

# INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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May 14, 2021

Mr. Gordon Hartogensis  
Director  
Pension Benefit Guaranty Corporation  
1200 K St, NW  
Washington, DC 20005

Dear Mr. Hartogensis:

The International Brotherhood of Teamsters (IBT) and its affiliates sponsor 135 multiemployer pension plans covering 1,650,000 participants. The IBT believes that as many as 50 IBT multiemployer pension plans may be eligible for special financial assistance under the American Rescue Plan Act of 2021 (ARPA) (Subtitle H, the Butch Lewis Emergency Pension Plan Relief Act of 2021), including the largest potential recipient, the Central States, Southeast and Southwest Areas Pension Plan (Central States). The IBT is not only a major stakeholder in the multiemployer pension system, it has also played a leading role in seeking an equitable and holistic solution to the system's funding crisis. In fact, the IBT proposed the original construct for the Butch Lewis Act (Senate 2254; and H.R. 397, the Rehabilitation for Multiemployer Pensions Act of 2019, 116th Congress), named after a deceased Teamster retiree leader.

For the past seven years, the IBT has actively advised Congress on every multiemployer pension reform initiative, including ARPA. The IBT opposed the Multiemployer Pension Reform Act of 2014 (MPRA) because it simplistically relied solely on punitive benefit reductions to remedy a funding crisis that required more empathy and financial assistance from the Federal Government. In 2015-16, the IBT successfully opposed Central States' proposed MPRA suspension of benefit application to the U.S. Treasury Department, protecting over 432,000 plan participants from unbearable reductions in their pensions. To date, only 18 multiemployer pension plans have been approved for suspension of benefit applications. As the IBT has advocated, MPRA was a flawed public policy that failed to stem the multiemployer pension crisis and prevent the projected insolvency of the Pension Benefit Guaranty Corporation (PBGC) multiemployer insurance program.

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In contrast, ARPA is a serious attempt by Congress to protect vulnerable retirees and active worker participants whose economic future is tied to troubled pension plans facing insolvency. ARPA is the long-needed solution to this pension funding crisis that only the Federal Government is capable of financing in its role as the ultimate risk manager and safety net for American society.

At the same time, ARPA is a highly complex law targeting a difficult set of pension problems that has origins in deregulation, a declining labor movement and cataclysmic events in the capital markets, all converging over the past twenty years to create a perfect storm. Through ARPA, Congress has legislated a framework for reform and has tasked experts at the PBGC and the U.S. Treasury Department to issue guidance on a number of key policy subjects that will determine the success of ARPA and the future of multiemployer pension plans. This letter offers for your consideration the IBT's recommendations and insights on five key policy issues related to the implementation of ARPA.

### **Special Financial Assistance:**

According to ARPA section 9704 (ERISA § 4262 (j)(1), "[t]he 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 . . . in 2051, with no reduction in a participant's or beneficiary's accrued benefit . . ." (emphasis added).

Several organizations have suggested that this key statutory mandate is subject to a range of interpretations. **The IBT strongly disagrees with that premise.** We believe the statute is crystal clear. The legislative language in the provision quoted above uses the mandatory directive "shall be", not "may be", in describing the special financial assistance. The language refers to "all benefits due during the period" (through 2051), which would include projected benefit obligations for actives, terminated vested participants, retirees and beneficiaries. The statute refers to "such amount required for the plan to pay all benefits due", defined as future benefit payment cash flows during the period, not merely accrued benefits or unfunded liability. In our view, Congress did not provide discretion to PBGC to pay some lesser amount as special financial assistance. Furthermore, ERISA section 4262(l) places restrictions on the use of the special financial assistance. "Special financial assistance received under this section and any earnings thereon may be used by any eligible multiemployer plan **to make benefit payments and pay plan expenses**" (emphasis added). Again, ARPA equates special financial assistance to benefit payments owed during the stated period.

The IBT's position on the amount of special financial assistance is buttressed by the Congressional Budget Office's (CBO) Cost Estimate of ARPA. CBO states that, "[p]lans would be eligible for a grant projected to be sufficient to pay benefits through 2051 and would not be required to repay the grants... plans could choose when to spend from the grant account and



when from their traditional asset account. CBO expects that plans would spend down the grant account first". The language of ARPA in combination with the CBO report leads to the inescapable conclusion that the purpose of the special assistance grants is to make plans solvent through 2051 **without regard to current assets or future contributions.**

ARPA's definition of the amount of "special financial assistance" is written broadly and does not provide PBGC with discretion as to its calculation. Moreover, the CBO's scoring analysis confirms a broad interpretation. CBO projects that the grants to plans would total \$86 billion, with \$82 billion in grants spent almost immediately in 2022 and the remaining amounts spent through 2026. CBO further projects that 336 plans would receive grants in at least one of its 500 simulations, but that on average 185 plans would receive grants. In addition, the legislative language (ERISA section 4262 (h)) mandates that the special financial assistance be paid as a lump sum of plan obligations through 2051, not a present value.

The IBT's actuarial consultant, Cheiron, projected ARPA special financial assistance to be \$88.3 billion, based on benefit cash flows through 2051, excluding current assets and future contributions and using ARPA's interest rate limit which CBO expects to be 5.5%. Cheiron's projection of special financial assistance increases to \$99.9 billion if Central States' discount rate is adjusted to 3.0%, which represents its valuation assumption in 2020. (CBO acknowledges in its report that Central States, the largest projected recipient of special financial assistance, will be able to use a lower rate since its 2020 assumption was 3%.) Moreover, based on Cheiron's projections, current assets and contributions in large recipient plans like Central States and the New England Teamsters and Trucking Industry Pension Plan can cover the negative arbitrage from using a discount rate of 5.5% to calculate the lump sum and the asset restrictions set by ARPA which will lead to a portfolio of investment-grade bonds yielding only 3.0%.

**For all of the above reasons, the IBT recommends that the PBGC interpret the special financial assistance provisions of ARPA broadly as intended by Congress and supported by the CBO Cost Estimate report, equal to benefit payment obligations due in the period through 2051, excluding current assets and contributions.**

**Priority Applications and Process Guidance:**

Determining a fair process for managing the queue for special financial assistance applications will be critical to ARPA's success in the timely distribution of the assistance to plans most in need. The IBT recognizes the awesome responsibility this process entails and the work pressures borne by the staff assigned by the PBGC and Treasury. Because the solvency status of a number of plans is urgent, the primary goal should be to balance the needs of priority plans as the law intended with resource constraints. Therefore, we recommend that the regulators prioritize insolvent plans and those next in line nearing insolvency. In addition, plans with pending MPRA suspension of benefit applications should also receive priority status. Guidance should specify the hierarchy among "priority plans" defined in ERISA § 4262(d), with the PBGC publishing a list of plans meeting the over \$1.0 billion threshold of (traditional) financial assistance. Finally, the IBT urges the PBGC to announce a process for considering non-priority



plans, after all priority plans' applications are addressed, to provide direction on application timing and avoid delays and confusion for both the agency and the plans.

**Withdrawal Liability Conditions for Plans Receiving Special Financial Assistance:**

Although ARPA is silent on how special financial assistance is treated in the calculation of withdrawal liability, PBGC has authority, in consultation with the Treasury Department, to impose conditions on recipient plans, including with respect to withdrawal liability. (ERISA § 4262(m).) The original bill passed by the House had a provision that excluded the special financial assistance from withdrawal liability calculations for the first 15 years, but this language was removed in the Senate version to satisfy Congressional budget rules. Nevertheless, ERISA Section 4262(m)(1) states that, "[t]he corporation in consultation with the Secretary of the Treasury, may impose, by regulation or other guidance, reasonable conditions on an eligible multiemployer plan that receives special financial assistance". Withdrawal liability is among the specifically referenced items in the list of conditions that may be imposed. Id.

The IBT urges the PBGC to promulgate special withdrawal liability rules as a condition for plans that receive special financial assistance. ARPA provides dramatic and substantial financial relief to tens of thousands of employers who currently contribute to plans that will receive special financial assistance. These same employers should not be allowed to use ARPA as a strategic opportunity to withdraw from these troubled plans at the very moment when they have been fortified by an Act of Congress. Instead, employers should be required to maintain current contributions to these plans and continue funding the retirement benefits of their employees. (The IBT recommends another use for employer contributions, consistent with retirement security goals and objectives, later in this letter.)

In order to promote employer contribution maintenance of effort, the IBT recommends the following approach to withdrawal liability that was included in the original Butch Lewis Act passed by the House of Representatives in 2019 as H.R. 397:

- The amount of the special financial assistance and investment of the proceeds would not be taken into account as plan assets in calculating the withdrawal liability of an employer that withdraws before the last day of the plan year ending in 2051.
- If an employer withdraws from the plan during the period from the date of payment of the special financial assistance until the last day of the plan year ending 2051, the withdrawal liability of such employer will be determined as if in the case of mass withdrawal. This would result in the elimination of the 20-year cap on withdrawal liability per ERISA section 4219(c)(1)(D), and the use of PBGC single-employer plan termination actuarial assumptions to value benefits as prescribed in regulations under section 4281 of ERISA.

**Conditions on Plans Receiving Special Financial Assistance – Allocating Future Contributions for Future Service Pension Plans:**



ARPA offers a one-time opportunity for plans that have been in decline to reset and transition themselves for a sustainable and secure future. Such a future could even include possibilities for growing the defined benefit system consistent with PBGC's statutory mission. Section 4262(m)(1) identifies areas such as "... reduction in employer contribution rates, diversion of contributions to, and allocation of expenses to, other plans..." where the PBGC and the U.S. Treasury are in a position to creatively support the restructuring of these plans through the promulgation of prudent and well thought out rules and conditions.

Plans that receive special financial assistance under ARPA "shall be deemed to be in critical status within the meaning of section 305(b)(2) until the last plan year ending in 2051". ERISA Section 4262 (m)(4). As a result, these plans are restricted from improving benefits for the next 30 years. This restriction is problematic in terms of maintaining institutional support from key stakeholders: employers and active workers. Under the Pension Protection Act of 2006 (PPA), active workers and terminated vested participants in critical status plans have absorbed 100% of benefit reductions required by rehabilitation plans. This generation of workers covered by critical status plans have not experienced a benefit improvement for almost two decades. Their benefits have been degraded by wage and price inflation. The intergenerational inequities that have developed in these affected pension plans over time cannot be overstated.

The IBT is proposing a solution to this dilemma. The PBGC and the U.S. Treasury should write guidance (under the conditions authority in ERISA Section 4262(m)) that, under controlled circumstances, allow plans to allocate future contributions and future benefit accruals to independent stand-alone variable annuity plans. The Legacy plan would retain current plan assets and a portion of current ongoing contributions that are projected to keep the plan 125% funded in 2052. Contributions that are not needed to maintain projected 125% funded status in 2052 can be allocated to a variable annuity plan.

This proposed approach has a number of distinctive advantages that will strengthen plans assisted by ARPA:

1. The variable annuity plan could effectively allow for benefit improvements over an active worker's career.
2. The variable annuity plan can be designed to avoid generating unfunded liability, and thus can meet the public policy goal of not repeating the funding experience that necessitated ARPA in the first place.
3. The variable annuity plan is a defined benefit pension plan. The creation of variable annuity plans is consistent with PBGC's statutory mission of supporting and growing defined benefit plans. Moreover, the PBGC would continue to receive premium income from variable annuity plans.



4. New employers would be more prone to participate in variable annuity plans.
5. By allocating future benefit accruals to the variable annuity plan, the amount of special financial assistance required under ARPA is reduced because benefits payable before 2051 from accruals occurring after the payment of financial assistance would not be part of the Legacy plan. For instance, Cheiron has estimated that the special financial assistance for Central States would decline by \$2.3 billion using a 5.5% discount rate, or \$3.7 billion using a 3.0% discount rate (the rate Central States used in its 2020 valuation report). The New England Teamsters plan would see a drop in special financial assistance by \$2.5 billion using a 5.5% discount rate.
6. Allocation of contributions to the variable annuity plan, as recommended by the IBT, is predicated on maintaining a projected funded ratio of 125% for the Legacy plan. If this condition is not met, contribution allocations are restricted. For example, Cheiron has estimated in the case of Central States that 100% of current contributions can be allocated to a variable annuity plan and the Legacy plan would be 129% funded in 2052. In contrast, the New England Teamster plan could allocate only 78% of current contributions to a variable annuity plan in order to maintain 128% funded ratio in 2052.
7. The IBT's proposal keeps all current contributions in the pension system securing defined benefit retirement benefits, as they were intended.

#### **Investment of Special Financial Assistance:**

ERISA section 4262(l) states that, “[s]pecial financial assistance shall be invested by plans in investment-grade bonds or other investments as permitted by the corporation.” The ARPA language intended the special financial assistance assets to be invested conservatively and securely to avoid losses that would put plans at risk of insolvency before the end of 2051. H.R. 397 –as passed by the House in 2019 -- prescribed several investment strategies (for the loan proceeds involved in that legislation) that the IBT recommends to the PBGC as relevant and appropriate ideas for structuring and investing special financial assistance assets. These strategies included cash matching portfolios and duration matching portfolios consisting of investment-grade fixed income investments. In addition, H.R. 397 allowed for the purchase of annuity contracts with insurance companies based on applicable fiduciary standards under ERISA. These investment options are especially germane in this instance as well, since ERISA section 4262(h) states that the special financial assistance ... “shall be made as a single, lump sum payment”.

The PBGC has the ability under ARPA to permit “other” investment options to plans receiving special financial assistance. As noted above under section 4262(l), special financial assistance assets must be invested in “...investment-grade bonds and **other investments** permitted by the corporation” (emphasis added). The IBT recommends that the National Association of Insurance Commissioners (NAIC) investment model for the insurance industry be considered for identifying eligible investments for ARPA special financial assistance. Specifically,

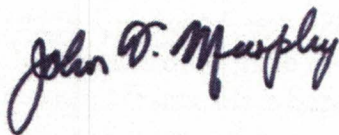


we recommend that a generous percentage of NAIC-1 and NAIC-2 rated investments from the private placement domain in both corporate and commercial mortgage-backed securities be defined as eligible investments for plans receiving special financial assistance. Insurance companies have taken advantage of these securities for years to great effect. NAIC 1 and 2 rated bonds typically have credit default and recovery characteristics in line with that of the broadly syndicated market or better, but with less volatility and higher overall spreads. The IBT believes that private placement and investment-grade lending securities are both appropriate and consistent with the intent of Congress and should be defined as eligible investments to be utilized for investing special financial assistance assets.

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The IBT is fully committed to the successful implementation of the Butch Lewis section of the American Rescue Plan Act. The IBT has focused its comments on five key areas that in our opinion will determine the success of this monumental law. Our interpretation of special financial assistance is based on the language of the statute itself, the Congressional Budget Office scoring, and expert actuarial modeling, not conjecture. Our proposals on priority applications for special financial assistance and withdrawal liability are based on principles of fairness and economic responsibility. Our proposal for allocating future employer contributions offers a pathway to modernizing and growing the defined benefit pension system based on actuarial modeling and proposing prudent standards for plan funding and solvency. Our investment proposals for special financial assistance provide prudent and logical alternatives consistent with Congress' intent that the proceeds be conservatively invested. We hope the PBGC and the U.S. Treasury will consider these recommendations in the same good faith with which they are offered. The IBT remains available to consult and offer our expertise on these core subjects and other relevant issues.

Sincerely,

A handwritten signature in dark ink, reading "John F. Murphy". The signature is written in a cursive, flowing style with a large initial "J".

John F. Murphy  
Vice President, International Brotherhood of Teamsters

cc: Hon. Janet Yellen, Secretary of the Treasury  
Hon. Martin Walsh, Secretary of Labor