide funding for certain severely underfunded multiemployer pension plans. A plan is eligible for such assistance if, as relevant here, it "is in critical and declining status (within the meaning of [29 U.S.C. 1085(b)(6)]) in any plan year beginning in 2020 through 2022." 29 U.S.C. 1432(b)(1)(A) (Supp. III 2021). Critical and declining status is one of several possible pension-plan "zone statuses" set forth in 29 U.S.C. 1085. If a plan terminates as a result of the mass withdrawal of every employer from the plan, Section 1085 ceases to apply to the plan. See 29 U.S.C. 1081(c). The question presented is:

Whether a multiemployer pension plan that terminated through mass withdrawal before the 2020 plan year is eligible for Special Financial Assistance under 29 U.S.C. 1432(b)(1)(A).

RELATED PROCEEDINGS

United States District Court (E.D.N.Y.):

Board of Trustees of the Bakery Drivers Local 550 & Industry Pension Fund v. *Pension Benefit Guaranty Corp.*, No. 23-cv-1595 (Oct. 26, 2023)

United States Court of Appeals (2d Cir.):

Board of Trustees of the Bakery Drivers Local 550 & Industry Pension Fund v. *Pension Benefit Guaranty Corp.*, No. 23-7868 (Apr. 29, 2025)

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PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of the Pension Benefit Guaranty Corporation, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-11a) is reported at 136 F.4th 26. The order of the district court (App., *infra*, 13a-39a) is available at 2023 WL 7091862.

JURISDICTION

The judgment of the court of appeals was entered on April 29, 2025. A petition for rehearing was denied on July 17, 2025 (App., *infra*, 12a). On September 29, 2025,

Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including November 14, 2025. On November 4, 2025, Justice Sotomayor further extended the time to and including December 12, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix. App., *infra*, 40a-70a.

INTRODUCTION

In 2021, Congress established the Special Financial Assistance (SFA) program to help certain severely underfunded multiemployer pension plans. Under the provision establishing the program, 29 U.S.C. 1432—a section of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*—an eligible plan is entitled to federal funding in the amount needed to pay benefits through 2051.[1] A plan is eligible if, as relevant here, it was "in critical and declining status (within the meaning of [29 U.S.C. 1085(b)(6)]) in any plan year beginning in 2020 through 2022." 29 U.S.C. 1432(b)(1)(A). The cross-referenced provision of ERISA sets forth the criteria for critical and declining status. 29 U.S.C. 1085(b)(6). And under another provision in the same part of ERISA, Section 1085(b)(6) ceases to apply to a multiemployer plan that terminates via the "mass withdrawal" of all participating employers. 29 U.S.C. 1081(c).

This case involves a multiemployer plan that terminated through mass withdrawal in 2016. Attempting to

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[1] All citations of 29 U.S.C. 1432 and 26 U.S.C. 432(k) in this petition refer to those statutes as set forth in Supplement III (2021) of the United States Code.

make itself eligible for SFA, the plan purported to restore itself in 2022 and applied for $132 million in SFA. In the decision below, however, the Second Circuit held that the plan's maneuver was unnecessary. The court concluded that even a non-restored, terminated plan can be eligible for SFA under Section 1432(b)(1)(A) because that provision cross-references only Section 1085(b)(6) (about critical and declining status) and not the related provision making Section 1085(b)(6) inapplicable to plans terminated by mass withdrawal.

That decision is incorrect and warrants this Court's review. The court of appeals' interpretation of Section 1432(b)(1)(A) conflicts with basic principles of statutory interpretation and this Court's precedents, which recognize that a statutory cross-reference does not sever the link between the referenced statute and related provisions—a principle that is especially important in a comprehensive and reticulated statute such as ERISA. Unless reversed, the decision below will likely compel the government to make hundreds of millions of dollars in SFA payments that Congress did not intend. The question presented more broadly implicates about $6 billion in potential SFA payments. This Court should grant review.

STATEMENT

A. Legal Background

1. Congress enacted ERISA "to provide comprehensive regulation for private pension plans." *Connolly* v. *Pension Benefit Guar. Corp.*, 475 U.S. 211, 214 (1986). "In addition to prescribing standards for the funding, management, and benefit provisions of these plans, ERISA also established a system of pension benefit insurance" to be administered by the Pension Benefit Guaranty Corporation (PBGC). *Ibid.* "This comprehen-

sive and reticulated statute was designed * * * to guarantee that if a worker has been promised a defined pension benefit upon retirement—and if he has fulfilled whatever conditions are required to obtain a vested benefit—he will actually receive it." *Ibid.* (citation and internal quotation marks omitted).

ERISA governs both single- and multi-employer plans, the latter of which are common in some industries. See *Concrete Pipe & Prods. of Cal., Inc.* v. *Construction Laborers Pension Trust*, 508 U.S. 602, 606 (1993). "The contributions made by employers participating in such a multiemployer plan are pooled in a general fund available to pay any benefit obligation of the plan." *Id.* at 605.

Congress has repeatedly amended ERISA to address the underfunding of multiemployer pension plans. In 1980, it passed a law requiring an employer that withdraws from a plan to pay its share of the plan's unfunded vested benefits. Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 Stat. 1208. In 2006 and 2014, it further amended ERISA to require underfunded multiemployer plans to take certain remedial measures. See Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780; Multiemployer Pension Reform Act of 2014, Pub. L. No. 113-235, Div. O, 128 Stat. 2773.

The slate of required remedial measures depends on the plan's "zone status." App., *infra*, 4a (citation omitted). Under 29 U.S.C. 1085, plans in "endangered status" must adopt "funding improvement plan[s]," and plans in "critical status" or "critical and declining status" must adopt "rehabilitation plan[s]." 29 U.S.C. 1085(a). The formulas and criteria for determining a plan's zone status are set forth in 29 U.S.C. 1085(b)(1) (endangered), (2) (critical), and (6) (critical and declin-

ing). The pension plan's actuary must annually determine and certify the plan's zone status. 29 U.S.C. 1085(b)(3).

Those statutory requirements cease to apply if a plan terminates through mass withdrawal—*i.e.*, as a result of the complete "withdrawal of every employer from the plan * * * or the cessation of the obligation of all employers to contribute under the plan." 29 U.S.C. 1341a(a)(2). Section 1081(c) provides that Section 1085 applies to a plan only "until the last day of the plan year in which the plan terminates" through mass withdrawal. 29 U.S.C. 1081(c).

2. Despite those legislative efforts, the underfunding of multiemployer pension plans remained a serious problem. Factors including the shrinkage of "industries that traditionally participated in multiemployer * * * plans," "declines in union membership," and economic crises like the 2007-2009 recession contributed to the ongoing "underfunding and insolvency crisis." Emp. Benefits Sec. Admin., Dep't of Labor, *Report on Special Financial Assistance* 2-3 (2024) (DOL Report). The potential insolvency of large plans risked bankrupting the PBGC's insurance program and triggering severe benefit cuts, decreases in tax revenue, and increases in demand for social programs. See *id.* at 4-5.

In March 2021, as part of a relief package addressing the effects of the COVID-19 pandemic, see American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4, Congress amended Title IV of ERISA by adding a provision establishing the Special Financial Assistance program, "a temporary program * * * to help struggling multiemployer pension plans." App., *infra*, 1a; see § 9704(b), 135 Stat. 190 (codified at 29 U.S.C. 1432). The Act directs the PBGC to provide "financial assistance" to an eligible plan in the form of a lump-sum payment of

the amount of funds projected to be "required for the plan to pay all benefits due" to the plan's beneficiaries through the 2051 plan year. 29 U.S.C. 1432(j)(1); see 29 U.S.C. 1432(a), (h), and (i). Unlike the PBGC's "traditional" financial assistance for insolvent multiemployer plans—which must be repaid and is funded with premiums paid by plans, see 29 U.S.C. 1305(a) and (b), 1431(b)(2)—SFA is not subject to repayment and is funded with taxpayer money, see 29 U.S.C. 1305(i), 1432(a)(2).

Under Section 1432(b)(1), a multiemployer plan is eligible for SFA if:

> (A) the plan is in critical and declining status (within the meaning of section 1085(b)(6) of this title) in any plan year beginning in 2020 through 2022;
>
> (B) a suspension of benefits has been approved with respect to the plan under section 1085(e)(9) of this title as of March 11, 2021;
>
> (C) in any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status (within the meaning of section 1085(b)(2) of this title), has a modified funded percentage of less than 40 percent, and has a ratio of active to inactive participants which is less than 2 to 3; or
>
> (D) the plan became insolvent for purposes of section 418E of title 26 after December 16, 2014, and has remained so insolvent and has not been terminated as of March 11, 2021.

29 U.S.C. 1432(b)(1). The eligibility criteria are also set forth in a parallel provision of the Internal Revenue Code (IRC), 26 U.S.C. 432(k)(3)(A).

Section 1432 further provides that a plan generally must show its eligibility for SFA, and calculate the

amount of SFA to be awarded, using the same actuarial assumptions that the plan used in a certification of zone status (see 29 U.S.C. 1085(b)(3)) that it filed before January 1, 2021. 29 U.S.C. 1432(e). "Because such certifications were completed before" the SFA program was created, that requirement ensured that "the selection of assumptions cannot have been biased by a financial incentive to effect eligibility [for SFA] by making the plan appear less well-funded." Gov't C.A. Supp. Br. 5.

An initial application for SFA must be submitted to the PBGC by December 31, 2025, and any revised application by December 31, 2026. 29 U.S.C. 1432(f). An application is deemed approved unless it is denied by the PBGC within 120 days of filing. 29 U.S.C. 1432(g). SFA must be paid "no later than 1 year" after a plan's "application is approved * * * or deemed approved." *Ibid.*

At Congress's direction, the PBGC issued implementing regulations for the SFA program. 29 C.F.R. Pt. 4262; see 29 U.S.C. 1432(c). In that rulemaking, the PBGC took the position that plans that terminated through mass withdrawal before 2020 are not eligible for SFA under Section 1432(b)(1)(A) because the zone-status provisions of Section 1085, including Section 1085(b)(6), cease to apply to plans terminated through mass withdrawal. 87 Fed. Reg. 40,968, 40,971 (July 8, 2022). "As of October 2024, over $69 billion of SFA was approved for 98 multiemployer plans covering over 1.2 million participants." DOL Report 2.

B. The Present Controversy

1. Respondent is the sponsor of the Bakery Drivers Local 550 and Industry Pension Fund (Fund), a multiemployer pension plan that terminated through mass withdrawal in 2016. App., *infra*, 2a-3a; Gov't C.A. Br. 1. Like other multiemployer plans terminated by mass

withdrawal, the Fund carried on certain basic administrative operations after its termination, such as filing annual reports and paying benefits to plan beneficiaries, despite no longer receiving any employer contributions or incurring new benefit obligations. App., *infra*, 3a. But by virtue of its termination, the Fund was no longer subject to the zone-status and related remedial provisions discussed above. See 29 U.S.C. 1081(c), 1085. Thus, for example, the Fund had ceased making an annual certification of its zone status. See 29 U.S.C. 1085(b)(3).

"In September 2022, hoping to ensure the Fund's eligibility under the newly enacted SFA program, a former employer—Bimbo Bakeries USA—agreed to rejoin the Fund and resume contributions on behalf of its then-current employees." App., *infra*, 3a. The Fund then applied for SFA, "asserting that it was in critical and declining status and thus qualified for SFA under § 1432(b)(1)(A)." *Id.* at 4a. But the PBGC denied the application, adhering to the view expressed in its rulemaking (*i.e.*, that a plan that terminated through mass withdrawal before 2020 is not eligible for SFA), and further explaining that, after terminating through mass withdrawal, a plan cannot be "restored." *Ibid.* (citation omitted).

2. Respondent sued the PBGC in the United States District Court for the Eastern District of New York to challenge the denial of its SFA application. App., *infra*, 4a. The district court granted summary judgment to the PBGC, agreeing both that plans terminated by mass withdrawal before 2020 are ineligible for SFA under Section 1432(b)(1)(A) and that such plans cannot be restored. *Id.* at 21a-38a.

3. The court of appeals reversed. App., *infra*, 1a-11a.

Respondent's appeal initially focused on whether a plan terminated through mass withdrawal can restore itself, such that the Fund was no longer terminated when it applied for SFA. See, *e.g.*, Resp. C.A. Br. 5, 22. After oral argument, however, the court of appeals ordered supplemental briefing on "whether terminated plans that have *not* been restored" are eligible for SFA under Section 1432(b)(1)(A). C.A. Doc. 60.1 (Dec. 18, 2024) (emphasis added).

After supplemental briefing, the court of appeals issued its opinion, holding that such plans are not per se ineligible for SFA. It began by explaining that a plan is eligible under Section 1432(b)(1)(A) as long as it "is in critical or declining status within the meaning of" Section 1085(b)(6), which assigns that status to a plan that is severely underfunded and projected to be insolvent sufficiently soon. 29 U.S.C. 1432(b)(1)(A); see 29 U.S.C. 1085(b)(2), (6); App., *infra*, 5a-7a. The Fund here, as the PBGC acknowledged, satisfied those underfunding and projected-insolvency criteria in isolation. App., *infra*, 7a. Although ERISA separately provides that Section 1085 ceases to apply to a plan terminated through mass withdrawal per Section 1081(c), the court concluded that "the SFA statute incorporates by reference only the definition [of critical and declining status] in § 1085(b)(6)" and therefore "does not incorporate external limitations on § 1085's operation, such as the limitation contained in § 1081(c)." *Id.* at 8a. The court reasoned that a "'statute that refers to another statute by specific title or section number in effect cuts and pastes the referenced statute,' meaning that it incorporates its text and nothing else." *Ibid.* (quoting *Jam* v. *International Fin. Corp.*, 586 U.S. 199, 209 (2019)). The court further noted that Congress "knew how to exclude terminated plans [from the SFA program] expressly," *id.*

at 10a, citing 29 U.S.C. 1432(b)(1)(D), which makes certain insolvent plans eligible if they had "not been terminated as of March 11, 2021."

The court of appeals accordingly held that a plan's terminated status does not preclude its eligibility for SFA under Section 1432(b)(1)(A). App., *infra*, 10a. Having so held, the court did not "decide whether ERISA permits a terminated multiemployer plan to be restored." *Id.* at 10a n.5. It remanded the case to the district court with instructions to vacate the PBGC's denial of SFA and remand to the PBGC for reconsideration of the Fund's SFA application. *Id.* at 11a.

REASONS FOR GRANTING THE PETITION

The decision below held that a pension plan that has terminated through mass withdrawal can be in "*critical and declining* status" for purposes of eligibility for Special Financial Assistance. 29 U.S.C. 1432(b)(1)(A) (emphasis added). That holding is as legally flawed as it is counterintuitive, and it conflicts with the view of the PBGC, which Congress charged with administering the SFA program. Unless reversed, the court of appeals' decision will likely result in the payment of hundreds of millions of dollars in taxpayer funds to terminated pension plans that Congress intentionally excluded from the SFA program. This Court should grant a writ of certiorari and reverse.

A. The Court Of Appeals' Decision Incorrectly Construes A Statutory Cross-Reference Without Regard For The Context

As relevant here, a plan is eligible for SFA if it was "in critical and declining status (within the meaning of [29 U.S.C. 1085(b)(6)]) in any plan year beginning in 2020 through 2022." 29 U.S.C. 1432(b)(1)(A). Because a plan that terminates through mass withdrawal, as re-

spondent's did, by definition has no zone status after the year of termination, see 29 U.S.C. 1081(c), the PBGC correctly denied respondent's application for SFA.

1. "It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation omitted). "A court must therefore interpret the statute 'as a symmetrical and coherent regulatory scheme,' and 'fit, if possible, all parts into an harmonious whole.'" *Ibid.* (citations omitted). "Similarly, the meaning of one statute may be affected by other Acts," *ibid.*, and courts "assume that Congress is aware of existing law when it passes legislation," *Hall* v. *United States*, 566 U.S. 506, 516 (2012) (citation omitted); see *United States* v. *Freeman*, 44 U.S. (3 How.) 556, 564 (1845) ("if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them"). "Slicing a statute into phrases while ignoring their contexts—the surrounding words, the setting of the enactment, the function a phrase serves in the statutory structure—is a formula for disaster." *Herrmann* v. *Cencom Cable Assocs., Inc.*, 978 F.2d 978, 982 (7th Cir. 1992) (Easterbrook, J.).

Under those basic principles of statutory interpretation, the answer to the question presented is straightforward. As relevant here, the SFA provisions of ERISA make a multiemployer pension plan eligible for assistance if it "is in critical and declining status (within the meaning of section 1085(b)(6) * * *) in any plan year beginning in 2020 through 2022." 29 U.S.C. 1432(b)(1)(A). The cross-referenced provision of ERISA defines "critical and declining status." 29 U.S.C. 1085(b)(6). And the "meaning of section 1085(b)(6)" that is incorporated into

29 U.S.C. 1432(b)(1)(A) is informed "not just [by] its immediate terms but [by] related provisions as well." *Harrington* v. *Purdue Pharma L.P.*, 603 U.S. 204, 221 (2024) (citing *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 275 (2023)). A closely related provision of ERISA, of which Congress must be presumed to have been aware in amending ERISA to establish the SFA program, provides that if a plan terminates through mass withdrawal (see 29 U.S.C. 1341a(a)(2)), then Section 1085—and the rest of the relevant part of Title I of ERISA—applies only "until the last day of the plan year in which the plan terminates." 29 U.S.C. 1081(c).

Such a terminated plan ceases to be subject to Section 1085, and it can therefore no longer be in critical and declining status under Section 1085(b)(6) (or in any other zone status described in Section 1085). If a plan terminated by mass withdrawal in 2016—as respondent's plan did, see App., *infra*, 2a-3a; Gov't C.A. Br. 1—it could not have been "in critical and declining status * * * in any plan year beginning in 2020 through 2022." 29 U.S.C. 1432(b)(1)(A). Reading the statutory framework as an integrated, unitary whole, it is clear that such a plan is ineligible for SFA under Section 1432(b)(1)(A), and the PBGC correctly denied respondent's application on that basis.

2. The Second Circuit rejected that conclusion on the ground that "the SFA statute incorporates by reference only the definition contained in § 1085(b)(6)," not "external limitations on § 1085's operation, such as the limitation contained in § 1081(c)" providing that Section 1085 does not apply to plans terminated by mass withdrawal. App., *infra*, 8a. Citing *Jam* v. *International Finance Corp.*, 586 U.S. 199 (2019), the court of appeals reasoned that a "'statute that refers to another statute

by specific title or section number in effect cuts and pastes the referenced statute,' meaning that it incorporates its text and nothing else." App., *infra*, 8a (quoting *Jam*, 586 U.S. at 209).

That reasoning is unsound. In *Jam*, this Court employed what it has lately called the "'reference' canon," which counsels that the *temporal* scope of a statutory cross-reference depends on the specificity of the reference: "when a statute refers to a general subject, the statute adopts the law on that subject as it exists whenever a question under the statute arises," whereas a specific statutory cross-reference "in effect cuts and pastes the referenced statute as it existed when the referring statute was enacted, without any subsequent amendments." 586 U.S. at 209-210 (citation omitted); see *id.* at 210 (applying the reference canon to the International Organizations Immunities Act, 22 U.S.C. 288a). However "helpful [a] tool" that canon might be, *Brown* v. *United States*, 602 U.S. 101, 115-116 (2024), it does not address the issue here, which concerns the *substantive* scope of a cross-reference—*i.e.*, whether a reference to a specific statutory provision also incorporates a related limitation on the scope or applicability of the referenced provision.

On that question, this Court's precedents establish that a statutory cross-reference is not always limited, as the court of appeals supposed, to the bare terms of the incorporated provision. "The adoption of an earlier statute by reference" "brings into the later act 'all that is *fairly covered* by the reference'; that is to say, all the provisions of the former act which, from the nature of the subject-matter, are applicable to the later act" and are therefore "material provision[s]" included in the reference. *Engel* v. *Davenport*, 271 U.S. 33, 38-39 (1926) (quoting *Panama R.R. Co.* v. *Johnson*, 264 U.S. 375, 392

(1924)) (emphasis added). For instance, suppose that Section 1 of an ordinance provides that "no vehicles (within the meaning of Section 2) are allowed in the park"; Section 2 defines "vehicle" as any wheeled means of transport; and Section 3 states that Section 2 does not apply to bicycles. Absent some countervailing indicia, Section 1 would most reasonably be read to permit bicycles in the park, because Section 3's proviso is "fairly covered" by the cross-reference to Section 2. *Id.* at 38 (citation omitted). While a specific cross-reference can figuratively be said to "cut[] and paste[] the referenced statute" into the other, *Jam*, 586 U.S. at 209, it does not necessarily sever the links between the specifically referenced provision and others, particularly when all of the provisions are part of the same statutory framework.

The statute at issue in *Roberts* v. *Sea-Land Services, Inc.*, 566 U.S. 93 (2012), 33 U.S.C. 906, supplies another example. Section 906(b)(1) states that certain worker's compensation "shall not exceed an amount equal to 200 per centum of the applicable national average weekly wage, as determined by the Secretary [of Labor] under paragraph (3)." 33 U.S.C. 906(b)(1). The referenced paragraph (3) sets forth instructions for the Secretary's determination of the average wage. 33 U.S.C. 906(b)(3). And Section 906(c) provides that "[d]eterminations under subsection (b)(3) * * * shall apply" to certain employees or survivors. 33 U.S.C. 906(c). It would plainly be incorrect to conclude that Section 906(c) has no application to worker's compensation paid under Section 906(b)(1) merely because the latter explicitly cross-references only Section 906(b)(3). Instead, as this Court held, "all three provisions interlock" and "work together to cap disability benefits." *Roberts*, 566 U.S. at 103.

Other precedents reinforce the point. In *United States Department of Energy* v. *Ohio*, 503 U.S. 607 (1992), the Court considered whether civil fines against the United States are authorized by environmental laws that cross-reference certain civil-penalty statutes. See *id.* at 611, 615-616. The latter provisions are all limited to penalties against "person[s]"; but separate provisions —which are not mentioned in the specific cross-references—in turn define "person" to exclude the United States. *Id.* at 617 & nn.10-11 (brackets in original). The Court held that civil fines are not available against the United States because "[t]he incorporations must be read as encompassing all the terms of the penalty provisions, *including their limitations*." *Id.* at 617 (citing *Engel*, 271 U.S. at 38) (emphasis added). And in *Kimel* v. *Florida Board of Regents*, 528 U.S. 62 (2000), the Court held that the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*, has abrogated state sovereign immunity by cross-referencing a provision referring to "any employer (including a public agency)," 29 U.S.C. 216(b), which the Court construed in light of a different provision—not in the cross-reference—defining "[p]ublic agency" to include States, 29 U.S.C. 203(x). See *Kimel*, 528 U.S. at 73-74.

Lower courts have taken the same interpretive approach. For instance, *U.S. Venture, Inc.* v. *United States*, 2 F.4th 1034 (7th Cir. 2021), involved a tax-credit statute referring to "taxable fuel (as defined in subparagraph (A), (B), or (C) of [26 U.S.C. 4083(a)(1)])." 26 U.S.C. 6426(e) (Supp. II 2020); see 2 F.4th at 1038. The cross-referenced provision defines "taxable fuel" to include "gasoline," 26 U.S.C. 4083(a)(1)(A), and a separate provision states that "[t]he term 'gasoline'" includes gasoline blends, 26 U.S.C. 4083(a)(2). The Seventh Circuit declined to "follow [the] cross-reference

only part of the way," and therefore held that gasoline blends are covered. *U.S. Venture*, 2 F.4th at 1041-1042. Other courts of appeals have understood those provisions in the same way. *Philadelphia Energy Sols. Refin. & Mktg., LLC* v. *United States*, 89 F.4th 1364, 1367 (Fed. Cir. 2024); *Vitol, Inc.* v. *United States*, 30 F.4th 248, 256 (5th Cir. 2022).

Thus, the supposed canon of construction employed by the Second Circuit in this case—providing that a statutory cross-reference incorporates the text of the specifically referenced provision "and nothing else," App., *infra*, 8a—does not exist. Any such canon would conflict with several of this Court's decisions, see, *e.g.*, *Department of Energy*, 503 U.S. at 617, and with the general principle that "courts do not interpret statutes in isolation, but in the context of the *corpus juris* of which they are a part," *Branch* v. *Smith*, 538 U.S. 254, 281 (2003) (plurality opinion).

3. The scope of a statutory cross-reference depends on context. As this Court recently reaffirmed, "courts must carefully consider the text and context of each statute before adopting a one-size-fits-all approach to cross-references." *Brown*, 602 U.S. at 118. Here, the context confirms that Section 1432(b)(1)(A)'s reference to "critical and declining status (within the meaning of section 1085(b)(6) of this title)" incorporates the rule that a plan terminated through mass withdrawal lacks any zone status after the year of termination, 29 U.S.C. 1081(c).

First, that limitation on zone status is "material" to Section 1432(b)(1)(A) and is "'fairly covered'" by the latter's reference to Section 1085(b)(6). *Engel*, 271 U.S. at 38-39 (citation omitted); see *Department of Energy*, 503 U.S. at 617. Congress indicated in Section 1432(b)(1) itself that the status of a plan as ongoing or terminated

is pertinent to eligibility for SFA, providing in subparagraph (D) that a plan is eligible if it became insolvent "after December 16, 2014, and has remained so insolvent *and has not been terminated* as of March 11, 2021." 29 U.S.C. 1432(b)(1)(D) (emphasis added). Reading subparagraph (A)'s cross-reference of Section 1085(b)(6) as carrying with it the latter's inapplicability to plans terminated through mass withdrawal coheres with the SFA program's evident purpose of preserving the solvency of ongoing plans rather than terminated ones.

Other contextual clues reinforce the conclusion that Section 1432(b)(1)(A)'s cross-reference to Section 1085(b)(6) is not strictly limited to the latter's text. For one, the Second Circuit's narrow cut-and-paste approach would render Section 1432(b)(1)(A) unintelligible. Section 1085(b)(6) itself cross-references other provisions of Section 1085(b), providing in pertinent part that, "[f]or purposes of this section, a plan in critical status shall be treated as in critical and declining status if the plan is described in one or more of subparagraphs (A), (B), (C), and (D) of paragraph (2)." 29 U.S.C. 1085(b)(6). That language would make no sense if transplanted into Section 1432(b)(1)(A) with "nothing else" accompanying it. App., *infra*, 8a.

Section 1085(b)(6)'s own cross-references confirm the court of appeals' error. The cited subparagraphs set forth the standards under which a plan's underfunding can trigger critical status. 29 U.S.C. 1085(b)(2). And paragraph (2)'s introductory text provides that an underfunding determination is to be made "by the plan actuary under paragraph (3)," 29 U.S.C. 1085(b)(2), which in turn describes the plan's required annual certification of zone status, 29 U.S.C. 1085(b)(3). But by virtue of Section 1081(c), plans terminated through mass withdrawal no longer make such certifications. So the court

of appeals' effort to isolate the definition of critical and declining status in Section 1085(b)(6) from the rest of the statutory scheme does not work.

A related problem with the Second Circuit's approach arises from 29 U.S.C. 1432(e), which requires a plan to establish its eligibility for SFA and the amount of SFA to be paid using the same actuarial assumptions that the plan used in a prior certification of zone status. On the court of appeals' reading, a plan may be eligible for SFA under Section 1432(b)(1)(A) if it satisfies the criteria for critical and declining status under Section 1085(b)(6) irrespective of its prior termination, even if it terminated through mass withdrawal long before the 2020 plan year—even before 2008, when the zone-status rules and the requirement to annually certify zone status first took effect, 120 Stat. at 885. The PBGC informs this Office that, since the court of appeals issued the decision below, 22 plans that terminated before 2008 have applied for SFA. But those plans have *never* certified their zone status because the certification requirement never applied to them. For those plans, no prior zone-status certification exists—rendering Section 1432(e), which is a critical component of the statutory framework, inoperative for those plans. Congress's failure to account for such plans in Section 1432(e) is a strong indication that it did not intend to include plans previously terminated through mass withdrawal in Section 1432(b)(1)(A).

The court of appeals' approach likewise nullifies part of Section 1432(b)(1)(D), which, as noted above, provides that a plan is eligible for SFA if it "became insolvent for purposes of section 418E of title 26 after December 16, 2014, and has remained so insolvent and *has not been terminated as of March 11, 2021*." 29 U.S.C. 1432(b)(1)(D) (emphasis added). A plan is insolvent if

its "available resources are not sufficient to pay benefits under the plan when due for the plan year," 26 U.S.C. 418E(b)(1), and an insolvent plan necessarily satisfies the criteria for critical and declining status in 29 U.S.C. 1085(b)(6), which depend on the plan's being gravely underfunded. Under the Second Circuit's approach, therefore, a plan that "became insolvent * * * after December 16, 2014, and has remained so insolvent" would be eligible for SFA under Section 1432(b)(1)(A) even if it had "terminated as of March 11, 2021," 29 U.S.C. 1432(b)(1)(D), rendering that limitation in subparagraph (D) nugatory.

The court of appeals also neglected to note that Congress enacted alongside Section 1432 a parallel provision in the Internal Revenue Code, 26 U.S.C. 432(k), as it often does when amending ERISA in order to provide for favored tax treatment for employee benefit plans. *Lyons* v. *Georgia-Pacific Corp. Salaried Emps. Ret. Plan*, 221 F.3d 1235, 1243 (11th Cir. 2000) ("Many ERISA sections have parallel provisions in the Internal Revenue Code."), cert. denied, 532 U.S. 967 (2001). Section 432(k) reproduces the eligibility criteria for SFA, including the one invoked by respondent. 26 U.S.C. 432(k)(3)(A). The eligibility criteria must be presumed to mean the same thing in both the ERISA and IRC provisions, see *Powerex Corp.* v. *Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007), and any contrary reading would be nonsensical.

Yet the IRC version simply omits any statutory cross-reference, providing that a plan is eligible if it "is in critical and declining status in any plan year beginning in 2020 through 2022," 26 U.S.C. 432(k)(3)(A)(i)—and it thus omits the very element that drove the court of appeals' construction of Section 1432(b)(1)(A). The IRC provision's general reference to "critical and de-

clining status" would even more clearly incorporate related statutory limitations on that term, such as the limitation in Section 1081(c), because "if a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it," not just the roots. *Sekhar* v. *United States*, 570 U.S. 729, 733 (2013) (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)). In short, reading Section 1432(b)(1)(A) to apply to plans terminated through mass withdrawal "creates anomalies" that further undercut the court of appeals' interpretation. *Small* v. *United States*, 544 U.S. 385, 391 (2005).

4. The Second Circuit's other defenses of its interpretation of Section 1432(b)(1)(A) are unpersuasive.

The court of appeals cited a treatise for the proposition that a specific statutory cross-reference "adopts only the particular parts of the statute to which it refers." 2B Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction* § 51:8 (7th ed. 2012) (Sutherland); see *id.* § 51:7 (similar); App., *infra*, 8a. Like this Court's recent reference-canon cases, however, see pp. 13-14, *supra*, the relevant sections of that treatise are principally concerned with how to deal with amendments of cross-referenced statutes, not the issue presented here. See generally Sutherland §§ 51:7, 51:8. In any event, treatises are not the law; as discussed above, several of this Court's decisions belie the notion that a specific cross-reference necessarily decouples the referenced statute from related provisions. Moreover, the treatise acknowledges that statutory context can overcome any presumption that a specific cross-reference should be interpreted narrowly. See, *e.g.*, *id.* § 51:8 ("Facially specific references can, and sometimes do, operate as general legislative refer-

ences."). For the reasons set forth above, the context here would override any such presumption.

Interstate Consolidated Street Railway Co. v. *Massachusetts*, 207 U.S. 79 (1907), is also inapposite. The court of appeals invoked that decision's statement that the "nature or effect" of an incorporated document is "derived wholly" from the document doing the incorporating. *Id.* at 84-85; see App., *infra*, 8a-9a. But that case concerned whether the constitutionality of a statute that was incorporated by reference into a company's charter affected the enforceability of the incorporated provision, see *Interstate Consol.*, 207 U.S. at 84-85; it did not involve an interpretive question about the scope of the cross-reference in relation to other legal provisions, which is the issue here.

The court of appeals further posited that "if Congress had wanted to incorporate the various limitations on § 1085's applicability, along with its definition, it could have used a phrase such as 'for purposes of section 1085(b)(6)' or 'to which section 1085(b)(6) of this title applies.'" App., *infra*, 9a. As always, though, "the mere possibility of clearer phrasing cannot defeat the most natural reading of a statute." *Caraco Pharm. Labs., Ltd.* v. *Novo Nordisk A/S*, 566 U.S. 399, 416 (2012). And the court's hypothetical variations on the statutory text would make no difference in any event. Under the court's interpretive approach, Section 1432(b)(1)(A) would still cross-reference Section 1085(b)(6) specifically, so the former would incorporate the latter's "text and nothing else." App., *infra*, 8a. The same kind of argument could also readily be made in the other direction: Congress could have clearly limited the scope of its cross-reference, such as by referring to "section 1085(b)(6) of this title, notwithstanding section 1081(c)." Cf., *e.g.*, 26 U.S.C. 414(b)(1) (Supp. V 2023) (providing that "all em-

ployees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer" for certain purposes); Sentencing Guidelines § 1B1.5(b)(2) ("An instruction to use a particular subsection or table from another offense guideline refers only to the particular subsection or table referenced, and not to the entire offense guideline.").

The court of appeals also drew a negative inference from Congress's express exclusion of terminated plans in Section 1432(b)(1)(D). App., *infra*, 10a. Congress had no need to do the same in subparagraphs (A), (B), or (C), however, because each of those eligibility provisions applies only to plans subject to Section 1085—and as discussed above, Congress would have known that plans terminated through mass withdrawal are excluded from Section 1085. 29 U.S.C. 1081(c), 1432(b)(1)(A)-(C).

Finally, the court of appeals declined to consider a Congressional Budget Office (CBO) report that estimated that the SFA legislation would result in grants to "about 185 plans," *CBO Cost Estimate: Reconciliation Recommendations of the House Committee on Ways and Means* 17 (rev. Feb. 17, 2021)—far fewer than would be eligible if terminated plans like respondent's qualified. See App., *infra*, 10a n.4; p. 25, *infra*. Although "no one votes for CBO reports, and courts charged with interpreting the law owe those estimates no rote deference," a CBO estimate "does provide further evidence of how an ordinary reader might have understood the statutory language at issue here." *Feliciano* v. *Department of Transp.*, 605 U.S. 38, 48 (2025). Yet the court of appeals gave the estimate no weight at all. Its interpretation of Section 1432(b)(1)(A) is untenable as a matter of statutory text and context.

B. This Court's Review Is Warranted Because The Decision Below Involves Important Legal Questions And Substantial Consequences For The Federal Fisc

1. The decision below warrants review. Respondent's SFA application alone requests more than $100 million in assistance. Gov't C.A. Br. 1. As the PBGC stipulated below, there are "no additional grounds for denial" of respondent's application besides the Fund's status as a plan terminated through mass withdrawal. *Id.* at 44. ERISA's SFA provision does not grant the PBGC discretion to withhold funds from eligible plans that submit compliant applications. See 29 U.S.C. 1432(a)(1) ("The corporation shall provide special financial assistance to an eligible multiemployer plan under this section, upon the application of a plan sponsor of such a plan for such assistance.").[2] The PBGC's ability to claw back funds paid in error is highly uncertain, given that SFA funds are distributed by plans to individual plan beneficiaries. See 29 U.S.C. 1432(j)(1) and (*l*). Therefore, if the Second Circuit's decision stands, the PBGC will likely be compelled to pay out more than $100 million in taxpayer funds that Congress did not intend to be paid and that would be difficult or impossible to recover.

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[2] It is therefore immaterial that, on remand after the decision below, the PBGC again denied respondent's SFA application as "incomplete" for inaccurately describing the Fund as "an ongoing plan" despite its termination. D. Ct. Doc. 43-2, at 2-3 (Sept. 26, 2025). The PBGC made clear that respondent can correct and resubmit the application, *id.* at 2; see 29 U.S.C. 1432(f) and (g), though respondent has asked the district court to order the PBGC to grant the existing application, see D. Ct. Doc. 43 (Sept. 26, 2025). Respondent's application remains live either way, so those developments do not render this case moot.

The Fund has no alternative basis of eligibility for SFA, having invoked only Section 1432(b)(1)(A). Resp. C.A. Br. 2, 14. Subparagraphs (B) and (C) could not apply because (among other reasons) the Fund did not have an approved suspension of benefits and was not certified to be in critical status during the relevant time periods. 29 U.S.C. 1432(b)(1)(B) and (C); see 29 U.S.C. 1085(b)(2) and (e)(9). Nor could the Fund qualify under subparagraph (D), given its termination in 2016. 29 U.S.C. 1432(b)(1)(D). Furthermore, although respondent contended in the alternative below that the Fund is eligible for SFA under subparagraph (A) regardless of its prior termination because it restored itself to ongoing status in 2022, see pp. 8-9, *supra*, that is plainly incorrect. ERISA's provision for restoring terminated plans unambiguously excludes plans that terminate through mass withdrawal. 29 U.S.C. 1347; see 29 U.S.C. 1341a(a)(2). The PBGC is unaware of any such plan other than the Fund that has ever attempted or purported to restore itself. As the PBGC explained below, there is no apparent incentive to restore such a plan other than to contrive eligibility for SFA. See Gov't C.A. Br. 8, 38.

The effects of the Second Circuit's decision extend beyond this particular case. Soon after the decision, the PBGC's inspector general issued a "risk advisory" describing its potential effects. Nicholas J. Novak, Inspector General, PBGC, *Risk Advisory: Recent Court of Appeals Ruling May Cost Taxpayers Approximately $6 Billion More in Special Financial Assistance Than Originally Projected* (June 16, 2025) (*Risk Advisory*). He projected that opening the SFA program to terminated multiemployer plans—of which there are 123 nationwide, according to PBGC records—would result in the payment of about $6 billion more than would other-

wise be distributed through the program. *Id.* at 5-6. The inspector general further warned that the influx of SFA applications from terminated plans could strain the PBGC's ability to process them, given that "SFA applications are complex" and the SFA statute imposes a 120-day deadline to process an application before it is automatically deemed approved. *Id.* at 7; see 29 U.S.C. 1432(g). As noted above, all initial applications are due by the end of this year, and revised applications are due a year later. 29 U.S.C. 1432(f).

The PBGC informs this Office that it has so far received 66 SFA applications from terminated plans, and 11 more such plans are on the PBGC's waiting list and could apply in short order. The PBGC has estimated that those 77 plans could collectively seek approximately $4.4 billion in assistance. It appears that 21 of the 77 plans are based within the Second Circuit. See 29 U.S.C. 1303(f)(1) and (2)(B) (authorizing a plan to sue the PBGC in "the United States district court for the judicial district in which the plan has its principal office"). The PBGC estimates that those 21 plans could seek a total of about $1 billion in assistance.

2. This case accordingly satisfies this Court's criteria for granting a writ of certiorari. The eligibility of terminated plans for SFA implicates billions of dollars in taxpayer funds, see *Risk Advisory* 5, and more than $100 million is at stake in this case alone. The question presented is therefore "an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c). The Court has viewed "the importance of [an] issue to the federal fisc" as justification for granting certiorari. *United States* v. *Hill*, 506 U.S. 546, 549 (1993); see, *e.g.*, *Barnhart* v. *Walton*, 535 U.S. 212, 217 (2002); *United States* v. *Mitchell*, 463 U.S.

206, 211 & n.7 (1983); see also *Territory of Alaska* v. *American Can Co.*, 358 U.S. 224, 225 (1959).

For the reasons discussed above, moreover, the court of appeals decided the question presented "in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c); see, *e.g.*, *Department of Energy*, 503 U.S. at 617. This case would provide the Court with an opportunity not only to answer the question presented, which is important in itself, but also to provide further guidance on the proper construction of statutory cross-references—an important issue that often arises in federal courts because of Congress's frequent use of cross-references in legislation. See, *e.g.*, *Brown*, 602 U.S. at 115-119; *Jam*, 586 U.S. at 209-210. The court of appeals' rejection of the regulatory position of the PBGC, which Congress has charged with administering the SFA program and the plan-termination provisions of ERISA, see 29 U.S.C. 1432; *Concrete Pipe & Prods. of Cal., Inc.* v. *Construction Laborers Pension Trust*, 508 U.S. 602, 607 (1993), counsels further in favor of certiorari.

Although this Court typically grants certiorari only after an issue has percolated and generated a disagreement in the courts of appeals, that course is not appropriate here, particularly in view of the deadlines for submission of SFA applications and PBGC's review process. See pp. 7, 25-26, *supra*. The question presented is a straightforward matter of statutory interpretation, and requiring the PBGC to accept the Second Circuit's answer for plans within that court's jurisdiction will soon result in substantial and irreversible outlays of taxpayer funds, which will create unwarranted disparities if other courts of appeals later disagree.

This Court has previously granted certiorari in similar circumstances. In *PBGC* v. *LTV Corp.*, 496 U.S. 633 (1990), the sponsor of three pension plans prompted the

PBGC to terminate the plans and then created "follow-on" plans in an "abusive" scheme to exploit the PBGC's benefit-insurance program. *Id.* at 642; see *id.* at 640-641. The PBGC responded by exercising its statutory authority to order the original plans restored, but the Second Circuit held that the PBGC's "anti-follow-on policy" was unlawful. *Id.* at 644. Although the court of appeals' decision did not implicate a circuit conflict, as the Solicitor General noted in urging this Court to grant certiorari, the PBGC stood to "lose, at the least, approximately half a billion dollars" if the decision stood, and "other companies in financial trouble [we]re sure to attempt to follow [the sponsor's] lead." U.S. Cert. Amicus Br. at 18-19, *LTV Corp.*, *supra* (No. 89-390). The Court granted certiorari "[b]ecause of the significant administrative law questions raised by th[e] case, and the importance of the PBGC's insurance program." *LTV Corp.*, 496 U.S. at 644.

Similar considerations support certiorari in this case, which involves important legal questions and substantial consequences for the public fisc, particularly in light of the number of terminated plans already seeking to take advantage of the decision below. In these circumstances, the Court should grant review without awaiting the development of a circuit conflict, as the Court has done in other ERISA cases. See *Advocate Health Care Network* v. *Stapleton*, 581 U.S. 468 (2017); *Gobeille* v. *Liberty Mut. Ins. Co.*, 577 U.S. 312 (2016); *LTV Corp.*, 496 U.S. 633; cf. *Hughes Aircraft Co.* v. *Jacobson*, 525 U.S. 432, 438 (1999) (certiorari granted in light of "tension" between court of appeals' decision and other courts' precedent).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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DECEMBER 2025

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 23-7868

BOARD OF TRUSTEES OF THE BAKERY DRIVERS LOCAL 550 AND INDUSTRY PENSION FUND,
PLAINTIFF-APPELLANT

v.

PENSION BENEFIT GUARANTY CORPORATION,
DEFENDANT-APPELLEE

August Term 2024
Argued: Dec. 12, 2024
Decided: Apr. 29, 2025

Appeal from the United States District Court
for the Eastern District of New York
Docket No. 2:23-cv-1595,
Joan M. Azrack, *District Judge*

Before: ROBINSON, PÉREZ, and NATHAN, *Circuit Judges*.

MYRNA PÉREZ, *Circuit Judge*:

This case requires us to interpret an eligibility provision in the statute establishing the Special Financial Assistance ("SFA") program, a temporary program created by Congress in 2021 to help struggling multiemployer pension plans. Plaintiff-Appellant, which spon-

sors a multiemployer plan primarily benefitting unionized bakery drivers in New York City ("the Fund"),[1] applied for SFA in 2022, asserting that it was "in critical and declining status" and thus eligible under the statute. 29 U.S.C. § 1432(b)(1)(A). The Pension Benefit Guaranty Corporation ("PBGC"), the agency responsible for administering the program, found that the Fund's termination in 2016 made it ineligible. The Fund sued under the Administrative Procedure Act ("APA"), and the district court granted summary judgment for the PBGC. The Fund now appeals.

Because we do not read the pertinent provision of the SFA statute to exclude plans based solely on a prior termination, we REVERSE the judgment of the district court and REMAND with instruction to (1) enter summary judgment for the Fund, (2) vacate the PBGC's denial of the Fund's SFA application, and (3) remand to the PBGC for reconsideration.

BACKGROUND

I. The Fund's Termination

The Fund was created in 1955 by an agreement between several large bakeries and the Bakery Drivers Union Local 550. It is subject to the Employee Retirement Income Security Act of 1974 ("ERISA") and ERISA's implementing regulations. In 2011, the Fund's largest employer, Hostess Brands, Inc., stopped making contributions. Hostess declared bankruptcy in 2012, and its liability to the Fund was eventually discharged in 2015. In 2016, facing insolvency, the Fund reached an agreement with its four remaining employ-

[1] For simplicity, we use "the Fund" to refer interchangeably to the plan and its sponsor.

ers to transfer some of their members to a newly created pension plan. Those employers were then relieved of their obligations to continue contributing to the Fund, triggering the Fund's termination by mass withdrawal under ERISA. *See* 29 U.S.C. § 1341a(a)(2) ("[T]he withdrawal of every employer from the plan[] . . . or the cessation of the obligation of all employers to contribute under the plan" will cause a multiemployer plan to terminate); 29 C.F.R. § 4041A.1 (labeling this a "terminat[ion] by mass withdrawal").

Despite its connotation, a "termination" of this kind does not mark the end of a plan's operations. In the succeeding years, the Fund continued to perform audits, conduct valuations, file annual reports, and make payments to more than 1,100 beneficiaries. *See* 29 U.S.C. § 1341a(c), (d), (f) (obligating multiemployer plans terminated by mass withdrawal to continue paying benefits); 29 C.F.R. §§ 4041A.21-.27 (requiring these plans to, among other things, pay certain benefits, collect withdrawal liabilities, conduct actuarial valuations, periodically assess plan solvency, and seek financial assistance from the PBGC when necessary).

In September 2022, hoping to ensure the Fund's eligibility under the newly enacted SFA program, a former employer—Bimbo Bakeries USA—agreed to rejoin the Fund and resume contributions on behalf of its then-current employees. The Fund became insolvent about a year later.

II. The Fund's Application for Special Financial Assistance

Congress established the SFA program in the American Rescue Plan Act of 2021, Pub. L. 117-2, § 9704, 135

Stat. 4, 190. Under the SFA statute, the PBGC must grant assistance to all eligible multiemployer plans, including plans that were "in critical and declining status (within the meaning of section 1085(b)(6) of this title) in any plan year beginning in 2020 through 2022." 29 U.S.C. § 1432(b)(1)(A). Of the three financial statuses defined in 29 U.S.C. § 1085, "critical and declining" is the direst.

In September 2022, shortly after reenlisting Bimbo Bakeries, the Fund applied for assistance under the SFA program, asserting that it was in critical and declining status and thus qualified for SFA under § 1432(b)(1)(A). The PBGC rejected the application, finding that the Fund could not be "in critical and declining status" because it "has had no zone status since plan year 2016, when the Plan terminated by mass withdrawal." J. App'x at 42 (Letter from then-PBGC Director Gordon Hartogensis to the Fund). The reenlistment of Bimbo Bakeries made no difference, it concluded, because "ERISA contains no provision allowing a multiemployer plan that terminated by mass withdrawal under section 4041A to be restored." *Id.* The PBGC did not indicate that it had any other reason to reject the application.

III. Procedural History

The Fund brought this APA action in the Eastern District of New York, claiming, among other things, that the PBGC's denial of its application was contrary to law. Both parties moved for summary judgment, raising two questions of statutory interpretation: (1) whether § 1432(b)(1)(A), the SFA eligibility provision at issue, per se excludes multiemployer plans that previously terminated by mass withdrawal; and (2) whether ERISA

permits such plans to be restored. The district court sided with the PBGC on both issues, concluding that a multiemployer plan that had been terminated by mass withdrawal could neither claim SFA funding under § 1432(b)(1)(A) nor restore itself. *Bd. of Trs. of Bakery Drivers Loc. 550 & Indus. Pension Fund v. PBGC*, No. 23-cv-1595, 2023 WL 7091862, at *4-5, 9 & n.12 (E.D.N.Y. Oct. 26, 2023).

The court consequently denied the Fund's motion for summary judgment, granted summary judgment for the PBGC, and affirmed the PBGC's denial of the Fund's SFA application. *Id.* at *11. This appeal followed.

STANDARD OF REVIEW

"On appeal from a grant of summary judgment in a challenge to agency action under the APA, we review the administrative record and the district court's decision *de novo*." *Pfizer, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 42 F.4th 67, 73 (2d Cir. 2022) (internal quotation marks omitted). When interpreting a federal statute—including a statute that a defendant agency is charged with administering—we must "exercise independent judgment." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). If the agency's final action does not accord with the statute as we interpret it, the APA requires that the action be "set aside." 5 U.S.C. § 706(2)(A).

DISCUSSION

We begin with the text of the SFA statute. Under 29 U.S.C. § 1432(b)(1)(A), the PBGC must grant assistance to a multiemployer plan that "is in critical and declining status (within the meaning of section 1085(b)(6) of this title) in any plan year beginning in 2020 through

2022."[2] Section 1085(b)(6), in turn, defines "critical and declining status" as follows:

> For purposes of this section, a plan in critical status shall be treated as in critical and declining status if the plan is described in one or more of subparagraphs (A), (B), (C), and (D) of paragraph (2) and the plan is projected to become insolvent within the meaning of section 1426 of this title during the current plan year or any of the 14 succeeding plan years. . . .

29 U.S.C. § 1085(b)(6). The subparagraphs referenced in § 1085(b)(6) describe a plan's financial condition in terms of the projected value of its assets compared to its projected liabilities. For example, subparagraph (D) provides the following:

> A plan is described in this subparagraph if the sum of—
>
> (i) the fair market value of plan assets, plus
>
> (ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming

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[2] For ease of reference, we refer to and quote the statutes as they appear in the United States Code. Because Title 29 of the U.S. Code is not a "positive law" title—meaning that Congress has not enacted the compilation itself into law—the authoritative versions are those that appear in the Statutes at Large. *See U.S. Nat'l Bank of Oregon v. Indep. Ins. Agents of America, Inc.*, 508 U.S. 439, 448 & n.3 (1993). But besides making the statutory cross-references easier to follow, the textual differences introduced by the compilers of the U.S. Code are inconsequential and do not affect our analysis. *Compare, e.g.*, American Rescue Plan Act of 2021 § 9704, 135 Stat. at 190 ("within the meaning of section 305(b)(6) [of ERISA]"), *with* 29 U.S.C. § 1432(b)(1)(A) ("within the meaning of section 1085(b)(6) of this title").

> that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

Id. § 1085(b)(2)(D). Section 1085(b)(6) also references the definition of insolvency in 29 U.S.C. § 1426, which provides that "a multiemployer plan is insolvent if the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year." *Id.* § 1426(b)(1).

These provisions do not, by their terms, exclude a plan that was terminated by mass withdrawal (that is, a plan that had at one time stopped receiving employer contributions). The PBGC does not dispute that such a plan could meet these criteria, nor does it dispute that the Fund meets them here.

Instead, the PBGC points to 29 U.S.C. § 1081(c), which provides that Part 3 of Subchapter I of ERISA—which includes § 1085 but not the SFA statute—"applies, with respect to a terminated multiemployer plan," only "until the last day of the plan year in which the plan terminates." For example, when a plan in critical and declining status terminates, it is only required to continue implementing a rehabilitation plan, as required by § 1085(a)(3)(A), through the end of that year. The PBGC argues that § 1081(c) applies to the status definitions in § 1085 as well as its requirements. And because the Fund terminated in 2016, the PBGC argues, it could not have a "status" under § 1085 in the 2020,

2021, or 2022 plan years, making it ineligible under § 1432(b)(1)(A).

We disagree. Section 1081(c) does not apply to the SFA statute, which is located in a different part of a different subchapter. Nor does it apply by virtue of its application to § 1085. By using the phrase "within the meaning of section 1085(b)(6)," *id.* § 1432(b)(1)(A), the SFA statute incorporates by reference only the definition contained in § 1085(b)(6). It does not incorporate external limitations on § 1085's operation, such as the limitation contained in § 1081(c).[3] "[A] statute that refers to another statute by specific title or section number in effect cuts and pastes the referenced statute," meaning that it incorporates its text and nothing else. *Jam v. Int'l Fin. Corp.*, 586 U.S. 199, 209 (2019); *see also* 2B Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction* § 51:8 (7th ed. rev. Aug. 2012) ("A statute of specific reference adopts only the particular parts of the statute to which it refers."); *id.* § 51:7 ("[W]here a statute refers specifically to another statute by title or section number, there is no reason to think its drafters meant to incorporate more than the provision specifically referred to." (alteration in original) (internal quotation marks omitted)).

The legal force of an incorporated reference derives from the statute making the reference, not from the document being incorporated. *See Interstate Consol. St. Ry. Co. v. Massachusetts*, 207 U.S. 79, 84-85 (1907) (Holmes, J.). This is because an incorporated provision "exists not as any part of the referenced material

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[3] We assume without deciding that § 1081(c) limits the applicability of the status definitions contained within § 1085 and not just the requirements imposed by § 1085.

itself, but rather as a duplicate or 'clone' of the referenced material that has been created within the adopting legislation." F. Scott Boyd, *Looking Glass Law: Legislation by Reference in the States*, 68 La. L. Rev. 1201, 1221 (2008). So "it [does] not matter what [the incorporated statute's] own nature or effect might be"—in this case, the nature or effect of § 1085(b)(6)—"as the force given to it by reference and incorporation [is] derived wholly from the [law incorporating it]." *Interstate*, 207 U.S. at 84-85. Any limitation that § 1081(c) might place on § 1085(b)(6)'s operation would not affect the operation of § 1085(b)(6)'s "clone" within the SFA statute. Boyd, *supra*, at 1221.

Moreover, if Congress had wanted to incorporate the various limitations on § 1085's applicability, along with its definition, it could have used a phrase such as "for purposes of section 1085(b)(6)" or "to which section 1085(b)(6) of this title applies"—phrasing that it did use in other parts of the same SFA section. *See* 29 U.S.C. § 1432(b)(1)(D) (a plan is eligible if "the plan became insolvent *for purposes of section 418E of title 26* after December 16, 2014 . . . ." (emphasis added)); *id.* § 1432(f) ("Any application by a plan for special financial assistance under this section shall be submitted to the corporation (and, in the case of a plan *to which section 432(k)(1)(D) of title 26 applies*, to the Secretary of the Treasury) no later than December 31, 2025 . . . ." (emphasis added)). Because Congress chose to use different language—"within the meaning of"—when referring to § 1085(b)(6), "we presume its word choice was intentional," *Hirt v. Equitable Ret. Plan for Emps., Managers & Agents*, 533 F.3d 102, 108 (2d Cir. 2008) (internal quotation marks omitted).

Congress also knew how to exclude terminated plans expressly—which it did in one of the other SFA eligibility provisions. *See* 29 U.S.C. § 1432(b)(1)(D) (a plan is eligible for SFA if it "became insolvent . . . and has remained so insolvent *and has not been terminated as of March 11, 2021*" (emphasis added)). The fact that Congress chose not to include a similar limitation in subparagraph (A), the provision at issue here, is telling.

Finally, the PBGC asserts that permitting terminated plans to apply for SFA funding "would severely challenge PBGC's ability to process the applications of all eligible plans within the tight statutory deadlines." PBGC Suppl. Br. at 8, Dkt. 62.1. While we are sympathetic to these difficulties, "[i]t is Congress's job to craft policy and ours to interpret the words that codify it." *Lackey v. Stinnie*, 145 S. Ct. 659, 669 (2025). And the words that Congress chose to codify eligibility for SFA do not support a per se exclusion of terminated plans under § 1432(b)(1)(A).[4] The PBGC acted contrary to law when it concluded otherwise and denied the Fund's SFA application on that basis.[5]

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[4] The PBGC also estimates that our reading will result in a significantly greater number of SFA-eligible plans than the Congressional Budget Office ("CBO") estimated. Even if we were inclined to consider these extra-record calculations, the complete absence of data or methodological detail accompanying the PBGC's estimates prevents us from doing so meaningfully. In any event, we are reluctant to infer congressional intent from a CBO projection, particularly when such an inference would contradict the plain text of the statute Congress enacted.

[5] Because we conclude that § 1432(b)(1)(A) does not exclude terminated plans per se, we need not decide whether ERISA permits a terminated multiemployer plan to be restored.

CONCLUSION

The judgment of the district court is REVERSED and the case is REMANDED with instruction to (1) enter summary judgment for the Fund, (2) vacate the PBGC's denial of the Fund's SFA application, and (3) remand to the PBGC for reconsideration.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 23-7868

BOARD OF TRUSTEES OF THE BAKERY DRIVERS LOCAL 550 AND INDUSTRY PENSION FUND,
PLAINTIFF-APPELLANT

v.

PENSION BENEFIT GUARANTY CORPORATION,
DEFENDANT-APPELLEE

Filed: July 17, 2025

ORDER

Appellee, Pension Benefit Guaranty Corporation, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

23-CV-1595 (JMA) (JMW)

BOARD OF TRUSTEES OF THE BAKERY DRIVERS LOCAL 550 AND INDUSTRY PENSION FUND,
PLAINTIFF

v.

PENSION BENEFIT GUARANTY CORPORATION,
DEFENDANT

Filed: Oct. 26, 2023 4:05 pm
U.S. District Court
Eastern District of New York
Long Island Office

ORDER

AZRACK, United States District Judge:

Before the Court are competing motions for summary judgment by Plaintiff Board of Trustees of the Bakery Drivers Local 550 and Industry Pension Fund (the "Fund") and Defendant Pension Benefit Guaranty Corporation ("PBGC"). The Fund moves for summary judgment and seeks a determination that PBGC's denial of its application for government-backed financial assistance was erroneous as a matter of law and seeks vacatur of that denial. PBGC cross-moves for summary

judgment and asks the Court to affirm its decision to deny the Fund's financial assistance application. For the below reasons, PBGC's motion is GRANTED and the Fund's motion is DENIED.

I. BACKGROUND

A. Regulatory Scheme

In 1974, in response to concerns over the growth in size and the unregulated state of the employee benefit plan sector, Congress passed the Employee Retirement Income Security Act of 1974 ("ERISA"), Pub. L. No. 93-406, 88 Stat. 829, 829 (codified at 29 U.S.C. § 1001 et seq.). One of ERISA's "principal purposes" was to ensure that employees and their beneficiaries would not be deprived of anticipated retirement benefits." Fisher v. Pension Benefit Guar. Corp., 468 F Supp 3d 7, 14-16 (D.D.C. 2020), aff'd, 994 F.3d 664 (D.C. Cir. 2021) (internal quotations and citations omitted). To accomplish this purpose, Title IV of ERISA created a plan termination insurance program, administered by the PBGC. Id.; see also 29 U.S.C. § 1301 et seq. That program protects plan participants "by guaranteeing a class of 'nonforfeitable benefits,' [and by] reimbursing eligible participants or beneficiaries when a guaranteed plan terminates without sufficient funds." Davis v. PBGC, 734 F.3d 1161, 1164 (D.C. Cir. 2013) (quoting 29 U.S.C. § 1322(a)). ERISA authorizes the PBGC to promulgate rules and regulations "as may be necessary to carry out the purposes of [Title IV of ERISA]." 29 U.S.C. § 1302(b)(3).

As relevant here, in the midst of the COVID-19 pandemic, Congress passed the American Rescue Plan Act of 2021 ("ARP"), which amended Title IV of ERISA to

create a new "special financial assistance" ("SFA") program, administered by PBGC, to give eligible multiemployer plans money projected to be sufficient to pay all benefits due through 2051. See 29 U.S.C. § 1432(a)(1). The Special Financial Assistance ("SFA") program, like all provisions of Title IV, is administered by PBGC. Unlike PBGC's regular multiemployer insurance program, which is funded by insurance premiums, the SFA program is funded from general taxpayer monies. See 29 U.S.C. § 1305. Under the SFA program, PBGC "shall provide special financial assistance to an eligible multiemployer plan" that satisfies one of the four criteria found in Section 1432(b)(1):

A. The plan is in critical and declining status (within the meaning of section 1085(b)(6) of this title) in any plan year beginning in 2020 through 2022;

B. A suspension of benefits has been approved with respect to the plan under section 1085(e)(9) of this title as of March 11, 2021;

C. In any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status (within the meaning of section 1085(b)(2) of this title), has a modified funded percentage of less than 40 percent, and has a ratio of active to inactive participants which is less than 2 to 3; or

D. The plan became insolvent for purposes of section 418E of title 26 after December 16, 2014, and has remained so insolvent and has not been terminated as of March 11, 2021.

See 29 U.S.C. § 1432(b)(1).

B. The Fund's Formation, Initial Termination, and Purported Restoration

The parties do not dispute the central facts of this case. PBGC is the federal agency responsible for administering and enforcing Title IV of ERISA. (Defendant's Rule 56.1 Statement of Material Facts ("Def. 56.1"), ECF No. 27-2, ¶ 1.) The Fund is a multiemployer defined benefit pension plan that was established in 1955 under an Agreement and Declaration of Trust pursuant to collective bargaining agreements between the Bakery Drivers Union, Local #550 (the "Union"), and large bakeries in the Northeast who are members of the New York City Bakery Employers Labor Council and other employers who agree to participate individually or as groups. (See Plaintiff's Rule 56.1 Statement of Material Facts ("Pl. 56.1"), ECF No. 26-2, ¶¶ 1-2, 7.) The Fund has approximately 1,122 members, and its plan sponsor is the Board of Trustees of the Bakery Drivers Local 550 and Industry Pension Fund (the "Trustees"). (Id. ¶¶ 3, 6.)

In 2011, approximately 93% of the Fund's active covered employees were employed by Bimbo Bakeries USA, Inc. ("BBU") and Hostess Brands, Inc. ("Hostess"), with Hostess employing 63% of the active participants. (Id. ¶ 8.) Hostess ceased making contributions to the Fund in 2011, did not pay any of its withdrawal liability, and subsequently filed for bankruptcy in 2012. (Id. ¶¶ 9-10.) In mid-2016, in order to extend the life of the Fund, the Trustees and PBGC created a multiemployer fund—the Teamsters Bakery Drivers and Industry Pension Fund (the "Teamsters Fund")—which was managed by the Trustees. (Id. ¶¶ 11-13.) In November 2016, the Fund's two largest active

employers—BBU and a trucking company named Grocery Haulers, Inc. ("GHI")—withdrew from the Fund and triggered a mass withdrawal. (Id. ¶ 14.) BBU and GHI made withdrawal liability payments to the Fund of $5.49 million and $1.55 million, respectively, during the plan year that ended October 31, 2017. (Id. ¶ 15.) On November 15, 2016, as part of its withdrawal, BBU paid $19 million into the Teamsters Fund to cover the first five years of expected benefit payments. (Id. ¶ 16.) PBGC approved the transfer of certain liabilities from the Fund to the Teamsters Fund on or about December 1, 2016. (Id. ¶ 17.) The Trustees amended the Fund's Rules and Regulations consistent with the liabilities transfer effective December 6, 2016. (Id. ¶ 18.) On December 17, 2016, the 550 Fund transferred to the Teamsters Fund liabilities for: (1) all benefits associated with current/active employees of BBU, GHI, the Bakery Drivers Local 550 and Industry Health Benefit Fund, and the Union to the Teamsters Fund; and (2) Fund participants with one-half or more of their total service with one of the four employers or their predecessors. (Id. ¶ 19.) The liabilities for the 550 Fund remained with the Fund. The Fund officially terminated by mass withdrawal on December 17, 2016, and notified PBGC of the mass withdrawal on or about January 13, 2017. (Id. ¶¶ 20-21.)[1]

On or about August 25, 2022, and approved by the Trustees effective September 1, 2022, BBU and the Union agreed to amend the Collective Bargaining Agree-

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[1] A terminated fund is required to continue paying benefits to its former beneficiaries, unless and until it decreases the amount of benefits paid in accordance with the requirements of Title IV, including 29 U.S.C. § 1441.

ment (the "CBA") under which its Fund-participating employees operated (the "Amendment"). (Id. ¶¶ 22, 24.) The Amendment required all covered workers to commence participation in the Fund and required BBU to resume making benefit contributions to the Fund on behalf of each of its covered employees. (Id. ¶¶ 23, 25.)

C. The Fund's Initial SFA Application and PBGC's Denial

On September 6, 2022, the Fund filed a certification of its "critical and declining" zone status[2] with the Internal Revenue Service pursuant to section 432 of the Internal Revenue Code, which provides additional funding rules for underfunded multiemployer plans. (Id. ¶ 29.) In response to projections from the Fund's October 31, 2020 valuation that it is only 10.4% funded, PBGC staff purportedly contacted the Fund's Administrator on or about February 15, 2023, to discuss the process for securing traditional financial assistance under section 4261 of ERISA, 29 U.S.C. § 1431.[3] (Id. ¶¶ 30-31.)

The Fund filed its SFA application on or about September 27, 2022 (the "SFA Application"). (Def. 56.1 ¶ 2; Pl. 56.1 ¶ 34.) The Fund's SFA Application requested $132,250,472.00 in assistance. It appears that purpose

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[2] Zone status designations describe a plan's ability to fund and pay promised benefits to participants and beneficiaries now and into the future. See 29 U.S.C. § 1085(b). "Critical and declining status" is the most severe of several "zone statuses" that generally categorize underfunded multiemployer plans by how poorly funded they are. 29 U.S.C. § 1085(b)(6).

[3] According to Plaintiff, the Fund is projected to become insolvent at some point towards the end of the plan year beginning November 1, 2022. (See Pl. 56.1 ¶¶ 32, 37.)

of the Fund's attempted restoration in September 2022 was to allow it to apply for SFA assistance.

In conjunction with the SFA Application, the Trustees submitted numerous documents, including "actuarial valuation reports, zone certifications, plan documents, actuarial and financial calculations[.]" (Pl. 56.1 ¶¶ 35-36.) In its SFA Application, the Fund stated in its application that it "terminated by mass withdrawal 12/17/2016" and that it "was restored 9/1/2022." (Def. 56.1 ¶ 9.) The SFA Application also included a included a certification by the Fund's actuary stating that the Fund was, as of September 1, 2022, "in critical and declining status" and that, on that date, the Fund "became subject to [Internal Revenue Code] Section 432[4] as a result of a bargaining unit joining the Plan[,]" and was thus eligible for SFA under 29 U.S.C. § 1432(b)(1)(A). (Id. ¶¶ 6, 8.)

On or about January 20, 2023, PBGC denied the Fund's SFA Application, based on its contention that "ERISA contains no provision allowing a multiemployer plan that terminated by mass withdrawal under [Section 1341a] to be restored." (Pl. 56.1 ¶ 38; Def. 56.1 ¶ 11.)

D. Procedural History

The Fund commenced this action on March 1, 2023, seeking "a preliminary injunction or stay of PBGC's denial of its application and PBGC's policy determination that once-terminated funds are automatically ineligible for SFA," and an order setting aside PBGC's denial of its SFA Application and remanding the application to

[4] Whether a multiemployer plan is in "critical and declining status" is governed by section 432(b)(6) of the Internal Revenue Code and section 305(b)(6) of ERISA.

PBGC for additional review. (See ECF No. 1, ¶¶ 7, 81, 87.) In lieu of the Fund formally moving for a preliminary injunction, the parties agreed to an expedited summary judgment briefing schedule, which the Court adopted on April 11, 2023. (See ECF Nos. 18, 19, 21.) The parties' cross-motions for summary judgment were fully briefed on May 26, 2023. (See ECF Nos. 26, 27.)

II. LEGAL STANDARDS

Summary judgment is appropriate when the pleadings, depositions, interrogatories, and affidavits demonstrate that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The movant bears the burden of demonstrating that "no genuine issue of material fact exists." Marvel Characters, Inc. v. Simon, 310 F.3d 280, 286 (2d Cir. 2002).[5] "An issue of fact is 'material' for these purposes if it 'might affect the outcome of the suit under the governing law,'" and "[a]n issue of fact is 'genuine' if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" Konikoff v. Prudential Ins. Co. of Am., 234 F.3d 92, 97 (2d Cir. 2000) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)).

"The same standard of review applies when the court is faced with cross-motions for summary judgment." Clear Channel Outdoor, Inc. v. City of New York, 608 F. Supp. 2d 477, 492 (S.D.N.Y. 2009), aff'd, 594 F.3d 94 (2d Cir. 2010) (citing Morales v. Quintel Entm't, Inc., 249

[5] Unless otherwise indicated, in quoting cases all internal quotation marks, alterations, emphases, footnotes, and citations are omitted.

F.3d 115, 121 (2d Cir. 2001)). In evaluating cross-motions for summary judgment, "[e]ach party's motion must be reviewed on its own merits, and the Court must draw all reasonable inferences against the party whose motion is under consideration." Id. (citing Morales, 249 F.3d at 121). However, "even when both parties move for summary judgment, asserting the absence of any genuine issues of material fact, a court need not enter judgment for either party." Morales, 249 F.3d at 121.

III. DISCUSSION

The parties' instant dispute turns on two questions of statutory interpretation:

(1) Are plans that were terminated by mass withdrawal in a plan year that ended before January 1, 2020 (and remain terminated) eligible for SFA under 20 U.S.C. § 1462(b)(1(A)?;

(2) Can a multiemployer plan such as the Fund—which was previously terminated via mass withdrawal—be restored after such termination?

This second question is the central issue before the Court. In considering this question, the Court must consider the potential applicability of the Chevron doctrine. The parties dispute whether the PBGC's interpretation of the relevant statutes at issue here are entitled to Chevron deference and whether PBGC's interpretation ultimately prevails when analyzed under Chevron.

A. Plans That Were Terminated By Mass Withdrawal Before January 1, 2020 and Remain Terminated are Not Eligible for SFA under § 1462(b)(1)(A)

The Fund contends that it qualifies for SFA because it meets the requirements of Section 1462(b)(1)(A), which states that the "plan is in critical and declining status (within the meaning of section 1085(b)(6) of this title) in any plan year beginning in 2020 through 2022."

The first question that the Court must address is whether plans that were terminated by mass withdrawal in a plan year that ended before January 1, 2020 (and remain terminated) are eligible for SFA under Section 1462(b)(1)(A). As explained below, the Court concludes that such terminated plans are not eligible under Section 1462(b)(1)(A).

Under the Fund's apparent reading, a terminated multiemployer plan may be eligible under Section 1462(b)(1)(A) even if the plan is never restored and remains terminated. The Fund's interpretation, however, is not supported by the relevant statutory provisions.

Section 1462(b)(1)(A) looks to whether the plan is in "critical" or "critical and declining status" under Section 1085(b)(6). While Section 1085(b)(6) does not address the relevance of a plan's termination status to "critical and declining status," Section 1081(c) indicates that certain provisions, including Section 1085(b)(6), cease to apply at the end of a plan year in which the plan terminated by mass withdrawal. Reading Sections 1462(b)(1)(A) and 1085(b)(6) in light of Section 1801(c), the Court concludes that a terminated plan does not have a zone status and, as such, cannot qualify for SFA under Section

1462(b)(1)(A). Thus, unless ERISA allows the Fund to restore itself (and exit "terminated" status), it cannot qualify under Section 1462(b)(1)(A).

This interpretation is in accord with the positions of both PBGC and the IRS, which the Court finds persuasive.[6] The Fund appears to dispute this interpretation and to assert that its pre-January 1, 2020 termination is irrelevant to its eligibility under § 1462(b)(1)(A).[7] (See Pl. Opp./Reply Mem. at 3 ("The plain and unambiguous eligibility criteria in Section 4262(b)(1)(A) of ERISA, 29 U.S.C. § 1432(b)(1)(A) in no way turns on whether a plan terminated prior to 2020."); see generally id. ("Because Congress did not intend for PBGC to exclude from SFA plans that terminated by mass withdrawal in a plan year that ended before January 1, 2020, PBGC's determination that the Fund was ineligible for SFA was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law.").

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[6] In July 2022, PBGC issued a final rule which explains that multiemployer plans that terminated due to mass withdrawal prior to January 1, 2020 are not eligible under Section 1462(b)(1)(A). 87 Fed. Reg. 40968, 40971, n.10 (July 8, 2022). In doing so, PBGC relied on binding IRS interpretations, with which the Court agrees. Id.

[7] In its opening brief, the Fund relegates this issue to a footnote remarking that it is "unclear that even a plan that is currently terminated is ineligible for SFA," and that the "Court need not resolve that complicated question, because it is clear that" the Fund is a "a currently active plan." (Pl. Mem. at 14, n. 7.) Moreover, in its subsequent brief, the Fund explicitly concedes that currently terminated plans do not have a zone status. Thus, the Fund admits that when a plan is terminated it ceases to have a zone status. The Fund insists that, after its purported restoration, it "again became subject to the zone-status rules."

At one point in its opposition papers, the Fund contends that because Section 1462(b)(1)(D) explicitly references certain "terminated" plans, it is irrelevant under Section 1462(b)(1)(A) whether a plan was terminated. According to the Fund, if Congress had intended to so exclude from the SFA Program plans terminated by mass withdrawal in a plan year beginning before 2020, it would have said so. However, the Court's analysis of the relevant statutory provisions above explains why terminated a plan cannot qualify under Section 1462(b)(1)(A). The fact that Section 1462(b)(1)(D) explicitly address certain terminated plans does not alter the Court's interpretation of Section 1462(b)(1)(A).

The Funds' arguments about Sections 1081 and 1085 are also unpersuasive. According to the Fund,

> ERISA Section 301(c), 29 U.S.C. § 1081(c) does nothing more than make clear that terminated multiemployer plans, although still responsible for the ongoing administration of the plan for the benefit of its participants and beneficiaries, are no longer subject to the statutory funding rules—including the rules requiring certification of the plan's funding status. However, where a collective bargaining agreement, pursuant to which the plan is maintained, is amended to require employer contributions, the actuary is legally required to make projections regarding the current value of the assets and liabilities for the current and succeeding plan years, Section 1085(b)(3)(B), or face penalties of up to $1,100 per day, Section 1085(b)(3)(C). So, while Congress, did indeed, grant PBGC the authority to review the reasonableness of the underlying funding assumptions,

> *see* Section 4262(g), there is nothing in the plain language of Section 1081(c) that could reasonably be interpreted as permitting PBGC to disregard an actuary's certification that a plan was in critical and declining status on the basis that the plan had once been terminated by mass withdrawal.

(Pl. Reply Mem. at 11.) The Fund's argument, however, ignores the explicit language of Section 1801(c), which states that this "part"—which includes Section 1805, where "critical and declining status" is defined—only applies to a "terminated multiemployer plan . . . until the last day of the plan year in which the plan terminates." 29 U.S.C. § 1801(c). The Fund attempts to reads language into Section 1801(c) that is simply not there. Section 1801(c) indicates that actuaries are not required to submit certifications for "terminated" plans. Thus, the critical question is whether a terminated multiemployer fund can be restored (and, thus, exit "terminated" status). Sections 1801 and 1805 simply do not speak to that question.[8] Nor does Section 1462. Rather, to answer this critical question the Court must examine other provisions of Title IV, including 20 U.S.C. § 1347.

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[8] To the extent the Fund is arguing that, under Sections 1801 or 1805, PBGC must defer to the Fund actuary's legal conclusion that a multiemployer plan terminated by mass withdrawal is restorable, the Court rejects that argument, which is not supported by any statutory language cited by the Fund.

B. Under Title IV, Multiemployer Plans Terminated via Mass Withdrawal Cannot be Restored after Termination

1. The Parties' Arguments Concerning Restoration under Title IV

As explained above, a multiemployer plan that was terminated prior to January 1, 2020 due to mass withdrawal and that remains terminated is ineligible for SFA under Section 1462(b)(1)(A). The Fund, however, contends that it is no longer "terminated" because it was purportedly "restored" in 2022. The Fund insists that a plan which is terminated prior to January 1, 2020, but is then restored after January 1, 2020, is eligible for SFA under Section 1462(b)(1)(A) because a restored plan has a zone status after January 1, 2020. According to the Fund, such restorations of terminated plans are permitted. The Fund's statutory interpretation argument is simple—no provision in ERISA explicitly prohibits or addresses the restoration, by private parties, of multiemployer plans that were previously terminated by mass withdrawal and, thus, such restoration is permitted.

In response, PBGC argues that multiemployer funds such as the Fund cannot be restored under ERISA and that, as such, the Fund's purported restoration in 2022 does not render it eligible for SFA under Section 1462(b)(1)(A). In support of this argument, PBGC points out that while certain provisions of ERISA explicitly permit restoration of certain types of plans, no provision in ERISA authorizes the "restoration" of multiemployer plans that were previously terminated via mass withdrawal. In addition to asserting that its interpretation of Title IV is correct, PBGC also maintains that its interpretation of Title IV is entitled to deference

under Chevron and that, as such, PBGC's interpretation should prevail as long as it is reasonable.

2. The Chevron Framework

When reviewing a challenge to an agency's interpretation of a statute that it administers, courts generally apply the statutory framework outlined by the Supreme Court in Chevron, 467 U.S. at 842-43. At "Step Zero," the Court must satisfy itself that Congress has sufficiently delegated interpretive authority to an agency such that Chevron deference may be triggered. At Step Zero, the Court also considers whether the form of the agency's determination is sufficient to warrant potential deference. See Rahman v. Limani 51, LLC, No. 20-cv-6708, 2022 WL 3927814, at *3, n.6 (S.D.N.Y. Aug. 31, 2022) (internal citations omitted) ("At Chevron step zero, courts ask whether the Chevron framework applies at all.")

After Step Zero is satisfied, Courts move to Step One and ask "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." Catskill Mountains Ch. of Trout Unlimited, Inc. v. Envtl. Protection Agency, 846 F.3d 492, 507 (2d Cir. 2017) (quoting Chevron, 467 U.S. at 842-43). If the Step One analysis yields statutory language that is "silent or ambiguous," however, the Court will proceed to Step Two, where "the question for the court is whether the agency's answer is based on a permissible construction of the statute" at issue. See id. (quoting Chevron, 467 U.S. at 843). If it is—i.e., if it is not "arbitrary, capricious, or manifestly contrary to the statute," the Court will accord deference to the

agency's interpretation of the statute so long as it is supported by a reasoned explanation, and "so long as the construction is 'a reasonable policy choice for the agency to make'" Id. (quoting Chevron, 467 U.S. at 844-45; Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 986 (2005)),[9]

3. Analysis under Chevron Step Zero

At Chevron Step Zero, the Court begins its "initial inquiry into whether the Chevron framework applies at all." ClearCorrect Operating, LLC v. Intl. Trade Com'n, 810 F.3d 1283, 1303 (Fed. Cir. 2015); see also Valenzuela Gallardo v. Barr, 968 F.3d 1053, 1059 (9th Cir. 2020) (quoting Or. Rest. & Lodging Ass'n v. Perez, 816 F.3d 1080, 1086 n.3 (9th Cir. 2016)) ("We begin at Chevron Step Zero, where we determine 'whether the Chevron framework applies at all.'"). The Chevron framework only applies where Congress has delegated to the agency the authority to "speak with the force of law" and the relevant interpretation was "promulgated in the exercise of that authority." United States v. Mead Corp., 533 U.S. 218, 226-27, 229 (2001).

As a threshold matter, the Court must first determine whether Congress sufficiently delegated interpretive authority of Title IV of ERISA to PBGC, such that its interpretation of the relevant provisions of Title IV, including Section 1347, trigger the Chevron deference framework. In support of its argument that Step Zero is

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[9] The Supreme Court has granted certiorari in two cases to address the continued viability and scope of Chevron in Loper Bright Enterprises v. Raimondo, 143 S. Ct. 2429 (2023) and Relentless, Inc. v. Dept. of Commerce, 2023 WL 6780370 (U.S. Oct. 13, 2023). This Court must, of course, apply the Chevron doctrine as it currently exists.

satisfied here, PBGC points to the statutory language contained in Section 1302, which explicitly lays out PBGC's role and responsibility in administering and enforcing Title IV. See Fisher, 468 F. Supp. 3d at 14 ("ERISA authorizes the PBGC to promulgate "rules and regulations "as may be necessary to carry out the purposes of [Title IV of ERISA].").

Specifically, Section 1302 states that PBGC has the power to "to adopt, amend, and repeal, by the board of directors, bylaws, rules, and regulations relating to the conduct of its business and the exercise of all other rights and powers granted to it by this chapter and such other bylaws, rules, and regulations as may be necessary to carry out the purposes of this subchapter" and "to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to the corporation by this chapter."

Additionally, Section 1432(g) directs PBGC to determine whether applicants qualify for SFA and to deny that an application if it finds that the "the plan is not eligible."

The Court finds that § 1302's broad grant of authority to PBFC is sufficient to demonstrate Congress's intent to delegate to it interpretive authority of Title IV of ERISA and, thus, satisfies Step Zero of Chevron. See, e.g., Lewis v. Pension Benefit Guar. Corp., 314 F. Supp. 3d 135, 151 (D.D.C. 2018), aff'd, 831 Fed. App'x 523 (D.C. Cir. 2020) (citing Beck v. PACE Int'l Union, 551 U.S. 96, 97 (2007)).

The Fund contends that, notwithstanding the grant of authority in Section 1302, Congress did not delegate to PBGC the authority to speak with the "force of law" with respect to the SFA's eligibility criteria, as set forth in Section 1462. Rather, the Fund asserts that Congress limited PBGC's authority to issuing regulations or guidance for certain discrete topics and appears to take the position that PBGC's role vis-à-vis the SFA application process is akin to that of a mere gatekeeper that rubberstamps eligible applications. The Court disagrees.

The Fund's argument that the text of the SFA evinces Congress's intent to limit PBGC's interpretive authority under ERISA is unpersuasive.

The Fund relies on two aspects of the SFA. First, the Fund stresses that Section 1432(a)(1) states that PBGC "shall provide special financial assistance to an eligible multiemployer plan under this section, upon the application of a plan sponsor of such a plan for such assistance." 29 U.S.C. § 1432(a)(1) (emphasis added). Second, the Fund argues that "Congress expressly limited PBGC's authority to issuing 'regulations or guidance setting forth requirements for special financial assistance applications under this section.' 29 U.S.C. § 1432(c)." and "did not give PBGC authority to determine what plans are eligible for SFA." (Pl. Reply Mem. at 8.) In support, PBGC cites to 29 U.S.C. §1432(c), which directs PBGC to "issue regulations or guidance setting forth requirements for special financial assistance applications under this section" and also directs that three specific matters that that must be addressed in those regulations. The Fund reasons that because these provisions—which direct PBGC to issue regula-

tions concerning applications—and the mandatory directive in the statute highlighted earlier together establish that PBGC loses at Step Zero of the Chevron analysis.

The Fund's arguments about these provisions are not persuasive. The fact that Congress specifically directed PBGC to issue regulations and guidance on certain topics concerning SFA does not undermine or limit the broader authority granted to PBGC in Section 1302 to interpret the various provisions of Title IV, including Section 1347 and the other statutory provisions discussed below as well as § 1462 which is itself part of Title IV.

The Court also notes that the critical statutory provisions that must be analyzed and interpreted in order to determine whether the once-terminated Fund can "restore" itself are not even found in any of newly passed statutory provisions concerning the SFA. Rather, the relevant aspects of Title IV that concern termination and restoration were all enacted prior to the passage of the ARP. Section 1462 and the other statutory provisions that were enacted as part of the ARP do not speak to the question of whether terminated plans can be restored itself and exit terminated status. Rather, other provisions of Title IV concern the termination and restoration of plans. And, PBGC is authorized, under Section 1302, to interpret those provisions and Title IV generally. The provisions in Section 1432 cited by the Fund do not alter that authority.

For these reasons, the Court finds that Congress sufficiently delegated interpretive authority of Title IV of ERISA to PBGC, such that its interpretation of Title IV,

including Sections 1347 and related provisions, trigger the Chevron deference framework.

Additionally, the Fund also argues, in footnotes, that PBGC's letter which found the Fund to be ineligible, and reflects PBGC's interpretation of Title IV, was too informal to warrant Chevron deference. According to the Fund, there is no "indication that the denial letter itself was promulgated with the force of law" and PBGC's denial letter is analogous to the type of determinations that courts have found insufficient to trigger Chevron deference. The Court disagrees. PBGC's determination of eligibility here is not akin to the tariff "ruling letters" that were found insufficient to warrant deference in Mead, 533 U.S. at 226-27. See Lewis, 314 F. Supp. at 151; cf. Apotex, Inc. v. Food & Drug Admin., 226 F. App'x 4, 5 (D.C. Cir. 2007) (granting Chevron deference to FDA approval letter, which concerned an "informal adjudication[]").

4. Analysis Under Chevron Steps One and Two

The Court now turns to the remaining two steps of Chevron. Sections 1341, 1341a, and 1342 provide the bases for termination of Title IV-covered pension plans. Section 1341a addresses the termination of multiemployer plans via mass withdrawal. Other grounds for termination are addressed in Section 1341[10] and 1342.[11]

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[10] Section 1341 sets forth the exclusive procedures for terminating single-employer pension plans in a standard termination or in a distress termination under ERISA. See 29 U.S.C. § 1341.

[11] Section 1342 gives PBGC the broad authority to initiate an involuntary termination of a plan to protect that plan's beneficiaries or the pension insurance system whenever PBGC determines that certain events have transpired. See Pension Ben. Guar. Corp. v. Heppenstall Co., 633 F.2d 293, 297 (3d Cir. 1980) (explaining that

Section 1347, which is Title IV's only provision that addresses the restoration of a terminated plan, authorizes PBGC to restore a plan that is terminated (or is in the process of being terminated) under Section 1341 or 1342. Section 1347, however, is silent as to the ability of a private party (or PBGC) to restore multiemployer plans that are terminated pursuant to Section 1341a.

PBGC contends that this silence as to Section 1341a, when analyzed under the interpretive canon, expressio unius est exclusio alterius (the expression of one is the exclusion of the other), leads to the conclusion that Congress intended to prohibit the restoration of a terminated multiemployer plan under Section 1347. PBGC argues that Sections 1341, 1341a, 1342 are an "associated group" under the expressio unius canon. PBGC further asserts that, given this "associated group" of statutes, the fact that Section 1347 provides PBGC with the power to undo both voluntary and involuntary terminations of plans under Sections 1341 and 1342 but is silent as to the power PBGC or any other party to restore multiemployer plans terminated by mass withdrawal, such a power is *expressly* prohibited. See 29 U.S.C. § 1347.

According to the Fund, PBGC's expression unius argument misses the mark because: (1) Section 1347 explicitly enumerates PBGC's power to restore plans, not the rights of any other parties to restore plans; and (2)

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the statute provides for involuntary termination because asset preservation is critical to PBGC's liability exposure). Under Section 1342, PBGC has discretionary authority to terminate both single employer and multiemployer plans. See also 29 U.S.C. § 1348(b)(2) (referencing termination of multiemployer plan in accordance with Section 1342).

Section 1347 applies only to the restoration of single-employer plans, rendering PBGC's interpretive canon argument inapplicable.

Title IV does not explicitly prohibit a private party from restoring a multiemployer plan that was terminated under Section 1341a. Title IV also does not explicitly authorize restoration of a plan by a plan sponsor. While both parties contend that their respective interpretations indicate that Congress unambiguously answered this question in their favor the Court assumes that, for purposes of the Chevron Step One analysis, Title IV is "silent or ambiguous" on this question.

The Court then turns to Chevron Step Two where the question for the Court is whether PBGC's interpretation is "based on a permissible construction of the statute," Chevron, 467 U.S. at 843, or, in other words, "within the range of permissible readings of the statute." Cmty. Health Care Ass'n of New York v. Shah, 770 F.3d 129, 146 (2d Cir. 2014). PBGC's interpretation of Title IV need not be "the only one it permissibly could have adopted . . . , or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." Chevron, 467 U.S. at 843, n.11. Indeed, it need only be "reasonable." Catskill Mountains, 846 F.3d at 507.

While the parties each marshal arguments in favor of their respective interpretations, it cannot be said that PBGC's interpretation is unreasonable, arbitrary, or capricious. PBGC's interpretative argument based on the expressio unius canon is reasonable and a permissible construction of Title IV. See Chevron U.S.A. Inc. v. Echazabal, 536 U.S. 73, 80 (2002) (quoting United States v. Vonn, 535 U.S. 55, 65 (2002)) ("[E]xpressing

one item of [an] associated group or series excludes another left unmentioned."); N.L.R.B. v. SW Gen., Inc., 580 U.S. 288, 302 (2017) ("If a sign at the entrance to a zoo says 'come see the elephant, lion, hippo, and giraffe,' and a temporary sign is added saying 'the giraffe is sick,' you would reasonably assume that the others are in good health."). The fact that ERISA is a "comprehensive and reticulated statute"—where, given its provisions concerning termination and restoration, one would expect Congress to explicitly authorize the restoration of terminated multiemployer plans by private parties if it intended to permit such restorations—further buttresses the reasonableness of PBGC's interpretation. Nachman Corp. v. Pension Ben. Guar. Corp., 446 U.S. 359, 361 (1980). The legislative history cited by PBGC also weighs in favor PBGC's interpretation. (See PBGC Mem. at 13-14.) Finally, PBGC offers a compelling rationale why, when Congress enacted all the provisions cited above addressing termination and withdrawal, Congress did not authorize the restoration of multiemployer plan that were terminated by mass withdrawal. Prior to the passage of the SFA program, there would have been little reason for parties to seek such restoration—a point driven home by the fact that, to PBGC's knowledge, no other parties have ever attempted to restore such a terminated plan. (PBGC Mem. at 5-6.) Based on the points above, the Court concludes that PBGC's interpretation of Title IV as prohibiting restoration of a multiemployer plan terminated by mass withdrawal is, even if not the only possible in-

terpretation, certainly within the range of reasonable interpretations.[12]

C. Section 1441

PBGC's primary argument is that Title IV's silence concerning the permissibility of restoring multiemployer funds that were terminated via mass withdrawal precludes such restoration. PBGC also asserts that one specific provision of Title IV, Section 4281, 29 U.S.C. § 1441, also indicates that underfunded multiemployer plans that were terminated via mass withdrawal cannot restored. PBGC's argument appears to be that even assuming arguendo that Title IV does not, per se, prohibit restoration of multiemployer funds terminated via mass withdrawal, Section 1441 precludes the specific manner in which the Fund purported to restore itself—namely, by installing a new bargaining unit and taking on additional, new liabilities, for those new employees in order to effectuate the Fund's purported restoration.

Section 1441 addresses the benefits provided by plans that are terminated via mass withdrawal. According to PBGC, "Section 4281 effectively prohibits a multiemployer plan terminated by mass withdrawal from increasing benefit liabilities while its liabilities exceed its assets." (PBGC Mem. at 16.) Here, the Fund's purported transformation from terminated to restored appears to have been accomplished through the execution of a collective bargaining agreement that increased the Fund's benefit liabilities.

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[12] Moreover, even if Chevron was inapplicable to PBGC's Section 1347 arguments, the Court would still agree with its interpretation of that Section.

The Fund responds to PBGC's Section 1441 argument by insisting that Section 1441 only applies to terminated plans and that, once its restoration was accomplished, the Fund no longer had to comply with Section 1441.

As PBGC's reply brief points out, the Fund seems to be arguing that it "was restored at the moment an employer and union (allegedly) amended their CBA to require contributions to the terminated Fund, and that this happened before the newly active Fund participants performed any work covered by the amended CBA, so before they accrued any benefits, so the Fund had not yet increased its benefit liabilities when it was restored, so the restoration, while it entailed benefit increases, did not violate section 4281." (PBGC Reply at 7-8.) According to PBGC, this "is an obtusely literalistic interpretation of section 4281, defiant of the purpose manifest in the text, to preserve the limited assets of an underfunded terminated plan—which by definition has no contributing employers (or, in Fund's case, assuming restoration were possible, a de minimis contribution base completely inadequate to its liabilities)—for payment of nonforfeitable benefits already accrued and, when that becomes impossible, for guaranteed benefits." (PBGC Reply Mem. at 8.) As such, PBGC contends that its "contrary, reasonable interpretation [of Section 1441] must be upheld." (Id.)

Because the Court determined earlier that that Title IV does not permit restoration of multiemployer funds terminated via mass withdrawal, it is unnecessary to determine whether the path the Fund took to its purported restoration also specifically violates Section 1441. As PBGC points out, the relevant "CBA amendment was

not in the administrative record before PBGC." (PBGC Reply Mem. at 7 n.4.) Accordingly, the Court declines to reach this issue. The Court also notes that the parties' arguments concerning Section 1441 are underdeveloped. The Fund does not address the specific provisions of Section 1441 or explain how the manner in which it purportedly restored itself complied with Section 1441. And PBGC's papers are less than precise in identifying the particulars of its "interpretation" of Section 1441. Ultimately, it is unnecessary to reach this issue in light of the Court's conclusion, in the prior section, that the Funds' restoration was not permitted irrespective of the means it sought to accomplish that goal.[13]

IV. CONCLUSION

For the foregoing reasons, the Court grants PBGC's motion for summary judgment and DENIES the Fund's motion for summary judgment. For the reasons explained above, the Court affirms PBGC's denial of the Fund's SFA application as that denial was not erroneous. The Clerk of the Court is respectfully directed to close this case.

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[13] Even if the Fund could establish that the manner in which it purportedly restored itself did not violate the letter of Section 1441, the purpose and structure of Section 1441 could potentially support to PBGC's broader argument that, considering Title IV in its entirety, Title IV's silence concerning the restoration of multiemployer funds terminated via mass withdrawal establishes that such restorations are prohibited.

SO ORDERED.

Dated: October 26, 2023
Central Islip, New York

/s/ (JMA)
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE

APPENDIX D

1. 26 U.S.C. 432(k) provides:

Additional funding rules for multiemployer plans in endangered status or critical status

(k) Rules relating to eligible multiemployer plans

(1) Plans applying for special financial assistance

In the case of an eligible multiemployer plan which applies for special financial assistance under section 4262 of such Act—[1]

(A) In general

Such application shall be submitted in accordance with the requirements of such section, including any guidance issued thereunder by the Pension Benefit Guaranty Corporation.

(B) Reinstatement of suspended benefits

In the case of a plan for which a suspension of benefits has been approved under subsection (e)(9), the application shall describe the manner in which suspended benefits will be reinstated in accordance with paragraph (2)(A) and guidance issued by the Secretary if the plan receives special financial assistance.

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[1] Probably means section 4262 of the Employee Retirement Income Security Act of 1974, see References in Text note below.

(C) Amount of financial assistance

(i) In general

In determining the amount of special financial assistance to be specified in its application, an eligible multiemployer plan shall—

(I) use the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021, provided that such interest rate does not exceed the interest rate limit, and

(II) for other assumptions, use the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions are unreasonable.

(ii) Interest rate limit

For purposes of clause (i), the interest rate limit is the rate specified in section 430(h)(2)(C)(iii) (disregarding modifications made under clause (iv) of such section) for the month in which the application for special financial assistance is filed by the eligible multiemployer plan or the 3 preceding months, with such specified rate increased by 200 basis points.

(iii) Changes in assumptions

If a plan determines that use of one or more prior assumptions is unreasonable, the plan may propose in its application to change such assumptions, provided that the plan discloses such changes in its application and describes

why such assumptions are no longer reasonable. The plan may not propose a change to the interest rate otherwise required under this subsection for eligibility or financial assistance amount.

(D) Plans applying for priority consideration

In the case of a plan applying for special financial assistance under rules providing for temporary priority consideration, as provided in paragraph (4)(C), such plan's application shall be submitted to the Secretary in addition to the Pension Benefit Guaranty Corporation.

(2) Plans receiving special financial assistance

In the case of an eligible multiemployer plan receiving special financial assistance under section 4262 of the Employee Retirement Income Security Act of 1974—

(A) Reinstatement of suspended benefits

The plan shall—

(i) reinstate any benefits that were suspended under subsection (e)(9) or section 4245(a) of the Employee Retirement Income Security Act of 1974, effective as of the first month in which the effective date for the special financial assistance occurs, for participants and beneficiaries as of such month, and

(ii) provide payments equal to the amount of benefits previously suspended to any participants or beneficiaries in pay status as of the effective date of the special financial assistance, payable, as determined by the plan—

(I) as a lump sum within 3 months of such effective date; or

(II) in equal monthly installments over a period of 5 years, commencing within 3 months of such effective date, with no adjustment for interest.

(B) Restrictions on the use of special financial assistance

Special financial assistance received by the plan may be used to make benefit payments and pay plan expenses. Such assistance shall be segregated from other plan assets, and shall be invested by the plan in investment-grade bonds or other investments as permitted by regulations or other guidance issued by the Pension Benefit Guaranty Corporation.

(C) Conditions on plans receiving special financial assistance

(i) In general

The Pension Benefit Guaranty Corporation, in consultation with the Secretary, may impose, by regulation or other guidance, reasonable conditions on an eligible multiemployer plan receiving special financial assistance relating to increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions and allocation of expenses to other benefit plans, and withdrawal liability.

(ii) Limitation

The Pension Benefit Guaranty Corporation shall not impose conditions on an eligible multiemployer plan as a condition of, or following receipt of, special financial assistance relating to—

(I) any prospective reduction in plan benefits (including benefits that may be adjusted pursuant to subsection (e)(8)),

(II) plan governance, including selection of, removal of, and terms of contracts with, trustees, actuaries, investment managers, and other service providers, or

(III) any funding rules relating to the plan.

(D) Assistance disregarded for certain purposes

(i) Funding standards

Special financial assistance received by the plan shall not be taken into account for determining contributions required under section 431.

(ii) Insolvent plans

If the plan becomes insolvent within the meaning of section 418E after receiving special financial assistance, the plan shall be subject to all rules applicable to insolvent plans.

(E) Ineligibility for suspension of benefits

The plan shall not be eligible to apply for a new suspension of benefits under subsection (e)(9)(G).

(3) Eligible multiemployer plan

(A) In general

For purposes of this section, a multiemployer plan is an eligible multiemployer plan if—

(i) the plan is in critical and declining status in any plan year beginning in 2020 through 2022,

(ii) a suspension of benefits has been approved with respect to the plan under subsection (e)(9) as of the date of the enactment of this subsection;

(iii) in any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status, has a modified funded percentage of less than 40 percent, and has a ratio of active to inactive participants which is less than 2 to 3, or

(iv) the plan became insolvent within the meaning of section 418E after December 16, 2014, and has remained so insolvent and has not been terminated as of the date of enactment of this subsection.

(B) Modified funded percentage

For purposes of subparagraph (A)(iii), the term "modified funded percentage" means the percentage equal to a fraction the numerator of which is current value of plan assets (as defined in section 3(26) of the Employee Retirement Income Security Act of 1974) and the denominator of which is current liabilities (as defined in section 431(c)(6)(D)).

(4) Coordination with pension benefit guaranty corporation

In prescribing the application process for eligible multiemployer plans to receive special financial assistance under section 4262 of the Employee Retirement Income Security Act of 1974 and reviewing applications of such plans, the Pension Benefit Guaranty Corporation shall coordinate with the Secretary in the following manner:

(A) In the case of a plan which has suspended benefits under subsection (e)(9)—

(i) in determining whether to approve the application, such corporation shall consult with the Secretary regarding the plan's proposed method of reinstating benefits, as described in the plan's application and in accordance with guidance issued by the Secretary, and

(ii) such corporation shall consult with the Secretary regarding the amount of special financial assistance needed based on the projected funded status of the plan as of the last day of the plan year ending in 2051, whether the plan proposes to repay benefits over 5 years or as a lump sum, as required by paragraph (2)(A)(ii), and any other relevant factors, as determined by such corporation in consultation with the Secretary, to ensure the amount of assistance is sufficient to meet such requirement and is sufficient to pay benefits as required in section 4262(j)(1) of such Act.

(B) In the case of any plan which proposes in its application to change the assumptions used, as provided in paragraph (1)(C)(iii), such corporation shall consult with the Secretary regarding such proposed change in assumptions.

(C) If such corporation specifies in regulations or guidance that temporary priority consideration is available for plans which are insolvent within the meaning of section 418E or likely to become so insolvent or for plans which have suspended benefits under subsection (e)(9), or that availability is otherwise based on the funded status of the plan under this section, as permitted by section 4262(d) of such Act, such corporation shall consult with the Secretary regarding any granting of priority consideration to such plans.

2. 29 U.S.C. 1081(c) provides:

Coverage

(c) Applicability of this part to terminated multiemployer plans

This part applies, with respect to a terminated multiemployer plan to which section 1321 of this title applies, until the last day of the plan year in which the plan terminates, within the meaning of section 1341a(a)(2) of this title.

3. 29 U.S.C. 1085(a) and (b) provide:

Additional funding rules for multiemployer plans in endangered status or critical status

(a) General rule

For purposes of this part, in the case of a multiemployer plan in effect on July 16, 2006—

(1) if the plan is in endangered status—

(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period,

(2) if the plan is in critical status—

(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period, and

(3) if the plan is in critical and declining status—

(A) the requirements of paragraph (2) shall apply to the plan; and

(B) the plan sponsor may, by plan amendment, suspend benefits in accordance with the requirements of subsection (e)(9).

(b) Determination of endangered and critical status

For purposes of this section—

(1) Endangered status

A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and is not described in paragraph (5), and, as of the beginning of the plan year, either—

(A) the plan's funded percentage for such plan year is less than 80 percent, or

(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 1084(d) of this title.

For purposes of this section, a plan shall be treated as in seriously endangered status for a plan year if the plan is described in both subparagraphs (A) and (B).

(2) Critical status

A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

(A) A plan is described in this subparagraph if—

(i) the funded percentage of the plan is less than 65 percent, and

(ii) the sum of—

(I) the fair market value of plan assets, plus

(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

(B) A plan is described in this subparagraph if—

(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 1084(d) of this title, or

(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 1084(d) of this title.

(C) A plan is described in this subparagraph if—

(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year,

(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 1084(d) of this title.

(D) A plan is described in this subparagraph if the sum of—

(i) the fair market value of plan assets, plus

(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current

plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

(3) Annual certification by plan actuary

(A) In general

Not later than the 90th day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury and to the plan sponsor—

(i) whether or not the plan is in endangered status for such plan year, or would be in endangered status for such plan year but for paragraph (5),,[1] whether or not the plan is or will be in critical status for such plan year or for any of the succeeding 5 plan years, and whether or not the plan is or will be in critical and declining status for such plan year, and

(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

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[1] So in original.

(B) Actuarial projections of assets and liabilities

(i) In general

Except as provided in clause (iv), in making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The actuary's projections shall be based on reasonable actuarial estimates, assumptions, and methods that, except as provided in clause (iii), offer the actuary's best estimate of anticipated experience under the plan. The projected present value of liabilities as of the beginning of such year shall be determined based on the most recent of either—

(I) the actuarial statement required under section 1023(d) of this title with respect to the most recently filed annual report, or

(II) the actuarial valuation for the preceding plan year.

(ii) Determinations of future contributions

Any actuarial projection of plan assets shall assume—

(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of

the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

(iii) Projected industry activity

Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, shall be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

(iv)[2] Projections relating to critical status in succeeding plan years

Clauses (i) and (ii) (other than the 2nd sentence of clause (i) may be disregarded by a plan actuary in the case of any certification of whether a plan will be in critical status in a succeeding plan year, except that a plan sponsor may not elect to be in critical status for a plan year under paragraph (4) in any case in which the certification upon which such election would be based is made without regard to such clauses.

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[2] So in original. Two cls. (iv) have been enacted.

(iv)[2] Projections of critical and declining status

In determining whether a plan is in critical and declining status as described in subsection (e)(9), clauses (i), (ii), and (iii) shall apply, except that—

(I) if reasonable, the plan actuary shall assume that each contributing employer in compliance continues to comply through the end of the rehabilitation period or such later time as provided in subsection (e)(3)(A)(ii) with the terms of the rehabilitation plan that correspond to the schedule adopted or imposed under subsection (e), and

(II) the plan actuary shall take into account any suspensions of benefits described in subsection (e)(9) adopted in a prior plan year that are still in effect.

(C) Penalty for failure to secure timely actuarial certification

Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 1132(c)(2) of this title as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 1021(b)(1) of this title.

(D) Notice

(i) In general

In any case in which it is certified under subparagraph (A) that a multiemployer plan is or will be in endangered or critical status for a

plan year or in which a plan sponsor elects to be in critical status for a plan year under paragraph (4), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary. In any case in which a plan sponsor elects to be in critical status for a plan year under paragraph (4), the plan sponsor shall notify the Secretary of the Treasury of such election not later than 30 days after the date of such certification or such other time as the Secretary of the Treasury may prescribe by regulations or other guidance.

(ii) Plans in critical status

If it is certified under subparagraph (A) that a multiemployer plan is or will be in critical status, the plan sponsor shall include in the notice under clause (i) an explanation of the possibility that—

(I) adjustable benefits (as defined in subsection (e)(8)) may be reduced, and

(II) such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after the date such notice is provided for the first plan year in which the plan is in critical status.

(iii) In the case of a multiemployer plan that would be in endangered status but for paragraph (5), the plan sponsor shall provide no-

tice to the bargaining parties and the Pension Benefit Guaranty Corporation that the plan would be in endangered status but for such paragraph.

(iv) Model notice

The Secretary of the Treasury, in consultation with the Secretary[3] shall prescribe a model notice that a multiemployer plan may use to satisfy the requirements under clauses (ii) and (iii).

(v) Notice of projection to be in critical status in a future plan year

In any case in which it is certified under subparagraph (A)(i) that a multiemployer plan will be in critical status for any of 5 succeeding plan years (but not for the current plan year) and the plan sponsor of such plan has not made an election to be in critical status for the plan year under paragraph (4), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the projected critical status to the Pension Benefit Guaranty Corporation.

(4) Election to be in critical status

Notwithstanding paragraph (2) and subject to paragraph (3)(B)(iv)—

(A) the plan sponsor of a multiemployer plan that is not in critical status for a plan year but that is projected by the plan actuary, pursuant to the

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[3] So in original. Probably should be followed by a comma.

determination under paragraph (3), to be in critical status in any of the succeeding 5 plan years may, not later than 30 days after the date of the certification under paragraph (3)(A), elect to be in critical status effective for the current plan year,

(B) the plan year in which the plan sponsor elects to be in critical status under subparagraph (A) shall be treated for purposes of this section as the first year in which the plan is in critical status, regardless of the date on which the plan first satisfies the criteria for critical status under paragraph (2), and

(C) a plan that is in critical status under this paragraph shall not emerge from critical status except in accordance with subsection (e)(4)(B).

(5) Special rule

A plan is described in this paragraph if—

(A) as part of the actuarial certification of endangered status under paragraph (3)(A) for the plan year, the plan actuary certifies that the plan is projected to no longer be described in either paragraph (1)(A) or paragraph (1)(B) as of the end of the tenth plan year ending after the plan year to which the certification relates, and

(B) the plan was not in critical or endangered status for the immediately preceding plan year.

(6) Critical and declining status

For purposes of this section, a plan in critical status shall be treated as in critical and declining status if the plan is described in one or more of subparagraphs (A), (B), (C), and (D) of paragraph (2) and the

plan is projected to become insolvent within the meaning of section 1426 of this title during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds 2 to 1 or if the funded percentage of the plan is less than 80 percent).

4. 29 U.S.C. 1432 provides:

Special financial assistance by the corporation

(a) Special financial assistance

(1) In general

The corporation shall provide special financial assistance to an eligible multiemployer plan under this section, upon the application of a plan sponsor of such a plan for such assistance.

(2) Inapplicability of certain repayment obligation

A plan receiving special financial assistance pursuant to this section shall not be subject to repayment obligations with respect to such special financial assistance.

(b) Eligible multiemployer plans

(1) In general

For purposes of this section, a multiemployer plan is an eligible multiemployer plan if—

(A) the plan is in critical and declining status (within the meaning of section 1085(b)(6) of this title) in any plan year beginning in 2020 through 2022;

(B) a suspension of benefits has been approved with respect to the plan under section 1085(e)(9) of this title as of March 11, 2021;

(C) in any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status (within the meaning of section 1085(b)(2) of this title), has a modified funded percentage of less than 40 percent, and has a ratio of active to inactive participants which is less than 2 to 3; or

(D) the plan became insolvent for purposes of section 418E of title 26 after December 16, 2014, and has remained so insolvent and has not been terminated as of March 11, 2021.

(2) Modified funded percentage

For purposes of paragraph (1)(C), the term "modified funded percentage" means the percentage equal to a fraction the numerator of which is current value of plan assets (as defined in section 1002(26) of this title) and the denominator of which is current liabilities (as defined in section 431(c)(6)(D) of title 26 and section 1084(c)(6)(D) of this title).

(c) Applications for special financial assistance

Within 120 days of March 11, 2021, the corporation shall issue regulations or guidance setting forth requirements for special financial assistance applications under this section. In such regulations or guidance, the corporation shall—

(1) limit the materials required for a special financial assistance application to the minimum necessary to make a determination on the application;

(2) specify effective dates for transfers of special financial assistance following approval of an application, based on the effective date of the supporting actuarial analysis and the date on which the application is submitted; and

(3) provide for an alternate application for special financial assistance under this section, which may be used by a plan that has been approved for a partition under section 1413 of this title before March 11, 2021.

(d) Temporary priority consideration of applications

(1) In general

The corporation may specify in regulations or guidance under subsection (c) that, during a period no longer than the first 2 years following March 11, 2021, applications may not be filed by an eligible multiemployer plan unless—

(A) the eligible multiemployer plan is insolvent or is likely to become insolvent within 5 years of March 11, 2021;

(B) the corporation projects the eligible multiemployer plan to have a present value of financial assistance payments under section 1431 of this title that exceeds $1,000,000,000 if the special financial assistance is not ordered;

(C) the eligible multiemployer plan has implemented benefit suspensions under section 1085(e)(9) of this title as of March 11, 2021; or

(D) the corporation determines it appropriate based on other similar circumstances.

(e) Actuarial assumptions

(1) Eligibility

For purposes of determining eligibility for special financial assistance, the corporation shall accept assumptions incorporated in a multiemployer plan's determination that it is in critical status or critical and declining status (within the meaning of section 1085(b) of this title) for certifications of plan status completed before January 1, 2021, unless such assumptions are clearly erroneous. For certifications of plan status completed after December 31, 2020, a plan shall determine whether it is in critical or critical and declining status for purposes of eligibility for special financial assistance by using the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions (excluding the plan's interest rate) are unreasonable.

(2) Amount of financial assistance

In determining the amount of special financial assistance in its application, an eligible multiemployer plan shall—

(A) use the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021, provided that such interest rate may not exceed the interest rate limit; and

(B) for other assumptions, use the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions are unreasonable.

(3) Interest rate limit

The interest rate limit for purposes of this subsection is the rate specified in section 1083(h)(2)(C)(iii) of this title (disregarding modifications made under clause (iv) of such section) for the month in which the application for special financial assistance is filed by the eligible multiemployer plan or the 3 preceding months, with such specified rate increased by 200 basis points.

(4) Changes in assumptions

If a plan determines that use of one or more prior assumptions is unreasonable, the plan may propose in its application to change such assumptions, provided that the plan discloses such changes in its application and describes why such assumptions are no longer reasonable. The corporation shall accept such changed assumptions unless it determines the changes are unreasonable, individually or in the aggregate. The plan may not propose a change to the interest rate otherwise required under this subsection for eligibility or financial assistance amount.

(f) Application deadline

Any application by a plan for special financial assistance under this section shall be submitted to the corporation (and, in the case of a plan to which section 432(k)(1)(D) of title 26 applies, to the Secretary of the Treasury) no later than December 31, 2025, and any revised application for special financial assistance shall be submitted no later than December 31, 2026.

(g) Determinations on applications

A plan's application for special financial assistance under this section that is timely filed in accordance with the regulations or guidance issued under subsection (c) shall be deemed approved unless the corporation notifies the plan within 120 days of the filing of the application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is not eligible under this section. Such notice shall specify the reasons the plan is ineligible for special financial assistance, any proposed change or assumption is unreasonable, or information is needed to complete the application. If a plan is denied assistance under this subsection, the plan may submit a revised application under this section. Any revised application for special financial assistance submitted by a plan shall be deemed approved unless the corporation notifies the plan within 120 days of the filing of the revised application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is not eligible under this section. Special financial assistance issued by the corporation shall be effective on a date determined by the corporation, but no later than 1 year after a plan's special financial assistance application is approved by the corporation or deemed approved. The corporation shall not pay any special financial assistance after September 30, 2030.

(h) Manner of payment

The payment made by the corporation to an eligible multiemployer plan under this section shall be made as a single, lump sum payment.

(i) Amount and manner of special financial assistance

(1) In general

Special financial assistance under this section shall be a transfer of funds in the amount necessary as demonstrated by the plan sponsor on the application for such special financial assistance, in accordance with the requirements described in subsection (j). Special financial assistance shall be paid to such plan as soon as practicable upon approval of the application by the corporation.

(2) No cap

Special financial assistance granted by the corporation under this section shall not be capped by the guarantee under 1322a of this title.

(j) Determination of amount of special financial assistance

(1) In general

The amount of financial assistance provided to a multiemployer plan eligible for financial assistance under this section shall be such amount required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment under this section and ending on the last day of the plan year ending in 2051, with no reduction in a participant's or beneficiary's accrued benefit as of March 11, 2021, except to the extent of a reduction in accordance with section 1085(e)(8) of this title adopted prior to the plan's application for special financial assistance under this section, and taking into account the reinstatement of benefits required under subsection (k).

(2) Projections

The funding projections for purposes of this section shall be performed on a deterministic basis.

(k) Reinstatement of suspended benefits

The Secretary, in coordination with the Secretary of the Treasury, shall ensure that an eligible multiemployer plan that receives special financial assistance under this section—

(1) reinstates any benefits that were suspended under section 1085(e)(9) of this title or section 1426(a) of this title in accordance with guidance issued by the Secretary of the Treasury pursuant to section 432(k)(1)(B) of title 26, effective as of the first month in which the effective date for the special financial assistance occurs, for participants and beneficiaries as of such month; and

(2) provides payments equal to the amount of benefits previously suspended under section 1085(e)(9) or 1426(a) of this title to any participants or beneficiaries in pay status as of the effective date of the special financial assistance, payable, as determined by the eligible multiemployer plan—

(A) as a lump sum within 3 months of such effective date; or

(B) in equal monthly installments over a period of 5 years, commencing within 3 months of such effective date, with no adjustment for interest.

(*l*) Restrictions on the use of special financial assistance

Special financial assistance received under this section and any earnings thereon may be used by an eligible multiemployer plan to make benefit payments and pay plan expenses. Special financial assistance and any earnings on such assistance shall be segregated from other plan assets. Special financial assistance shall be invested by plans in investment-grade bonds or other investments as permitted by the corporation.

(m) Conditions on plans receiving special financial assistance

(1) In general

The corporation, in consultation with the Secretary of the Treasury, may impose, by regulation or other guidance, reasonable conditions on an eligible multiemployer plan that receives special financial assistance relating to increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions to, and allocation of expenses to, other benefit plans, and withdrawal liability.

(2) Limitation

The corporation shall not impose conditions on an eligible multiemployer plan as a condition of, or following receipt of, special financial assistance under this section relating to—

(A) any prospective reduction in plan benefits (including benefits that may be adjusted pursuant to section 1085(e)(8) of this title);

(B) plan governance, including selection of, removal of, and terms of contracts with, trustees, actuaries, investment managers, and other service providers; or

(C) any funding rules relating to the plan receiving special financial assistance under this section.

(3) Payment of premiums

An eligible multiemployer plan receiving special financial assistance under this section shall continue to pay all premiums due under section 1307 of this title for participants and beneficiaries in the plan.

(4) Assistance not considered for certain purposes

An eligible multiemployer plan that receives special financial assistance shall be deemed to be in critical status within the meaning of section 1085(b)(2) of this title until the last plan year ending in 2051.

(5) Insolvent plans

An eligible multiemployer plan receiving special financial assistance under this section that subsequently becomes insolvent will be subject to the current rules and guarantee for insolvent plans.

(6) Ineligibility for other assistance

An eligible multiemployer plan that receives special financial assistance under this section is not eligible to apply for a new suspension of benefits under section 1085(e)(9)(G) of this title.

(n) Coordination with Secretary of the Treasury

In prescribing the application process for eligible multiemployer plans to receive special financial assistance under this section and reviewing applications of such plans, the corporation shall coordinate with the Secretary of the Treasury in the following manner:

(1) In the case of a plan which has suspended benefits under section 1085(e)(9) of this title—

(A) in determining whether to approve the application, the corporation shall consult with the Secretary of the Treasury regarding the plan's proposed method of reinstating benefits, as described in the plan's application and in accordance with guidance issued by the Secretary of the Treasury, and

(B) the corporation shall consult with the Secretary of the Treasury regarding the amount of special financial assistance needed based on the projected funded status of the plan as of the last day of the plan year ending in 2051, whether the plan proposes to repay benefits over 5 years or as a lump sum, as required by subsection (k)(2), and any other relevant factors, as determined by the corporation in consultation with the Secretary of the Treasury, to ensure the amount of assistance is sufficient to meet such requirement and is sufficient to pay benefits as required in subsection (j)(1).

(2) In the case of any plan which proposes in its application to change the assumptions used, as provided in subsection (e)(4), the corporation shall con-

sult with the Secretary of the Treasury regarding such proposed change in assumptions.

(3) If the corporation specifies in regulations or guidance that temporary priority consideration is available for plans which are insolvent within the meaning of section 418E of title 26 or likely to become so insolvent or for plans which have suspended benefits under section 1085(e)(9) of this title, or that availability is otherwise based on the funded status of the plan under section 1085 of this title, as permitted by subsection (d), the corporation shall consult with the Secretary of the Treasury regarding any granting of priority consideration to such plans.