

No. 25-____

IN THE
Supreme Court of the United States

MFN PARTNERS, LP, ET AL.,
Petitioners,

v.

NEW YORK STATE TEAMSTERS CONFERENCE AND
RETIREMENT FUND, ET AL.
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Pension Benefit Guaranty Corporation (PBGC) can—through the auspices of imposing “reasonable conditions” on multiemployer pension plans (MEPPs) under 29 U.S.C. § 1432(m)(1)—direct MEPPs to exclude certain plan assets from the unfunded-vested-benefits formula in 29 U.S.C. § 1393(c) when calculating an employer’s withdrawal liability, even though that statutory formula expressly includes plan assets as an input.

2. Whether MEPPs can calculate a withdrawing employer’s allocable unfunded vested benefits and annual withdrawal-liability payments through methods that deviate from statutory requirements without obtaining the PBGC’s approval.

PARTIES TO THE PROCEEDING

Petitioners MFN Partners, LP and Mobile Street Holdings, LLC were claim objectors in the bankruptcy court and appellants in the Third Circuit.

Petitioners Yellow Corporation and its affiliated debtors and debtors in possession (collectively, Yellow) were claim objectors in the bankruptcy court and appellants in the Third Circuit. The affiliated debtors and debtors in possession are: Express Lane Services, Inc.; New Penn Motor Express LLC; Roadway Express International, Inc.; Roadway LLC; Roadway Next Day Corporation; USF Bestway Inc.; USF Dugan Inc.; USF Holland International Sales Corporation; USF Holland LLC; USF RedStar LLC; USF Reddaway Inc.; Yellow Freight Corporation; Yellow Logistics, Inc.; YRC Association Solutions, Inc.; YRC Enterprise Services, Inc.; YRC Freight Canada Company; YRC Inc.; YRC International Investments, Inc.; YRC Logistics Inc; YRC Logistics Services, Inc.; YRC Mortgages, LLC; and YRC Regional Transportation, Inc.

Respondents Central States, Southeast and Southwest Areas Pension Fund, Pension Benefit Guaranty Corporation, New York State Teamsters Conference and Retirement Fund, Freight Drivers and Helpers 557 Pension Fund, Management Labor Pension Fund Local 1730, Mid Jersey Trucking Industry and Teamsters Local 701 Pension and Annuity Fund, Road Carriers Local 707 Pension Fund, Teamsters Local 617 Pension Fund, and Trucking Employees of North Jersey Pension Fund were claimants in the bankruptcy court and appellees in the Third Circuit.

RULE 29.6 DISCLOSURE STATEMENT

MFN Partners, LP is a limited partnership and investment vehicle that is exempt from registration under the Investment Company Act of 1940, as amended (the “1940 Act”) and whose securities are not registered under the Securities Act of 1933, as amended (the “Securities Act”). MFN Partners Management, LP is the investment manager that provides investment advisory services to MFN Partners, LP. MFN Partners Management, LP is an SEC-registered investment advisor. Interests in MFN Partners, LP are offered pursuant to applicable exemptions from registration under the Securities Act and 1940 Act, and investors in MFN Partners, LP are generally “qualified purchasers” as defined in the 1940 Act, and include, among others, charitable and not-for-profit organizations, university endowments, high net worth individuals, trusts and other entities. No publicly held corporation owns 10% or more of MFN Partners, LP.

Mobile Street Holdings, LLC is a wholly owned subsidiary of MFN Partners, LP. No publicly held corporation owns 10% or more of Mobile Street Holdings, LLC.

Yellow was a publicly traded company prior to these bankruptcy proceedings. USF Holland LLC and New Penn Motor Express LLC are wholly owned subsidiaries of Yellow Corporation. YRC Inc. (d/b/a YRC Freight) is a wholly owned subsidiary of Roadway LLC, which is a wholly owned subsidiary of Yellow Corporation. USF Reddaway Inc. is a wholly owned subsidiary of YRC Regional Transportation, Inc., which is a wholly owned subsidiary of Yellow Corporation. There are no other parent corporations. No

publicly held company owns more than 10% of Yellow's stock. For completeness of disclosure, however, MFN Partners (through MFN Partners, LP, MFN Partners GP, LLC, MFN Partners Management, LP, MFN Partners Management LLC, Farhad Nanji, and Michael F. DeMichele) and the U.S. Department of Treasury each own 10% or more of Yellow's stock, but those entities are not publicly held companies.

RELATED PROCEEDINGS

United States Bankruptcy Court (Bankr. D. Del.):

In re Yellow Corp., No. 23-bk-11069-CTG (Dec. 2, 2024)

United States District Court (D. Del.):

In re Yellow Corp., No. 1:24-mc-00619-JLH (case pending)

International Brotherhood of Teamsters v. Yellow Corp., No. 1:24-cv-1024-JLH (Jan. 9, 2025)

Pension Benefit Guaranty Corp. v. Yellow Corp., No. 1:24-cv-350-JLH (Sep. 16, 2024)

In re Yellow Corp., No. 1:25-cv-307-JLH (case pending)

In re Yellow Corp., No. 1:25-cv-377-JLH (case pending)

United States Court of Appeals (3rd Cir.):

In re Yellow Corp., No. 25-1421 (Sept. 16, 2025)

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PETITION FOR WRIT OF CERTIORARI

This petition poses questions of exceptional importance concerning fundamental aspects of ERISA’s meticulous statutory scheme. The questions involve several circuit splits, one of which is already before the Court. And at bottom, they are about (1) correcting agency overreach that defies *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024); and (2) reaffirming that Congress’s clear statutory commands control over freewheeling determinations regarding how best to further a statute’s purpose.

Withdrawal liability is a charge imposed on employers exiting an underfunded multiemployer pension plan (MEPP) based on the plan’s unfunded vested benefits, *i.e.*, its underfunding. For decades, Congress has prescribed a straightforward formula for calculating unfunded vested benefits: unfunded vested benefits equal vested benefits minus plan assets. *See* 29 U.S.C. § 1393(c). In the American Rescue Plan Act of 2021 (ARPA), Congress neither changed that formula nor authorized the PBGC to change that formula. But Congress did give billions of dollars in “special financial assistance” (SFA Funds) to certain struggling MEPPs. ARPA provided that these SFA Funds “may” be used by MEPPs to pay plan benefits and expenses. 29 U.S.C. § 1432(*l*). And ARPA gave the PBGC the ability to impose “reasonable conditions” on these MEPPs specifically relating to the allocation of plan assets and withdrawal liability. *Id.* § 1432(*m*)(1).

Invoking that “reasonable conditions” authority, the PBGC issued two regulations that fundamentally change Section 1393(c)’s unfunded-vested-benefits formula: the Phase-In Regulation and the No-

Receivables Regulation (collectively, the PBGC Regulations). These regulations prohibit MEPPs from counting SFA Funds as plan assets when calculating unfunded vested benefits. By reducing MEPPs’ plan assets, the PBGC Regulations increase exiting employers’ withdrawal liability. This correspondingly grants MEPPs a double recovery—as they are paid both directly with SFA Funds and indirectly with inflated contributions from employers.

In the decision below, the Third Circuit upheld the PBGC Regulations as “reasonable conditions” under Section 1432(m)(1). That holding, however, elevated the PBGC’s preference for how to use SFA Funds over clear statutory text. When Congress said SFA Funds “*may*” be used to pay plan benefits and expenses in Section 1432(l), the PBGC transmogrified that to mean the funds must go “*only*” to those purposes and never for calculating corresponding withdrawal liability. By elevating the PBGC’s policy preferences over what Congress actually said, the court erred.

The court also split from the Second Circuit’s decision in *Board of Trustees of Bakery Drivers Local 550 & Industry Pension Fund v. PBGC*, 136 F.4th 26 (2d Cir. 2025), *petition for cert. filed*, 2025 WL 3681858 (U.S. Dec. 12, 2025) (No. 25-701). There, the Second Circuit faced similar policy assertions from the PBGC about which MEPPs should be eligible for SFA Funds under ARPA. Unlike the Third Circuit, the Second Circuit faithfully applied *Loper Bright* and refused to displace clear statutory text in deference to agency priorities. The Third Circuit should have done likewise. It should have held what this Court and many others have held: “May” means “may,” not “shall.”

That error cascaded into others. Having prioritized the PBGC's preference above statutory text, the court then upheld the regulations because they furthered that preference. Never mind that the regulations jarringly amend Section 1393(c)'s unfunded-vested-benefits formula. According to the Third Circuit, that general formula must yield to ARPA's specific policy embodied in the court's (mis)interpretation of Section 1432(*l*).

The resulting perversity is stark. Take this case, which arises from Petitioner Yellow's bankruptcy. Due to the PBGC Regulations, MEPPs that took SFA Funds (SFA MEPPs) greatly inflated their withdrawal-liability claims against Yellow. These artificially inflated claims leave little money for Yellow's other creditors and stockholders. Among those disadvantaged are MEPPs that did not receive SFA Funds; the PBGC, which has its own creditor claim; and the U.S. Treasury, which is Yellow's second largest equity holder. As Senator Hawley stated when protesting the PBGC Regulations, significant regulatory change to the withdrawal-liability framework should be effectuated "in the halls of Congress, not pushed through by administrative fiat."

That is not all. The Third Circuit committed another certiorari-worthy error by allowing two SFA MEPPs to deviate from the statutorily prescribed method for calculating the unfunded vested benefits allocable to Yellow and Yellow's annual withdrawal-liability payments. Such deviations require the PBGC's approval as an "alternative method" of calculation under 29 U.S.C. § 1391(c)(5)(A). *See also id.* §§ 1399(c)(7), 1400(a). Yet the plans never obtained such approval. That should have been dispositive.

But the Third Circuit instead disregarded Section 1391(c)(5)(A) in favor of its view of the statute’s purpose because doing so made “good sense.”

By invoking purpose-based vagaries while discounting statutory text, the Third Circuit’s decision implicates a circuit split that this Court has already agreed to resolve. See *M & K Emp. Sols., LLC v. Trs. of the IAM Nat’l Pension Fund*, 145 S. Ct. 2871 (2025). The issue in *M & K*, like here, is whether MEPPs must follow Section 1391’s statutory prescription for how to calculate withdrawal liability even when deviating from that prescription may allegedly serve broader purposes.

The Court should grant certiorari on both questions presented. At the very least, this Court should hold this petition pending its resolution of *M & K* and then grant, vacate, and remand (GVR) this case should the outcome of *M & K* bear on the issues presented here or the decision below.

OPINIONS BELOW

The Third Circuit’s opinion affirming the bankruptcy court’s grant of summary judgment to Respondents (App.1a-25a) is reported at 152 F.4th 491. The bankruptcy court’s opinion granting partial summary judgment to Respondents (App.29a-72a) is not reported but is available at 2024 WL 4925124.

JURISDICTION

The judgment of the Third Circuit was entered on September 16, 2025. Justice Alito extended the time to file a petition until February 13, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The pertinent statutory and regulatory provisions are reproduced in the appendix to this petition. *See* App.90a-152a.

STATEMENT

A. Statutory Background

1. In 1974, Congress passed the Employee Retirement Income Security Act (ERISA), a “comprehensive and reticulated statute” that was the product of extensive congressional study. *Nachman Corp. v. PBGC*, 446 U.S. 359, 361 (1980); *see Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262 (1993) (“enormously complex and detailed statute”).

As part of ERISA, Congress created the PBGC, a federal corporation, to serve as a backstop by guaranteeing employees’ defined benefits if a pension plan failed. *PBGC v. R.A. Gray & Co.*, 467 U.S. 717, 720 (1984). The PBGC’s backstop covered both single employer pension plans and MEPPs. *Id.* As relevant here, a MEPP is an employee benefit plan to which multiple employers are required to contribute and that is maintained by at least one collective bargaining agreement between multiple employers and one or more labor unions. 29 U.S.C. § 1002(37)(A).

2. ERISA’s original scheme required employers to shoulder some of the financial burden needed to rescue a failing MEPP, but only if they had contributed to a plan in the five years preceding the plan’s termination. *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 608 (1993). This incentivized employers to withdraw from

a “financially shaky” plan early and avoid the later risk of “having to bear alone the entire cost of keeping the shaky plan afloat.” *Milwaukee Brewery Workers’ Pension Plan v. Joseph Schlitz Brewing Co.*, 513 U.S. 414, 416-17 (1995).

Soon after enacting ERISA, Congress became concerned about the large number of MEPPs “experiencing extreme financial hardship.” *R.A. Gray*, 467 U.S. at 721. Worried that an exodus of employers and subsequent plan terminations would “forc[e] the PBGC to assume obligations in excess of its capacity,” *id.*, Congress amended ERISA in the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). Pub. L. No. 96-364, 94 Stat. 1208.

MPPAA requires withdrawing employers to pay a “proportionate share” of a MEPP’s underfunded benefits. *R.A. Gray*, 467 U.S. at 725. This new withdrawal-liability charge “transformed what was only a risk (that a withdrawing employer would have to pay a fair share of underfunding) into a certainty.” *Milwaukee Brewery Workers’ Pension Plan*, 513 U.S. at 417. It also relieved other employers and the PBGC from the burden of covering the underfunding attributable to the withdrawal. *Connolly v. PBGC*, 475 U.S. 211, 215-17 (1986).

3. MPPAA sets forth a “complex scheme” for calculating withdrawal liability. *Bay Area Laundry & Dry Cleaning Pension Tr. Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 196 (1997); see *Milwaukee Brewery Workers’ Pension Plan*, 513 U.S. at 417 (“detailed set of rules”); *Laborers Health & Welfare Tr. Fund For N. Cal. v. Advanced Lightweight Concrete Co.*, 484 U.S.

539, 545 (1988) (“elaborate provision”). Three steps bear emphasizing.

First, a plan calculates its “unfunded vested benefits”—*i.e.*, its underfunding. A plan’s unfunded vested benefits equal the “value of nonforfeitable benefits under the plan” (vested benefits that the plan owes to its participants) minus the “value of the assets of the plan.” 29 U.S.C. § 1393(c); *see Concrete Pipe*, 508 U.S. at 610. Because MPPAA requires that withdrawing employers pay their “fair share of a plan’s underfunding,” *Milwaukee Brewery Workers’ Pension Plan*, 513 U.S. at 417, a crucial question is how underfunded (if at all) a given plan is.

Between its passage in 1980 and the present, Congress amended MPPAA several times. *See, e.g.*, Multiemployer Pension Reform Act of 2014, Pub. L. No. 113-235, Division O, 128 Stat. 2773; Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780; Deficit Reduction Act of 1984, Pub. L. No. 98-369, sec. 558(b)(2), 98 Stat. 494, 899. Yet Congress never modified MPPAA’s basic formula for calculating unfunded vested benefits. The same longstanding formula persists to this day: unfunded vested benefits equal non-forfeitable benefits minus plan assets. *Compare* 29 U.S.C. § 1393(c), *with* § 4241(b)(9), 94 Stat. at 1251.

Second, a share of those unfunded vested benefits is allocated to the withdrawn employer through one of four statutory methods, 29 U.S.C. § 1391(b), (c)(2), (c)(3), (c)(4). Although plans can deviate from those four methods, “any other alternative method[s]” are permissible only “subject to the approval of the [PBGC].” *Id.* § 1391(c)(5)(A); *see also* 29 C.F.R.

§ 4211.1(a) (2025) (same). Under the presumptive method at issue, an employer’s share of unfunded vested benefits is based on the contributions the employer was “required to [make] under the plan.” 29 U.S.C. § 1391(b)(2)(E)(ii)(I).

Third, once allocable unfunded vested benefits are calculated, final adjustments are made. One of those adjustments requires calculating an employer’s annual-payment schedule. That calculation requires using the actual contributions that “the employer had an obligation to contribute under the plan.” 29 U.S.C. § 1399(c)(1)(C)(i). Changes to this calculation also require PBGC approval. *Id.* §§ 1399(c)(7), 1400(a).

B. The PBGC Regulations

1. In the mid-2010s, many MEPPs fell into a deep financial hole. In response, Congress passed ARPA. Pub. L. No. 117-2, 135 Stat. 4. Section 9704 of ARPA provides SFA Funds to certain MEPPs that qualify as “financially troubled.” 135 Stat. at 190-99. At present, the federal government has distributed about \$70.9 billion in SFA Funds to 109 plans with over 1.3 million participants. Press Release, PBGC, PBGC Approves SFA Application For UNITE HERE Fund (Jan. 15, 2025).¹ Over half of that amount (\$35.8 billion) went to Respondent Central States, Southeast and Southwest Areas Pension Fund (Central States). App.11a.

2. ARPA tasked the PBGC with processing SFA applications and distributing SFA Funds. 29 U.S.C. § 1432(f)-(j). Congress also authorized the PBGC to

¹ <https://perma.cc/E4R7-C5V2>.

issue regulations imposing “reasonable conditions on an eligible [MEPP] that receives special financial assistance.” *Id.* § 1432(m)(1). Reasonable conditions imposed under Section 1432(m)(1) could relate to a host of relevant issues, including the “allocation of plan assets,” and “withdrawal liability.” *Id.*

Notably, one proposed version of ARPA would have provided that, for 15 years after they were distributed, SFA Funds could not be counted as plan assets when calculating an employer’s withdrawal liability. H.R. 1319, 117th Cong. § 9704(b), at 578-79 (as engrossed in House, March 3, 2021). But that provision never received a vote in the Senate. The Senate parliamentarian ruled that it violated the Byrd rule, which prevents the Senate from considering matters extraneous to the budget during the reconciliation process. App.37a-38a.

3. In 2022, the PBGC published a final rule with multiple regulations related to distributing and using SFA Funds. Special Financial Assistance by PBGC, 87 Fed. Reg. 40968 (July 8, 2022).

Two of those regulations are at issue here. Both amend Section 1393(c)’s formula for calculating unfunded vested benefits and thus fundamentally alter Congress’s method for determining an employer’s withdrawal liability.

First, the Phase-In Regulation provides that, when determining a MEPP’s unfunded vested benefits, SFA Funds do not immediately and fully count as plan assets. 29 C.F.R. § 4262.16(g)(2)(viii) (2025). That is, if a MEPP received \$100 million in SFA Funds, it cannot simply add \$100 million to the “assets of the plan” input of the unfunded-vested-benefits formula. *See* 29

U.S.C. § 1393(c)(B). Rather, the Phase-In Regulation directs that SFA Funds be incrementally considered in the unfunded-vested-benefits formula, starting from the year when SFA Funds are first received. 29 C.F.R. § 4262.16(g)(2)(ix)-(xii). The rate of this increase is determined by the number of years it would take a specific plan to exhaust its SFA Funds, as projected in its SFA Funds application. *See id.*; *see also id.* § 4262.16(g)(2)(xvi) (providing examples).

Second, the No-Receivables Regulation provides that SFA Funds do not count as plan assets during the period between when the funds are awarded and when they are paid. *Id.* § 4262.16(g)(2)(xiii). So if a MEPP's unfunded vested benefits were determined in the middle of that period, SFA Funds would not impact the calculation, and an employer's withdrawal liability would be higher than it statutorily should be.

The upshot of these two regulations is to prevent SFA Funds from counting as plan assets (either in part or in whole) in the unfunded-vested-benefits formula and thus the calculation of withdrawal liability.

The PBGC claimed authority to issue these regulations through Section 1432(m)(1) as "reasonable conditions" on MEPPs relating to withdrawal liability. 87 Fed. Reg. at 40996-97. According to the PBGC, the regulations were reasonable because they ensure that SFA Funds are not "used to subsidize employer withdrawals rather than to make benefit payments and pay plan expenses"—supposedly the *exclusive* and "only" purpose of SFA Funds. *Id.* at 40993-94, 40996-97, 41001 (emphasis added). The PBGC claimed that this exclusive focus was reflected in 29 U.S.C. § 1432(l). 87 Fed. Reg. at 40994, 40996-97. But

Section 1432(*l*) in fact states that SFA Funds “*may* be used by an eligible [MEPP] to make benefit payments and pay plan expenses,” not that they must be used “*only*” for those purposes. (emphasis added).

The PBGC also rejected Senator Hawley’s comment raising separation-of-powers concerns. The Senator warned that the PBGC was attempting to do through administrative regulations what Congress had not done legislatively. Letter from Sen. Hawley to PBGC (July 28, 2022).² As Senator Hawley warned, massive regulatory changes like those imposed in the PBGC Regulations that “will have sweeping impacts on American businesses should be deliberated in the halls of Congress, not pushed through by administrative fiat.” *Id.*

The PBGC rejected Senator Hawley’s warnings. On its account, the PBGC Regulations were reasonable conditions that “reflect[] the authority Congress delegated to the PBGC to oversee the SFA program and ensure that SFA is preserved for the payment of benefits and expenses.” Special Financial Assistance by PBGC—Withdrawal Liability Condition Exception, 88 Fed. Reg. 4900, 4902 (Jan. 26, 2023).

C. Yellow And Its Reentry In NY/WPA Teamsters

Yellow was one of the world’s largest trucking companies. It participated in many MEPPs. Two of those were the Respondents New York State Teamsters Conference Pension & Retirement Fund and the Western Pennsylvania Teamsters and Employers

² <https://perma.cc/H99Q-MHMN>.

Pension Fund (collectively, NY/WPA Teamsters). Yellow reentered these MEPPs in 2013.

In the reentry agreements, NY/WPA Teamsters allowed Yellow to pay reduced contribution rates. App.12a. Should Yellow withdraw, however, NY/WPA Teamsters were permitted to calculate Yellow's allocable unfunded vested benefits and annual withdrawal-liability payment using contribution rates that Yellow would have otherwise been required to pay. App.12a. NY/WPA Teamsters never sought or received PBGC approval to use the alternative scheme that the reentry agreements adopt. App.23a.

D. Proceedings Below

1. In 2023, following a threatened strike by the International Brotherhood of Teamsters, Yellow ceased operations and filed for Chapter 11 bankruptcy. App.5a. Accordingly, Yellow was deemed to have involuntarily withdrawn from all MEPPs. *See* 29 U.S.C. § 1383(a).

In the Chapter 11 proceedings, the SFA MEPPs filed proofs of claim for withdrawal liability totaling approximately \$6.5 billion. App.11a. Those same plans had previously received \$41.1 billion in SFA Funds, App.11a, leaving only small amounts of unfunded vested benefits. Had the PBGC Regulations not altered the statutory formula for calculating unfunded vested benefits, those plans' withdrawal-liability claims would have plummeted.

The biggest beneficiary of the PBGC Regulations was Central States. Because Yellow involuntarily withdrew in 2023, Central States calculated its unfunded vested benefits as of the end of its last full plan

year (2022). Its \$35.8 billion in SFA Funds had been awarded on December 5, 2022—before the 2022 plan year ended—and paid out on January 12, 2023—just after the 2022 plan year ended. App.11a. Because the award and payment of funds sat on different sides of the 2022 plan-year closing, the No-Receivables Regulation allowed Central States artificially to exclude almost \$36 billion in SFA Funds from the unfunded-vested-benefits calculation. App.11a.

As for NY/WPA Teamsters, their withdrawal-liability claims totaled over \$1 billion. C.A. SA31, 42. NY/WPA Teamsters used the presumptive method to calculate Yellow’s allocable unfunded vested benefits, which requires using the rates Yellow actually contributed. *See supra* pp. 7-8; *see also* C.A. SA39, 72. Under their agreements with Yellow, however, they used much higher contribution rates, not Yellow’s actual, lower contribution rates. App.22a-23a. They did the same when calculating Yellow’s annual-payment schedule. App.70a-71a.

2. Petitioner MFN, Yellow’s largest pre-petition shareholder, joined with Yellow to object to the SFA MEPPs’ withdrawal-liability claims. After summary-judgment briefing, the bankruptcy court upheld the PBGC Regulations and found NY/WPA Teamsters’ use of the higher contributions did not violate MPPAA. App.44a-64a, 69a-72a.

The bankruptcy court recognized that the arguments against the PBGC Regulations were “particularly colorable,” but it ultimately rejected them. App.73a. By analogizing to Congress’s power to attach conditions on federal funds under the Spending Clause, the bankruptcy court held that the PBGC

Regulations were “reasonable conditions on” MEPPs under 29 U.S.C. § 1432(m)(1). App.48a-49a, 74a-78a, 81a-85a. Faced with the tension between Section 1393(c)’s unfunded-vested-benefits formula and the PBGC Regulations, the bankruptcy court also held that 29 U.S.C. § 1432(l) prevented SFA Funds from being used to reduce an employer’s withdrawal liability. App.51a-52a. Regarding NY/WPA Teamsters, the court concluded that the plans could use the higher contributions both when calculating Yellow’s allocable unfunded vested benefits and its annual payments because Yellow had agreed “to treat [its] withdrawal liability claims in this manner.” App.69a-72a.

MFN and its subsidiary Petitioner Mobile Street (which by then held nearly \$200 million in general unsecured claims) moved for reconsideration. The bankruptcy court denied that motion. App.79a-89a. Recognizing the “public importance” and “very high” stakes of this case, the bankruptcy court certified its order for direct appeal under 28 U.S.C. § 158(d). C.A. JA80. The Third Circuit granted permission.

3. The Third Circuit proceeded to affirm. The court began by stating that Petitioners’ “strongest argument” was that ARPA “did not grant the PBGC the *regulatory* authority to change the *statutory* formula for [the] withdrawal-liability calculation.” App.14a-15a. Yet it was ultimately “not convinced.” App.15a. Agreeing with the PBGC and the bankruptcy court, the Third Circuit interpreted Section 1432(l) as *mandating* that SFA Funds be used “*only* ‘to make benefit payments and pay plan expenses,’” App.15a (quoting 29 U.S.C. § 1432(l)), even though the statute does not use such exclusive language.

This interpretation of Section 1432(*l*) led the court to uphold the PBGC Regulations as “reasonable conditions” on MEPPs related to the “allocation of plan assets”—that is, the SFA Funds. App.15a (quoting 29 U.S.C. § 1432(m)(1)). The court recognized that, absent the regulations, SFA Funds would lower employers’ withdrawal liability because the funds would naturally count as assets in Section 1393(c)’s unfunded-vested-benefits formula. App.15a. According to the court, however, this would contravene the “statutorily mandated purpose” of Section 1432(*l*). App.15a. It thus upheld the regulations because they “fill[ed] this gap” between Section 1432(*l*)’s purpose and how SFA Funds would be used absent the regulations. App.15a. The court brushed aside the acknowledged conflict between the PBGC Regulations and Section 1393(c)’s unfunded-vested-benefits formula by asserting that Section 1432(*l*)’s “specific policy” controls over Section 1393(c)’s general formula. App.16a.

The court then recognized as “forceful” the argument that the PBGC Regulations “are actually conditions on the employers, not the plans,” as Section 1432(m)(1) requires. App.20a. But the court nonetheless upheld the regulations as conditions directed at the plans, and maintained, in any event, that employers had no “claim” to SFA Funds because the regulations merely preserved the “*status quo*.” App.20a-21a (quotation omitted).

Separately, the court agreed with Petitioners that the contractual provisions allowing NY/WPA Teamsters to use higher contributions than Yellow actually contributed “seem[] to run headlong into the statutory requirement that any other alternative method for determining an employer’s withdrawal liability must be

approved by the PBGC.” App.24a (quotation omitted). But it then held that no approval was needed because it “makes good sense” to allow employers to waive withdrawal-liability limitations without such approval. App.25a. After all, the court reasoned, MPPAA’s purpose is to “ensure the solvency of” MEPPs. App.24a.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari because the Third Circuit’s decision implicates multiple circuit splits, including one already before this Court. The decision below is also wrong—both in upholding the PBGC Regulations and in allowing NY/WPA Teamsters to deviate from Section 1391’s requirements without obtaining the PBGC’s approval. Both errors raise issues of exceptional importance.

I. The Third Circuit’s PBGC-Regulations Holding Warrants This Court’s Review

A. The PBGC-Regulations Holding Creates And Deepens Several Circuit Splits

In *Loper Bright*, this Court ended the practice of reflexively deferring to agency interpretations of statutes, instead mandating that lower courts “exercise their independent judgment.” 603 U.S. at 412. In exercising that judgment, lower courts must “interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences.” *Id.* at 403. Agency regulations or actions contravening plain statutory text must therefore be set aside as “not in accordance with law” and

in “excess of statutory ... authority.” 5 U.S.C. § 706(2)(A), (C); see *Loper Bright*, 603 U.S. at 391.

The circuit courts have diverged over how to implement *Loper Bright*’s directives—particularly in interpreting ARPA. Some have adhered to clear statutory text notwithstanding the PBGC’s nebulous concerns about statutory purpose and practical effects. Others, like the Third Circuit, have taken the opposite approach.

1. The Second Circuit followed the former path in *Board of Trustees of Bakery Drivers Local 550 & Industry Pension Fund v. PBGC*, 136 F.4th 26 (2d Cir. 2025), *petition for cert. filed*, 2025 WL 3681858 (U.S. Dec. 12, 2025) (No. 25-701). There, a terminated MEPP applied for SFA Funds. *Id.* at 27-28. The PBGC rejected the MEPP’s application because the MEPP had been terminated. *Id.* at 28. In defending that denial, the PBGC asserted 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.” *Id.* at 31 (quotation omitted).

The Second Circuit was unmoved by the PBGC’s invocation of purpose and policy. Although the court recognized the practical “difficulties” that allowing terminated MEPPs to seek SFA Funds may cause the PBGC, the court held that it “is Congress’s job to craft policy and ours to interpret the words that codify it.” *Id.* (quotation omitted). Because “the words that Congress chose to codify eligibility for SFA do not support a per se exclusion of terminated plans,” the court deemed the terminated plan eligible for SFA Funds. *Id.* Simply put, the court began and ended with the

“text of the SFA statute,” *id.* at 29-31—just as *Loper Bright* commands.

2. In contrast, by upholding the PBGC Regulations, the Third Circuit split from both the Second Circuit’s approach to ARPA in *Bakery Drivers* and this Court’s decision in *Loper Bright*. It did so by elevating an atextual purpose espoused by the PBGC over clear statutory text.

In interpreting Section 1432(*l*), the Third Circuit stated that Congress issued SFA Funds in ARPA “*only* for recipient plans ‘to make benefit payments and pay plan expenses.’” App.15a (quoting 29 U.S.C. § 1432(*l*)). In the court’s view, this was ARPA’s “goal,” “purpose,” and “specific policy.” App.15a-16a. This echoes the PBGC’s long-held view regarding Section 1432(*l*) and ARPA’s purpose. *See* 87 Fed. Reg. at 40994, 40996-97, 41001.

But there is a problem: Neither the word “only” nor any similar word appears in the determinative sentence of Section 1432(*l*). Instead, Section 1432(*l*) states that SFA Funds “*may* be used by an eligible multiemployer plan to make benefit payments and pay plan expenses.” (emphasis added). That language is permissive, not mandatory. Congress of course knew how to use mandatory language. The rest of Section 1432(*l*) provides that MEPPs “*shall*” segregate SFA Funds from other plan assets and that they “*shall*” invest SFA Funds in certain investment instruments. (emphasis added). At bottom, the Third Circuit dressed up the PBGC’s preferred view of ARPA and transformed that into a statutory command, even though the text says something entirely different. That approach diverges from the Second

Circuit’s refusal to read atextual limitations into ARPA. *See Bakery Drivers*, 136 F.4th at 30-31.

Nor is that all. By interpreting Section 1432(*l*) as it did, the Third Circuit created a separate split on the meaning of “may,” which “customarily connotes discretion.” *See Jama v. ICE*, 543 U.S. 335, 346 (2005). That “connotation is particularly apt where, as here, ‘may’ is used in contraposition to the word ‘shall’” in nearby statutory language. *Id.* Multiple circuits have faithfully applied this rule. *See, e.g., Yoo v. United States*, 43 F.4th 64, 74 (2d Cir. 2022) (“The Supreme Court has cautioned against ignoring contexts in which Congress’s use of the permissive ‘may’ contrasts with the legislators’ use of a mandatory ‘shall’ in the very same section.” (quotation omitted)); *Brasil v. Sec’y, Dep’t of Homeland Sec.*, 28 F.4th 1189, 1193 (11th Cir. 2022) (similar); *Sheppard v. Riverview Nursing Ctr., Inc.*, 88 F.3d 1332, 1338 (4th Cir. 1996) (similar). Contrary to those cases, however, the Third Circuit concluded that “may” confers no discretion and instead creates a “statutorily mandated purpose” to use SFA Funds “only” to pay plan benefits and expenses. App.15a.

Worse still, the Third Circuit used its atextual and purpose-driven interpretation of Section 1432(*l*) to justify regulations that alter the statutorily prescribed formula for calculating unfunded vested benefits in Section 1393(c). Before the PBGC Regulations, that formula set unfunded vested benefits equal to vested benefits *minus plan assets*. Under the PBGC Regulations, however, that formula now reads: unfunded vested benefits equal vested benefits minus plan assets *excluding billions of dollars in SFA Funds*. Even before *Loper Bright*, statutes could not be

amended via agency regulations. Statutes certainly cannot be so amended after it.

But the Third Circuit seemed quite comfortable allowing the PBGC to amend Section 1393(c)'s formula. On its account, that general formula must yield to ARPA's alleged "specific policy" in Section 1432(l) to use SFA Funds "only" to pay plan benefits and expenses. App.16a (quotation omitted). Because the PBGC Regulations purportedly advanced that "specific policy," they were "reasonable conditions" related to the "allocation of plan assets" under Section 1432(m)(1). App.15a-17a (quotation omitted).

Ultimately, by allowing the PBGC's view of Section 1432(l)'s purpose to trump standard statutory construction, the Third Circuit gave short shrift to two clear statutory provisions. This interpretive misstep contravenes *Loper Bright* and splits from the Second Circuit's holding in *Bakery Drivers*.

3. The divergence between the Second and Third Circuits in interpreting ARPA is part of a larger pattern. In interpreting other statutes after *Loper Bright*, some courts, like the Second, Fifth, and Sixth Circuits, have struck down or set aside agency actions contravening the statutory text. See, e.g., *Rest. L. Ctr. v. U.S. Dep't of Lab.*, 120 F.4th 163, 174 (5th Cir. 2024) (striking down DOL rule as "inconsistent with the FLSA's text"); *In re MCP No. 185*, 124 F.4th 993, 1001 (6th Cir. 2025) (setting aside FCC order because the agency "misread[]" statutory text); see also *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312, 1318 (Fed. Cir. 2025) (setting aside Executive Orders imposing worldwide tariffs because the IEEPA conferred no such powers), *cert. granted*, No. 25-250, 2025 WL 2601020

(U.S. Sept. 9, 2025). Others, like the Third, Ninth, and D.C. Circuits, have upheld agency actions that went beyond or contravened statutory text. *See, e.g., China Unicom (Americas) Operations Ltd. v. FCC*, 124 F.4th 1128 (9th Cir. 2024); *id.* at 1159 (Bea, J., dissenting) (noting how “the majority does not adhere to the plain text of the Act”); *Solar Energy Indus. Ass’n v. FERC*, 2025 WL 2599488 (D.C. Cir. Sept. 9, 2025); *id.* at *11 (Walker, J., concurring in part and dissenting in part) (noting the majority’s construction “adds an atextual limit that Congress didn’t adopt”).

B. The PBGC-Regulations Holding Is Wrong

The PBGC Regulations amend—by administrative fiat—Section 1393(c)’s unfunded-vested-benefits formula. Nothing in ARPA authorizes this administrative overstep. Contrary to the Third Circuit’s conclusion, the PBGC Regulations are not “reasonable conditions on” MEPPs related to the “allocation of plan assets.” 29 U.S.C. § 1432(m)(1). Indeed, it is never reasonable for an agency to defy Congress’s clear statutory prescription.

1. Ever since MPPAA was enacted, the statute has prescribed a simple formula for calculating unfunded vested benefits: unfunded vested benefits equal vested benefits minus plan assets. 29 U.S.C. § 1393(c).

And SFA Funds are plan assets by any plausible understanding. The definition of “asset” is noncontroversial: “anything owned that has value” or “property that can be used for payment of debts.” *Asset*, Barron’s Dictionary of Business and Economics Terms (5th ed. 2012); *see Asset*, Black’s Law Dictionary (12th

ed. 2024) (“An item that is owned and has value.”). That encompasses SFA Funds—billions of dollars sitting on SFA MEPPs’ balance sheets. Confirming the point, Congress itself categorized SFA Funds as plan assets in ARPA by providing that SFA Funds and earnings thereon “shall be segregated from *other* plan assets.” 29 U.S.C. § 1432(*l*) (emphasis added).

Despite all that, the PBGC Regulations allow SFA MEPPs to apply a different formula to calculate unfunded vested benefits. The regulations do so by excluding SFA Funds from the definition of “plan assets” at different points in time. The Phase-In Regulation first requires that SFA MEPPs fully exclude SFA Funds before adding them back into the unfunded-vested-benefits calculation over time. 29 C.F.R. § 4262.16(g)(2)(viii). And the No-Receivables Regulation requires SFA MEPPs to fully exclude SFA Funds that have been awarded—and are accordingly listed on their balance sheets as receivables—but not yet actually paid. *Id.* § 4262.16(g)(2)(xiii). Because the PBGC Regulations amend Congress’s formula, they are not “reasonable conditions” under Section 1432(m)(1) as a matter of law.

That conclusion is straightforward. An agency “may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law.” *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 91 (2002) (quotation omitted); see *Loper Bright*, 603 U.S. at 392 (similar). This Court has long so held.

For example, in *MCI Telecommunications Corp. v. AT&T Corp.*, 512 U.S. 218 (1994), this Court struck down FCC regulations purporting to eliminate the

statutory command in Section 203 of the Communications Act that “[e]very common carrier ... shall ... file” tariffs for certain carriers. *Id.* at 224 (quotation omitted). The FCC’s basis for doing so was a separate provision empowering it to “modify any requirement” in Section 203. *Id.* (quotation omitted). This Court recognized that a regulation giving the agency some discretion to “modify” a statute does not grant the agency license to enact a “fundamental revision of the statute.” *Id.* at 231. What the FCC had in mind “may well [have been] a better regime,” but it is “not one that Congress established.” *Id.* at 234.

Likewise, in *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014), the Court rejected the EPA’s efforts to “rewrite clear statutory terms to suit its own sense of how the statute should operate.” *Id.* at 328. There, the EPA changed the statutory threshold requirement for certain permitting from “100 or 250 tons per year of a relevant pollutant” to “100,000 tons per year for greenhouse gases.” *Id.* at 325. The Court held that the EPA had no authority to “replace [Congress’s] numbers with others of its own choosing.” *Id.* at 326.

When amplified through *Loper Bright*, both *MCI* and *Utility Air* provide an unmistakable blueprint for addressing the PBGC’s claimed regulatory authority: The agency’s authority to issue “reasonable conditions” related to the “allocation of plan assets” and “withdrawal liability” under Section 1432(m)(1) does not give the PBGC license to fundamentally amend Section 1393(c)’s prescribed formula for calculating unfunded vested benefits—a formula that Congress has repeatedly declined to amend.

2. The Third Circuit thought differently. It allowed the PBGC—through the PBGC Regulations—to override Section 1393(c)’s plain text. And it did so in service of ARPA’s supposed purpose of ensuring that SFA Funds are used “*only* ... ‘to make benefit payments and pay plan expenses.’” App.15a (quoting 29 U.S.C. § 1432(*l*)). As explained, however, Section 1432(*l*) does not state that SFA Funds can be used “*only*” to pay plan benefits and expenses. (Indeed, this logic fails on its own terms, as the PBGC Regulations permit SFA Funds to count as assets over time.) Rather, Section 1432(*l*) states that SFA Funds “received under this section and any earnings thereon *may* be used by an eligible multiemployer plan to make benefit payments and pay plan expenses.” 29 U.S.C. § 1432(*l*) (emphasis added). And “‘may’ means ‘may.’” *Biden v. Texas*, 597 U.S. 785, 807 (2022). It is permissive, not mandatory. *See supra* p. 19. By concluding otherwise, the Third Circuit erred.

ERISA is “an enormously complex and detailed statute.” *Mertens*, 508 U.S. at 262; *see Nachman Corp.*, 446 U.S. at 361; *see also LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248, 258 (2008). In wading through such a complex scheme, courts should be “especially reluctant to tamper” with express statutory prescription. *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 209 (2002) (quotation omitted). This Court has thus consistently rejected attempts by courts or others to stray from ERISA’s clear text. *See, e.g., Advoc. Health Care Network v. Stapleton*, 581 U.S. 468, 475-77 (2017); *CIGNA Corp. v. Amara*, 563 U.S. 421, 435-36 (2011). And this Court is set to potentially do so again in a pending case involving deviations from the plain text of the

withdrawal-liability provisions. *M & K Emp. Sols.*, 145 S. Ct. 2871.

The Third Circuit ignored this Court’s warnings. Instead, it amended Section 1432(*l*)’s “may” to a “shall” and then used that counter-textual gloss to justify the PBGC Regulations—regulations that amend Section 1393(c)’s unfunded-vested-benefits formula. App.14a-17a. The decision below should thus be reversed as the latest attempt to deviate from ERISA’s plain text.

3. Beyond that fundamental error concerning Section 1393(c)’s formula, the Third Circuit further erred by holding that the PBGC Regulations meet Section 1432(m)(1)’s requirement that the regulations be “conditions on” MEPPs. App.20a-21a. They are not; they are conditions on *employers*. By excluding SFA Funds from the unfunded-vested-benefits formula, the PBGC Regulations directly modify participating employers’ statutory rights to have unfunded vested benefits (and thus withdrawal liability) calculated as prescribed by Congress.

In rejecting this point, the Third Circuit did not defend the bankruptcy court’s strained analogy to Congress’s Spending Clause power. App.21a n.5; *see* App.48a-49a, 74a-78a, 81a-85a. Instead, the Third Circuit observed that MEPPs, not employers, calculate withdrawal liability. App.20a. But that is beside the point. Changing the contours of the correct calculation does not alter the rights of MEPPs performing it; it affects the rights of employers who are bound by the calculation. Moreover, it would follow, at most, that the PBGC Regulations are conditions *on* MEPPs

and employers. In that instance, the regulations still stray beyond Section 1432(m)(1)'s limited authority.

Perhaps recognizing this problem, the Third Circuit claimed that the PBGC Regulations do not affect employers at all because they merely maintain the “*status quo*.” App.21a. On its account, before ARPA, SFA Funds had no impact on employers’ withdrawal liability; the PBGC Regulations ensure that remains so. App.21a. But this misapprehends the relevant status quo. Once Congress passed ARPA, the status quo was that SFA Funds—indisputably plan assets—would count as plan assets in the unfunded-vested-benefits formula. Far from maintaining that state of affairs, the PBGC Regulations upend it by arbitrarily excluding SFA Funds from the unfunded-vested-benefits calculation—even in an instance, like this, where Central States has received billions of dollars of federal funding to rectify the supposedly “unfunded” deficit. The PBGC has no power to drastically change the statutorily prescribed treatment of employers under the auspices of imposing “conditions on” MEPPs. 29 U.S.C. § 1432(m)(1).

C. The Validity Of The PBGC Regulations Is Exceptionally Important And Cleanly Presented

1. The proper calculation of withdrawal liability carries profound consequences. Accordingly, this Court has repeatedly taken cases raising issues about calculating withdrawal liability, including this Term. *See, e.g., M & K Emp. Sols.*, 145 S. Ct. 2871; *Bay Area Laundry & Dry Cleaning*, 522 U.S. 192; *Milwaukee Brewery Workers’ Pension Plan*, 513 U.S. 414; *Concrete Pipe*, 508 U.S. 602; *Laborers Health and Welfare*,

484 U.S. 539; *Connolly*, 475 U.S. 211; *R.A. Gray*, 467 U.S. 717.

The PBGC Regulations strike at the core of that vital, recurring, high-stakes calculation. By changing the withdrawal-liability framework, the regulations impose sweeping, massive economic impact on American businesses, American employees, and ultimately the American government itself—as this case illustrates.

Yellow was one of the largest trucking companies in the world and participated in multiple MEPPs. In bankruptcy, the SFA MEPPs filed claims asserting withdrawal liability stemming from Yellow’s involuntary withdrawal from the plans due to bankruptcy. App.11a-12a. The biggest SFA MEPP, Central States, had already been awarded \$35.8 billion in SFA Funds and had received them earlier in 2023. App.11a. Under the PBGC Regulations, those funds were excluded from qualifying as plan assets in calculating Yellow’s withdrawal liability. App.11a-12a. The result was to artificially inflate the withdrawal liability relative to the actual economic reality facing the SFA MEPPs—which now have little (if any) unfunded vested benefits due to the SFA Funds.

This windfall is perverse and antithetical to how ERISA and bankruptcy law are meant to work. Resources are scarce for Yellow and for all its stakeholders. Even though the SFA MEPPs took billions of dollars in SFA Funds to shore up their books, the PBGC Regulations enable those SFA MEPPs to cannibalize Yellow’s estate, leaving precious little for the MEPPs that did *not* take U.S. taxpayer dollars, along with hundreds of other creditors.

To make matters worse, the U.S. Treasury is the second largest holder of equity in Yellow, owning approximately 30% of its stock. C.A. JA0868. By leveraging the PBGC Regulations to massively inflate their claims, the SFA MEPPs will wipe out the U.S. Treasury's otherwise valuable stake in Yellow. Likewise, the PBGC itself has a nine-figure claim against Yellow, Bankr. Claim No. 19837, but it too will recover much less because of the SFA MEPPs' inflated claims.

The economic impacts are seismic. To the extent they are rightful, they should be imposed by Congress, not the PBGC. Yet Congress ventured and then abandoned a proposal to do exactly what the PBGC Regulations do. The House version of ARPA contained a provision that would have excluded SFA Funds from the calculation of unfunded vested benefits for 15 years. *See* H.R. 1319 § 9704(b), at 578-79 (Engrossed in House, March 3, 2021). The Senate parliamentarian, however, struck that provision under the Byrd rule. App.37a-38a. If Congress could not pass a sweeping change to the calculation of withdrawal liability through ARPA, then the PBGC cannot—by brute administrative force—harness ARPA to enact that same change. As Senator Hawley explained when urging the PBGC to “change course,” regulations like the PBGC Regulations with “sweeping impacts on American businesses should be deliberated in the halls of Congress, not pushed through by administrative fiat.” Hawley, *supra*. The separation of powers demands no less.

2. The PBGC Regulations' impact and the Third Circuit's choice to uphold them is not limited to this case.

Withdrawal liability is an important consideration for employers when they decide whether to enter, stay, or exit a MEPP. The PBGC Regulations impact more than \$70 billion in disbursed funds. *See supra* p. 8. That affects a huge number of employers. Central States alone has approximately 1,000 contributing employers representing nearly 35,000 active participants in a variety of industries. Central States Pension Fund: Message from the Board of Trustees.³ As of November 2024, there were over 1,300 MEPPs with over 11 million participants. PBGC, *FY 2024 Annual Report* 39 (Nov. 2024).⁴ The PBGC Regulations impact all those plans and participants.

3. This case is an ideal vehicle to decide whether the PBGC Regulations are unlawful. There are no relevant disputes of fact, and, in any event, the unlawfulness of the PBGC Regulations is a purely legal issue that depends on only a handful of statutory provisions. Nor does any arguable waiver or forfeiture pose an obstacle to this Court's review.

Additional percolation is unnecessary. The parties have extensively briefed the issue (with over twenty submissions before the Third Circuit and the bankruptcy court). And while this case arose from a claims dispute in bankruptcy court, a typical disagreement over withdrawal liability would be required to go through a lengthy arbitration proceeding followed by judicial review, *see* 29 U.S.C. § 1401, resulting in inordinate delay. This Court can and should take this

³ <https://perma.cc/2LMN-H26R>.

⁴ <https://perma.cc/L6Z9-CY8F>.

opportunity to vindicate Congress’s statutory text in the face of contrary agency rulemaking.

II. The Third Circuit’s Alternative-Method Holding Warrants This Court’s Review

The Third Circuit separately nullified MPPAA’s requirement that within the withdrawal-liability framework, “any other alternative method” of calculating an employer’s allocable unfunded vested benefits needs the PBGC’s approval. *See* 29 U.S.C. § 1391(c)(5)(A). That holding implicates a circuit split already before this Court. And the Court’s intervention is exceptionally important, as the Third Circuit’s decision is not only incorrect but creates perverse incentives that Congress could not have intended.

A. The Alternative-Method Holding Implicates A Circuit Conflict Before This Court

1. In *M & K*, this Court is set to resolve a circuit conflict between the Second and D.C. Circuits over how to calculate withdrawal liability under Section 1391 by determining whether Section 1391’s text controls over general invocations of statutory purpose. *See* 145 S. Ct. 2871.

In *National Retirement Fund v. Metz Culinary Management, Inc.*, 946 F.3d 146 (2d Cir. 2020), the Second Circuit needed to decide which actuarial assumptions applied to calculate an employer’s withdrawal liability. *Id.* at 148-50. The court looked to Section 1391 to supply the answer. And Section 1391 states that withdrawal liability must be computed “as of the end of the plan year preceding the plan year in which the employer withdraws,” *i.e.*, the

measurement date. *See, e.g.*, 29 U.S.C. § 1391(b)(2)(E)(i). The Second Circuit followed that straightforward language: The actuarial assumptions on the measurement date control. *Metz*, 946 F.3d at 152. Nothing in Section 1391 suggests that “the date of withdrawal or sometime later” should apply. *Id.* at 148.

Yet in *Trustees of IAM National Pension Fund v. M & K Employee Solutions, LLC*, 92 F.4th 316 (D.C. Cir. 2024), *cert. granted*, 145 S. Ct. 2871 (2025), the D.C. Circuit rejected that plain reading of Section 1391. The court concluded that plans need not “use the [actuarial] assumptions and methods in effect on the relevant measurement date when calculating withdrawal liability.” *Id.* at 322 (quotation omitted). Instead, the court held that “an actuary may base their assumption[s] on information after the measurement date so long as those assumptions are ‘as of’ the measurement date.” *Id.* (quotation omitted). To reach that conclusion, the court relied on MPPAA’s general purpose of “protect[ing plans] and their beneficiaries.” *Id.* at 323. In other words, because the court thought its atextual rule furthered MPPAA’s supposed purpose of helping plans over employers, it ignored Section 1391’s plain commands.

2. The Third Circuit’s alternative-method holding concerns neighboring provisions of Section 1391 addressing the contribution used to calculate withdrawal liability. At bottom, the court committed the same error as the D.C. Circuit in *M & K*: It elevated its view of MPPAA’s general purpose over Section 1391’s plain text.

Initially, the Third Circuit agreed that the text of Section 1391 “suggests withdrawal liability is calculated using an employer’s *actual* contribution rates for a time period before the withdrawal.” App.23a (citing 29 U.S.C. § 1391). It also agreed that any deviation from that actual contribution “run[s] headlong into the statutory requirement that ‘any other alternative methods for determining an employer’s’ withdrawal liability must be approved by the PBGC.” App.24a (quoting 29 U.S.C. § 1391(c)(5)(A)).

Yet the Third Circuit nonetheless affirmed NY/WPA Teamsters’ use of contributions that were higher than Yellow’s actual contributions. App.22a-25a. Despite the statutory text stating otherwise, it held that “employers may waive *limitations* on their withdrawal liability without approval as an alternative method.” App.25a (quotation omitted). MPPAA, the court stated, “establishes a withdrawal liability floor, rather than a withdrawal liability ceiling.” App.23a (quotation omitted).

None of that is in any statutory text. MPPAA, as the court admitted, requires the PBGC’s approval for “any other alternative method,” not just those that decrease withdrawal liability. The court ignored that plain text because the “flexibility” of its new rule made “good sense” to its own sense of justice. App.25a. It is hard to find a more purposive and policy-driven analysis. And like the D.C. Circuit in *M & K*, that analysis conflicts with the Second Circuit’s application of Section 1391’s plain text.

B. The Alternative-Method Holding Is Wrong

1. Section 1391 sets out four permissible methods for a MEPP to calculate a withdrawing employer's allocable unfunded vested benefits. *See* 29 U.S.C. § 1391(b), (c)(2), (c)(3), (c)(4). If a MEPP uses "any other alternative method for determining an employer's allocable share of unfunded vested benefits," then such a method is permissible only "subject to the approval of the [PBG]."
Id. at § 1391(c)(5)(A).

NY/WPA Teamsters purported to use Section 1391(b)'s presumptive method. *See supra* p. 13. Under that method, NY/WPA Teamsters needed to calculate Yellow's allocable unfunded vested benefits by using the contributions that Yellow was "required to [make] under the plan[s]," *i.e.*, Yellow's actual contributions in the relevant time period. 29 U.S.C. § 1391(b)(2)(E)(ii)(I); *see Concrete Pipe*, 508 U.S. at 610 (holding that under the presumptive method, "the proportion of total employer contributions to the plan" is used). NY/WPA Teamsters did not do that. App.22a-23a. Under Yellow's reentry agreements with NY/WPA Teamsters, Yellow contributed to the plans at reduced rates. App.22a. Yet the plans did not use those lower rates—*i.e.*, the rates Yellow actually paid—they used much higher rates. App.22a-23a.

Because these higher contribution rates deviated from the presumptive method's requirements, NY/WPA Teamsters used an "alternative method" that needed the PBGC's approval under Section 1391(c)(5)(A). NY/WPA Teamsters never sought that approval. App.23a. Using the higher rates thus violates Section 1391.

2. The Third Circuit rejected that straightforward conclusion. It emphasized that the same contracts allowing lower rates also mandated higher rates if Yellow withdrew from the plans. App.22a-25a. It faulted Yellow for offering “no good reason” why it should not hold “Yellow to its end of the bargain.” App.25a. But Yellow plainly pointed to a “good reason”: Section 1391(c)(5)(A)’s plain text. That NY/WPA Teamsters did not comply with that provision by failing to seek the PBGC’s approval is not Yellow’s fault, nor is it a reason to concoct a new statutory scheme to hold Yellow to its bargain.

But the Third Circuit held otherwise. Even though the court admitted the critical statutory premises—that Section 1391 requires using the actual contribution rates and that using the higher rates here required the PBGC’s approval, *see supra* p. 32—it nonetheless failed to invalidate NY/WPA Teamsters’ decision to use the higher rates. Instead, it invented its own rule that “employers may waive *limitations* on their withdrawal liability without approval as an alternative method.” App.25a (quotation omitted). It did so because that made “good sense” under Yellow’s contracts. App.25a.

That rule has no basis in the text of Section 1391. *See supra* p. 32. And the two supposed textual reasons that the court gave betray further disregard of statutory text.

First, the court asserted that changing the contribution rates was not “a completely different method,” just an “accounting change.” App.24a. But the words “completely different method” do not appear in Section 1391. Instead, Section 1391(c)(5)(A) requires

approval for “any other alternative method.” Something is “alternative” when it is “different from the usual or conventional,” not completely different. See *Alternative*, Merriam-Webster Online Dictionary.⁵ Likewise, “the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’” *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (quoting *United States v. Gonzalez*, 520 U.S. 1, 5 (1997)). Using higher rates than Yellow’s actual contribution rates is not usual or conventional under the presumptive method; it therefore qualifies as “any other alternative method” under Section 1391(c)(5)(A).

Second, the court held that the PBGC’s approval was unnecessary because (1) by statute, the PBGC must approve methods that “would not significantly increase the risk of loss to the plan,” and (2) agreements to increase withdrawal liability do not do so. App.24a (quoting 29 U.S.C. § 1391(c)(5)(A)). But this nullifies the statutory requirement to seek the PBGC’s approval by assuming that the PBGC would grant that approval. That cannot be right.⁶

⁵ <https://perma.cc/UVS7-AYRG>.

⁶ By affirming the bankruptcy court, the Third Circuit also implicitly allowed NY/WPA Teamsters to use the higher contribution rates to calculate Yellow’s annual payments. That separately deviates from 29 U.S.C. § 1399(c)(1)(C)(i), which requires using the actual contributions. NY/WPA Teamsters never sought the PBGC’s approval for that deviation in violation of Sections 1399(c)(7) and 1400(a).

C. Whether MEPPs Can Adopt Alternative Calculation Methods Without The PBGC's Approval Is An Exceptionally Important Question That Is Cleanly Presented

By transforming MPPAA into a withdrawal-liability floor that MEPPs can contract around, the Third Circuit has opened the door to mischief that threatens to throw off perverse, far-flung effects.

When it comes to withdrawal liability, employers depend on the certainty that Congress's precise, rigid guardrails create. Among other things, it helps them determine whether they should enter MEPPs. But if plans can contract around those guardrails, as the Third Circuit allowed, that certainty disappears. In its place now lurk dangerous risks.

Under the court's ruling, MEPPs can now adopt rules increasing withdrawal liability and force employers to either accept such rules with their next collective-bargaining agreement or withdraw. In fact, many collective bargaining agreements already have standard language binding employers to any "contract" term that the MEPPs adopt. So MEPPs may already be able to bind employers to rules that increase future withdrawal liability. *See, e.g., Cent. States v. Cent. Transp., Inc.*, 472 U.S. 559, 562 (1985) (explaining that employer's collective bargaining agreement bound it to a MEPP's trust agreement). With the stroke of a pen, MEPPs can, for example, eliminate the twenty-year cap on annual withdrawal-liability payments, even though MPPAA prohibits that. *See* 29 U.S.C. § 1399(c)(1)(B).

With such risk now possible, employers are better served by withdrawing before such rules are adopted. Indeed, the mere threat that plans could do such a thing will irreparably harm the MEPP system. This Court’s intervention is needed to restore certainty to the withdrawal-liability framework. And for the same reasons as was true for the PBGC Regulations, *see supra* pp. 29-30, this case presents the ideal vehicle to do so.

III. Alternatively, The Court Should Hold This Petition For *M & K* And Then GVR

This Court “regularly hold[s] cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted in order that (if appropriate) they may be ‘GVR’d’ when the case is decided.” *Stutson v. United States*, 516 U.S. 163, 181 (1996) (Scalia, J., dissenting) (emphasis omitted); *see* Shapiro, et al., *Supreme Court Practice*, § 6.31(E) (11th ed. 2019) (explaining that the Court holds petitions “presenting questions that will be—or might be—affected by its ruling” in another case). A GVR is correspondingly proper when this Court’s recent decisions reveal “a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration.” *Greene v. Fisher*, 565 U.S. 34, 41 (2011); *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 167 (1996).

If the Court does not grant this petition outright, it should at least hold it pending this Court’s *M & K* decision. As explained, *M & K* is another case in which this Court will address withdrawal liability and how to calculate it. Ultimately, the question

presented there and the two questions presented here boil down to the same fundamental conflict: Whether the text of provisions governing withdrawal liability controls over assertions of policy and purpose. Should this Court affirm text over purpose in *M & K*, then it should GVR in this case to allow the Third Circuit to re-assess withdrawal liability in light of the supremacy of the clear statutory language.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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February 13, 2026

APPENDIX

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APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1421

IN RE: YELLOW CORPORATION, et al.,

Debtors

MFN PARTNERS LP; MOBILE STREET
HOLDINGS LLC; YELLOW CORPORATION

Appellants

On Appeal from the United States Bankruptcy Court
for the District of Delaware
(Bankruptcy Court No. 23-11069)
Bankruptcy Judge: Honorable Craig T. Goldblatt

Argued June 25, 2025

Before: SHWARTZ, MONTGOMERY-REEVES, and
AMBRO, *Circuit Judges*

(Opinion filed: September 16, 2025)

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OPINION OF THE COURT

AMBRO, *Circuit Judge*

Yellow Corporation,¹ once one of the nation’s largest trucking companies, went out of business and filed for bankruptcy in 2023. As part of that winddown, it withdrew from several pension plans that secured retirement benefits for Yellow’s union workforce. In the bankruptcy, those plans came looking for what they believed they were owed, filing claims against the estate for Yellow’s withdrawal liability—what it must pay to the plans for its early exit. Of course, Yellow and the plans disagree on the amount of that liability. And here we are.

Mine-run bankruptcy disputes are about money, but this one is mostly about administrative law. In the midst of the COVID-era economic downturn, Congress granted billions in cash to struggling pension plans through the American Rescue Plan Act of 2021 (ARPA). But the money came with a catch—Congress charged a federal agency, the Pension Benefit Guaranty Corporation (PBGC), with the task of promulgating regulations that would impose “reasonable conditions” on how the pension plans would account for and use that money.

We consider two of those regulations in this appeal. Their upshot is this: The money Congress granted to

¹ Throughout this opinion, unless the distinction is relevant, we use “Yellow” to refer to Yellow Corporation, its 23 affiliated debtor entities, and creditors MFN Partners and Mobile Street Holdings, who filed the primary brief challenging the regulations, and whose arguments were joined in full by Yellow.

the plans does not fully count in calculating what Yellow owes to the plans upon its untimely exit. A bigger deficit to fill, a bigger bill to pay. In the Bankruptcy Court, Yellow argued those regulations flouted the statutory scheme that normally governs withdrawal-liability calculations, impermissibly inflating the amount it owes the plans. After the Bankruptcy Court upheld the regulations, we granted a petition for direct appeal of its order on these novel issues. Now, we affirm that order.

I. BACKGROUND

Two storylines blend together in this appeal: ARPA and the bankruptcy of Yellow. First, for some context on our dispute, we go back to the enactment of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.*, the early days of the PBGC, and the subsequent enactment of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), *id.* § 1381 *et seq.*

A. ERISA created the PBGC to insure pension funds, and the MPPAA sets out the withdrawal-liability framework underlying this appeal.

Congress enacted ERISA in 1974 to protect retirees' pension benefits. Among the main purposes of this "comprehensive and reticulated statute was to ensure that employees and their beneficiaries would not be deprived of anticipated retirement benefits by the termination of pension plans before sufficient funds have been accumulated in the plans." *PBGC v. R.A. Gray & Co.*, 467 U.S. 717, 720 (1984) (quotation omitted).

To serve that purpose, Congress established the PBGC. A federal agency and corporation, it operates

“a plan termination insurance program” that “collects insurance premiums from covered pension plans and provides benefits to participants in those plans if their plan terminates with insufficient assets” to cover what the participants are owed. *Id.* As detailed below, Congress gave the PBGC wide regulatory authority to achieve this goal. It may issue “regulations as may be necessary to carry out the purposes” of ERISA. 29 U.S.C. § 1302(b)(3). As relevant here, those purposes include “encourag[ing] the continuation and maintenance of voluntary private pension plans” while “provid[ing] for the timely and uninterrupted payment of pension benefits to participants and beneficiaries.” *Id.* § 1302(a)(1)–(2).

The PBGC insures both single-employer and multiemployer pension plans (MEPPs). *R.A. Gray*, 467 U.S. at 720. Here, our concern is just the latter: employee benefit plans to which multiple employers contribute through collective bargaining agreements with labor unions. 29 U.S.C. § 1002(37)(A).

At first, ERISA and the PBGC created a kind of moral hazard in MEPPs. When an employer withdrew from a plan, the remaining employers in the MEPP would be responsible for making up the shortfall. Realizing this would increase their burden, other employers would *also* withdraw, leading to a run-on-the-bank-type spiral as more and more employers withdrew. The financial burden then would fall on the PBGC to fill the gap.

As a remedy, Congress enacted the MPPAA to impose withdrawal liability on employers that left MEPPs. If an employer chose to leave, then it—rather than the employers remaining in the pension plan and the PBGC—would be on the hook for the departing employer’s portion of the shortfall. *Peick v.*

PBGC, 724 F.2d 1247, 1267–68 (7th Cir. 1983). By expanding on the initial grant of authority under ERISA, the MPPAA gave the PBGC additional authority relating to withdrawal liability, including the power to prescribe “actuarial assumptions” for calculating that liability. 29 U.S.C. § 1393(a).

Under the MPPAA framework still operative today, a withdrawing employer is responsible for its proportional share of a plan’s “unfunded vested benefits.” 29 U.S.C. § 1381(b)(1). The formula for calculating a plan’s unfunded vested benefits is deceptively simple: the value of the pension benefits vested (and thus owed) minus “the value of the assets of the plan.” *Id.* § 1393(c). In other words, the *unfunded vested benefits* are the difference between the plan’s *vested benefits* and the *plan’s assets*. We say “deceptively” simple because the definition of a plan “asset,” and the ways statutes and regulations interact to form that definition, are the core questions here.

There is a limit to this general “proportional share” rule. Per the MPPAA, an employer’s total withdrawal liability is amortized into “level annual payments” that are roughly equal to the payments owed in the recent years before the withdrawal. *See* 29 U.S.C. § 1399(c)(1)(A). But an employer’s liability is capped at 20 years’ worth of such payments—in effect, setting a maximum amount of liability. *See id.* § 1399(c)(1)(B) (“In any case in which the amortization period . . . exceeds 20 years, the employer’s liability shall be limited to the first 20 annual payments . . .”). Still, akin to the operation of an acceleration clause in a standard loan agreement, those annual obligations can be accelerated if the withdrawing employer defaults on the payments. *Id.* § 1399(c)(5).

B. ARPA infused billions of dollars into MEPPs and authorized the PBGC to impose “reasonable conditions” on MEPPs that received “special financial assistance.”

The MPPAA helped, but did not heal, the financial condition of MEPPs. Decades later, COVID made things worse. To respond to the financial crises caused by the pandemic, Congress enacted ARPA to shore up the nation’s struggling pension system. *See generally* ARPA, Pub. L. No. 117-2, § 9704, 135 Stat. 4, 190-99 (2021).

Through that law, Congress appropriated funds, deemed “special financial assistance,” to support MEPPs. The money would enable receiving plans to pay full pension benefits through at least 2051. 29 U.S.C. § 1432(j)(1). To achieve this goal, Congress instructed that the special financial assistance funds could be used only “to make benefit payments and pay plan expenses” and must be “segregated from other plan assets.” *Id.* § 1432(l).

Congress delegated to the PBGC the authority to solicit applications for these funds from MEPPs, distribute the money, and issue regulations that placed “reasonable conditions on a[] . . . multiemployer plan that receives special financial assistance,” including conditions related to the “allocation of plan assets” and “withdrawal liability.” *Id.* §§ 1432(a)(1), (m)(1). At the same time, Congress listed several specific areas that the PBGC could not regulate, like plan personnel, plan governance, and the funding of and accounting for plans in “critical” status. *Id.* §§ 1432(m)(2), 1085(e)(8).

After notice and comment, the PBGC promulgated the two challenged regulations before us. 29 C.F.R. § 4262.16.

The **Phase-In Regulation** prohibits MEPPs from fully counting special financial assistance funds as plan assets all at once. MEPPs must instead *phase in* those funds. *Id.* § 4262.16(g)(2)(viii). In this way, the funds are added incrementally to the plan-assets calculation, the rate determined by the number of years it would take the MEPP to exhaust the special assistance funds, as stated in the plan's application. *Id.* § 4262.16(g)(2)(ix)-(xii).

As a simple example, say a MEPP received \$100 million in ARPA special financial assistance, and in its application projected it would take five years to exhaust the funds. The Phase-In Regulation requires that in the first year only \$20 million of those funds are counted as plan assets. In the second year, \$40 million would count, and so on. This regulation affects withdrawal liability, as an employer that withdrew later would calculate its liability against a bigger base of plan assets, offsetting the amount owed.

The **No-Receiptables Regulation** restricts MEPPs from recognizing as an asset any awarded special financial assistance before the funds are paid to the plan. *Id.* § 4262.16(g)(2)(xiii). Like the Phase-In Regulation, this regulation bears on withdrawal liability, as an employer (like Yellow here) that withdrew after the award of funds to a MEPP, but before their actual receipt, would face withdrawal liability that did not account for any special financial assistance funds.

The MEPPs involved in this appeal applied for special financial assistance under ARPA between 2021 and 2022. Collectively, they were awarded \$41.1 billion in special financial assistance.

C. Yellow went into bankruptcy, the MEPPs filed proofs of claim, and we granted a petition for direct appeal.

Unable to resolve a protracted labor dispute with the Teamsters union, Yellow shut down in July 2023 and filed the underlying bankruptcy cases the next month.

Eleven MEPPs are part of the dispute here. Those eleven filed 174 proofs of claim in the bankruptcy case, seeking a combined \$6.5 billion in withdrawal liability. For varied reasons all involving the challenged regulations, the pension plans did not include all the special financial assistance funding in their determinations of Yellow's withdrawal liability.

For example, Central States, the pension fund with the largest proof of claim at issue, received its special financial assistance funds in a lump-sum payment on January 12, 2023. For its proof of claim, Central States calculated withdrawal liability "as of the end of the plan year preceding the plan year in which the employer withdraws," like the MPAA requires. 29 U.S.C. § 1391(b)(2)(E)(i). So liability was calculated as of December 31, 2022, as Yellow withdrew upon its 2023 bankruptcy. Because Central States did not receive its special financial assistance until January 2023, the No-Receivables Regulation barred the inclusion of those funds—totaling \$35.8 billion—as "assets" in the calculation of withdrawal liability. 29 C.F.R. § 4262.16(g)(2)(xiii).

The ten other MEPPs had received their special financial assistance by the time they filed their proofs of claims, so the Phase-In Regulation applied rather than the No-Receiveables Regulation. Yellow's withdrawal liability, calculated accordingly, counted in the balance only some of the special financial assistance funds (those that had been "phased in").

Separate from these regulatory questions, Yellow's withdrawal from the plans also raised a question regarding how to calculate its withdrawal liability under the statutory scheme. In relevant part, two MEPPs—the New York Teamsters Fund and the Western Pennsylvania Teamsters Fund—filed proofs of claim in line with an agreement they made with Yellow in 2013. That agreement allowed Yellow to reenter those MEPPs (it had previously withdrawn) and contribute to its employees' benefits at 25% of its usual rate, which meant diminished accruals for those employees. But in that same contract, the plans and Yellow agreed that if Yellow later faced withdrawal liability, it would do so at 100% of the usual contribution rate. So those MEPPs filed proofs of claim for withdrawal liability at the 100% rate.

After objections and motions, the parties cross-moved for summary judgment on these issues. Before us now is the Bankruptcy Court's Amended Memorandum Opinion and Order, which held in part:

- The Phase-In Regulation and No-Receiveables Regulations were valid exercises of the PBGC's statutory authority and were not otherwise arbitrary and capricious; and
- Yellow can be held to its agreement to pay withdrawal liability at 100% of the contribution rate because the statutory formula for calc-

ulating withdrawal liability sets a floor on an exiting employer's liability, not a ceiling.

In re Yellow Corp., No. 23-11069, 2024 WL 4925124, at *7-18 (Bankr. D. Del. Nov. 5, 2024).

The Bankruptcy Court certified its order for direct appeal, and we granted the petition to do so. Though the novel issue of the regulations' validity was the basis for the certification, we take the entire order on appeal, so we consider the statutory withdrawal-calculation issue as well. 28 U.S.C. § 158(d)(2).

II. JURISDICTION AND STANDARD OF REVIEW

The Bankruptcy Court had core proceeding jurisdiction. 28 U.S.C. § 157(b)(2)(B). We have jurisdiction over this direct appeal of the Bankruptcy Court's order under 28 U.S.C. § 158(d)(2)(A).²

² The appellants who make the main case against the PBGC regulations, MFN Partners and Mobile Street Holdings, spend a significant portion of their opening brief defending their standing under the "persons aggrieved" doctrine, a prudential standing requirement in bankruptcy appeals. Under that doctrine, parties have appellate standing "only if they can show that 'the order of the bankruptcy court diminishes their property, increases their burdens, or impairs their rights.'" *In re Boy Scouts of Am.*, 35 F.4th 149, 157 (3d Cir. 2022) (quotation omitted). We need not consider the doctrine's applicability here, however, as Yellow, which has standing unquestionably, joins in MFN's and Mobile Street's challenge to the regulations. Thus, even if MFN and Mobile Street lack standing to appeal, the issues raised in their briefs would remain properly before us. *See Dir., Off. of Workers' Comp. Programs, U.S. Dep't of Lab. v. Bethlehem Steel Corp.*, 949 F.2d 185, 186 (5th Cir. 1991) ("Dollins, . . . pursuant to FRAP 28(i) . . . , formally adopted the brief and argument of the Director[, s]o the contentions . . . were clearly before us in the form of arguments advanced, not only by the Director, but by claimant Dollins as well.").

We review a bankruptcy court’s rulings on questions of law de novo. *In re FTX Trading Ltd.*, 91 F.4th 148, 152 (3d Cir. 2024).

III. ANALYSIS

Yellow argues that the regulations violate the PBGC’s statutory authority and are arbitrary, capricious, or otherwise invalid. We first address those challenges to the regulations before moving to the withdrawal-liability calculation issue.

A. The Phase-In and No-Receiveables Regulations are valid.

Yellow lobs a slew of challenges at the regulations. As we explain, each fails.

1. The Phase-In and No-Receiveables Regulations are valid exercises of the PBGC’s authority.

Courts must “independently interpret” statutes granting authority to an agency to ensure the agency’s actions are within “the boundaries of [its] delegated authority.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024) (citation modified). The *Loper Bright* Court rejected the “fiction” that statutory ambiguity is always a grant of authority to an agency. *Id.* at 404. Even so, a “statute’s meaning may well be that the agency is authorized to exercise a degree of discretion.” *Id.* at 394. Thus, courts must “independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion” appropriately. *Id.* at 404.

In this context, Yellow’s strongest argument is that ARPA did not grant the PBGC the *regulatory* authority to change the *statutory* formula for with-

drawal-liability calculation. In its view, the PBGC did so by excluding the special financial assistance funds from the assets considered in that calculation of “unfunded vested benefits.” 29 U.S.C. § 1393(c).

We are not convinced. The Bankruptcy Court put it well: “Congress has expressly granted the PBGC the type of gap-filling authority that *Loper Bright* described, both in ERISA as originally enacted in 1974 and again in the provisions of [ARPA] that are directly at issue here.” *In re Yellow Corp.*, 2024 WL 4925124, at *7. In fact, ARPA explicitly grants PBGC the power to set conditions on the “allocation of plan assets,” as it did with these regulations. 29 U.S.C. § 1432(m)(1).

Through ARPA, Congress issued the special financial assistance *only* for recipient plans “to make benefit payments and pay plan expenses.” 29 U.S.C. § 1432(l). But if those funds were included as assets under withdrawal-liability calculation, that would necessarily mean that the funding would subsidize the liability of employers that withdrew from the plans. (And what savvy employer considering withdrawal would not use that opportunity to do so at a withdrawal-liability discount?) If used this way—as an unintentional withdrawal-liability subsidy—the funds would clearly not be for either “benefit payments” or “plan expenses.” *Id.* Congress, instead, left it to the PBGC to fill that gap and effect the statute’s goals. The agency did so by issuing the two regulations to ensure that the funds are used for the statutorily mandated purpose of being “allocat[ed]” in ways that would comply with ARPA. 29 U.S.C. § 1432(m)(1).

This reading also squares with the Supreme Court’s guidance on how to mesh later, specific

statutes with earlier, broader ones. A key function of the MPPAA was to prevent pension-plan collapse when several employers withdrew. *E.g.*, 29 U.S.C. § 1381 (establishing withdrawal liability for withdrawing employers). ARPA was meant to bolster struggling plans, and Congress set specific uses for the special financial assistance granted as part of that legislation. In circumstances like this, when “the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand,” the “specific policy embodied in a later federal statute should control our construction of the [earlier] statute, even though it ha[s] not been expressly amended.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) (alterations in original) (quoting in the second instance *United States v. Est. of Romani*, 523 U.S. 517, 530–31 (1998)).

As did the Bankruptcy Court, we understand this guidance to control our case. The statutory formula for calculating a plan’s “unfunded vested benefits”—from which withdrawal liability is derived—is broad. Original to the MPPAA, it “governs the calculation of withdrawal liability *in general*.” *In re Yellow Corp.*, 2024 WL 4925124, at *9 (emphasis in original). But ARPA “embodied” the “specific policy,” *Brown & Williamson*, 529 U.S. at 143, of granting special assistance funds only “to make benefit payments and pay plan expenses,” otherwise “segregat[ing]” those funds “from other plan assets,” 29 U.S.C. § 1432(l). We follow the principle of statutory construction offered in *Brown & Williamson* and conclude that, for calculating withdrawal liability, the more specific

provisions of ARPA control over the general provisions of the MPPAA.³

In this light, the two regulations are “reasonable conditions” on the grant of funds to the plans, promulgated according to Congress’s grant of authority to the PBGC in ARPA, 29 U.S.C. § 1432(m)(1).

2. The regulations are not arbitrary or capricious.

As part of its scattershot challenge to the regulations, Yellow faults them as arbitrary or capricious. We disagree.

An agency action is “arbitrary or capricious if it is not reasonable and reasonably explained.” *Ohio v. EPA*, 603 U.S. 279, 292 (2024) (citation modified). We thus examine whether the agency gave “a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n. of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation omitted). We do not review these policy-making decisions de novo, as courts are

³ We emphasize that we do not agree with Yellow’s argument that ERISA’s plain language forbids the PBGC from promulgating the regulations at issue. ERISA gave the PBGC the authority to define “plans assets . . . by such regulations as” it “may prescribe.” 29 U.S.C. 1002(42); *see also Loper Bright*, 603 U.S. at 394 (explaining how Congress can “expressly delegate” that an agency define a term). And the MPPAA likewise allowed the PBGC to “prescribe by regulation actuarial assumptions” for calculating unfunded vested benefits. 29 U.S.C. § 1393(a). Properly understood, then, ARPA’s express delegation to the PBGC of regulating the “allocation of plan assets” and “withdrawal liability” relating to special financial assistance funds follows the well-trod path laid by ERISA and the MPPAA for delegating such power to the PBGC.

forbidden to “substitute their own judgment for that of the agency.” *FDA v. Wages & White Lion Invs.*, 145 S. Ct. 898, 917 (2025). We “simply ensure[] that the agency has acted within a zone of reasonableness.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021).

As the Bankruptcy Court aptly explained, the notice-and-comment process for the regulations was comprehensive. “[I]ndustry stakeholders, including employers, pension plans, actuarial firms, law firms, individuals, and members of Congress” weighed in. *In re Yellow Corp.*, 2024 WL 4925124, at *13. There was even a “listening tour.” *Id.* The main thrust of the feedback was a concern “that if special financial assistance were immediately recognized in the calculation of unfunded vested benefits[,] . . . employers would withdraw from the pension plans—leaving those who remain holding the bag.” *Id.* These concerns had weight, especially against the backdrop of ERISA and MPPAA’s history—“avoiding a circumstance in which one employer’s withdrawal from a troubled multiemployer plan would have a cascading effect that would destroy the plan.” *Id.* The PBGC issued these regulations to “balance the objectives” set by Congress in the MPPAA and to fulfill ARPA’s purpose of strengthening “struggling pension plans.” *Id.*

Before us, Yellow does not challenge the breadth of the PBGC’s reasoning or the scale of its efforts, but it objects to the agency’s conclusions and their consequences.

In the main, it argues that the PBGC’s concern—that an influx of funding to the plans would subsidize an employer-withdrawal death-spiral—was misplaced. But Yellow just as quickly concedes that the

regulations serve “to discourage employers from withdrawing from financially troubled MEPPs, which might otherwise encourage additional withdrawals and create a downward spiral.” MFN & Mobile Street Opening Br. at 45 (quotation omitted). We agree with the latter.

In other places, Yellow disputes certain industry figures and estimates relied on by the PBGC,⁴ but these industry figures are “predictive judgments about the likely economic effects of a rule” that courts, including this one, are “particularly loath to second-guess.” *Newspaper Ass’n of Am. v. Postal Regul. Comm’n*, 734 F.3d 1208, 1216 (D.C. Cir. 2013) (quotation omitted). We are convinced that the administrative record reflects “reasonable” rulemaking, “reasonably explained.” *Ohio*, 603 U.S. at 292. Our “appropriate deference” is owed to “agency decisionmaking,” not to Yellow’s efforts to convince us it would have gone about the rulemaking another way. *Wages & White Lion*, 145 S. Ct. at 917.

To succeed, Yellow must show that the PBGC’s decision-making was so outside the “zone of reasonableness,” *Prometheus Radio Project*, 592 U.S. at 423, that it flunks our “deferential” review of agency

⁴ Yellow misquotes the PBGC as warning of “a potential surge of employer withdrawal” up to “35% of active members” of MEPPs receiving special financial assistance. MFN and Mobile Street Opening Br. at 46. The relevant portion of the quoted interim final rule does mention “a potential surge of employer withdrawal,” Special Financial Assistance by PBGC, 86 Fed. Reg. 36598, 36619 (July 12, 2021) (to be codified at 29 C.F.R. pts. 4000, 4262). It also displays a single benchmark scenario premised on a 35% withdrawal rate. *Id.* at 36617. But it does not predict the “potential surge” will be “35% of active members.” Because the Federal Register does not say this, we do not consider Yellow’s arguments premised on the fiction that it does.

policymaking, *Loper Bright*, 603 U.S. at 392. For the reasons noted, Yellow has not made that showing.

3. Yellow’s other arguments fail as well.

We briefly address Yellow’s other regulatory arguments.

(a) The regulations are not conditions on third parties. The PBGC’s regulations are conditions on the plans, in line with Congress’s grant of authority. Recall that the relevant regulation says that a “*plan* that receives special financial assistance must be administered in accordance with” the regulations. 29 C.F.R. § 4262.16(a) (emphasis added). The Phase-In and No-Receivables Regulations then instruct the plan how to calculate withdrawal liability in light of the special financial assistance funding. This is a job for the MEPPs themselves: the relevant statutes do “not call upon the [withdrawing] employer to propose the amount of withdrawal liability. Rather, it places the calculation burden on the plan’s trustees.” *Bay Area Laundry & Dry Cleaning Pension Tr. Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 197 (1997).

The most forceful part of Yellow’s argument is that these regulations are actually conditions on the employers, not the plan. It contends the regulations “directly modify participating employers’ statutory rights to have” their withdrawal liability “calculated in the way Congress prescribed.” *MFN & Mobile Street Opening Br.* at 22. But Yellow does not identify the source of those “rights.”

In any event, this argument gets it backward. Every clue from the regulatory and statutory text points us to the conclusion that ARPA and the

PBGC’s regulations are directed at the *plans*, not the employers. As the PBGC said in its brief to us, Yellow’s argument “rests on” the “unfounded assumption” that Yellow has “a claim” to the special financial assistance funds. PBGC Answering Br. at 21. It does not. Before ARPA was passed, Yellow was “obligated to pay withdrawal liability to” the MEPPs. *Id.* These regulations “merely preserve[] the *status quo* and prevent[] [ARPA] funds from being redirected to participating employers by reducing their withdrawal liability.” *Id.*⁵

(b) The major questions doctrine does not apply. The major questions doctrine stands for the following general proposition: An agency cannot take action that results in a “transformative expansion” of its authority—especially over issues of “vast economic and political significance”—without express permission from Congress. *West Virginia v. EPA*, 597 U.S. 697, 716, 724 (2022) (quotations omitted). In those “extraordinary cases,” we might “hesitate before concluding that Congress meant to confer such authority.” *Id.* at 721 (internal quotation omitted).

This is not an extraordinary case. Congress created the PBGC to set regulations on withdrawal liability, made clear through ARPA it did not want special financial assistance to be used to subsidize withdrawal liability, and charged the PBGC specifically with the task to “impose, by regulation[,] . . . reasonable conditions” related to “withdrawal liability” on any “eligible multiemployer plan that

⁵ The Bankruptcy Court, as a backstop, reasoned that even if these regulations *did* impose conditions on third parties—that is, employers like Yellow—Congress had power under the Spending Clause to do so. *In re Yellow Corp.*, 2024 WL 4925124, at *7–8. We need not address that rationale.

receives special financial assistance.” 29 U.S.C. § 1432(m)(1). Far from a “transformative expansion,” this is PBGC business as usual, transacted per “clear congressional authorization.” *West Virginia*, 597 U.S. at 723–24 (quotations omitted).

Yellow plays the doctrine as a get-out-of-regulation-free card, but we decline to accept that move.

B. We affirm the Bankruptcy Court’s order on the withdrawal liability calculation issue as to the New York and Western Pennsylvania Teamsters Funds.

The regulatory issues above were the basis for our granting this direct appeal. But another withdrawal-liability-calculation issue came to us through the operation of the direct-certification statute, by which we exercise jurisdiction over the entire Bankruptcy Court order, not just those novel issues favoring certification. 28 U.S.C. § 158(d)(2). The Bankruptcy Court ruled that the MPPAA permitted two plans, the New York Teamsters Fund and the Western Pennsylvania Teamsters Fund, to enforce their contract with Yellow and demand withdrawal liability at a contractually-bargained-for rate higher than Yellow’s actual contributions. We agree.

As background, Yellow reentered the New York Teamsters Fund and the Western Pennsylvania Teamsters Fund in 2013. The reentry agreements allowed Yellow to pay reduced contribution rates for employees, as little as 25% of what would normally be required, leading to diminished accruals for those employees. If Yellow withdrew from the pension plans, both agreements allowed the plans to calculate the withdrawal liability at the full 100% of the

contribution rate. Accordingly, the Funds submitted proofs of claim in Yellow’s bankruptcy that calculated its liability at the 100% contribution rate.⁶ The relevant statutory text suggests withdrawal liability is calculated using an employer’s *actual* contribution rates for a time period before the withdrawal. *See* 29 U.S.C. § 1391 (setting out four ways of calculating liability, each of which incorporates this contribution-rate math). Alternative calculation methods are permissible only when a plan obtains PBGC approval, *see id.* § 1391(c)(5)(A); 29 C.F.R. § 4211.23(b), but the New York and Western Pennsylvania funds did not.

Thus here, as in the Bankruptcy Court, Yellow challenges the 100% contribution-rate calculation as a violation of law. But the Bankruptcy Court agreed with the plans that “they did not need PBGC approval” to use the 100% contribution-rate calculation because Yellow “*agreed* to treat [its] withdrawal liability claims in this manner.” *In re Yellow Corp.*, 2024 WL 4925124, at *17 (emphasis in original). The Court reasoned that the MPPAA establishes “a withdrawal liability floor, rather than a withdrawal liability ceiling.” *Id.* That is because “the MPPAA establishes mandatory liability, overriding contracts that allowed firms to withdraw with an effective transfer of unfunded liability to the federal

⁶ We refer to the agreement as a contract because even an ERISA plan “is nothing more than a contract.” *Mirza v. Ins. Adm’r of Am., Inc.*, 800 F.3d 129, 133 (3d Cir. 2015). But we note that the contract issue here was Yellow’s agreement to reenter the MEPP under the terms of a rehabilitation plan. *See Central States, Se. & Sw. Areas Pension Fund v. Event Media Inc.*, 135 F.4th 529, 531 (7th Cir. 2025) (explaining that the Pension Protection Act of 2006 requires MEPPs to adopt rehabilitation plans when critically underfunded to change benefit accruals and contributions “that would enable the plan to recover”).

Treasury. It does not forbid employers from agreeing to pay extra money to a pension trust.” *Id.* (quoting *Artistic Carton Co. v. Paper Indus. Union-Mgmt. Pension Fund*, 971 F.2d 1346, 1353 (7th Cir. 1992)). And, in any event, because “the purpose of the MPPAA is to ensure the solvency of multiemployer plans, . . . case law has interpreted the statute liberally to protect plans’ solvency.” *Cent. States, Se. & Sw. Areas Pension Fund v. Laguna Dairy, S. De R.L. De C.V.*, 132 F.4th 672, 678 (3d Cir. 2025).

True, at first glance the contractual provision here seems to run headlong into the statutory requirement that “any other alternative method for determining an employer’s” withdrawal liability must be approved by the PBGC. 29 U.S.C. § 1391(c)(5)(A). Yellow would have us believe so. But we do not for two reasons.

First, Yellow never reckons sufficiently with the fact that this approval is required not for every accounting change, but just for those that are a “completely different method” for a plan as a whole. *Peick*, 724 F.2d at 1256. Here, the contract simply made clear that the plan’s normal contribution rate and calculation would apply upon Yellow’s withdrawal, so we struggle to see how any such change requiring PBGC approval occurred. Second, by statute, any PBGC approval must be “based on its determination that adoption of the method by the plan would not significantly increase the risk of loss to plan participants and beneficiaries or to the corporation.” 29 U.S.C. § 1391(c)(5)(A). Although its understanding of the statute is not entitled to deference, *see Loper Bright*, 603 U.S. at 396, we agree with the PBGC that agreements mandating a method whereby an employer agrees to pay more withdrawal liability “pose[] no such risk.” PBGC Supp. Br. at 5

(citing PBGC, Opinion Letter 89-8 (Oct. 19, 1989), 1989 WL 224526).

So, bottom line, “employers may waive *limitations* on their withdrawal liability . . . without approval as an alternative method.” *Artistic Carton*, 971 F.2d at 1354 (emphasis added) (citing PBGC Opinion Letter 89-8). This flexibility—which results only in employers making higher withdrawal-liability payments, not lower ones—makes good sense. Consider it here: Yellow’s contracted-for withdrawal contribution rate was an exchange of (a) greater solvency for the plans in the event of its withdrawal for (b) permission for Yellow to contribute at a lower rate.

Yellow offers no good reason why we should not enforce its own contract against it, instead pointing us to an array of cases in which a plan imposed, without consent, a higher contribution rate on a withdrawing employer’s liability calculation. Yellow Withdrawal Br. at 15–22 (collecting cases). That is not the case here, where Yellow *contracted for this result*. We know no convincing statutory case against holding Yellow to its end of the bargain. Seeking to reenter these pension plans, it bargained for a discount on its contributions by offering to pay full freight on its withdrawal liability if the time came. It is here.

* * *

The PBGC’s Phase-In and No-Receivables Regulations were valid exercises of its delegated authority under ARPA, and Yellow must pay the higher withdrawal liability contracted for with the New York and Western Pennsylvania Teamsters Funds. Therefore, we affirm.

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APPENDIX B

**IN THE UNITED STATES BANKRUPTCY
COURT FOR THE DISTRICT OF DELAWARE**

Chapter 11
Case No. 23-11069 (CTG)
(Jointly Administered)

In re:
YELLOW CORPORATION, *et al.*,¹
Debtors.

**ORDER RELATING TO SFA MEPP
LITIGATION MOTIONS FOR SUMMARY
JUDGMENT AND MOTIONS TO RECONSIDER**

The Court has considered: (a) certain motions for summary judgment filed by the Debtors, SFA MEPPs, and PBGC (the “MSJs”) [Docket Nos. 3803, 3805, 3825, 3882] and responses and objections thereto; and (b) certain motions to reconsider (the “Motions to Reconsider”) [Docket Nos. 4461, 4462] and responses and objections thereto; and the Court having held a hearing on the MSJs on August 6, 2024, and having held a hearing on the Motions to Reconsider on October 28, 2024; the Court having issued rulings regarding the MSJs [Docket Nos. 4326,

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/YellowCorporation>. The location of the Debtors’ principal place of business and the Debtors’ service address in these chapter 11 cases is: 11500 Outlook Street, Suite 400, Overland Park, Kansas 66211.

4769] and Motions to Reconsider [Docket Nos. 4771, 4846]; and the district court having jurisdiction under 28 U.S.C. § 1334, which was referred to this Court under 28 U.S.C. § 157 pursuant to the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that venue of this proceeding in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The *Central States Pension Fund's Motion for Partial Summary Judgment* [Docket No. 3803] is granted, for the reasons set forth in the *Amended Memorandum Opinion* [Docket No. 4769].

2. The *Multiemployer Pension Plans' Motion for Partial Summary Judgment* [Docket No. 3805] is granted, for the reasons set forth in the *Amended Memorandum Opinion* [Docket No. 4769].

3. The *Debtors' Motion for Partial Summary Judgment on SFA MEPPS' Withdrawal Liability Claims* [Docket No. 3825] is granted in part, for the reasons set forth in the *Amended Memorandum Opinion* [Docket No. 4769].

4. The *Pension Benefit Guaranty Corporation's Motion for Partial Summary Judgment & Opposition to Summary Judgment for Debtors* [Docket No. 3882] is granted in part, for the reasons set forth in the *Amended Memorandum Opinion* [Docket No. 4769]. Specifically, the Court determined that the PBGC Regulations at issue were in the scope of the agency's expressly delegated authority, were consistent with

the applicable statutory text, and were not arbitrary or capricious.

5. The *Debtors' Motion to Reconsider in Part the September 13, 2024 Memorandum Opinion Finding a Withdrawal Liability Default in Advance of a Withdrawal Liability Payment Obligation* [Docket No. 4461] is granted, for the reasons set forth in the *Amended Memorandum Opinion* [Docket No. 4769] and *Order Granting Motion for Reconsideration and Posing Further Questions for the Parties to Consider* [Docket No. 4771].

6. The *MFN Partners, LP and Mobile Street Holdings, LLC Pursuant to 11 U.S.C. § 502(j) and Federal Rules of Bankruptcy Procedure 3008 and 9023 Requesting Reconsideration of Court's Entry of Partial Summary Judgment in Favor of Pension Plans and Joining Debtor Reconsideration Motion* [Docket No. 4462] is denied, for the reasons set forth in the *Memorandum Opinion* [Docket No. 4846].

7. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. For avoidance of doubt, this Order does not constitute a final order for purposes of 28 U.S.C. § 158(a)(1).

9. This Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation, implementation, or enforcement of this Order.

Dated: December 2nd, 2024
Wilmington, Delaware

/s/Craig T. Goldblatt
CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

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APPENDIX C

**IN THE UNITED STATES BANKRUPTCY
COURT FOR THE DISTRICT OF DELAWARE**

Chapter 11

Case No. 23-11069 (CTG)

(Jointly Administered)

Related Docket Nos. 3803, 3805, 3825, 3882

In re:

YELLOW CORPORATION, *et al.*,

Debtors.

AMENDED MEMORANDUM OPINION

As part of the American Rescue Plan Act of 2021, Congress authorized the Pension Benefit Guaranty Corporation to provide billions of dollars in “special financial assistance” to financially troubled pension plans.¹ Congress addressed the use of these federal funds and specified that they may be used only to “make benefit payments and pay plan expenses.”² The debtors assert without contradiction that the eleven multiemployer pension plans that are parties

¹ 29 U.S.C. § 1432. The Pension Benefit Guaranty Corporation is referred to as the “PBGC.” In citing and referring to provisions of ERISA, this Memorandum Opinion points to the statutory provisions as codified in titles 26 and 29 of the United States Code.

² 29 U.S.C. § 1432(l).

to this claims-allowance dispute collectively received more than \$40 billion in special financial assistance.³

The debtors, who once operated one of the nation’s largest trucking companies, shut down their business in the summer of 2023. As a result of shutting down, the debtors withdrew from the various multiemployer pension plans to which they had contributed. When an employer withdraws from a multiemployer pension plan that has “unfunded vested benefits,” ERISA makes the withdrawing employer liable to the plan for that employer’s share of those unfunded vested benefits.⁴ The employer’s share of unfunded vested benefits (with certain adjustments) is generally referred to as the employer’s “withdrawal liability.”

The principal question now before the Court is whether federal funds awarded to the plans under the American Rescue Plan Act should count as “plan assets” for the purposes of calculating the plans’ “unfunded vested benefits” and thus for determining (and potentially reducing or eliminating) the debtors’ withdrawal liability. The debtors contend that the federal funds should count. The PBGC, however, issued two regulations designed to ensure that a plan’s receipt of special financial assistance would not operate to let a withdrawing employer off the hook for withdrawal liability it would have otherwise owed. One regulation (referred to as the “No-Rec-eivables Regulation”) provides that American Rescue Plan Act funds that have been awarded but not yet paid to the plan do not count as assets of the plan.⁵

³ D.I. 3825 at 1.

⁴ 29 U.S.C. § 1381(a). The Employee Retirement Income Security Act is referred to as ERISA.

⁵ 29 C.F.R. § 4262.16(g)(2)(xiii).

The other regulation (referred to as the “Phase-In Regulation”) provides that, for the purpose of calculating plan assets, the funds received under the American Rescue Plan Act should be treated as if they were received by the plans over time, even after they are in fact paid to the plan in a lump sum.⁶

In the present motions for partial summary judgment, the debtors argue that these two regulations exceed the PBGC’s statutory authority and are contrary to law. The Court rejects that argument. The American Rescue Plan Act gave the PBGC express authority to “impose, by regulation or other guidance, reasonable conditions on an eligible multi-employer plan that receives special financial assistance relating to . . . withdrawal liability.”⁷ In addition, ERISA gives the PBGC general authority to adopt “regulations as may be necessary to carry out the purposes” of Title IV of ERISA, which includes the provisions that relate to an employer’s withdrawal liability.⁸ The Phase-In and No-Receiveables Regulations fall within these express grants of authority. The regulations implement Congress’s specific directive in the American Rescue Plan Act that special financial assistance be used only to pay plan benefits and costs. The regulations prevent such funds from instead being used, in effect, to reduce amounts that employers would otherwise be required to pay upon withdrawal from a plan.

The debtors argue that the regulations cannot properly be regarded as “reasonable conditions *on an eligible multiemployer plan* that receives special

⁶ *Id.* § 4262.13(g)(viii).

⁷ 29 U.S.C. § 1432(m).

⁸ *Id.* § 1302(b)(3); *id.* § 1393(a).

financial assistance relating to . . . withdrawal liability” because the conditions affect the withdrawal liability of *the employer*, which is not the entity that receives the federal funds. But in the analogous context of Congress’ power under the Spending Clause, the Supreme Court has enforced similar provisions that bind third parties, not just the party that agreed to the terms when it accepted the federal funds. The debtors also argue that the Phase-In Regulation is contrary to a statutory provision that describes the special financial assistance funds, once paid to a plan, as an “asset.” The Court concludes, however, that this passing use of the term “asset” cannot prevail over the specific directive of the American Rescue Plan Act that expressly prohibits the use of special financial assistance for any purpose other than paying benefits and plan expenses.

The debtors alternatively contend that the regulations are arbitrary and capricious. The administrative record, however, makes clear that the PBGC considered the relevant factors and provided a reasoned analysis in support of its regulatory decision.

Finally, the debtors seek partial summary judgment on three discrete issues regarding the calculation of withdrawal liability. That liability is calculated is by determining (through a formula) a cap on the withdrawing employer’s annual payment obligation. Under the statute, an employer’s withdrawal liability will never exceed 20 times that annual payment, even if it would take 25 or 50 or 1,000 such payments to repay the employer’s allocable share of the fund’s unfunded vested benefits. A default, if one occurred, would accelerate the payments that would have otherwise been due over 20 years. It would not

however, contrary to the arguments made by the plans, remove the cap imposed on the employer's withdrawal liability, which limits that liability to no more than 20 times the amount of the annual payments. The question of whether the debtors defaulted, however, is not properly resolved on the current summary judgment record. The debtors are also incorrect in arguing that there is anything in ERISA that should relieve them of their contractual obligation to pay the New York Teamsters and the Western Pennsylvania Teamsters more than they might have otherwise owed in the absence of such agreement.

Factual and Procedural Background

A. The statutory and regulatory framework

1. *ERISA as amended by the Multi-employer Pension Plan Amendments Act of 1980*

Congress enacted ERISA to establish minimum standards for pension plans in private industries. The PBGC is a government agency, created under ERISA, whose purpose is to ensure the stability of the pension system, both for single-employer and multiemployer pension plans. The PBGC is charged by statute with the task of encouraging voluntary private pension plans for the benefit of participants, providing for the timely and uninterrupted payment of benefits, and maintaining premiums (which are paid to the pension plans) at the lowest level consistent with carrying out these obligations.⁹ The PBGC also operates as an insurer for pension

⁹ 29 U.S.C. § 1302(a)(1)-(3).

benefits, guaranteeing a portion of the benefits if a plan becomes insolvent.¹⁰

Soon after the enactment of ERISA, Congress became concerned about multiemployer pension plans. The structure of multiemployer pension plans created incentives for employers to withdraw from financially troubled plans. When an employer exits a financially distressed plan, the remaining employers would bear the costs of filling whatever funding shortfall the plan faced, without the assistance of the departing employer. This created a problem much like the paradigmatic run on a bank. Once an employer exited, others (who did not want to be left shouldering the departing employer's share) would have an incentive to do the same. And once those participants left, whomever remained in the plan would have even greater incentives to exit, leading to what a former PBGC Executive Director described, in testimony before Congress, as a "vicious downward spiral."¹¹ As the insurer of these plans, much of the cost of withdrawal would fall upon the PBGC.¹²

Congress enacted the Multiemployer Pension Plan Amendments Act of 1980, as an amendment to ERISA, to address these concerns.¹³ The MPPAA imposed liability on employers when they withdraw

¹⁰ 29 U.S.C. §§ 1322, 1322(a), 1361.

¹¹ See, e.g., *Connolly v. PBGC*, 475 U.S. 211, 216 (1986) (quoting Pension Plan Termination Insurance Issues: Hearings before the Subcommittee on Oversight of the House Committee on Ways and Means, 95th Cong., 2nd Sess., 22 (1978) (statement of Matthew M. Lind)).

¹² 29 U.S.C. § 1361.

¹³ See *Connolly*, 475 U.S. at 217. The Multiemployer Pension Plan Amendments Act of 1980 is referred to as the "MPPAA."

from a multiemployer pension plan. If an employer chose to leave, the departing employer, rather than the employers remaining in the pension plan (and the PBGC), would be on the hook for the departing employer's portion of the shortfall.¹⁴ This ensured that employers would have incentives to stay in a plan even if another employer were to leave.

The MPPAA sets forth a formula to calculate withdrawal liability, which is the withdrawing employer's portion of the pension plan's shortfall, or "unfunded vested benefits."¹⁵ Unfunded vested benefits are "the value of nonforfeitable benefits under the plan" (or liabilities of the plan) less "the value of the assets of the plan."¹⁶

After an employer has withdrawn from a multi-employer plan, the pension plan calculates the liability and notifies the employer of the amount of liability and the schedule for payments.¹⁷ The statute provides that the withdrawing employer's proportional share of the plan's unfunded vested benefits is measured "as of the end of the plan year preceding the plan year in which the employer withdraws," and is based upon the most recent 10 years of contributions.¹⁸

This framework is subject to an exception. The MPPAA requires that the proportional share be

¹⁴ *Peick v. PBGC*, 724 F.2d 1247, 1267-1268 (7th Cir. 1983).

¹⁵ 29 U.S.C. § 1381(b)(1).

¹⁶ *Id.* § 1393(c).

¹⁷ *Id.* § 1399(b).

¹⁸ *Id.* § 1391(c)(4)(C). See also *Milwaukee Brewery Workers' Pension Plan v. Joseph Schlitz Brewing Co.*, 513 U.S. 414, 418 (1995); *Central States, Se. & Sw. Areas Pension Fund v. Safeway, Inc.*, 229 F.3d 605, 608 (7th Cir. 2000).

amortized into level annual payments that are roughly equal to the payments owed in recent years.¹⁹ If the amortized payments require more than 20 years of payments, the employer’s liability is capped at the first 20 annual payments.²⁰ But like a standard acceleration provision in a loan agreement, the employer’s obligations may be accelerated (with the total amount becoming immediately due and payable) if the employer defaults on its payment obligations.²¹

2. *The American Rescue Plan Act*

After the enactment of the MPPAA, multiemployer pension plans continued to struggle financially, leaving the retirements of many union workers at risk. In the American Rescue Plan Act of 2021, a sweeping legislative enactment that sought to respond to the financial crises caused by the pandemic, Congress sought to shore up the nation’s faltering pension system. The legislation included an appropriation of funds to support multiemployer pension plans, in the form of “special financial assistance.” Eligible pension plans could receive amounts to pay participants’ full benefits through at least 2051.²² These funds could only be used “to make benefit

¹⁹ 29 U.S.C. § 1399(c)(1)(A) (“Except as provided in subparagraphs (B) . . . and in paragraph[] . . . (5), an employer shall pay the amount determined . . . over the period of years necessary to amortize the amount in level annual payments”); *Milwaukee Brewery Workers’ Pension Plan*, 513 U.S. at 418.

²⁰ 29 U.S.C. § 1399(c)(1)(B) (“In any case in which the amortization period . . . exceeds 20 years, the employer’s liability shall be limited to the first 20 annual payments”)

²¹ *Id.* § 1399(c)(5).

²² *Id.* § 1432(j)(1).

payments and pay plan expenses” and must be “segregated from other plan assets.”²³

Congress delegated authority to the PBGC to solicit applications for these funds, distribute them, and issue regulations that placed “reasonable conditions [upon a] . . . multiemployer plan that receives special financial assistance” including conditions “relat[ed] to. . . withdrawal liability.”²⁴ In granting this authority, Congress also listed a number of specific areas that the PBGC could not regulate.²⁵

This delegation added to the PBGC’s preexisting sources of regulatory authority. Since ERISA was first enacted in 1974, the PBGC has had the authority to adopt “regulations as may be necessary to carry out the purposes” of Title IV of ERISA.²⁶ When Congress adopted the MPPAA in 1980, it also granted the PBGC other authority relating to withdrawal liability, including the authority to prescribe “actuarial assumptions and methods” for determining withdrawal liability.

As discussed above, the federal funds at issue here were awarded pursuant to the American Rescue Plan Act, which in relevant part authorized special financial assistance for troubled multiemployer pension plans. The American Rescue Plan Act was passed as a budget reconciliation measure, which under the Senate’s parliamentary rules meant that it was not subject to a filibuster. The parliamentary rules relating to budget reconciliation measures

²³ *Id.* § 1432(l).

²⁴ *Id.* §§ 1432(a)(1), 1432(m)(1).

²⁵ *Id.* § 1432(m)(2).

²⁶ 29 U.S.C. § 1302(b)(3).

(referred to as the “Byrd Rule”) also provide that the legislation may only contain measures related to the federal budget, and nothing “extraneous” thereto.²⁷ The House version of the American Rescue Plan Act contained a provision that expressly provided that funds received under the Act would not be taken into account for the purposes of calculating withdrawal liability, until 15 years after the funds are received.²⁸ The debtors contend, without contradiction from any other party, that this provision was removed as extraneous under the Byrd Rule.²⁹

As enacted, however, the American Rescue Plan Act specified that special financial assistance may be used only to “make benefit payments and pay plan expenses”³⁰ and gave the PBGC authority to “impose, by regulation or other guidance, reasonable conditions on an eligible multiemployer plan that receives special financial assistance relating to . . . withdrawal liability.”³¹ After notice and comment, the PBGC promulgated the two regulations at issue here (among other regulations).³² The “Phase-In Regulation” directs plans to phase in the special financial

²⁷ Congressional Research Service, “The Budget Reconciliation Process: The Senate’s ‘Byrd Rule’” at 5 (Sept. 28, 2022), <https://crsreports.congress.gov/product/pdf/RL/RL30862/20>.

²⁸ H.R. 1319 § 9704(l) (Engrossed in House, March 3, 2021).

²⁹ D.I. 3852 at 8-9. Comments in the administrative record are to the same effect. *See, e.g.*, D.I. 3882-2 at 579 of 729.

³⁰ 29 U.S.C. § 1432(l).

³¹ *Id.* § 1432(m).

³² *See generally*, D.I. 3882-3 at 2 of 729 (listing a combined 111 public comments received in response to the SFA Interim Final Rule and SFA Final Rule), and *id.* at 6-10 of 729 (listing communications with stakeholders that pre-date the SFA Interim Final Rule).

assistance gradually, over a number of years, for purposes of the calculation of withdrawal liability.³³ The “No-Receivables Regulation” restricts multiemployer plans from recognizing, as an asset, special financial assistance that they have been awarded before the funds are actually paid to the plan.³⁴

The pension plans that are parties to this proceeding submitted applications to the PBGC for special financial assistance between 2021 and 2022.³⁵ They were awarded, in aggregate, \$41.1 billion in financial assistance.³⁶ The PGBC made payments “as soon as practicable.” The application for special financial assistance submitted by Central States, which is the pension fund with the largest proof of claim at issue here, was approved by the PGBC on December 5, 2022; Central States received those funds as a lump sum on January 12, 2023.³⁷

³³ See 29 C.F.R. § 4262.16(g)(ii) (“**SFA assets excluded.** The value of the plan assets taken into account as of the end of each determination year is the value of the assets that would otherwise be taken into account in the absence of this provision reduced by the amount described in paragraph (g)(2)(ix) of this section. The value of plan assets determined under this paragraph (g)(2)(viii) may not be less than zero.”)

³⁴ See 29 C.F.R. § 4262.16(g)(2)(xiii) (“**No receivable.** Special financial assistance assets must be excluded from the determination of unfunded vested benefits until the date that special financial assistance is paid to the plan under § 4262.12, and no receivable shall be set up as of any earlier date in anticipation of the plan receiving such payment.”) (emphasis in original).

³⁵ See D.I. 3825 at 11-12 n.8-18.

³⁶ *Id.* at 12-14 n.19-37.

³⁷ D.I. 1322 at 19.

B. The bankruptcy case and claims objections

The debtors ceased business operations in July 2023 and filed these bankruptcy cases on August 6, 2023.³⁸ The 11 pension plans whose claims are now at issue calculated the debtors' annual payment or prepared an annual payment schedule for the debtors and filed 174 proofs of claim in the bankruptcy case, seeking \$6.5 billion in withdrawal liability. The pension plans did not include special financial assistance funding in the determination of the debtors' withdrawal liability.³⁹

Central States, the pension plan with the largest proof of claim, calculated the debtors' withdrawal liability "as of the end of the plan year preceding the plan year in which the employer withdraws," or December 31, 2022. Central States did not receive its special financial assistance until January 2023. Since PBGC regulation barred Central States from including the SFA as a "receivable," Central States did not include those funds as "assets" in its calculation of withdrawal liability.

The ten other pension plans that received special financial assistance also calculated debtors' annual payment or prepared an annual payment schedule for debtors. These plans gave effect to the Phase-In Regulation. In addition, these plans assert that the debtors, by virtue of the bankruptcy, were in default of their obligations. As a result, these plans contend

³⁸ D.I. 1.

³⁹ D.I. 3852-6 at 21 (Ciner Dep. Tr.); D.I. 3852-7 at 46, 147 (Culp Dep. Tr.); D.I. 3852-8 ¶ 25 (Sekol Decl.); D.I. 3852-9 ¶ 25 (Regalbuto Decl.); D.I. 3852-10 ¶ 25 (Bullock Decl.); D.I. 3852-11 ¶ 25 (Iannucci Decl.); D.I. 3852-12 ¶ 25 (Dennis Decl.).

that the debtors' withdrawal liability obligations were accelerated. In calculating that accelerated liability, these plans did not limit the withdrawal liability they were seeking to 20 years of the annual payments, but instead included the debtors' entire allocable share of the plans' unfunded vested benefits.⁴⁰

The debtors objected to all of the pension plans' proofs of claim. The parties then submitted an agreed scheduling order on the claims allowance issues, anticipating a week-long trial to occur in the first week of August 2024.⁴¹ The pension plans then filed a motion that was styled as a motion to compel arbitration, but that the Court concluded was better understood as a motion for stay relief to permit the plans to initiate an arbitration. The Court denied the motion.⁴²

Central States moved for partial summary judgment regarding the validity of the Phase-In and No-Receiveables Regulations, arguing they are consistent with the text of the American Rescue Plan Act and ERISA.⁴³ The ten other pension plans that received special financial assistance moved for summary judgment regarding the validity of the PBGC's Phase-In Regulation.⁴⁴ The debtors moved for partial summary judgment regarding the validity of the PBGC regulations as well as on certain issues relat-

⁴⁰ D.I. 3852 at 16-17.

⁴¹ D.I. 2195.

⁴² 42 *In re Yellow Corp.*, No. 23-11069, 2024 WL 1313308 (Bankr. D. Del. Mar. 27, 2024).

⁴³ D.I. 3803.

⁴⁴ D.I. 3805.

ing to the calculation of withdrawal liability.⁴⁵ The PBGC filed its own motion for summary judgment in defense of its regulations.⁴⁶ The Unsecured Creditors' Committee filed a statement that took no positions regarding the validity of the PBGC regulations at issue, but generally in support of the debtors on the calculation issues.⁴⁷ An ad hoc group of equity holders and an unsecured creditor joined the debtors' motion for partial summary judgment.⁴⁸ After full briefing on each of the motions, the Court held oral argument on August 6, 2024.⁴⁹ The Court issued its original Memorandum Opinion on September 13, 2024. Following the filing of the debtors' motion for

⁴⁵ D.I. 3825.

⁴⁶ D.I. 3882.

⁴⁷ D.I. 3998 at 3 (“The Committee submits, however, that to the extent the Court determines that the Pension Funds have allowed withdrawal liability claims, the Committee agrees with the Debtors that the 20-Year Cap must be applied and that such withdrawal liability claims should be discounted to net present value. Because the appropriate discount rate appears to be a factual dispute not suitable for summary judgment, the Committee takes no position on the appropriate discount rate at this time.”).

⁴⁸ D.I. 4015; D.I. 4028.

⁴⁹ D.I. 3803 (Central States' motion for summary judgment), D.I. 3805 (other pension funds' motion for summary judgment), D.I. 3917 (debtors' opposition brief), D.I. 3918 (MFN's opposition brief), D.I. 4009 (other pension funds' reply), D.I. 4010 (Central States' reply), D.I. 4009 (other pension funds' reply); D.I. 3825 (debtors' motion for summary judgment), D.I. 3950 (Central States' opposition brief), D.I. 3975 (other pension funds' opposition brief), D.I. 4011 (debtors' reply brief), D.I. 4012 (MFN's reply); D.I. 3882 (PBGC's motion for summary judgment), D.I. 3992 (debtors' opposition brief), D.I. 3993 (MFN's opposition brief), D.I. 4034 (PBGC's reply).

reconsideration, the Court issues this Amended Memorandum Opinion.

Jurisdiction

The district court has subject-matter jurisdiction over this contested matter under 28 U.S.C. § 1334(b). This case has been referred to this Court under 28 U.S.C. § 157(a) and the district court's standing order of February 29, 2012. The motions for partial summary judgment arise in connection with a claims allowance dispute, which is a core bankruptcy matter.⁵⁰

Analysis

This claims allowance dispute is a contested matter whose procedures are governed by Bankruptcy Rule 9014, which incorporates Civil Rule 56.⁵¹ Under Rule 56, summary judgment (in whole or in part) may be entered if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”⁵² In opposing a motion for summary judgment, a party must “set forth specific facts showing that there is a genuine issue for trial.”⁵³

The parties agree that with respect to the matters on which summary judgment is sought, there is no genuine dispute of material fact. Rather, the differences between the parties are over questions of law. The parties therefore sensibly agreed to present these issues to the Court for resolution on cross-

⁵⁰ 28 U.S.C. § 157(b)(2)(B) (“Core proceedings include . . . allowance or disallowance of claims against the estate”).

⁵¹ See Fed. R. Bankr. P. 9014(c).

⁵² Fed. R. Civ. P. 56(a).

⁵³ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

motions for partial summary judgment, in the hope that, following the Court’s resolution of the disputed legal questions, it may be relatively easy to resolve the remaining questions with respect to claims allowance (preserving, of course, all parties’ rights to seek review of this Court’s resolution of the legal issues presented).

I. The Phase-In and No-Receivables Regulations are valid.

The framework for considering Yellow’s challenge to the PBGC regulations is set forth in the Supreme Court’s recent decision in *Loper Bright*.⁵⁴ Overruling *Chevron*, the Supreme Court in *Loper Bright* rejected the “fiction” that every ambiguity in a statute is an implicit delegation of authority to an agency charged with administering the program.⁵⁵ The Supreme Court instructed judges to resolve questions of statutory interpretation independently.⁵⁶

At the same time, *Loper Bright* recognized that the correct reading of a statute may well be that it authorizes an agency to exercise discretion.⁵⁷ “For example, some statutes expressly delegate to an agency the authority to give meaning to a particular statutory term. Others empower an agency to prescribe rules to fill up the details of a statutory scheme, or to regulate subject to the limits imposed by a term or phrase that leaves agencies with

⁵⁴ *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).

⁵⁵ *Id.* at 2268.

⁵⁶ *Id.*

⁵⁷ *Id.* at 2263.

flexibility, such as ‘appropriate’ or ‘reasonable.’”⁵⁸ As examples, the Supreme Court pointed to the language of the Fair Labor Standards Act and the Atomic Energy Act that authorized administrative agencies to issue regulations that define statutory terms, as well as environmental statutes that authorized the Environmental Protection Agency to regulate power plants if “such regulation is appropriate and necessary.”⁵⁹ When “the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the” Administrative Procedure Act “is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits.”⁶⁰ To “stay out of discretionary policymaking left to the political branches,” judges should “independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA.”⁶¹

Furthermore, *Loper Bright* reaffirmed that in resolving statutory ambiguities, courts should give “due respect” to the Executive Branch.⁶² The Supreme Court explained that the “interpretations and

⁵⁸ *Id.* at 2263 (citations, brackets, and internal quotations omitted).

⁵⁹ *Id.* n. 5 & 6.

⁶⁰ *Id.* The Administrative Procedure Act is referred to as the “APA.”

⁶¹ *Id.* at 2263. *See also* *Mayfield v. Department of Labor*, No. 23-50724, 2024 WL 4142760, at *4 (5th Cir. Sept. 11, 2024) (“[h]ere, because there is an uncontroverted, explicit delegation of authority, the question is whether the Rule is within the outer boundaries of that delegation”).

⁶² *Id.* at 2257.

opinions” of a government agency with “specialized experience” could be a source “to which courts and litigants [could] properly resort for guidance,” particularly when the agency’s view was well reasoned, longstanding, and consistently held.⁶³

Congress has expressly granted the PBGC the type of gap-filling authority that *Loper Bright* described, both in ERISA as originally enacted in 1974 and again in the provisions of the American Rescue Plan Act that are directly at issue here. As originally enacted, ERISA authorized the PBGC to adopt “regulations as may be necessary to carry out the purposes” of Title IV of ERISA, which is the chapter of the statute addressed to the insurance of defined benefit pension plans.⁶⁴ And in the provisions of the American Rescue Plan Act that provided special financial assistance for troubled multiemployer pension plans, Congress authorized the PBGC to “impose, by regulation or other guidance, reasonable conditions on an eligible multiemployer plan that receives special financial assistance relating to . . . withdrawal liability.”⁶⁵

Accordingly, the questions for this Court are whether the No-Receivables Regulation and the Phase-In Regulation exceed the boundaries of these express delegations of authority and, alternatively, whether the regulations are arbitrary and capricious.

⁶³ *Id.* at 2259 (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-140 (1944) (brackets in original)).

⁶⁴ 29 U.S.C. § 1302(b)(3); see also, e.g., *Doe v. United States*, 372 F.3d 1347, 1357 (Fed. Cir. 2004) (explaining that a similar grant of rulemaking authority – the authority to issue “regulations . . . necessary for the administration of this subchapter” – allows an agency to issue substantive regulations).

⁶⁵ 29 U.S.C. 1432(m).

For the reasons described below, the answer to each of these questions is no.

A. The regulations are authorized by 29 U.S.C. §§ 1302(b)(3) and 1432(m).

As explained above, in both §§ 1302(b) and 1432(m) of Title 29, Congress expressly granted the PBGC the authority to fill statutory gaps through regulation. The Phase-In and No-Receiveables Regulations fall within the boundaries of those delegations because they implement the American Rescue Plan Act’s directive that special financial assistance funds may be used only to “make benefit payments and pay plan expenses.”⁶⁶ If such funds instead were to eliminate or reduce the payments a withdrawing employer would have otherwise have been required to make, those federal funds would, in effect, be used to subsidize the withdrawing employer, even if indirectly. These regulations are therefore precisely the kind of “gap-filling” regulation that *Loper Bright* contemplated. Moreover, for the reasons set forth below, the Phase-In and No-Receiveables Regulations are not contrary to other relevant statutory provisions.

1. The No-Receiveables Regulation and the Phase-In Regulation are properly regarded as conditions on the plans’ receipt of the special financial assistance.

The American Rescue Plan Act authorized the PBGC to “impose, by regulation or other guidance, reasonable conditions on an eligible multiemployer plan that receives special financial assistance

⁶⁶ 29 U.S.C. § 1432(l).

relating to . . . withdrawal liability.”⁶⁷ The debtors contend that the Phase-In and No-Receiveables Regulations impermissibly impose conditions on *employers* – who do not receive special assistance funds and thus do not agree to the terms of such grants – rather than conditions on the plans.

The Supreme Court, however, has rejected a similar argument when addressing the scope of Congress’s authority to attach conditions on federal grants pursuant to the Constitution’s Spending Clause. The Supreme Court has explained that “Congress may attach conditions on the receipt of federal funds.”⁶⁸ And, as particularly relevant here, the Supreme Court has not limited such “conditions” to those matters that can be accomplished by the *recipient’s* agreement to comply. In *Philpott v. Essex County Welfare Board*, for example, the Supreme Court addressed a provision of the Social Security Act that provided that “none of the moneys paid or payable . . . under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process.”⁶⁹ Although the social security benefits were paid to an individual, the Supreme Court held that the quoted condition prevented a state agency (the Essex County Welfare Board) from garnishing the payments to offset the individual’s debts to the state agency. The Supreme Court so held even though the Social Security Act was an exercise of Congress’s Spending Power⁷⁰ and the Essex County

⁶⁷ 29 U.S.C. § 1432(m).

⁶⁸ *South Dakota v. Dole*, 483 U.S. 203, 206 (1987).

⁶⁹ 42 U.S.C. § 407.

⁷⁰ See *Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548, 588-589 (1937).

Welfare Board was not the recipient of the Social Security Act funds and therefore did not agree to be bound to its conditions.

The same reasoning applies here. Despite the superficial appeal of the debtors' argument that the No-Receivables Regulation and the Phase-In Regulation essentially impose additional *obligations* on withdrawing employers and operate only to the *benefit* of the plans, under the precedent described above (which dealt with an analogous situation), the regulations may fairly be described as conditions on the plans, and thus comport with § 1432(m).⁷¹

⁷¹ In post-hearing submissions, the plans point to the decision in *Zinman v. FDIC*, 567 F. Supp. 243 (E.D. Pa. 1983), as support for the proposition that a condition imposed on one party can affect others who did not agree to the condition. In *Zinman*, a bank received financial assistance from the FDIC on the condition that it issue warrants in favor of the FDIC. A preexisting shareholder of the bank's objected to the issuance of the warrants on the ground they would dilute the shareholder's ownership interest. The court rejected that contention. Reliance on *Zinman* misses the heart of the debtors' argument. The argument is *not* that a condition imposed on one party cannot have incidental effects on other parties. It is instead that one cannot achieve, through the imposition of a condition on a party, anything that cannot be accomplished on account of that party's *agreement* to the condition. In *Zinman*, there was no suggestion that the bank lacked the authority to issue warrants in favor of the FDIC. The dilutive effect on its prior shareholders was simply incidental to the bank's decision to agree to the FDIC's condition. *Philpott*, however, is different (and more like the PBGC regulations at issue here) in that the individual's receipt of social security funds operated to bar the exercise of the collection remedies of Essex County Welfare Board, which (like the debtors here) never agreed to the conditions at issue.

2. In light of the specific statutory directive that special financial assistance be used only to pay benefits and plan administrative costs, the regulations do not run afoul of any other applicable statutory command.

Section 1432(m) expressly limits the PBGC's authority to the adoption of "reasonable" conditions. The debtors contend that even if the Phase-In and No-Receivables Regulations are properly described as conditions on the plans, they are contrary to another statutory requirement and are therefore not "reasonable." Specifically, the debtors argue that a general ERISA provision that predates the American Rescue Plan Act, 29 U.S.C. § 1393(c), defines the term "unfunded vested benefits" to mean the value of the "nonforfeitable benefits" minus "the value of the assets of the plan." The debtors argue that the term "asset" has an ordinary meaning that includes anything of value. Because the plan's right to receive special financial assistance once it is awarded by the PBGC is something of value, the debtors argue that the No-Receivables Regulation and the Phase-In Regulation are not "reasonable" within the meaning of Section 1432(m), which is the later-enacted provision of the American Rescue Plan Act. The Court addresses each regulation separately and rejects the debtors' argument with respect to both regulations.

The Phase-In Regulation. The Phase-In Regulation provides that the special financial assistance funds that the plans received should not be treated as plan assets immediately after they are paid to the plans. Rather, those funds should be "phased in" over a 15-year period.

In challenging this regulation, the debtors point to § 1432(l), which provides that the special financial assistance funding must be segregated from “other plan assets.” They argue that this provision implies that the special financial assistance funding is a plan asset and must be included in the calculation of withdrawal liability. In response, the PBGC does not dispute that special financial assistance, once it has been paid to a plan (as opposed to when it is just a receivable), is an asset. The question is whether the manner in which the Phase-In Regulation treats that asset, for the purpose of calculating withdrawal liability, is consistent with the text of ERISA.

To that end, it must be borne in mind that statutory construction is a holistic exercise that cannot begin and end with a single snippet of statutory text.⁷² In measuring the Phase-In Regulation against ERISA as a whole, the Court must take account of the statutory requirement that special financial assistance be used only “to make benefit payments and pay plan expenses.”⁷³ In light of the magnitude of the special financial assistance provided and the statutory formula for how withdrawal liability is determined, it would necessarily be the case that the mechanical application of ERISA’s § 1393(c) formula would mean that the special financial assistance funding would go toward reducing the withdrawal liability employers would be required to pay to plans in the absence of the cash infusion. That result, however, could not be squared with the specific restriction on the use of the funds imposed by § 1432(l).

⁷² See, e.g., *In re Hertz Corp.*, No. 23-1169, 2024 WL 4132132, at *14 (3d Cir. Sept. 10, 2024).

⁷³ 29 U.S.C. § 1432(l).

The Supreme Court observed in *Brown & Williamson* that the “classic judicial task of reconciling many laws enacted over time, and getting them to make sense in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute.”⁷⁴ The Supreme Court noted that this “is particularly so where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand.”⁷⁵ In such a case, “a specific policy embodied in a later federal statute should control our construction of the earlier statute, even though it has not been expressly amended.”⁷⁶

That account describes this case. The statutory language regarding the computation of withdrawal liability in § 1393(c) dates to the original adoption of the MPPAA in 1980 and governs the calculation of withdrawal liability *in general*. The PBGC was then presented with a more specific question in 2021 when Congress enacted the American Rescue Plan Act and added the restriction set forth in § 1432(l). As in *Brown & Williamson*, the specific policy embodied in the subsequent legislation – here, to ensure that the special financial assistance be used only to pay benefits and plan expenses, not to reduce an employer’s withdrawal liability – conflicted with the literal application of § 1393(c). Under these circumstances, the later and more specific enactment controls. When read in light of that established principle

⁷⁴ *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) (internal quotation and citation omitted).

⁷⁵ *Id.*

⁷⁶ *Id.* (internal quotation, citation, and brackets omitted).

of statutory construction, the Phase-In Regulation poses no conflict with ERISA as a whole.

The Court does not rely on an alternative rationale the PBGC and the plans have offered for upholding the Phase-In Regulation. They suggest that the Phase-In Regulation is analogous to a Department of Treasury Regulation that relates to minimum funding standards. Section 431(c)(2)(A) of Title 26 requires a plan to value its assets, for the purpose of determining the minimum funding required, using “any reasonable actuarial method of valuation that takes into account fair market value and which is permitted under regulations prescribed by the Secretary [of Treasury].”⁷⁷ And the Treasury regulations permit some “smoothing” of the value of assets, such that the minimum funding obligations would not vary sharply based on short-term swings in the present value of perhaps volatile assets.

The Treasury’s “smoothing” regulation, however, can fairly be described as an effort to capture the “true” value of a plan’s assets. The point of the smoothing regulation is to minimize the impact of short-term volatility in an asset’s price, and thus avoid “spiking” that may turn out to be more artificial than representative of the asset’s true value. The same is not true of the Phase-In Regulation, as no one contends that the Phase-In Regulation is a better or more accurate long-term assessment of the assets’ true value than would be provided by short-term market prices. But as explained above, the Phase-In Regulation does accord with a holistic reading of ERISA, particularly in view of the principle that specific and more recent

⁷⁷ 26 U.S.C. § 431(c)(2)(A).

statutory language should be given primacy over older and more general language. On that ground, the Court concludes that the regulation is permissible.

The No-Receivables Regulation. The No-Receivables Regulation does not conflict with any statutory text. ERISA provides that the employer’s allocable share of unfunded vested benefits is based on the unfunded vested benefits “as of the end of the plan year preceding the plan year in which the employer withdraws.”⁷⁸ The No-Receivables Regulation provides that special financial assistance should not be counted as a plan asset, for the purpose of calculating withdrawal liability, unless and until the plan actually receives the promised payment.

At least with respect to Central States (which represents the overwhelming majority of the debtors’ potential withdrawal liability), this is the critical regulation. The PBGC awarded Central States \$35.8 billion in special financial assistance on December 5, 2022.⁷⁹ Central States actually received those funds on January 12, 2023.⁸⁰ Central States’ plan year ended on December 31, 2022.⁸¹ So as of the time at which the calculation of Central States’ unfunded vested benefits was required to be made, it had been awarded \$35.8 billion from the PBGC, but those funds had not yet been received. The No-Receivables Regulation thus provides that the \$35.8 billion should not count as an asset for the purpose of calculating Yellow’s withdrawal liability.

⁷⁸ 29 U.S.C. § 1391.

⁷⁹ D.I. 3804-5.

⁸⁰ D.I. 3804-6.

⁸¹ D.I. 3950-6 at 26, 30 of 71.

How to value a receivable can fairly be described as one of the “details” of the “statutory scheme” that Congress may authorize an administrative agency to “fill up.”⁸² Disputes over how best to value or account for a receivable are of course commonplace.⁸³ The debtors’ argument is that once the PBGC awarded special financial assistance to Central States, the right to receive that payment is properly understood as an “asset” that has value. And at least as far as bankruptcy law is concerned, that point has some force. No one would contend, for example, that a receivable held by a debtor was not property of its bankruptcy estate – an estate asset – under § 541 of the Bankruptcy Code.

On this question, however, it is significant that the No-Receivables Regulation is similar to and consistent with how the agencies implementing ERISA had long addressed similar questions. For example, regardless of the creditworthiness of the employer, the Department of Labor’s position is that an employer’s obligation to make contributions to a plan should not be counted, in annual reports or otherwise, until they are actually received.⁸⁴

⁸² *Loper Bright*, 144 S. Ct. at 2263.

⁸³ See generally *In re Nobilis Health Corp.*, No. 21-51183, 2024 WL 2965204 (Bankr. D, Del. June 12, 2024) (granting summary judgment for defendants in claim alleging that company’s management breached fiduciary duties by improperly valued and accounted for receivables).

⁸⁴ The Department of Labor “has taken the position that employer contributions become an asset of the [pension] plan only when the contribution has been made.” U.S. Department of Labor, *Field Assistance Bulletin No. 2008-01* (Feb. 1, 2008), <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2008-01>. In a plan’s annual report, it cannot use unpaid contributions as plan assets. 29 U.S.C.

Loper Bright emphasized that respect for an agency determination is “especially warranted” where its construction is “longstanding” and “consistent over time.”⁸⁵ Similarly, in the course of upholding a regulation that required federally funded health-care facilities to ensure that their employees were vaccinated against COVID-19, the Supreme Court emphasized that the vaccination requirement was consistent with “the longstanding practice of Health and Human Services in implementing the relevant statutory authorities.”⁸⁶ The Supreme Court explained that although the agency had not previously imposed a vaccination requirement, federally funded healthcare facilities “have always been obligated to satisfy a host of conditions that address the safe and effective provision of healthcare.”⁸⁷

The No-Receipts Regulation, like the vaccine mandate, imposes a rule that is similar to those that had long been applicable in analogous circumstances. The No-Receipts Regulation is thus a valid exercise of the rulemaking authority that Congress has given to the PBGC.

3. The major questions doctrine is inapplicable.

The debtors’ reliance on the major questions doctrine is misplaced. Under that doctrine, “separ-

§ 1024(a) (delegating regulatory authority to the Secretary of Labor regarding a plan’s annual report); Instructions for Form 5500, Schedule R, line 6b (“do not include receivable contributions”), Line 19(a) (“do not include the value of any receivables”), -and-compliance/reporting-and-filing/form-5500/2023-instructions.pdf.

⁸⁵ *Loper Bright*, 144 S. Ct. at 2258.

⁸⁶ *Id.* at 94.

⁸⁷ *Id.*

ation of powers principles and a practical understanding of legislative intent” counsel against interpreting a general or ancillary statutory provision to give an agency authority to adopt regulations that would have a sweeping economic or political significance.⁸⁸ Even if the regulations at issue here implicate that doctrine, Congress clearly stated in the American Rescue Plan Act that it did not want the special financial assistance it was providing to be used for purposes other than to pay benefits and plan expenses. The regulations at issue here give effect to that specific congressional directive. Accordingly, the major questions doctrine poses no obstacle to the challenged regulations.

4. No inference should be drawn, in either direction, from proposed statutory language that Congress declined to include in the American Rescue Plan Act or from the enumeration of areas that the PBGC may not regulate.

Congress considered but failed to enact statutory language that would have required special financial assistance to be excluded from plan assets for 15 years, for purposes of calculating withdrawal liability. The debtors argue that the Court should infer from that decision that the regulations at issue here are unauthorized. The PBGC argues that the Court should infer from the enumeration of areas that the PBGC may not regulate that the regulations are authorized. The Court does not accept either side’s argument in this regard.

⁸⁸ *West Virginia v. EPA*, 597 U.S. 697, 723 (2022). *See also Biden v. Nebraska*, 143 S. Ct. 2355 (2023).

The debtors argue that the Court should infer from the failure to adopt the language that was stricken under the Byrd Rule that the regulations at issue are necessarily invalid – an attempt to do by regulation what could not be accomplished legislatively. But even without that proposed language, the text of the American Rescue Plan Act makes plain that Congress was focused on ensuring that the special financial assistance being provided would be used to shore up the nation’s faltering pension system and not for other purposes. In light of this statutory context, the Court does not believe it should ascribe significance to the proposed statutory language that Congress considered but did not adopt.

The Supreme Court has long made clear that courts must be “reluctant to draw inferences from the failure of Congress to act.”⁸⁹ Sometimes Congress considers but rejects certain statutory language because it believes the remaining legislation is sufficient and the additional language is extraneous. Other times, it may be because of a substantive disagreement with what was proposed and rejected. The point of the cases cited in the margin (at n. 89) is that, at the very least, one must exercise care before drawing an inference from the failure to enact language that was considered but rejected. In fairness, in some number of more recent cases, the Supreme Court has pointed to Congress’ failure to enact legislation as a basis to invalidate regulations that might accomplish what the proposed legislation

⁸⁹ *Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 220 (1983); *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 306 (1988).

did not.⁹⁰ But even so, at least in cases like this one, where a reasoned case can be made that the omitted language was unnecessary in light of other statutory language, such an inference is inappropriate.

For its part, the PBGC emphasizes that Congress identified certain areas that the PBGC could *not* regulate. In § 1432(m)(2), Congress identified certain areas that it excluded from the agency's regulatory authority, including prospective benefit reductions, plan governance, and funding rules.⁹¹ The PBGC suggests that the Court can draw a negative inference: The fact that the No-Receipts Regulation and the Phase-In Regulation are not on the list of things that the agency *cannot* do, the PBGC implies, means that Congress effectively authorized them. That argument is not persuasive. In its context, including the detail and complexity of ERISA, the express exclusion of certain specific areas from the agency's regulatory authority cannot fairly be read to mean that Congress granted the agency the authority to adopt any and every regulation that was not on its list of exclusions. The task of deciding whether a regulation is consistent with the statute still requires a careful assessment of the rest of the applicable statutory language. As stated above, the PBGC regulations at issue here are within the scope of its expressly delegated authority and are consistent with the applicable statutory text.

⁹⁰ See *West Virginia*, 597 U.S. at 731 (“Finally, we cannot ignore that the regulatory writ EPA newly uncovered conveniently enabled it to enact a program that, long after the dangers posed by greenhouse gas emissions had become well known, Congress considered and rejected multiple times.”) (citation and internal quotation omitted).

⁹¹ See 29 U.S.C. § 1432(m)(2).

B. The PBGC did not act in an arbitrary and capricious manner.

In the alternative, the debtors contend that the regulations are arbitrary and capricious. An agency action is “arbitrary or capricious if it is not reasonable and reasonably explained.”⁹² Unlike with questions of law, for questions of policy, the court does not approach the question anew and may not substitute its own judgment for that of the agency.⁹³ Rather, the enquiry ensures that the agency provided “a satisfactory explanation for its action, including a rational connection between the facts found and the choice made.”⁹⁴ The agency cannot circumvent this analysis by ignoring “an important aspect of the problem.”⁹⁵

The backdrop of the PBGC’s rulemaking was the history of ERISA and the MPPAA. Congress’ concern was with avoiding a circumstance in which one employer’s withdrawal from a troubled multiemployer plan would have a cascading effect that would destroy the plan.⁹⁶ The PBGC was required to balance the objectives set forth by Congress in the MPPAA (to continue employer contributions and maintain the plans for its beneficiaries) with the one-time cash payment provided under the American Rescue Plan

⁹² *Ohio v. Environ. Protec. Agency*, 144 S. Ct. 2040, 2053 (2024) (citation and internal quotations omitted).

⁹³ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009).

⁹⁴ *Motor Vehicle Mfrs. Assn of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotations omitted).

⁹⁵ *Id.*

⁹⁶ *See, e.g., Milwaukee Brewery Workers*, 513 U.S. at 416-417.

Act to struggling pension plans without destabilizing the plans.⁹⁷

The PBGC provided interested parties with multiple opportunities to weigh in. The notice and comment process included review of letters from industry stakeholders, including employers, pension plans, actuarial firms, law firms, individuals, and members of Congress. The PBGC also held a listening tour with relevant stakeholders.⁹⁸ Certain employers expressed concerns that if special financial assistance were immediately recognized in the calculation of unfunded vested benefits that employers would withdraw from the pension plans – leaving those who remain holding the bag.⁹⁹ The primary concern arising from the comments was that the special financial assistance would subsidize employer withdrawals rather than fund benefit payments and plan expenses.¹⁰⁰

Based on the comments, the PBGC concluded that a phased recognition was a reasonable condition that respected the purpose of the MPPAA and the fact that the source of the special financial assistance is a one-time payment from taxpayers, not the payment of regular plan contributions from employers.¹⁰¹ The PBGC was concerned about the impact on pension plans if the special financial assistance were recognized immediately, since doing so would provide

⁹⁷ See 29 U.S.C. § 1302(a).

⁹⁸ 87 Fed. Reg. at 40968, 40970 (July 8, 2022); D.I. 3820-1 at 2-5 of 13.

⁹⁹ D.I. 3820-1 at 6-8, 9-13 of 13 (Bimbo's and Albertsons' comments).

¹⁰⁰ 87 Fed. Reg. at 40996.

¹⁰¹ *Id.* at 40997.

employers with a greater incentive to withdraw from the plans.¹⁰²

The debtors' and equity holders' challenges to the agency's procedures in adopting the regulations are not persuasive. With respect to the Phase-In Regulation, the administrative record shows that the PBGC considered various alternatives to the phasing in of the special financial assistance and ultimately adopted the Phase-In Regulation after considering the comments of interested parties. The decision to phase in the special financial assistance was fully considered and explained in the agency's final rule:

After consideration of comments and analysis of the effectiveness of the interim final rule's withdrawal liability condition, PBGC declined to adopt the approach of fully disregarding [special financial assistance] that was discussed in the interim final rule and suggested by some commenters. Instead, PBGC has concluded that a better approach to addressing commenters' concerns would be to phase in the recognition of [special financial assistance] for purposes of withdrawal liability in a manner that is a more accurate and reasonable reflection of the period over which [special financial assistance] is likely to be spent down by plans. Thus, under § 4262.16(g)(2) of the final rule, pursuant to PBGC's authority under [29 U.S.C. § 1432(m)], PBGC imposes an additional condition relating to withdrawal liability on a plan that receives [special financial assistance]. This condition requires

¹⁰² *Id.* at 40996.

plans to recognize over time the amount of [special financial assistance] received by the plan for the purpose of determining the plan's [unfunded vested benefits] for calculating withdrawal liability.¹⁰³

Nor is there merit to the debtors' contention that the agency's litigation position is a *post hac* rationalization. To the contrary, the final rule offers the same explanation for the rule's statutory basis as the PBGC does before this Court:

Requiring phased recognition of [special financial assistance] as a plan asset is a reasonable condition because [special financial assistance] does not result from employer contributions, but is a transfer of taxpayer funds to eligible financially distressed plans for the purpose of enabling these plans to pay benefits and expenses. That purpose is reflected in [29 U.S.C. §§ 1432(j)(1) and 1432(l)]. Without the condition, the payment of [special financial assistance] could instead result in indirect transfers of [special financial assistance] to withdrawing employers from plans by reducing their withdrawal liability. For a majority of plans that receive [special financial assistance], all [special financial assistance] will be recognized as a plan asset for withdrawal liability purposes within 10 years, and because additional [special financial assistance] will be incorporated into the determination of withdrawal liability each

¹⁰³ *Id.* at 40996.

year, the effect of the condition will lessen over time.¹⁰⁴

The debtors and the equity holder also fault the agency for not limiting the regulations to employers that are voluntarily withdrawing from a plan, as opposed to those (like the debtors) whose withdrawal from a plan might be described as involuntary. But the PBGC is correct to respond that such a distinction, even assuming that it were administratively possible to draw it, would be a total stranger to ERISA itself, which neither makes nor suggests of any such distinction. The agency's failure to consider a proposal that was neither proposed during the notice and comment period, nor is grounded in the statutory text, does not render its decision arbitrary and capricious.

II. The debtors are correct that their withdrawal liability is subject to the 20-year cap; the current record does not permit the entry of summary judgment on whether that liability is accelerated on account of default; and the debtors should be held to their agreements with the New York Teamsters and Western Pennsylvania Teamsters.

The debtors and the pension plans also seek partial summary judgment with respect to three questions relating to the calculation of the debtors' withdrawal liability. *First*, the debtors contend that the withdrawal liability should be subject to ERISA's 20-year cap. *Second*, the debtors contend that the 20-year stream of payments that would otherwise be due needs to be reduced to present value. And *third*, the

¹⁰⁴ *Id.* at 40997.

debtors challenge the manner in which two plans calculated their withdrawal liability.

A. ERISA's 20-year cap is applicable to the plans' claims.

The debtors contend that 10 of the 11 plans failed to limit their asserted claims to the first 20 years of annual payments, as they contend §§ 1381(b)(1)(C) and 1391(c)(1)(B) require.

ERISA sets forth a multi-step process for calculating withdrawal liability. *First*, the plan needs to calculate the amount of its unfunded vested benefits, which (as described above) is the plan's nonforfeitable benefits minus the value of the plan's assets.¹⁰⁵ *Second*, the plan must determine what share of those unfunded vested benefits are properly allocated to the withdrawing employer. ERISA requires the plan to use one of four different allocation methods unless the plan receives authorization from the PBGC to use an alternative method.¹⁰⁶ The result of this process is the employer's allocable share of the plan's unfunded vested benefits.

Third, § 1399 provides for four adjustments to the amount of withdrawal liability, the only one of which that is applicable here being the 20-year cap.¹⁰⁷ Withdrawal liability is paid through annual payments. Those annual payments are determined through a formula derived from the employers' actual contributions over the ten preceding plan years.¹⁰⁸

¹⁰⁵ 29 U.S.C. § 1393(c).

¹⁰⁶ *Id.* § 1391.

¹⁰⁷ *Id.* § 1399.

¹⁰⁸ The formula multiplies the highest contribution rate during the ten-year period times the highest average

Section 1399(c)(1)(B) provides that “[i]n any case in which” the employer’s allocable share of the plan’s unfunded vested benefits (from step 2) exceeds 20 annual payments (from step 3) “the employer’s liability shall be limited to the first 20 annual payments.”¹⁰⁹ This amount is the employer’s “withdrawal liability.”

Section 1399(c)(5) provides that in “the event of a default, a plan sponsor may require immediate payment of the outstanding amount of an employer’s withdrawal liability, plus accrued interest.”¹¹⁰ The definition of “default” includes not only the failure to make an annual payment when due, but also “any other event defined in rules adopted by the plan which indicates a substantial likelihood that an employer will be unable to pay its withdrawal liability.”¹¹¹

The plans contend that if the debtors defaulted, the 20-year cap is inapplicable. For that proposition, the plans rely on § 1399(c)(1)(A), which provides (as relevant) that “[e]xcept as provided in . . . subparagraph[] . . . 5, an employer shall pay the amount determined . . . over the period of years necessary to amortize the amount in level annual payments.”¹¹² Section 1399(c)(1)(B) caps the length of the payment obligation at 20 years.

“contribution base units” over three consecutive plan years in the ten-year period.

¹⁰⁹ 29 U.S.C. § 1399(c)(1)(B).

¹¹⁰ 29 U.S.C. § 1399(c)(5).

¹¹¹ *Id.* § 1399(c)(5)(B).

¹¹² 29 U.S.C. § 1399(c)(1)(A)(i).

On the plans' view, the point of the "except" clause does not merely permit acceleration. Rather, the clause provides that, in the event of default, the 20-year cap is abrogated, and the employer is responsible for its entire share of the plan's unfunded vested benefits. There is indeed a case that supports that view. In *GCIU-Employer Retirement Fund v. Professional Printers, Inc.*, the employer defaulted on its obligation to make withdrawal payments.¹¹³ The plan then sued to recover withdrawal liability. The plan apparently argued that the amount of liability in the event of a default was the full amount of the employer's allocable share of the plan's unfunded vested benefits. The employer did not respond to the complaint, so the court considered the issue on the plan's motion for a default judgment. In a footnote, the court adopted the plan's position: "Title 29 U.S.C. section 1399(c)(1)(B) provides that an employer's withdrawal liability is limited to 20 annual payments calculated in accordance with Section 1399(c)(1)(C). This restriction is inapplicable, however, because an employer is permitted to make such 'level annual payments' under Section 1399(c)(1) only if it is not in 'default' under Section 1399(c)(5)."¹¹⁴

That reasoning, however, is not persuasive. The exception that § 1399(c)(1)(A) authorizes is the one set out in § 1399(c)(5). And § 1399(c)(5) provides for acceleration of the 20 years of payments. Nothing in § 1399(c)(5) suggests that what is accelerated is the employer's full share of the plan's unfunded vested benefits. To the contrary, the statute says that what is accelerated is the employer's "withdrawal liability,"

¹¹³ No. 18-01592, 2018 WL 5880281 (C.D. Cal. Aug. 3, 2018).

¹¹⁴ *Id.* at *3 n.4.

a term that, in this context, is best read to mean the amount the employer owes *after* the application of the 20-year cap.

This reading also brings the statute into accord with ordinary commercial terms. It is commonplace for a loan agreement to provide for the loan's acceleration in the event of the borrower's default.¹¹⁵ The commonsense reading of the acceleration upon default provision of § 1399 is one that reads the statute to codify this ordinary practice. Accordingly, even if the debtors had defaulted on their withdrawal liability obligations, the debtors are entitled to summary judgment on their claim that the plans' claims for withdrawal liability are limited to the amounts that would have been due over 20 years as calculated under ERISA.

B. The question of whether the debtors' liability should be discounted to present value cannot be decided on the existing summary judgment record.

The debtors further argue that the 20-year stream of payment should be discounted to its present value. Under the Bankruptcy Code, the amount of an allowed claim is "the amount of such claim in lawful currency of the United States as of the date of the filing of the petition."¹¹⁶ The predicate of that

¹¹⁵ See generally *In re Energy Future Holdings Corp.*, 540 B.R. 96, 99 (Bankr. D. Del. 2015) (quoting commercial loan agreement as providing that, in the event of the borrower's default, that "all principal of *and premium, if any*, interest (including Additional Interest, if any) *and any other monetary obligations* on the outstanding Notes shall be due and payable immediately without further action or notice") (emphasis in original).

¹¹⁶ 11 U.S.C. § 502(b).

argument, however, is that as of the petition date, the debtors owed a 20-year stream of payments and that those payments have not been accelerated. Whether that predicate is correct, however, cannot properly be decided on the current record. The record shows that in calculating its withdrawal liability Central States declared an “insecurity default,” as a result of the debtors’ bankruptcy filing, under 29 U.S.C. § 1399(c)(5)(B).¹¹⁷ The record is silent as to the other pension plans. And even as to Central States, determining the effect of the declared insecurity default raises questions about the enforceability of *ipso facto* provisions for claims allowance purposes, which has not been briefed sufficiently. Nor have the parties engaged the analysis required under the Third Circuit’s decision in *In re Oakwood Homes* to determine whether present discounting is appropriate.¹¹⁸ In light of this uncertainty of both law and fact, the Court will not resolve this question on the current summary judgment record.

C. The New York Teamsters and the Western Pennsylvania Teamsters are entitled to use higher contribution rates when calculating the debtors’ withdrawal liability.

Section 1391 sets out the four methods for calculating unfunded vested benefits. Alternative allocation methods are only permissible where a pension plan first seeks and obtains approval of the PBGC.¹¹⁹

¹¹⁷ See D.I. 3983 at 33-34 & n.14.

¹¹⁸ *In re Oakwood Homes*, 449 F.3d 588 (3d Cir. 2006).

¹¹⁹ 29 U.S.C. § 1391(c)(5)(A) (any amended procedure is “subject to the approval of the corporation based on its determination

In 2013, the debtors reentered the New York Teamsters Fund and the Western Pennsylvania Teamsters Fund.¹²⁰ The agreements to reenter the pension funds allowed the debtors to pay reduced contribution rates for employees, for the New York fund only 25% of the usual rate, leading to diminished accruals for those employees.¹²¹ If the debtors withdrew from the pension plans, both agreements allowed the plans to calculate the withdrawal liability at the full 100% of the contribution rate.¹²²

In calculating their proofs of claim, the New York Teamsters Fund and the Western Pennsylvania Teamsters Fund calculated the debtors' withdrawal liability based on the higher contribution rates.¹²³ Neither plan received PBGC authorization to use this

that adoption of the method by the plan would not significantly increase the risk of loss to plan participants and beneficiaries or to the corporation.”); 29 C.F.R. § 4211.23(b) (criteria for approving alternative allocation methods).

¹²⁰ D.I. 3825-25 (Debtors to reenter New York Teamsters Fund in 2013); D.I. 3825-8 at 7-8 of 10 (Sekol Decl.); D.I. 3825-26 at 2 of 9 (“Distressed Employer Schedule”).

¹²¹ D.I. 3825-25 (“Schedule G” for New York Teamsters Fund) § a (employers under Schedule G to pay contribution rates as low as 25% of their last effective rate).

¹²² See Schedule G, § d; See D.I. 3825-26 at 8 of 9, §§ E.1.5, E.2.2.

¹²³ D.I. 3852 at 26-28 of 49; See D.I. 3825-38 (reflecting imputed contribution rates and contribution base units for Debtors); D.I. 3825-7 at 97, 104-105 (Culp. Dep. Tr.). See D.I. 3825-8 ¶¶ 40-43, 49-50 (Sekol Decl.) (“As of December 31, 2014, the Debtors’ contribution rate being paid to the Fund [\$69.50] was disregarded for purposes of allocating shares of UVB to Debtors. The prevailing National Mater Freight rate of \$432.48 was used for the 2015 pool . . . Annual increases in the NMF rate, if any, were used for subsequent pools.”).

alternative method of allocating the plan's unfunded vested benefits and calculating the debtors' annual payments.¹²⁴

The question then is whether to use the 25% contribution rate based on actual contributions or the 100% contribution rate based upon the agreement. The debtors argue that the New York Teamsters and the Western Pennsylvania Teamsters funds should use the reduced contribution rates that correspond with their actual contributions. And because these plans did not obtain approval from the PBGC, they must use the actual contribution rates.

The pension plans explain, however, that they did not need PBGC approval since the debtors *agreed* to treat their withdrawal liability claims in this manner. And while the plans also make additional arguments, the Court need not consider them, since this first response is sufficient.

Courts have read the MPPAA as establishing a withdrawal liability floor, rather than a withdrawal liability ceiling. The Seventh Circuit wrote in *Artistic Carton*, "the MPPAA establishes mandatory liability, overriding contracts that allowed firms to withdraw with an effective transfer of unfunded liability to the federal Treasury. It does not forbid employers from agreeing to pay extra money to a pension trust."¹²⁵

Here, as in *Artistic Carton*, there is an agreement by the debtors to pay more in the case of withdrawal

¹²⁴ See D.I. 3825-7 at 117-118 (Culp Dep. Tr.) ("Q: New York Teamsters also never got approval from the PBGC for amending the rehabilitation plan to include a Schedule G; correct? A: I believe that's correct."); See D.I. 3825-8 ¶ 39.3 (Sekol Decl.).

¹²⁵ *Artistic Carton Co. v. Paper Indus. Union-Management Pension Fund*, 971 F.2d 1346, 1353 (7th Cir. 1992).

liability. While it is true that pension plans cannot unilaterally impose a change in the withdrawal liability calculations without seeking approval from the PBGC under § 1391, there is nothing to prevent the debtors from forming a contract with the plans that provides for a greater contribution.

That is precisely what has occurred here. Nothing in the text or purpose of ERISA provides a reason why the debtors should not be held to their bargain. The plans are entitled to summary judgment on this point.

Conclusion

For the reasons stated above, the Court will enter partial summary judgment in favor of the plans and partial summary judgment in favor of the debtors. The parties are directed to settle an order so providing.

Dated: November 5, 2024

/s/ Craig T. Goldblatt
CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

APPENDIX D

**IN THE UNITED STATES BANKRUPTCY
COURT FOR THE DISTRICT OF DELAWARE**

Chapter 11
Case No. 23-11069 (CTG)
(Jointly Administered)
Related Docket No. 4462

In re:
YELLOW CORPORATION, *et al.*,
Debtors.

PRELIMINARY OBSERVATIONS

In a September 13, 2024 Memorandum Opinion, this Court concluded that it would reject a challenge, asserted by the debtors and certain holders of equity interests in the debtor, to two regulations issued by the Pension Benefit Guaranty Corporation. Those regulations bear on the calculation of the debtors' liability to various multi-employer pension plans on account of the debtors' withdrawal from those plans.¹

Though the Court rejected their arguments, the challengers raised two particularly colorable points. The *first* argument is that the relevant statute authorizes the PBGC to “impose, by regulation or other guidance, *reasonable conditions on an eligible multiemployer plan* that receives special financial

¹ See D.I. 4326. The Pension Benefit Guaranty Corporation is referred to as the “PBGC.”

assistance relating to . . . withdrawal liability.”² The challengers argued that the regulations at issue, whose net effect was to increase the withdrawal liability employers owed the plans upon withdrawal, could not be described as a “condition” that was being “impose[d]” on the “plan.” *Second*, the challengers suggest that the regulations conflict with statutory language that could be read to suggest that the special financial assistance provided by the federal statute is an “asset” of the plan.

These preliminary observations are directed to the first of those two points. During the oral argument on the summary judgment motion, based on the Court’s review of the arguments advanced by counsel, the Court was receptive to the contention that these regulations were better viewed as conditions on *employers* than conditions on the *plans*.³ While the Court did not find the arguments advanced by the plans or the PBGC on this point to be fully satisfactory, the Court ultimately upheld the regulations for a reason that differed somewhat from the parties’ arguments.

In its Memorandum Opinion, the Court analogized the statutory grant of authority to the PBGC, which allowed it to impose conditions on the plans’ receipt of federal funds, to Congress’ Spending Clause Power, which similarly grants authority to impose conditions on the recipients of federal funds.⁴ In the context of the Spending Clause, the Supreme Court has rejected the argument, implicit in the challenge to the PBGC

² 29 U.S.C. § 1432(m) (emphasis added).

³ *See, e.g.*, Aug. 6, 2024 Hr’g Tr. at 25, 63-64.

⁴ D.I. 4326 at 19 (citing *South Dakota v. Dole*, 483 U.S. 203, 206 (1987))

regulations, that an agreement to accept federal funds can only alter the legal rights of the recipient of those funds – not the legal rights of a third party. To make that point, this Court relied on the Supreme Court decision in *Philpott v. Essex County Welfare Board*.⁵ There, the Court held that the Social Security Act, which said that benefits provided to *individuals* under the act would not be subject to garnishment, barred a *government agency* from exercising its state law garnishment rights. This Court relied on that analogy to conclude that the statutory language that limits the PBGC’s authority to impose conditions on the plans was not necessarily limited to what might be accomplished merely by the plans’ agreement.

MFN and Mobile Street seek reconsideration of this Court’s decision.⁶ Their motion argues that the Court erred in relying on *Philpott* and offers three reasons why they believe the case does not support the view that “federal regulations may adversely impact the legal rights of employers as a condition of [the plans] receiving [federal funds].”⁷ Notwithstanding the demanding standards that typically apply to motions for reconsideration, and in view of the fact that the Court relied on *Philpott* without the case having been cited by any party, the Court believes that principles of fairness and due process counsel in favor of giving the motion for reconsideration a fair hearing on the merits.

The imperatives of this bankruptcy case would be well served by the prompt resolution of this dispute.

⁵ 409 U.S. 413 (1973).

⁶ D.I. 4462. MFN Partners, LP is referred to as “MFN.” Mobile Street Holdings, LLC is referred to as “Mobile Street.”

⁷ D.I. 4462 at 8.

The Court accordingly hopes to issue a decision on the pending reconsideration motion by November 15, 2024. In order to ensure that, in connection with such a ruling, the Court has the full benefit of the parties' positions, the Court hereby sets forth (on a preliminary basis) additional authority that may support the reasoning set forth in the Memorandum Opinion.

Congress provides federal funds to various public and private educational institutions. The Family Education Rights and Privacy Act ("FERPA") provides that "[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records," except as provided by statute.⁸

In *United States v. Miami University*, the Chronicle of Higher Education sought student disciplinary records, under the Ohio Public Records Act, from Miami University (in Ohio) and Ohio State University. Based on a ruling of the Ohio Supreme Court that required the universities to provide the records, the universities did so. The Department of Education then sued the universities, seeking an injunction that would prevent them from releasing further information in violation of FERPA.

The Chronicle of Higher Education intervened. A federal district court concluded, relying on regulations issued by the Department of Education, that disciplinary records were "educational records" covered by FERPA and issued the injunction requested by the Department of Education. The Chronicle of Higher Education appealed. Even though the

⁸ 20 U.S.C. § 1232g(b)(2).

universities, not the Chronicle of Higher Education, was the recipient of the federal funds, the Sixth Circuit nevertheless held that FERPA operated to preempt the Chronicle of Higher Education's state-law right under the Ohio Public Records Act to obtain the disciplinary records.⁹

Norfolk Southern Railway is to similar effect.¹⁰ There, states that received federal transportation funds agreed to install warning devices, designed in a particular manner, at railroad highway crossings. The Supreme Court held that this condition on the receipt of federal funds operated to preclude a tort suit by a plaintiff who contended that those warning devices were designed improperly. In *Norfolk Southern Railway*, as with the FERPA cases and in *Philpott*, the legal rights of a party *other than the recipient of the funds* were altered by another party's receipt of the federal funds. If all of these circumstances could be found to fall within the rubric of a "condition" imposed on the recipient of federal funds, the Court is hard pressed to see why the effect of the PBGC regulation on the rights of employers should be any different.

⁹ *United States v. Miami Univ.*, 294 F.3d 797, 809 (6th Cir. 2002) (finding that the "condition" that "sensitive information about students may not be released without the student's consent," could bar the Chronicle of Higher Education from obtaining student records) (emphasis and brackets omitted). *Cf. Chicago Tribune Co. v. Bd. of Trustees of Univ. of Illinois*, 680 F.3d 1001 (7th Cir. 2012) (rejecting, on jurisdictional grounds, a suit by the Chicago Tribune that sought a determination that FERPA did not provide a defense to its request for educational records from the University of Illinois).

¹⁰ *Norfolk Southern Railway Co. v. Shanklin*, 529 U.S. 344 (2000).

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The Court intends to consider and address the arguments set forth in the motion for reconsideration and issue a decision as promptly as possible. The Court believes, however, that it would benefit not only from the parties' excellent briefing on the motion, but also from any response they may offer to these preliminary observations. MFN and Mobile Street are directed (if they choose to respond) to do so in a supplemental brief of no more than 10 pages that shall be filed no later than 12:00 p.m. on November 4, 2024. The funds and the PBGC are directed to respond (if they choose to do so) in a brief subject to the same 10-page limit by 5:00 p.m. on November 8, 2024.

Dated: October 29, 2024

/s/ Craig T. Goldblatt

CRAIG T. GOLDBLATT

UNITED STATES BANKRUPTCY JUDGE

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APPENDIX E

**IN THE UNITED STATES BANKRUPTCY
COURT FOR THE DISTRICT OF DELAWARE**

Chapter 11

Case No. 23-11069 (CTG)

(Jointly Administered)

Related Docket No. 4462

In re:

YELLOW CORPORATION, *et al.*,

Debtors.

MEMORANDUM OPINION

After the enactment of the American Rescue Plan Act of 2021, the PBGC issued a series of regulations that provided, in effect, that funds received by pension plans under that Act would not be considered for the purpose of determining an employer's withdrawal liability.¹ The debtors in this case withdrew from various pension plans in the days leading up to the bankruptcy. Several pension plans that received funds under American Rescue Plan Act filed proofs of claim for withdrawal liability. The pension plans calculated the amounts due as provided in the PBGC regulations. They therefore did not treat federal funds they received (or that they would receive) under the Act as plan assets.

¹ The Pension Benefit Guaranty Corporation is referred to as the "PBGC."

The debtors, joined by MFN Partners (which holds equity in the debtors), objected to those proofs of claim.² In connection with this claims allowance dispute, they sought summary judgment, seeking a determination that the PBGC regulations were invalid on the ground that they were inconsistent with the applicable statute. The pension plans, joined by the PBGC, filed cross motions seeking summary judgment that the regulations were consistent with the statute. In a Memorandum Opinion dated September 13, 2024, this Court held that the regulations were valid.³

MFN Partners and Mobile Street have moved for reconsideration.⁴ The principal basis for the motion is that the Court erred in concluding that the PBGC regulations are authorized by 29 U.S.C. § 1432(m), which authorizes the PBGC to “impose, by regulation or other guidance, *reasonable conditions on an eligible multiemployer plan* that receives special financial assistance relating to . . . withdrawal liability.” The motion for reconsideration argues that the regulations in question regulate employers rather than pension plans.

In the Summary Judgment Opinion, this Court relied on the Supreme Court’s decision in *Philpott*, a case that none of the parties cited, for the proposition that an authority to impose a “condition” on a party that accepts federal funds may also “bind third parties, not just the party that agreed to the terms

² MFN Partners, LP is referred to as “MFN Partners.”

³ D.I. 4326. The September 13, 2024 Memorandum Opinion is referred to as the “Summary Judgment Opinion.”

⁴ D.I. 4462. Mobile Street Holdings, LLC is referred to as “Mobile Street.”

when it accepted the federal funds.”⁵ The principal point of the rehearing petition is that *Philpott* is different because it was about a statute enacted by Congress under its constitutional Spending Clause authority, whereas this case involves an agency regulation. The rehearing petition argues that the “Movants have located no case blessing a federal agency, as part of implementing its interpretation of a Congressional directive, to issue a regulation adversely impacting third parties as is the undisputed case here.”⁶

The Court, however, has since come across further caselaw that it believes supports its reading of the statute. Because that caselaw had not been cited by any party, the Court issued “preliminary observations” explaining that it was inclined to deny the motion for reconsideration, but affording the parties the opportunity to address the caselaw on which the Court was inclined to rely.⁷ The parties have filed briefs in response to those preliminary observations. Having reviewed the briefing, the Court will deny the motion for reconsideration.

I. The Supreme Court’s decision in *Philpott* is analogous to the circumstances presented here.

The rehearing petition argues that *Philpott* is different from this case for three reasons. The *first* is that the condition in *Philpott* was statutory, whereas here the condition is contained in an agency regulation. That is true. But the point of the Court’s

⁵ D.I. 4326 at 3. See also *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973).

⁶ D.I. 4462 at 3.

⁷ D.I. 4718.

reliance on *Philpott*, however, is that it provided a very close analogy to the question presented here. As the Summary Judgment Opinion explained, when exercising its Spending Clause power, Congress may impose conditions on the receipt of federal funds, and there is a body of caselaw addressing the kinds of “conditions” that may validly be imposed.⁸ The American Rescue Plan Act similarly granted the PBGC authority to impose conditions on pension plans that receive such funds. In construing the statutory language authorizing the PBGC to impose conditions on pension plans that receive American Rescue Plan Act funds, it only makes sense to draw upon the body of law that sets forth the kinds of conditions that Congress may impose under the Spending Clause on the recipients of federal funds.

Second, the petition argues that in *Philpott*, the Social Security Act *preceded* the relationship between the state and the individual who received the federal funds. In this case, by contrast, the withdrawal liability calculation provisions of the Multiemployer Pension Plan Amendments Act of 1980 had been in place long before the enactment of the American Rescue Plan Act and the promulgation of the PBGC regulations.

While that point about timing may be descriptively correct, it does not speak to the validity of the regulation. There is no reason why a condition imposed on the receipt of federal funds cannot alter parties’ existing expectations. So, while it may be true that *Philpott* is different from this case in this respect, it

⁸ D.I. 4326 at 19 (citing *South Dakota v. Dole*, 483 U.S. 203, 206 (1987)).

is not a distinction that makes a difference to the relevant analysis.

Third, the petition suggests that *Philpott* does not stand for the proposition that the Social Security Act was a valid exercise of the Spending Clause power because the Essex County Welfare Board did not expressly argue that the conditions imposed on it were improper. But by the time of its *Philpott* decision, the Supreme Court had long made clear that the Social Security Act was an exercise of Congress' authority under the Spending Clause, which permitted it to condition the grant of funds on the recipient's agreement to comply with the terms of the grant.⁹ And it was by then also well established that when Congress exercises its Spending Clause power, it may do so in a way that is "not limited by the direct grants of legislative power found in the Constitution."¹⁰

Against that backdrop, the Supreme Court made clear in *Philpott* that the Social Security Act "imposes a broad bar against the use of any legal process to reach all social security benefits. That is broad enough to include all claimants, including a State."¹¹ In this context, it necessarily follows that the *Philpott* Court decided, even if implicitly, that a "condition" on

⁹ See generally *King v. Smith*, 392 U.S. 309, 333 (1968); *Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548, 589-590 (1937). See also Brief for State of New Jersey as Amicus Curiae at 5, *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973) (No. 71-5656), 1972 WL 135832 (describing how program at issue "provides assistance payments to needy disabled persons out of monies appropriated by the federal government and the states which participate").

¹⁰ *United States v. Butler*, 297 U.S. 1, 66 (1936).

¹¹ *Philpott*, 409 U.S. at 417.

the use of federal funds is not limited to the terms to which the recipient of the federal funds agrees, but further extends to include restrictions on third parties' receipt of those funds. That implicit holding by the Supreme Court is certainly binding on this Court.

II. Additional authority further supports the proposition that a condition on the receipt of federal funds can bind third parties.

Following argument on the motion for reconsideration, this Court issued preliminary observations in which it suggested that additional authority, including the Supreme Court's decision in *Norfolk Southern Railway* and the Sixth Circuit's decision in *United States v. Miami University*, support the Spending Clause analogy on which the Court relied.¹² The Court provided both parties the opportunity to respond to those points.

The points made in MFN Holdings and Mobile Street's response can be placed into two categories. They *first* reiterate the contention set out above, that those cases are different because they involve congressional legislation that imposed conditions on the receipt of federal funds, rather than agency action. Again, it is true that in this context the condition on the use of federal funds is set forth in the PBGC regulations whereas the conditions at issue in *United States v. Miami University* and *Norfolk Southern* were statutory. The Court nevertheless views this body of caselaw to be highly

¹² D.I. 4718 (citing *Norfolk Southern Railway Co. v. Shanklin*, 529 U.S. 344 (2000); *United States v. Miami Univ.*, 294 F.3d 797, 809 (6th Cir. 2002)).

relevant to the statutory question at issue here – what Congress would have meant, in the American Rescue Plan Act, when it granted the PBGC the authority to “impose, by regulation or other guidance, reasonable conditions on an eligible multiemployer plan that receives special financial assistance relating to . . . withdrawal liability.”¹³

Second, MFN Partners and Mobile Street make a series of additional points, all of which are premised on the notion that the PBGC’s regulations are inconsistent with other provisions of ERISA. To be sure, if that premise were correct, the rest of their arguments would be valid ones. But for the reasons set forth in the Summary Judgment Opinion and addressed further Part III, the regulations do not conflict with other statutory language.

III. In view of the principle that the specific controls over the general, the PBGC regulations do not conflict with the text of the statute.

Much of the rehearing petition and the response to the Court’s preliminary observations is premised on the argument that the PBGC’s regulations improperly “change” the statutorily required method for calculating withdrawal liability. As the response to the Court’s preliminary observations puts the point, “the PBGC Regulations necessarily change existing law that Congress itself did not change.”¹⁴

The Court addressed this basic point in the Summary Judgment Opinion. It explained that 29 U.S.C. § 1432(*l*) calls for the segregation of special financial

¹³ 29 U.S.C. § 1432(m)(1).

¹⁴ D.I. 4758 at 2.

assistance provided under the American Rescue Plan Act from “other plan assets.” This, standing alone, would suggest that the special financial assistance is itself a “plan asset” that ought to be included when calculating unfunded vested benefits. The preceding sentence of § 1432(l), however, contains an unambiguous and specific contrary instruction: “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.”¹⁵

If the net effect of a plan’s receipt of special financial assistance were to reduce an employer’s withdrawal liability, this specific statutory command would be violated. A stylized example may help illustrate the point. Consider a pension plan that held \$200 in plan assets and owed \$300 in non-forfeitable benefits.¹⁶ That plan’s “unfunded vested benefits” would be \$100. If an employer with a 50% allocable share of those unfunded vested benefits withdrew from the plan, that employer’s withdrawal liability (subject to specific adjustments as provided by statute) would be \$50. After the employer paid that withdrawal liability, the plan would have \$250 in plan assets. (Let’s call this result, Scenario A.)

Now consider the result if that plan were to receive \$100 in special financial assistance before the date on which withdrawal liability were calculated. If that \$100 were to be treated as a plan asset, the employer

¹⁵ 29 U.S.C. § 1432(l).

¹⁶ D.I. 4326 at 7 (citing 29 U.S.C. § 1381). *See also Allied Painting & Decorating, Inc. v. Int’l Painters & Allied Trades Indus. Pension Fund*, No. 23-1537, 2024 WL 3366492, at *1 & n.1 (3d Cir. July 11, 2024).

would have \$300 in plan assets and \$300 in nonforfeitable benefits, meaning that it would have no unfunded vested benefits. The withdrawing employer, in turn, would be off the hook from its obligation to pay \$50 in withdrawal liability into the plan. (Let's call this Scenario B.)

What is the net difference between Scenario A and Scenario B? In Scenario A, the pension plan ends up with \$250 in plan assets, whereas in Scenario B it has \$300. From the employer's perspective, in Scenario A it owes \$50 in withdrawal liability, whereas in Scenario B it owes nothing.

Therefore, if the \$100 in special financial assistance were treated as a plan asset, the net result of the plan's receipt of that \$100 would be that the plan would get \$50 of that payment (increasing its assets from \$250 to \$300) and the employer could keep the \$50 that it would have otherwise owed to the plan. That state of affairs, in which \$50 of the special financial assistance would reduce the employer's obligations to the plans, would violate Congress' express instruction that special financial assistance may only be used "to make benefit payments and pay plan expenses."¹⁷

To be sure, the \$100 in special financial assistance would need to be "segregated from other plan assets" and "invested by plans in investment-grade bonds or other investments as permitted by the [PBGC]."¹⁸ But even so, it would blink economic reality to suggest that \$50 of the \$100 in special financial assistance has not been used to reduce the employer's withdrawal liability.

¹⁷ 29 U.S.C. § 1432(l).

¹⁸ *Id.*

The Supreme Court acknowledged this common-sense point when it upheld, against constitutional challenge, a statute that prohibits the bribery of state and local officials of entities that receive at least \$10,000 in federal funds. The defendant argued that to fall within the spending power, there needed to be a showing that the federal funds themselves were tied in some way to the bribes received by the government officials. The Supreme Court had none of that. “It is true . . . that not every bribe or kickback . . . will be traceably skimmed from specific federal payments.”¹⁹ The Court held, however, that “[m]oney is fungible,” and that “[l]iquidity is not a financial term for nothing.”²⁰ Rather, “money can be drained off here because a federal grant is pouring in there.”²¹

The PBGC regulations were motivated by the same economic reality. Reducing the employer’s contribution by \$50 as a result of the \$100 in special financial assistance is exactly what the Supreme Court meant in saying that “money can be drained off here because a federal grant is pouring in there.”²² The PBGC regulations at issue were thus necessary to give effect to the specific statutory requirement that the special financial assistance not be used for any purpose other than to pay plan benefits and expenses. For that reason, it is irrelevant that more general provisions of the Multiemployer Pension Plan Amendments Act of 1980 might suggest that anything of economic value owned by the pension plans should be treated as an asset for the purpose of

¹⁹ *Sabri v. United States*, 541 U.S. 600, 605-606 (2004).

²⁰ *Id.* at 606.

²¹ *Id.*

²² *Id.*

calculating withdrawal liability. This case is controlled by principle set out in *Brown & Williamson* and other cases that explain that a specific statutory provision must control over a more general one.²³

For these reasons, the attempts by MFN Partners and Mobile Street to distinguish *Philpott, Norfolk Southern*, and *United States v. Miami University* on the ground that this case involves an agency regulation that conflicts with the statutory text are unpersuasive. The Court accordingly adheres to the views set forth in its preliminary observations, which are incorporated by reference. The motion for reconsideration will therefore be denied. The parties should settle an appropriate order reflecting the Court's ruling on the motions for summary judgment [D.I. 4326], including its decisions granting the debtors' motion for reconsideration [D.I. 4461] and denying this one [D.I. 4462].

Dated: November 12, 2024

/s/ Craig T. Goldblatt

CRAIG T. GOLDBLATT

UNITED STATES BANKRUPTCY JUDGE

²³ *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000).

APPENDIX F

29 U.S.C. § 1391. Methods for computing withdrawal liability

(a) Determination of amount of unfunded vested benefits allocable to employer withdrawn from plan

The amount of the unfunded vested benefits allocable to an employer that withdraws from a plan shall be determined in accordance with subsection (b), (c), or (d) of this section.

(b) Factors determining computation of amount of unfunded vested benefits allocable to employer withdrawn from plan

(1) Except as provided in subsections (c) and (d), the amount of unfunded vested benefits allocable to an employer that withdraws is the sum of--

(A) the employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, as determined under paragraph (2),

(B) the employer's proportional share, if any, of the unamortized amount of the plan's unfunded vested benefits at the end of the plan year ending before September 26, 1980, as determined under paragraph (3); and

(C) the employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits (if any) as determined under paragraph (4).

If the sum of the amounts determined with respect to an employer under paragraphs (2), (3), and (4) is

negative, the unfunded vested benefits allocable to the employer shall be zero.

(2)(A) An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, is the sum of the employer's proportional shares of the unamortized amount of the change in unfunded vested benefits for each plan year in which the employer has an obligation to contribute under the plan ending--

(i) after such date, and

(ii) before the plan year in which the withdrawal of the employer occurs.

(B) The change in a plan's unfunded vested benefits for a plan year is the amount by which--

(i) the unfunded vested benefits at the end of the plan year; exceeds

(ii) the sum of--

(I) the unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, and

(II) the sum of the unamortized amounts of the change in unfunded vested benefits for each plan year ending after September 25, 1980, and preceding the plan year for which the change is determined.

(C) The unamortized amount of the change in a plan's unfunded vested benefits with respect to a plan year is the change in unfunded vested benefits for the plan year, reduced by 5 percent of such change for each succeeding plan year.

(D) The unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, is the amount of the unfunded vested benefits as of the end of that plan year reduced by 5 percent of such amount for each succeeding plan year.

(E) An employer's proportional share of the unamortized amount of a change in unfunded vested benefits is the product of--

(i) the unamortized amount of such change (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

(ii) a fraction--

(I) the numerator of which is the sum of the contributions required to be made under the plan by the employer for the year in which such change arose and for the 4 preceding plan years, and

(II) the denominator of which is the sum for the plan year in which such change arose and the 4 preceding plan years of all contributions made by employers who had an obligation to contribute under the plan for the plan year in which such change arose reduced by the contributions made in such years by employers who had withdrawn from the plan in the year in which the change arose.

(3) An employer's proportional share of the unamortized amount of the plan's unfunded vested benefits for the last plan year ending before September 26, 1980, is the product of--

(A) such unamortized amount; multiplied by--

(B) a fraction--

(i) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the most recent 5 plan years ending before September 26, 1980, and

(ii) the denominator of which is the sum of all contributions made for the most recent 5 plan years ending before September 26, 1980, by all employers--

(I) who had an obligation to contribute under the plan for the first plan year ending on or after such date, and

(II) who had not withdrawn from the plan before such date.

(4)(A) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits is the sum of the employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits for each plan year ending before the plan year in which the employer withdrew from the plan.

(B) Except as otherwise provided in regulations prescribed by the corporation, the reallocated unfunded vested benefits for a plan year is the sum of--

(i) any amount which the plan sponsor determines in that plan year to be uncollectible for reasons arising out of cases or proceedings under Title 11, or similar proceedings.

(ii) any amount which the plan sponsor determines in that plan year will not be assessed as a result of the operation of section 1389, 1399(c)(1)(B), or 1405 of this title against an employer to whom a notice

described in section 1399 of this title has been sent, and

(iii) any amount which the plan sponsor determines to be uncollectible or unassessable in that plan year for other reasons under standards not inconsistent with regulations prescribed by the corporation.

(C) The unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the reallocated unfunded vested benefits for the plan year, reduced by 5 percent of such reallocated unfunded vested benefits for each succeeding plan year.

(D) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the product of--

(i) the unamortized amount of the reallocated unfunded vested benefits (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

(ii) the fraction defined in paragraph (2)(E)(ii).

(c) Amendment of multiemployer plan for determination respecting amount of unfunded vested benefits allocable to employer withdrawn from plan; factors determining computation of amount

(1) A multiemployer plan, other than a plan which primarily covers employees in the building and construction industry, may be amended to provide that the amount of unfunded vested benefits allocable to an employer that withdraws from the plan is an amount determined under paragraph (2), (3), (4), or (5) of this subsection, rather than under subsection

(b) or (d). A plan described in section 1383(b)(1)(B)(i) of this title (relating to the building and construction industry) may be amended, to the extent provided in regulations prescribed by the corporation, to provide that the amount of the unfunded vested benefits allocable to an employer not described in section 1383(b)(1)(A) of this title shall be determined in a manner different from that provided in subsection (b).

(2)(A) The amount of the unfunded vested benefits allocable to any employer under this paragraph is the sum of the amounts determined under subparagraphs (B) and (C).

(B) The amount determined under this subparagraph is the product of--

(i) the plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; multiplied by

(ii) a fraction--

(I) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the last 5 plan years ending before September 26, 1980, and

(II) the denominator of which is the sum of all contributions made for the last 5 plan years ending before September 26, 1980, by all employers who had an obligation to contribute under the plan for the first plan year ending after September 25, 1980, and who had not withdrawn from the plan before such date.

(C) The amount determined under this subparagraph is the product of--

(i) an amount equal to--

(I) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less

(II) the sum of the value as of such date of all outstanding claims for withdrawal liability which can reasonably be expected to be collected, with respect to employers withdrawing before such plan year, and that portion of the amount determined under subparagraph (B)(i) which is allocable to employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws and who also had an obligation to contribute under the plan for the first plan year ending after September 25, 1980; multiplied by

(ii) a fraction--

(I) the numerator of which is the total amount required to be contributed under the plan by the employer for the last 5 plan years ending before the date on which the employer withdraws, and

(II) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the date on which the employer withdraws, increased by the amount of any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed by an employer who withdrew from the plan under this part during those plan years.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

(3) The amount of the unfunded vested benefits allocable to an employer under this paragraph is the product of--

(A) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less the value as of the end of such year of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from employers withdrawing before such year; multiplied by

(B) a fraction--

(i) the numerator of which is the total amount required to be contributed by the employer under the plan for the last 5 plan years ending before the withdrawal, and

(ii) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed to the plan during those plan years by employers who withdrew from the plan under this section during those plan years.

(4)(A) The amount of the unfunded vested benefits allocable to an employer under this paragraph is equal to the sum of--

(i) the plan's unfunded vested benefits which are attributable to participants' service with the employer (determined as of the end of the plan year preceding the plan year in which the employer withdraws), and

(ii) the employer's proportional share of any unfunded vested benefits which are not attributable to service with the employer or other employers who are obligated to contribute under the plan in the plan year preceding the plan year in which the employer withdraws (determined as of the end of the plan year preceding the plan year in which the employer withdraws).

(B) The plan's unfunded vested benefits which are attributable to participants' service with the employer is the amount equal to the value of nonforfeitable benefits under the plan which are attributable to participants' service with such employer (determined under plan rules not inconsistent with regulations of the corporation) decreased by the share of plan assets determined under subparagraph (C) which is allocated to the employer as provided under subparagraph (D).

(C) The value of plan assets determined under this subparagraph is the value of plan assets allocated to nonforfeitable benefits which are attributable to service with the employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws, which is determined by multiplying--

(i) the value of the plan assets as of the end of the plan year preceding the plan year in which the employer withdraws, by

(ii) a fraction--

- (I) the numerator of which is the value of nonforfeitable benefits which are attributable to service with such employers, and
 - (II) the denominator of which is the value of all nonforfeitable benefits under the plan as of the end of the plan year.
- (D) The share of plan assets, determined under subparagraph (C), which is allocated to the employer shall be determined in accordance with one of the following methods which shall be adopted by the plan by amendment:
- (i) by multiplying the value of plan assets determined under subparagraph (C) by a fraction--

 - (I) the numerator of which is the value of the nonforfeitable benefits which are attributable to service with the employer, and
 - (II) the denominator of which is the value of the nonforfeitable benefits which are attributable to service with all employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws;
 - (ii) by multiplying the value of plan assets determined under subparagraph (C) by a fraction--

 - (I) the numerator of which is the sum of all contributions (accumulated with interest) which have been made to the plan by the employer for the plan year preceding the plan year in which the employer withdraws and all preceding plan years; and
 - (II) the denominator of which is the sum of all contributions (accumulated with interest) which have been made to the plan (for the plan year

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preceding the plan year in which the employer withdraws and all preceding plan years) by all employers who have an obligation to contribute to the plan for the plan year preceding the plan year in which the employer withdraws; or

(iii) by multiplying the value of plan assets under subparagraph (C) by a fraction--

(I) the numerator of which is the amount determined under clause (ii)(I) of this subparagraph, less the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(I) which are attributable to service with the employer; and

(II) the denominator of which is the amount determined under clause (ii)(II) of this subparagraph, reduced by the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(II) which are attributable to service with respect to the employers described in such clause (ii)(II).

(E) The amount of the plan's unfunded vested benefits for a plan year preceding the plan year in which an employer withdraws, which is not attributable to service with employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which such employer withdraws, is equal to--

(i) an amount equal to--

(I) the value of all nonforfeitable benefits under the plan at the end of such plan year, reduced by

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(II) the value of nonforfeitable benefits under the plan at the end of such plan year which are attributable to participants' service with employers who have an obligation to contribute under the plan for such plan year; reduced by

(ii) an amount equal to--

(I) the value of the plan assets as of the end of such plan year, reduced by

(II) the value of plan assets as of the end of such plan year as determined under subparagraph (C); reduced by

(iii) the value of all outstanding claims for withdrawal liability which can reasonably be expected to be collected with respect to employers withdrawing before the year preceding the plan year in which the employer withdraws.

(F) The employer's proportional share described in subparagraph (A)(ii) for a plan year is the amount determined under subparagraph (E) for the employer, but not in excess of an amount which bears the same ratio to the sum of the amounts determined under subparagraph (E) for all employers under the plan as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan.

(G) The corporation may prescribe by regulation other methods which a plan may adopt for allocating assets to determine the amount of the unfunded vested benefits attributable to service with the employer and to determine the employer's share of unfunded vested benefits not attributable to service with employers who have an obligation to contribute

under the plan in the plan year in which the employer withdraws.

(5)(A) The corporation shall prescribe by regulation a procedure by which a plan may, by amendment, adopt any other alternative method for determining an employer's allocable share of unfunded vested benefits under this section, subject to the approval of the corporation based on its determination that adoption of the method by the plan would not significantly increase the risk of loss to plan participants and beneficiaries or to the corporation.

(B) The corporation may prescribe by regulation standard approaches for alternative methods, other than those set forth in the preceding paragraphs of this subsection, which a plan may adopt under subparagraph (A), for which the corporation may waive or modify the approval requirements of subparagraph (A). Any alternative method shall provide for the allocation of substantially all of a plan's unfunded vested benefits among employers who have an obligation to contribute under the plan.

(C) Unless the corporation by regulation provides otherwise, a plan may be amended to provide that a period of more than 5 but not more than 10 plan years may be used for determining the numerator and denominator of any fraction which is used under any method authorized under this section for determining an employer's allocable share of unfunded vested benefits under this section.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease

administrative burdens of plan sponsors in calculating such denominators.

(E) Fresh start option

Notwithstanding paragraph (1), a plan may be amended to provide that the withdrawal liability method described in subsection (b) shall be applied by substituting the plan year which is specified in the amendment and for which the plan has no unfunded vested benefits for the plan year ending before September 26, 1980.

(d) Method of calculating allocable share of employer of unfunded vested benefits set forth in subsection (c)(3); applicability of certain statutory provisions

(1) The method of calculating an employer's allocable share of unfunded vested benefits set forth in subsection (c)(3) shall be the method for calculating an employer's allocable share of unfunded vested benefits under a plan to which section 404(c) of Title 26, or a continuation of such a plan, applies, unless the plan is amended to adopt another method authorized under subsection (b) or (c).

(2) Sections 1384, 1389, 1399(c)(1)(B), and 1405 of this title shall not apply with respect to the withdrawal of an employer from a plan described in paragraph (1) unless the plan is amended to provide that any of such sections apply.

(e) Reduction of liability of withdrawn employer in case of transfer of liabilities to another plan incident to withdrawal or partial withdrawal of employer

In the case of a transfer of liabilities to another plan incident to an employer's withdrawal or partial with-

drawal, the withdrawn employer's liability under this part shall be reduced in an amount equal to the value, as of the end of the last plan year ending on or before the date of the withdrawal, of the transferred unfunded vested benefits.

(f) Computations applicable in case of withdrawal following merger of multiemployer plans

In the case of a withdrawal following a merger of multiemployer plans, subsection (b), (c), or (d) shall be applied in accordance with regulations prescribed by the corporation; except that, if a withdrawal occurs in the first plan year beginning after a merger of multiemployer plans, the determination under this section shall be made as if each of the multiemployer plans had remained separate plans.

APPENDIX G**29. U.S.C. § 1393. Actuarial assumptions****(a) Use by plan actuary in determining unfunded vested benefits of a plan for computing withdrawal liability of employer**

The corporation may prescribe by regulation actuarial assumptions which may be used by a plan actuary in determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part. Withdrawal liability under this part shall be determined by each plan on the basis of--

- (1) actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan, or
- (2) actuarial assumptions and methods set forth in the corporation's regulations for purposes of determining an employer's withdrawal liability.

(b) Factors determinative of unfunded vested benefits of plan for computing withdrawal liability of employer

In determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part, the plan actuary may--

- (1) rely on the most recent complete actuarial valuation used for purposes of section 412 of Title 26 and reasonable estimates for the interim years of the unfunded vested benefits, and

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(2) in the absence of complete data, rely on the data available or on data secured by a sampling which can reasonably be expected to be representative of the status of the entire plan.

(c) Determination of amount of unfunded vested benefits

For purposes of this part, the term “unfunded vested benefits” means with respect to a plan, an amount equal to--

(A) the value of nonforfeitable benefits under the plan, less

(B) the value of the assets of the plan.

APPENDIX H

29 U.S.C. § 1432. 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 multi-employer 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 multi-employer plan or the 3 preceding months, with such specified rate increased by 200 basis points.

(4) Changes in assumptions

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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

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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 section 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 multi-employer 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 multi-employer 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

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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 consult 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.

APPENDIX I**29 C.F.R. § 4262.16. Conditions for special financial assistance.**

(a) In general. A plan that receives special financial assistance must be administered in accordance with the conditions in this section.

(b) Benefit increases. This paragraph (b) applies to benefits and benefit increases described in section 4022A(b)(1) of ERISA without regard to the time the benefit or benefit increase has been in effect. This paragraph (b) does not apply to the reinstatement of benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA (as provided under § 4262.15) or a restoration of benefits under 26 CFR 1.432(e)(9)–1(e)(3).

(1) Retrospective. A benefit or benefit increase must not be adopted during the SFA coverage period if it is in whole or in part attributable to service accrued or other events occurring before the adoption date of the amendment.

(2) Prospective. A benefit or benefit increase must not be adopted during the SFA coverage period unless—

(i) The plan actuary certifies that employer contribution increases projected to be sufficient to pay for the benefit increase have been adopted or agreed to; and

(ii) Those increased contributions were not included in the determination of the special financial assistance.

(3) Request for exception. No earlier than 10 years after the end of the plan year in which the plan receives payment of special financial assistance

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under § 4262.12, the plan sponsor may request approval from PBGC for an exception from the conditions under paragraphs (b)(1) and (2) of this section by demonstrating to the satisfaction of PBGC that, taking into account the value of the proposed benefit or benefit increase, the plan will avoid insolvency. A request for PBGC approval of a proposed benefit or benefit increase must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following identifying, actuarial, and financial information:

- (i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.
- (ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.
- (iii) A certification by the enrolled actuary that the plan or any of its component parts received special financial assistance and the most recent value of special financial assistance assets.
- (iv) The EIN assigned to the plan sponsor by the IRS and the PN assigned to the plan by the plan sponsor of the plan that applied for special financial assistance, if not the same as the EIN and PN in paragraph (b)(3)(ii) of this section.
- (v) A copy of the proposed benefit or benefit increase amendment.

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(vi) Most recent plan document or restatement of the plan document and all subsequent amendments adopted (if any).

(vii) A copy of the most recent actuarial valuation performed for the plan before the date of the plan's submission of a request for approval under this paragraph (b)(3), and the actuarial valuation performed for each of the 2 plan years immediately preceding the most recent actuarial valuation.

(viii) A copy of the plan actuary's most recent certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(ix) A statement certified by an enrolled actuary of the effect of the proposed benefit or benefit increase on the plan's existing benefit formula and benefit amount, and a demonstration that the expected contributions equal or exceed the estimated amount necessary, taking into account the proposed benefit or benefit increase, to satisfy the minimum funding requirement of section 431 of the Code.

(x) A detailed statement certified by an enrolled actuary that the plan is projected to avoid insolvency, taking into account the value of the proposed benefit or benefit increase. The statement must include the basis for the conclusion, supporting data, calculations, assumptions, a description of the methodology, the basis for assumptions

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used, and the present value of the proposed benefit or benefit increase. The statement must also specify the amount of the change in the minimum required contribution under section 431 of the Code attributable to the proposed benefit or benefit increase for the first full plan year in which it is in effect, including the change in normal cost, the change in actuarial accrued liability and the annual amortization amount associated with the change in actuarial accrued liability.

(xi) The statement in paragraph (b)(3)(x) of this section must include an exhibit showing the annual cash flow projection for the plan for 30 years beginning on or after the proposed adoption date of the amendment. The cash flow projection should use an open group valuation. Annual cash flow projections must reflect the following information:

(A) Fair market value of assets as of the beginning of the year, splitting the assets by special financial assistance and non-special financial assistance amounts.

(B) Contributions and withdrawal liability payments made and expected to be made to the plan taking into account a reasonable allowance for amounts considered uncollectible.

(C) Plan level benefit payments organized by participant type (e.g., active, retiree, terminated vested) for the projection period.

(D) Administrative expenses for the projection period.

(E) Assumed investment return separately for special financial assistance and non-special financial assistance amounts.

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(F) Fair market value of assets as of the end of the year.

(xii) The present value of accrued benefits.

(xiii) Any additional information PBGC determines it needs to review a request for approval of a proposed amendment, including any adjustments to assumptions required by PBGC in its review of whether the plan is projected to avoid insolvency.

(c) Allocation of plan assets. During the SFA coverage period, plan assets, including special financial assistance, must be invested in investment grade fixed income as described in § 4262.14(d) sufficient to pay for at least 1 year (or until the date the plan is projected to become insolvent, if earlier) of projected benefit payments and administrative expenses, taking into account the limitations on derivatives and leverage in § 4262.14(h).

(d) Contribution decreases.

(1) During the SFA coverage period, the contributions to a plan that receives special financial assistance required for each contribution base unit must not be less than, and the definition of the contribution base units used must not be different from, those set forth in collective bargaining agreements or plan documents (including contribution increases to the end of the collective bargaining agreements) in effect on March 11, 2021, unless the plan sponsor determines that the change lessens the risk of loss to plan participants and beneficiaries and, if the contribution reduction affects over \$10 million of annual contributions and over 10 percent of all employer contributions, PBGC also determines that the change lessens the risk of loss to plan participants and beneficiaries.

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(2) A request for PBGC approval of a proposed contribution change that affects over \$10 million of annual contributions and over 10 percent of all employer contributions must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) Name, address, email, and telephone number of the contributing employer for which the proposed contribution change is being submitted, and the employer's authorized representatives, if any.

(iv) Names and addresses of each controlled group member of the contributing employer identified in paragraph (d)(2) (ii) of this section, along with a chart depicting the structure of the controlled group by entity and its ownership with ownership percentage.

(v) Audited financial statements (income statement, balance sheet, cashflow statement, and notes) for the contributing employer and the controlled group including the contributing employer, if available, for the most recent 4 years, or, if audited financial statements were not prepared, unaudited financial statements, a statement explaining why audited statements are not available,

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and tax returns with all schedules for the most recent 4 years available. The financial statement submissions must:

- (A) Identify the cash contributions to the multi-employer plan for which the contributing employer is seeking contribution relief;
 - (B) Identify all outstanding indebtedness, including the name of the lender, the amount of the outstanding loan, scheduled repayments interest rate, collateral, significant covenants, and whether the loan is in default;
 - (C) Identify and explain any material changes in financial position since the date of the last financial statement;
 - (D) To the extent that the contributing employer has undergone or is in the process of undergoing a partial liquidation, estimate the sales, gross profit, and operating profit that would have been reported for each of the 3 years covered by the financial statement for only that portion of the business that is currently expected to continue; and
 - (E) State the estimated liquidation values for any assets related to discontinued operations or operations that are not expected to continue, along with the sources for the estimates.
- (vi) Projected financial statements (income statement, balance sheet, cash flow statement) for the current year and the following 4 years as well as the key assumptions underlying those projections and a justification for the reasonableness for each of those key assumptions. The projections must include:

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- (A) All business or operating plans prepared by or for management, including all explanatory text and schedules;
 - (B) All financial submissions, if any, made within the prior 3 years to a financial institution, government agency, or investment banker in support of possible outside financing or sale of the business;
 - (C) All recent financial analyses done by an outside party with a certification by the employer's chief executive officer that the information on which each analysis is based is accurate and complete; and
 - (D) Any other relevant information.
- (vii) Description of events leading to the current financial distress.
 - (viii) Description of financial and operational restructuring actions taken to address financial distress, including cost cutting measures, employee count or compensation reductions, creditor concessions obtained, and any other restructuring efforts undertaken; also, indicate whether any new profit-sharing or other retirement plan has been or will be established or if benefits under any such existing plan will be increased.
 - (ix) Any additional information PBGC determines it needs to review a request for approval of a proposed contribution change.
- (e) Allocating contributions and other practices—
 - (1) In general. During the SFA coverage period, a decrease in the proportion of income or an increase in the proportion of expenses allocated to a plan that receives special financial assistance pursuant

to a written or oral agreement or practice (other than a written agreement in existence on March 11, 2021, to the extent not subsequently amended or modified) under which the income or expenses are divided or to be divided between a plan that receives special financial assistance and one or more other employee benefit plans is prohibited. The prohibition in the preceding sentence does not apply to a good faith allocation of:

(i) Contributions pursuant to a reciprocity agreement;

(ii) Costs of securing shared space, goods, or services, where such allocation does not constitute a prohibited transaction under ERISA or is exempt from such prohibited transaction provisions pursuant to section 408(b)(2) or 408(c)(2) of ERISA, or pursuant to a specific prohibited transaction exemption issued by the Department of Labor under section 408(a) of ERISA;

(iii) The actual cost of services provided to the plan by an unrelated third party; or

(iv) Contributions where the contributions to a plan that receives special financial assistance required for each base unit are not reduced, except as otherwise permitted by paragraph (d) of this section.

(2) Request for exception. No earlier than 5 years after the end of the plan year in which the plan receives payment of special financial assistance under § 4262.12, the plan sponsor may request approval from PBGC for an exception from the conditions under paragraph (e) of this section by demonstrating to the satisfaction of PBGC that, taking into account the value of any proposed

reallocation of contributions, the plan will avoid insolvency, that the reallocation is needed due to a significant increase in health benefit costs due to a change in Federal law which goes into effect after March 11, 2021, that the reallocation is no more than a 10 percent reduction in the amount of the contribution rate negotiated on or before March 11, 2021, that is allocable to the pension plan, and that the reallocation relating to any change in Federal law is for no more than 5 years. A continuation of the reallocation of contributions relating to any change in Federal law after the initial reallocation beyond 5 years must satisfy the requirement for a contribution decrease under paragraph (d) of this section. A subsequent change in Federal law causing a significant increase in health benefit costs is a separate event for purposes of applying this exception, except that a plan may reallocate contributions under this exception from the conditions under paragraph (e) of this section for no more than 10 years cumulatively for all reallocation requests during the SFA coverage period. A request for PBGC approval of a proposed reallocation of contributions must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following identifying, actuarial, and financial information:

- (i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.
- (ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If

an EIN or PN has not been assigned, that should be indicated.

(iii) A certification by the enrolled actuary that the plan or any of its component parts received special financial assistance and the most recent value of special financial assistance assets.

(iv) The EIN assigned to the plan sponsor by the IRS and the PN assigned to the plan by the plan sponsor of the plan that applied for special financial assistance, if not the same as the EIN and PN in paragraph (e)(2)(ii) of this section.

(v) A copy of the proposed reallocation of contributions amendment.

(vi) Most recent plan document or restatement of the plan document and all subsequent amendments adopted (if any).

(vii) A copy of the most recent actuarial valuation performed for the plan before the date of the plan's submission of a request for approval under this paragraph (e)(2), and the actuarial valuation performed for each of the 2 plan years immediately preceding the most recent actuarial valuation.

(viii) A copy of the plan actuary's most recent certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(ix) A statement certified by an enrolled actuary of the effect of the proposed reallocation of contributions on the plan's existing contributions, and a demonstration that the expected contributions equal or exceed the estimated amount necessary, taking into account the proposed reallocation of contributions, to satisfy the minimum funding requirement of section 431 of the Code.

(x) A detailed statement certified by an enrolled actuary that the plan is projected to avoid insolvency, taking into account the value of the proposed reallocation of contributions. The statement must include the basis for the conclusion, supporting data, calculations, assumptions, a description of the methodology, the basis for assumptions used, and the present value of the proposed reallocation of contributions.

(xi) The statement in paragraph (e)(2)(x) of this section must include an exhibit showing the annual cash flow projection for the plan for 30 years beginning on or after the proposed adoption date of the amendment. The cash flow projection should use an open group valuation. Annual cash flow projections must reflect the following information:

(A) Fair market value of assets as of the beginning of the year, splitting the assets by special financial assistance and non-special financial assistance amounts.

(B) Contributions and withdrawal liability payments expected to be made to the plan taking into account a reasonable allowance for amounts considered uncollectible.

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(C) Plan level benefit payments organized by participant type (e.g., active, retiree, terminated vested) for the projection period.

(D) Administrative expenses for the projection period.

(E) Assumed investment return separately for special financial assistance and non-special financial assistance amounts.

(F) Fair market value of assets as of the end of the year.

(xii) The present value of accrued benefits.

(xiii) A demonstration that the reallocation is needed due to a significant increase in health benefit costs due to a change in Federal law, that the reallocation is no more than a 10 percent reduction in the amount of the contribution rate negotiated on or before March 11, 2021, going to the pension plan, and that the reallocation is for no more than 5 years for a reallocation request relating to any single change in Federal law and no more than 10 years cumulatively for all reallocation requests during the plan's SFA coverage period.

(xiv) Any additional information PBGC determines it needs to review a request for approval of a proposed amendment, including any adjustments to assumptions required by PBGC in its review of whether the plan is projected to avoid insolvency.

(f) Transfer or merger. During the SFA coverage period, a plan must not engage in a transfer of assets or liabilities (including a spinoff) or merger except with PBGC's approval. Notwithstanding anything to

the contrary in 29 CFR part 4231, the plans involved in the transaction must request approval from PBGC.

(1) In general. PBGC will approve a proposed transfer of assets or liabilities (including a spinoff) or merger if PBGC determines that the transaction complies with section 4231(a)-(d) of ERISA and that the transaction, or the larger transaction of which the transfer or merger is a part, does not unreasonably increase PBGC's risk of loss with respect to any plan involved in the transaction, and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans involved in the transaction.

(2) Request for approval. A request for approval of a proposed transfer of assets or liabilities (including a spinoff) or merger must be submitted by the plan sponsor or its duly authorized representative and must contain the information that must be submitted with a notice of merger or transfer and a request for a compliance determination under subpart A of part 4231 of this chapter and all of the following information for each of the plans involved in the transaction:

(i) A certification by the enrolled actuary that the plan or any of its component parts received special financial assistance and the most recent value of special financial assistance assets.

(ii) A copy of the actuarial valuation performed for each of the 2 plan years before the most recent actuarial valuation filed in accordance with § 4231.9(f) of this chapter.

(iii) A copy of the plan actuary's most recent certification under section 305(b)(3) of ERISA,

including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(iv) A detailed narrative description demonstrating that the transaction does not unreasonably increase PBGC's risk of loss with respect to any plan involved in the transaction. The narrative must be supported by a detailed determination certified by the enrolled actuary of the present value of financial assistance under section 4261 of ERISA which is calculated using the guaranteed benefits and administrative expenses presented in the cash flow projections under paragraph (f)(2)(v) of this section, discounted using interest rates published under section 4044 of ERISA. The certification must include supporting data, calculations, assumptions, a description of the methodology, the basis for assumptions used, and the projected date of insolvency.

(v) The statement in paragraph (f)(2)(iv) of this section must include an exhibit showing the annual cash flow projections for each plan before and after the transaction, through the year that each plan pays its last dollar of benefit (but not to exceed 100 years). The cash flow projection should use an open group valuation until the plan reaches insolvency. Annual cash flow projections must reflect the following information:

(A) Fair market value of assets as of the beginning of the year, splitting the assets by special

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financial assistance and non-special financial assistance amounts.

(B) Contributions and withdrawal liability payments taking into account a reasonable allowance for amounts considered uncollectible.

(C) Plan level benefit payments organized by participant type (e.g., active, retiree, terminated vested) for the projection period.

(D) Guaranteed benefits payable post insolvency by participant type (e.g., active, retiree, terminated vested).

(E) Administrative expenses for the projection period.

(F) Assumed investment return separately for special financial assistance and non-special financial assistance amounts.

(G) Fair market value of assets as of the end of the year.

(vi) If the plan requests that PBGC approve that a waiver of the conditions in paragraph (b)(1) of this section (retrospective benefits), paragraph (d) of this section (contribution decreases), and the condition in paragraph (e) of this section relating to allocating contributions and other income applies to the merged plan, a demonstration that the requirements for a waiver in paragraph (f)(4) of this section are met.

(vii) A detailed narrative description with supporting documentation demonstrating that the transaction is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans involved in the transaction. The narrative description and sup-

porting documentation must consider the projected month and year of plan insolvency for each of the plans before and after the transaction.

(viii) Any additional information PBGC determines it needs to review a request for approval of a proposed transfer of assets or liabilities (including a spinoff) or merger.

(3) Application of conditions with respect to an approved transfer or merger. If PBGC approves a transfer of assets and liabilities (that is not a merger) from a plan that receives special financial assistance to another plan (the transferee plan) under this paragraph (f), the restrictions and conditions that apply to the plan that receives special financial assistance will also apply to the transferee plan as determined by PBGC as a condition of the approval. If PBGC approves a merger under this paragraph (f), the restrictions and conditions that apply to a plan that receives special financial assistance will apply after the merger as follows:

(i) The restrictions in §§ 4262.13(b) and 4262.14 and the conditions in this paragraph (f) (transfer or merger), paragraph (h) of this section (withdrawal liability settlement), paragraph (i) of this section (annual compliance statement), and paragraph (j) of this section (audit) apply to the merged plan.

(ii) The conditions in paragraph (b)(2) of this section (prospective benefit increase), paragraph (c) of this section (allocation of plan assets), and paragraph (e) of this section relating to allocating expenses do not apply to the merged plan.

(iii) In the absence of a waiver described in paragraph (f)(4) of this section, the condition in

paragraph (b)(1) of this section (retrospective benefit increase) continues to apply to participants in the plan that received special financial assistance before the merger, the condition in paragraph (d) of this section (contribution decreases) continues to apply to employers who had an obligation to contribute to the plan that received special financial assistance before the merger, and the condition in paragraph (e) of this section relating to allocating contributions and other income continues to apply to contributions or income relative to the plan that received special financial assistance before the date of the merger.

(iv) For the condition described in paragraph (g)(1) of this section (withdrawal liability interest assumption), the merged plan must use the interest assumptions under § 4044.54 of this chapter to determine the unfunded vested benefits that arose under the plan that received special financial assistance before the date of the merger for purposes of allocating unfunded vested benefits under subpart D of part 4211 of this chapter and determining withdrawal liability for employers that participated in that plan.

(v) For the condition described in paragraph (g)(2) of this section (withdrawal liability amount of special financial assistance required to be phased in), the merged plan must apply the special financial assistance phase-in condition to determine the unfunded vested benefits that arose under the plan that received special financial assistance before the date of the merger for purposes of allocating unfunded vested benefits under subpart D of part 4211 of this chapter and determining withdrawal

liability for employers that participated in that plan.

(4) Waiver of conditions with respect to an approved merger. A plan may request a waiver of the condition in paragraph (b) (1) of this section (retrospective benefit increase), paragraph (d) of this section (contribution decreases), and the condition in paragraph (e) of this section relating to allocating contributions and other income for the merged plan in the plan's request for PBGC's approval of a merger pursuant to paragraph (f)(1) of this section. If any of the plans involved in the merger engage in multiple transactions in any 1-year period, the transactions will be considered in the aggregate. The plan's application must demonstrate the following requirements for a waiver—

(i) The total current value of assets of the plans that received special financial assistance before the merger must be 25 percent or less of the total current value of assets of the merged plan, calculated using the current value of assets most recently required before the merger to be entered by the plans on the Form 5500 Schedule MB.

(ii) The total current liability of the plans that received special financial assistance before the merger must be 25 percent or less of the total current liability of the merged plan, calculated using the current liability most recently required before the merger to be entered by the plans on the Form 5500 Schedule MB.

(iii) In the most recent certification of plan status for any plan that did not receive special financial assistance before the merger, the plan actuary

must have certified that the plan is not in endangered or critical status (including critical and declining status) and is not projected to be in critical status within 5 years from the date of the plan's request for approval, and the plan must not be described in section 432(b)(5) of the Code.

(g) Withdrawal liability determination—

(1) Interest assumptions. A plan must use the interest assumptions under § 4044.54 of this chapter in determining the unfunded vested benefits of the plan under section 4213(c) of ERISA (for the purpose of determining withdrawal liability), and in determining the amortization schedule under section 4219(c)(1)(A) of ERISA, beginning with the first plan year in which the plan receives payment of special financial assistance under § 4262.12 and until the later of—

(i) The end of the tenth plan year after the first plan year in which the plan receives payment of special financial assistance under § 4262.12; or

(ii) The end of the plan year described in paragraph (g)(1)(iii) of this section (if the special financial assistance most recently paid to the plan as of the end of that plan year is calculated under this part as in effect before August 8, 2022); otherwise the end of the plan year described in paragraph (g)(1)(iv) of this section.

(iii) The plan year described in this paragraph (g)(1)(iii) is the plan year by which the plan is projected to exhaust any SFA assets as determined under the methodology of § 4262.4(b), applying the interest rate under § 4262.4(e)(2) to the special financial assistance as determined as of the SFA measurement date as determined under this part

as in effect before August 8, 2022. However, if the first plan year in which the plan receives payment of special financial assistance is after the plan year that includes the plan's SFA measurement date, the plan year by which the plan is projected to exhaust any SFA assets is deferred by the number of years by which the first plan year in which the plan receives payment is after the plan year that includes the plan's SFA measurement date.

(iv) The end of the plan year by which, according to the plan's projection, the plan is projected to exhaust any SFA assets, as determined under § 4262.4(b). However, if the first plan year in which the plan receives payment of special financial assistance is after the plan year that includes the plan's SFA measurement date, the plan year by which the plan is projected to exhaust any SFA assets is deferred by the number of years by which the first plan year in which the plan receives payment of special financial assistance is after the plan year that includes the plan's SFA measurement date.

(2) Phase-in of SFA—

(i) In general. In determining unfunded vested benefits under section 4213(c) of ERISA (for the purpose of determining withdrawal liability), the procedures in this paragraph (g)(2) must be followed.

(ii) Phase-in period. The procedures in this paragraph (g)(2) apply to the determination of unfunded vested benefits as of the end of any determination year that is not earlier than the payment year or later than the exhaustion year.

(iii) Determination year. For purposes of this paragraph (g)(2), the determination year is the plan year as of the end of which unfunded vested benefits are being valued.

(iv) Payment year. For purposes of this paragraph (g)(2), the payment year is the first plan year in which the plan receives special financial assistance.

(v) Determination of exhaustion year. For purposes of this paragraph (g)(2), if the special financial assistance most recently paid to the plan as of the last day of the determination year is calculated under this part as amended effective August 8, 2022, then the exhaustion year is the plan year described in paragraph (g)(2)(vi) of this section; otherwise, the exhaustion year is the plan year described in paragraph (g)(2)(vii) of this section.

(vi) Exhaustion year. The plan year described in this paragraph (g)(2)(vi) is the plan year by which, according to the plan's projection, the plan is projected to exhaust any SFA assets, as determined under § 4262.4(b). However, if the first plan year in which the plan receives payment of SFA is after the plan year that includes the plan's SFA measurement date, the exhaustion year is deferred by the number of years by which the payment year is after the plan year that includes the plan's SFA measurement date.

(vii) Exhaustion year before any SFA paid under this part. The plan year described in this paragraph (g)(2)(vii) is the plan year by which the plan is projected to exhaust any SFA assets, determined under the methodology of § 4262.4(b), applying the interest rate under § 4262.4(e)(2) to the special

financial assistance as determined as of the SFA measurement date as determined under this part as in effect before August 8, 2022. However, if the first plan year in which the plan receives payment of SFA is after the plan year that includes the plan's SFA measurement date, the exhaustion year is deferred by the number of years by which the payment year is after the plan year that includes the plan's SFA measurement date.

(viii) SFA assets excluded. The value of the plan assets taken into account as of the end of each determination year is the value of the assets that would otherwise be taken into account in the absence of this provision reduced by the amount described in paragraph (g)(2)(ix) of this section. The value of plan assets determined under this paragraph (g)(2)(viii) may not be less than zero.

(ix) Calculation of SFA assets excluded—

(A) In general. Except for plans required to pay make-up payments described in § 4262.15(b), the amount described in this paragraph (g)(2)(ix)(A) is, as of the end of the determination year—

(1) The total amount of special financial assistance paid to the plan under § 4262.12 (as determined under § 4262.12(a) or (b), or under § 4262.12(b) and (c) for plans paid under a supplemented application, as applicable), minus the amount paid to PBGC under § 4262.12(e), as of the end of the determination year;

(2) Multiplied by a fraction, the numerator of which is the number of years determined under paragraph (g)(2)(x) of this section as of the end of the determination year and the

denominator of which is the number of years determined under paragraph (g)(2)(xi) of this section as of the end of the determination year.

(B) Plans required to pay make-up payments. For plans required to pay make-up payments described in § 4262.15(b), the amount described in this paragraph (g)(2)(ix)(B) is, as of the end of the determination year—

(1) The total amount of special financial assistance paid to the plan under § 4262.12 (as determined under § 4262.12(a) or (b), or under § 4262.12(b) and (c) for plans paid under a supplemented application, as applicable), minus the amount paid to PBGC under § 4262.12(e), and minus the amount of make-up payments paid by the plan to participants and beneficiaries under § 4262.15(b) whether the payments are made from SFA assets or non-SFA assets, as of the end of the determination year;

(2) Multiplied by a fraction, the numerator of which is the number of years determined under paragraph (g)(2) (x) of this section as of the end of the determination year and the denominator of which is the number of years determined under paragraph (g)(2)(xi) of this section as of the end of the determination year.

(x) Numerator. The number of years determined under this paragraph (g)(2)(x) is the number of plan years in the period beginning with the determination year and ending with the exhaustion year.

(xi) Denominator. The number of years determined under this paragraph (g)(2)(xi) is the number of

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plan years in the period beginning with the payment year and ending with the exhaustion year.

(xii) Plan year. For purposes of this paragraph (g)(2), any reference to a plan year means a complete plan year.

(xiii) No receivable. Special financial assistance assets must be excluded from the determination of unfunded vested benefits until the date that special financial assistance is paid to the plan under § 4262.12, and no receivable shall be set up as of any earlier date in anticipation of the plan receiving such payment.

(xiv) Reporting. For any withdrawal liability assessed during the phase-in period, the amount described under paragraph (g)(2)(ix) of this section must be reported in the plan's annual statement of compliance (as required under paragraph (i) of this section) for the plan year in which the liability is assessed.

(xv) Applicability. This paragraph (g)(2) applies to a plan in determining withdrawal liability for withdrawals occurring after the plan year in which the plan receives payment of special financial assistance under this part. Notwithstanding the preceding sentence, for a plan that received special financial assistance under this part in effect before August 8, 2022, this paragraph (g)(2) will not apply unless the plan files a supplemented application under this part. If the plan files a supplemented application, this paragraph (g)(2) applies to the plan in determining withdrawal liability for withdrawals occurring on or after the date the plan files the supplemented application.

(xvi) Examples. The following examples illustrate the provisions of paragraph (g)(2) of this section.

(A) Example 1. Plan A, a calendar-year plan, filed an application for special financial assistance under this part with an SFA measurement date in plan year 2023 and received a special financial assistance payment of \$1,000,000 in 2024. In the plan's application, Plan A is projected to exhaust its special financial assistance assets during plan year 2028. Accordingly, the payment year is 2024 and the exhaustion year is 2029 (the projected SFA exhaustion year in the application plus 1 year for the difference between the plan year that includes the SFA measurement date and the payment year). Employer P withdraws from Plan A in 2028. For Employer P: {1} the determination year is 2027; {2} the numerator of the phase-in fraction is 3 (2027 to 2029); {3} the denominator of the phase-in fraction is 6 (2024 to 2029); and {4} the phased in amount is \$500,000 ($\$1,000,000 \times 3 / 6$). If total assets (assuming no phased recognition of SFA) are \$100,000,000, unfunded vested benefits are based on assets of \$99,500,000.

(B) Example 2. Plan B, a calendar-year plan, filed an application for special financial assistance under the terms of the interim provisions of this part with an SFA measurement date in plan year 2022 and received a special financial assistance payment of \$1,000,000 in 2022. According to the methodology under paragraph (g)(2) of this section and the information submitted in the plan's application under the interim provisions of this part, Plan B is projected to exhaust its special financial assistance assets during plan year 2028. However, Plan B files a supplemented application under this part in 2023

and receives an additional special financial assistance payment of \$100,000 in 2024. In Plan B's supplemented application, the plan is projected to exhaust its special financial assistance assets during plan year 2030. Employer R withdraws from Plan B in 2024, which is after Plan B filed a supplemented application. For Employer R: {1} the payment year is 2022; {2} the determination year is 2023; {3} the exhaustion year is 2028; {4} the numerator of the phase-in fraction is 6 (2023 to 2028); {5} the denominator of the phase-in fraction is 7 (2022 to 2028); and {6} the phased in amount is \$857,143 ($\$1,000,000 \times 6 / 7$). If total assets (assuming no phased recognition of SFA) are \$100,000,000, unfunded vested benefits are based on assets of \$99,142,857. Employer S withdraws from Plan B in 2028. For Employer S: {1} the payment year is 2022; {2} the determination year is 2027; {3} the exhaustion year is 2030; {4} the numerator of the phase-in fraction is 4 (2027 to 2030); {5} the denominator of the phase-in fraction is 9 (2022 to 2030); and {6} the phased in amount is \$488,889 ($\$1,100,000 \times 4 / 9$). If total assets (assuming no phased recognition of SFA) are \$100,000,000, unfunded vested benefits are based on assets of \$99,511,111. If, instead of withdrawing in 2024, Employer R withdrew from Plan B in 2023 before Plan B filed its supplemented application, the phase-in condition would not apply and unfunded vested benefits would be based on total assets of \$100,000,000.

(C) Example 3. Plan C, a calendar-year plan, filed an application for special financial assistance under this part with an SFA measurement date in plan year 2024 and received a special financial assistance payment of \$1,000,000 in 2025. According to the plan's application, Plan C is projected to exhaust its

SFA assets during plan year 2024. Accordingly, the payment year is 2025 and the exhaustion year is 2025 (the projected SFA exhaustion year in the application plus 1 year for the difference between the plan year that includes the SFA measurement date and the payment year). Employer T withdraws from Plan C in 2026. For Employer T: {1} the determination year is 2025; {2} the numerator of the phase-in fraction is 1 (2025 to 2025); {3} the denominator of the phase-in fraction is 1 (2025 to 2025); and {4} the phased in amount is \$1,000,000 ($\$1,000,000 \times 1 / 1$). If total assets (assuming no phased recognition of SFA) are \$100,000,000, unfunded vested benefits are based on assets of \$99,000,000.

(D) Example 4. In plan year 2022, Plan D received an SFA payment amount of \$50,000,000 (not including the amount paid to PBGC for repayment of traditional financial assistance) and a supplemented SFA payment amount of \$30,000,000. A total of \$20,000,000 in lump-sum make-up payments were paid by Plan D in plan year 2022. An employer withdraws in 2023. At the end of the determination year (2022), the amount of SFA required to be excluded from assets equals \$60,000,000 ($\$50,000,000 + \$30,000,000 - \$20,000,000$). If, instead, the make-up payments were paid by Plan D in plan year 2023, the amount of SFA required to be excluded from assets at the end of the determination year (2022) would equal \$80,000,000. Under this scenario, Plan D's unfunded vested benefit liability would be the same at the end of the determination year because the additional \$20,000,000 of SFA required to be excluded from assets offsets the \$20,000,000 in SFA that the plan still holds for make-up payments but has not yet distributed as of the end of the determination year. Similarly, if the employer

withdraws in 2024, the make-up payments were paid in 2023, and the phase-in fraction was 9/10th for 2023, the amount of SFA excluded from the assets at the end of the determination year (2023) would be \$54,000,000 (9/10th x \$60,000,000), where the \$60,000,000 is calculated as the total \$80,000,000 in SFA paid to the plan minus the \$20,000,000 in make-up payments that were disbursed prior to the end of the determination year.

(3) Request for exception. The plan sponsor of a plan eligible for special financial assistance may request approval from PBGC for an exception from the conditions under paragraphs (g)(1) and (2) of this section by demonstrating to the satisfaction of PBGC that the exception lessens the risk of loss to plan participants and beneficiaries and does not increase expected employer withdrawals. The plan sponsor must also demonstrate to the satisfaction of PBGC that the exception does not increase the amount of the plan's special financial assistance or unreasonably increase PBGC's risk of loss. A request for PBGC approval of an exception must be submitted by the plan sponsor, or its duly authorized representative, either before an initial application or before a revised application for special financial assistance is filed by the plan, and must contain all of the following identifying, actuarial, and financial information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if

different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) Most recent plan document or restatement of the plan document and all subsequent amendments adopted (if any) and most recent Declaration of Trust.

(iv) Administrative manuals and other documents governing the plan's assessment or administration of withdrawal liability.

(v) A copy of the most recent actuarial valuation performed for the plan before the date of the plan's submission of a request for approval under this paragraph (g)(3), and the actuarial valuation performed for each of the 2 plan years immediately preceding the most recent actuarial valuation.

(vi) A copy of the plan actuary's most recent certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(vii) A statement of whether the plan sponsor is requesting an exception from the condition under paragraph (g)(1) or (2) of this section or both and a demonstration of how the proposed exception lessens the risk of loss to plan participants and beneficiaries and does not increase expected employer withdrawals. The statement must also include a demonstration that the exception does

not increase the amount of the plan's special financial assistance or unreasonably increase PBGC's risk of loss.

(viii) A list of employers contributing greater than 5 percent of plan contributions in a plan year.

(ix) A certification by the plan's actuary that the amount of special financial assistance that will be requested in the plan's application for special financial assistance will be determined assuming the exception will be approved.

(x) A detailed statement certified by an enrolled actuary of the effect of the proposed exception, and a demonstration for 30 years that the estimated withdrawal liability payments and contributions with the proposed exception exceed the estimated withdrawal liability payments and contributions without the proposed exception. The demonstration must show an aggregate of all withdrawal liability payments and an aggregate of all contributions for each year in the 30-year period and include representative examples of employer withdrawal liability payments and contributions. An individual employer's withdrawal liability assessment reflecting the proposed exception must be no less than what would be assessed without the proposed exception.

(xi) Any additional information PBGC determines it needs to review a request for approval of a proposed exception.

(h) Withdrawal liability settlement.

(1) During the SFA coverage period, a plan must obtain PBGC approval for a proposed settlement of withdrawal liability if the amount of the liability

settled is greater than \$50 million calculated as the lesser of—

(i) The allocation of unfunded vested benefits to the employer under section 4211 of ERISA; or

(ii) The present value of withdrawal liability payments assessed for the employer discounted using the interest assumptions under § 4044.54 of this chapter.

(2) PBGC will approve a proposed settlement of withdrawal liability if it determines—

(i) Implementation of the settlement is in the best interests of participants and beneficiaries; and

(ii) The settlement does not create an unreasonable risk of loss to PBGC.

(3) A request for approval of a proposed settlement of withdrawal liability must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) A copy of the proposed settlement agreement.

(iv) A description of the facts leading up to the proposed settlement, including—

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- (A) The date the employer withdrew from the plan;
 - (B) The calculation of the withdrawal liability amount, including payment dates and amounts listed in the schedule for liability payments provided to the withdrawn employer in accordance with section 4219(b)(1)(A) of ERISA;
 - (C) The amount(s) and date(s) of withdrawal liability payments made; and
 - (D) How the proposed settlement amount was determined (discount rate used, financial condition of the employer, and other factors, as applicable).
- (v) Most recent 3 years of audited financial statements and a 5-year cash flow projection for the employer with which the plan proposes to settle.
- (vi) A copy of the most recent actuarial valuation report of the plan.
- (vii) A statement certifying the trustees have determined that the proposed settlement is in the best interest of the plan and the plan's participants and beneficiaries.
- (viii) Any additional information PBGC determines it needs to review a request for approval of a proposed withdrawal liability settlement.
- (i) Reporting. In accordance with the statement of compliance instructions on PBGC's website at www.pbgc.gov, a plan sponsor must file with PBGC for each plan year, beginning with the plan year in which the plan received payment of special financial assistance and through the last plan year ending in 2051, a statement of compliance with the terms and

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conditions of the special financial assistance under this part and section 4262 of ERISA as follows—

- (1) Except as provided in paragraph (i)(2) of this section, a plan's statement of compliance for each plan year must be filed no later than 90 days after the end of the plan year.
 - (2) If six months or fewer remain in the plan year after the month that includes the date the plan first received payment of special financial assistance, the first statement of compliance must cover the period from the date the plan received payment of special financial assistance through the last day of the plan year following the plan year in which the plan received payment of special financial assistance, and must be filed no later than 90 days after the end of such plan year.
 - (3) Each statement of compliance must be signed and dated by a trustee who is a current member of the board of trustees and authorized to sign on behalf of the board of trustees, or by another authorized representative of the plan sponsor.
- (j) Audit. As authorized under section 4003 of ERISA, PBGC may conduct periodic audits of a plan that receives special financial assistance to review compliance with the terms and conditions of the special financial assistance under this part and section 4262 of ERISA.
- (k) Filing rules. The filing rules in this paragraph (k) apply to a request for PBGC approval under paragraph (b), (d), (f), or (h) of this section and a statement of compliance under paragraph (i) of this section.

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(1) Method of filing. A filing described under paragraph (b), (d), (f), (h), or (i) of this section must be made electronically in accordance with the rules in part 4000 of this chapter. The time period for filing a request or statement of compliance must be computed under the rules in subpart D of part 4000 of this chapter.

(2) Where to file. A filing described under paragraph (b), (d), (f), (h), or (i) of this section must be submitted as described in § 4000.4 of this chapter.