OFFICE OF INSPECTOR GENERAL

EVALUATION REPORT

PBGC Should Improve Its Special Financial Assistance Review Procedures

Report No. EVAL-2023-08
February 24, 2023

PBGC Should Improve Its SFA Review Procedures

Report Number: EVAL-2023-08
Date: February 24, 2023

Brief Sheet

Background and Key Questions

On March 11, 2021, the President signed into law the American Rescue Plan Act (ARP) of 2021 in response to the COVID-19 global pandemic. The law added section 4262 to ERISA, creating the Special Financial Assistance (SFA) program administered by PBGC. The SFA program is intended to address the immediate monetary crisis threatening the retirement of millions of American workers, retirees, and their families, and assists plans by providing funds to reinstate suspended benefits and extend the solvency of multiemployer plans. According to PBGC, the SFA program will pay approximately $82 billion in assistance to about 200 underfunded plans with millions of participants and beneficiaries. Under the SFA program, plans will receive funds sufficient to pay all benefits to participants and beneficiaries through 2051. Upon approval of an application, PBGC will make a single, lump-sum payment, or substantially so, using general taxpayer funds provided by the U.S. Treasury.

Our objectives were to determine whether PBGC's policies, procedures and controls are sufficient to deliver timely and appropriate SFA to eligible multiemployer plans and to determine the adequacy of the procedures PBGC used in identifying plans eligible for SFA.

Evaluation Results

Conclusion. After passage of ARP, PBGC quickly drafted SFA regulations, provided guidance for multiemployer plans, established an SFA application review process, and launched the SFA program. The Corporation implemented the program to stabilize struggling multiemployer plans. However, the Corporation did not formally assess and document fraud risks, sufficiently define risk tolerances, establish review procedures for exceptions, formalize final review procedures, or design a control that would ensure timely review of SFA applications. As such, current procedures are not sufficient to ensure timely delivery of accurate SFA amounts to eligible plans. In addition, while procedures are adequate for identifying plans eligible for SFA in priority groups, additional procedures are needed as the priority group period ends.

Recommendations/Management Response

We made eight recommendations to improve the SFA program. We recommended the Office of Negotiations and Restructuring conduct a fraud risk assessment for the SFA program and develop mitigation strategies for those risks that require remediation. We also recommended they develop procedures to detect multiemployer plans that may manipulate ratios to qualify for SFA, develop procedures for review of changed assumptions that impact SFA amount by a threshold percentage, and develop procedures to review certain changed assumptions to ensure in-depth analysis and review of exceptions, as well as consistent review of historical data for outliers, one-time items, and other anomalies. Furthermore, we recommended that they develop procedures for reviewing the impact of inflation on administrative expenses and to develop and document procedures for management reviews of the concurrence package for SFA applications. Finally, we recommended that the Office of Negotiations and Restructuring review the control for timeliness to help ensure that the SFA application review process is completed in 120 days.

The Corporation agreed with the eight recommendations. Specifically, ONR plans to: conduct a formal fraud risk assessment led by a newly-hired Enterprise Risk Management Expert; develop and implement mitigation strategies for risks that require remediation; refine its procedures to better document eligibility review procedures including those related to qualifying ratios; develop and add procedures for additional review of certain changed assumptions that impact SFA amount by a threshold percentage; design specific procedures documenting the appropriate analysis and review that should be conducted on exceptions, outliers, and anomalies; document its procedures for reviewing the impact of inflation on administrative expenses and saving supporting documentation in the case file; develop and document procedures for management's final review of SFA applications (the concurrence package); and review the control ensuring timely processing of applications and consider any changes needed

We evaluated the Corporation's response and planned actions and determined they met the intent of the recommendations. The Corporation plans to complete the recommendations by September 30, 2023.

Office of Inspector General

February 24, 2023

MEMORANDUM

TO: John Hanley
Chief of Negotiations and Restructuring

FROM: John Seger
Assistant Inspector General for Audits, Evaluations, and Reviews

SUBJECT: Issuance of Final Evaluation Report, PBGC Should Improve its Special Financial Assistance Review Procedures (Report No. EVAL-2023-08)

We are pleased to provide you with the above-referenced final report. We appreciate the cooperation you and your staff extended to the OIG during this project. We thank you for your receptiveness to our recommendations and your commitment to reducing risk and improving the effectiveness and efficiency of PBGC programs and operations.

This report contains public information and will be posted in its entirety on our website and provided to the Board and Congress in accordance with the Inspector General Act.

cc:
Frank Pace, Director, Corporate Controls and Reviews Department
Kristin Chapman, Chief of Staff
Karen Morris, General Counsel, Office of General Counsel
Department of Labor Board staff
Department of Treasury Board staff
Department of Commerce Board staff
House committee staff (Education and Workforce, Ways and Means, HOGR)
Senate committee staff (HELP, Finance, HSGAC)

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Background

Established by the Employee Retirement Income Security Act of 1974 (ERISA), the Pension Benefit Guaranty Corporation (PBGC or Corporation) insures the pension benefits of workers and retirees in private sector defined-benefit pension plans. PBGC's mission is to enhance retirement security by preserving plans and protecting pensioners' benefits. The Corporation guarantees payment, up to the legal limits, of the pension benefits earned by over 33 million American workers, retirees, and beneficiaries in more than 25,000 single-employer and multiemployer plans. PBGC pays guaranteed benefits directly to retirees and beneficiaries in failed single-employer plans and pays financial assistance to insolvent multiemployer plans to allow them to pay guaranteed benefits to retirees and beneficiaries.

Special Financial Assistance Program for Multiemployer Plans

On March 11, 2021, the President signed into law the American Rescue Plan (ARP) Act of 2021 in response to the COVID-19 global pandemic. The law added section 4262 to ERISA, creating the Special Financial Assistance (SFA) program administered by PBGC. The SFA program is intended to address the immediate monetary crisis threatening the retirement of millions of American workers, retirees, and their families, and assists plans by providing funds to reinstate suspended benefits and extend the solvency of multiemployer plans.

According to PBGC, the SFA program will pay approximately $82 billion in assistance to about 200 eligible, severely underfunded plans with millions of participants and beneficiaries.[1] Under the SFA program, eligible plans will receive funds sufficient to pay all benefits to participants and beneficiaries through 2051. Upon approval of an application, PBGC will make a single, lump-sum payment, or substantially so[2], using general taxpayer funds provided by the U.S. Treasury. As shown in Figure 1, there are differences between traditional financial assistance and special financial assistance.

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[1] As of July 2022, PBGC estimates the SFA program to be valued at $82.3 billion.

[2] Supplementary information to the Final Rule for Special Financial Assistance by PBGC states, "[f]or example, if a plan's SFA payment exceeds the statutory limitation for a Federal wire of $10 billion, the plan will receive multiple federal wire payments that will equal the approved lump sum amount." Special Financial Assistance by PBGC, 87 Fed. Reg. 40,968, 40,988, fn. 26 (July 8, 2022) (to be codified at 29 CFR pt. 4262).

Figure 1: Comparing Traditional and Special Financial Assistance

	Traditional Financial Assistance	Special Financial Assistance
Multiemployer Plan Repayment Obligation	Loan (Generally not repaid; however, repaid with SFA funds for plans receiving SFA.)	No repayment obligation
Multiemployer Plan Eligibility Criteria	Insolvency	See 'SFA Eligibility' section next page
Participant Benefits	Annual amounts capped based on formula (100% of first $11 of the monthly benefit rate plus 75% of the next $33, multiplied by years of service)	All benefits due through 2051
Funding Source	Multiemployer plan premiums	U.S. Treasury General Fund (taxpayers)
Payments	2012-2021: $1.4 billion	Estimated total program cost: $82 billion
PBGC Standard of Review	Determination of reasonableness of request including review of participant data and benefit calculations for new retirees	Determination of reasonableness of application amount
PBGC Management Review Process	Financial assistance package reviewed by: 1. MEPD Supervisory Auditor 2. MEPD Division Manager 3. Chief of Negotiations and Restructuring	Concurrence Package Reviewed by: 1. MEPD Division Manager 2. PCD Director 3. NRAD Director 4. Chief Negotiations and Restructuring 5. Senior Executives (for plans requesting greater than $250 million or in priority group 1): General Counsel, PRAD Director, OPEA Director and PBGC Director
Intervals of Payment	Routine basis, usually quarterly	One-time, lump sum, or substantially so
Request for Assistance	Online application, recurring requests	Online application, one-time request

Source: PBGC OIG Summarization of Financial Assistance Programs.

SFA Eligibility

To receive SFA, multiemployer plans must demonstrate eligibility. A plan is eligible if it is considered in one of the following four categories.

- “Critical and declining” status in any plan year beginning in 2020 through 2022;
- Suspension of benefits approved under the Multiemployer Pension Reform Act of 2014 (MPRA) as of March 11, 2021;
- "Critical” status in any plan year beginning in 2020 through 2022, “modified” funded percentage of less than 40 percent, and ratio of active to inactive participants less than 2:3; or
- Insolvent after December 2014, remained insolvent, and not terminated as of March 11, 2021.

A plan can apply for SFA through December 31, 2025, and, for revised applications, until December 31, 2026. Plans must file applications electronically through PBGC’s e-Filing portal. PBGC must process completed applications within 120 days of receipt. Any applications not processed within that time will be approved by default. Recognizing the challenge of 120-day review for a large volume of applications, PBGC established a priority application process for the most financially impacted multiemployer plans. PBGC prioritized the application process into six groups. (See Figure 2.) All other plans will be allowed to apply for SFA no later than March 11, 2023.

Figure 2: SFA Priority Groups Established by PBGC

Priority Group	Description of Priority Group	Date Plans May Apply for SFA
1	Plans already insolvent or projected to become insolvent before March 11, 2022	July 9, 2021
2	(a) Plans expected to be insolvent within one year of the date an application for SFA is filed (b) Plans that implemented a Multiemployer Pension Reform Act of 2014 (MPRA) benefit suspension before March 11, 2021	(a) December 27, 2021 (b) January 1, 2022
3	Plans in critical and declining status that had 350,000 or more participants	April 1, 2022
4	Plans projected to become insolvent before March 11, 2023	July 1, 2022
5	Plans projected to become insolvent before March 11, 2026	November 15, 2022
6	Plans with present value of traditional financial assistance more than $1 billion	February 11, 2023

Source: Federal Register Volume 87 No. 130 29 CFR Part 4262 Special Financial Assistance by PBGC and PBGC Website: https://www.pbgc.gov/arp-sfa.

Interim Final Rule

Under ARP, PBGC was required to develop rules and regulations for SFA applications and the SFA process, review applications, and provide payment to plans. After the Corporation published its Interim Final Rule in July 2021, it received more than one hundred comments from multiemployer plans, lawmakers, actuaries, union representatives, and beneficiaries. Given the new rule and quick rollout of the SFA program, there was a need to ensure the processes, procedures and controls put in place by PBGC were adequate to ensure eligible plans received the appropriate amount of SFA on a timely basis.

Objectives

Our objectives were to determine whether PBGC's policies, procedures and controls are sufficient to deliver timely and appropriate SFA to eligible multiemployer plans and determine the adequacy of the procedures PBGC used in identifying plans eligible for SFA.

Evaluation Results

Summary

After passage of ARP, PBGC quickly drafted SFA regulations, provided guidance for multiemployer plans, established an SFA application review process, and launched the SFA program. The Corporation implemented a program to stabilize struggling multiemployer plans. However, the Corporation did not formally assess and document fraud risks, sufficiently define risk tolerances, establish review procedures for exceptions, formalize final review procedures, or design a control that would ensure timely review of SFA applications. As such, current procedures are not sufficient to ensure timely delivery of accurate SFA amounts to eligible plans. In addition, while procedures are adequate for identifying plans eligible for SFA in priority groups, additional procedures are needed as the priority group period ends. The Corporation should conduct a fraud risk assessment, add procedures to ensure verification of eligible plans, design and establish risk tolerances for the SFA program, develop procedures for managing exceptions, develop procedures for review of final application approvals, and add a timeline to the Weekly Report − the control designed to ensure timeliness.

Finding 1: PBGC Did Not Conduct a Fraud Risk Assessment of the SFA Program

According to the U.S. Government Accountability Office's (GAO's) *Standards for Internal Control in the Federal Government* (also known as the "Green Book"), agencies are required to follow internal control principles necessary to establish an effective internal control system. Principle 8.01 states, "*Management should consider the potential for fraud when identifying, analyzing, and responding to risks*." This includes recommendations to consider the types of fraud and other forms of misconduct likely to occur, as well as analyzing and responding to potential fraud risks so that they are effectively mitigated.

In 2015, GAO published its fraud risk framework to identify leading practices and formalize these practices into a risk-based framework at the program level. The framework recommended identifying and assessing risk to determine a program's fraud risk profile; specifically, "*Managers who effectively assess fraud risks attempt to fully consider the specific fraud risks the agency or program faces, analyze the potential likelihood and impact of fraud schemes, and then ultimately document prioritized fraud risks.*" OMB Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, says agencies should adhere to these leading practices as part of their efforts to effectively design, implement, and operate an internal control system that addresses fraud risks.

The purpose of a fraud risk assessment is to allow subject matter experts to determine the universe of risks, to prioritize the risks, and review the suitability of internal controls. According to GAO's fraud risk framework an assessment generally involves the following steps: (1) identify inherent fraud risks affecting the program; (2) assess the likelihood and impact of inherent fraud risks; (3) determine fraud risk tolerance; (4) examine the suitability of existing fraud controls and prioritize residual fraud risks; and (5) document the program's fraud risk profile.

In March 2022, GAO testified before the Senate on spending related to the pandemic and reported that agencies had significant shortcomings in their application of fundamental internal controls, and financial and fraud risk management practices. As a result of those shortcomings, GAO reported that billions of dollars were at risk for improper payments, including those from fraud, and provided limited assurance that programs would effectively meet their objectives.

After passage of ARP, the Corporation established an application process with detailed procedures for financial analysts in its Multiemployer Program Division (MEPD) and actuaries in its Negotiations and Restructuring Actuarial Department (NRAD), as well as multiple layers of management review and approval. In addition, the Corporation identified program risks and established key internal controls to help ensure program objectives were met.

Need to Formally Assess Fraud Risk for New Program

However, PBGC's Office of Negotiations and Restructuring (ONR), which oversees much of the review process for SFA applications, did not conduct a fraud risk assessment for the SFA program and specifically document procedures to effectively mitigate potential fraud. Although PBGC's FY 2021 Risk Profile, developed as part of the Corporation's mandated Enterprise Risk Management program, identified oversight risks for the SFA program, there was no explicit mention of fraud risk. Further, a December 2021 overview of Corporation fraud risks delivered to the Internal Control Committee did not include discussion of the SFA program.

In FY 2022, the Corporation's Risk Management Council determined the SFA program did not impact the Corporation's overall risk appetite and left the risk appetite unchanged from the year before. Corporation officials discussed with us the risk of fraud in the SFA program. An ONR official said the biggest fraud-related concern was falsely inflated requests for SFA money. Understandably, this concern drew much of the Corporation's attention as it designed its process. ONR officials noted that certain aspects of the program and its procedures would reduce the risk of fraud; this includes the size of the multiemployer universe (which was much smaller than the single-employer program − about 1,400 plans versus 24,000); as well as ONR's familiarity with many of the plans likely to request SFA (especially those that were insolvent and already receiving traditional financial assistance). Familiarity with plans in financial distress could help reduce fraud risk because the agency already expects many of them to apply for SFA. In addition, plans are required to submit applications and official documents, such as actuarial valuation reports, and certifications, through the Corporation’s e-Filing Portal, using templates specifically designed for the SFA program. Plan applications must also include previously filed information, including audited financial statements.

Nonetheless, a formal fraud risk assessment might have uncovered additional strategies to mitigate risk, and without a fraud assessment and other fraud strategies in place, PBGC remains at risk. The following example illustrates potential fraud risks.

Potential Fraud Risk: Eligibility

As mentioned, the Corporation prioritizes applications based on financial need (See Figure 2.) and PBGC prioritized insolvent plans to apply first. Once the priority group period ends – no later than March 2023 – all remaining eligible plans may apply. Plans in any plan year 2020, 2021, or 2022 certified as “critical and declining,” or certified to be ‘critical’ and meeting certain financial ratios, qualify for SFA. The waiting period for non-priority group plans creates a potential for fraud. During this interim period, plans could take business steps − which the Corporation’s procedures may not be able to detect − to manipulate key ratios to qualify for SFA. The Corporation is likely to be less familiar with plans outside the priority groups, making it easier for those plans to take improper steps to qualify for SFA. The Corporation planned to create a tool that would include additional eligibility review steps. However, the Corporation delayed development given determining eligibility for insolvent and nearly insolvent plans was relatively straight-forward. It is unclear when PBGC might develop a tool or whether planned procedures would effectively mitigate the eligibility risks described.

In sum, the Corporation did not formally assess and document fraud risks for the SFA program. The lack of a formal assessment leaves the Corporation at risk for fraud. In addition, eligibility risks will increase as the window opens for multiemployer plans that are not part of a priority group.

Recommendations

We recommend that the Office of Negotiations and Restructuring:

1. Conduct a fraud risk assessment for the SFA program based on GAO's *A Framework for Managing Fraud Risks in Federal Programs* to fully consider specific fraud risks the Corporation and program faces.

PBGC's Response and OIG's Evaluation

Resolved. PBGC concurred with the recommendation. ONR plans to conduct a formal fraud risk assessment based on GAO's *A Framework for Managing Fraud Risks in Federal Programs* to fully consider any risks that may exist. ONR recently hired an Enterprise Risk Management expert who will lead the effort. ONR's goal is to complete the planned action by June 30, 2023.

Closure of this recommendation will occur when the Corporation provides evidence of a formal fraud risk assessment for the SFA program that fully considers specific fraud risks the Corporation and program faces to the PBGC OIG.

2. Based on the fraud risk assessment, develop mitigation strategies for risks that require remediation.

PBGC's Response and OIG's Evaluation

Resolved. PBGC concurred with the recommendation. Based on the fraud risk assessment conducted in response to recommendation 1, the ONR and its Enterprise Risk Management expert plan to develop and implement mitigation strategies for risks that require remediation. ONR's goal is to develop and implement mitigation strategies for SFA risks that require remediation by September 30, 2023.

Closure of this recommendation will occur when the Corporation provides evidence that SFA fraud risk mitigation strategies have been developed and implemented to the PBGC OIG.

3. Develop specific eligibility review procedures to detect multiemployer plans taking steps to manipulate ratios to qualify for SFA.

PBGC's Response and OIG's Evaluation

Resolved. PBGC concurred with the recommendation. The ONR plans to refine its procedures to better document eligibility review procedures, including those designed to detect any manipulation of eligibility ratios. ONR's goal is to complete the planned action by June 30, 2023.

Closure of this recommendation will occur when the Corporation submits evidence of the refined eligibility procedures to the PBGC OIG.

Finding 2: PBGC Lacks Risk Tolerances and Exceptions Procedures for the SFA Program

Government agencies are required to establish internal controls in accordance with the GAO Green Book standards. Principle 6.01 requires management to define objectives clearly to enable the identification of risks and define risk tolerances. Risk tolerance is the acceptable level of variation in performance relative to the achievement of objectives. The Green Book recommends defining risk tolerances in specific and measurable terms so they are clearly stated and can be measured. In addition, Green Principle Book 12.01 requires management to implement control activities through policies. The Green Book recommends that each unit document policies in the appropriate level of detail to allow management to effectively monitor the control activity. PBGC's directive on internal controls (GA-15-01 dated September 27, 2021) requires the Corporation to apply the Green Book to meet each of the internal control objectives and to assess internal control effectiveness.

In accordance with the Green Book, the Corporation established new key controls around achieving objectives for the SFA program, one of which was to ensure eligible plans receive the correct amount of SFA. Five of the controls identify lack of review as a business risk that could lead to inaccurate SFA payments, improper denial, or an inconsistent review process. In addition, the Corporation established an application process with detailed application instructions to plans, guidance for key assumptions used to determine the SFA amount, and developed templates to gather standardized, complete information. Finally, "checker" versions of the templates, which included analytical checks to perform, were developed to assist PBGC actuaries conducting the reviews. But the Corporation did not sufficiently define risk tolerances around program objectives. Specifically, the agency did not establish risk tolerances to help ensure accurate SFA payment. As mentioned, the agency established an internal control to ensure eligible plans received the correct amount of SFA, and internal control standards required the agency to define risk tolerances for defined objectives. We think the addition of risk tolerances would help standardize the review process and better ensure consistency.

Changed Assumptions with Significant Impact on SFA

While defining risk tolerances falls under the risk assessment internal control component of the Green Book, the Green Book's five components of internal control apply to all levels of the organization. An appropriate response to the risk of inaccurate SFA payments likely requires risk tolerances at the operational level because it is MEPD and NRAD that perform the bulk of the analytical review work to approve or reject an application.

It could be difficult to establish risk tolerances at the highest level, for example, around requested SFA amount, because the SFA amount varies widely. Multiemployer plans must make assumptions to determine the SFA amount, and many of the assumptions may be changed (See figure 3 for examples of assumptions used to determine the SFA amount). Changed assumptions are the agency's focus when reviewing SFA applications. As such, the agency could establish risk tolerances around changed assumptions that impact the SFA amount by a certain percentage. Additional review procedures should be required for changed assumptions that exceed the established risk tolerance threshold.

Figure 3: Examples of Demographic and Economic Assumptions Used in the Calculation of SFA

Demographic Assumptions

1. Retirement Rates
2. Marital Status
3. Active Participant Count

Business Assumptions

4. Contribution Base Units (CBUs - units of measurement that reflect time worked by active participants that help determine contributions made to the plan.)
5. Contribution Rate

Source: PBGC Procedures: NRAD SFA Assumption Summary Template, ARPA CBU Analysis.

Although the Corporation scrutinizes changed assumptions, it is a matter of professional judgment whether a change is reasonable or whether it rises to the level of additional review. For example, one reviewer could determine a changed assumption with a 5 percent impact on the SFA amount warrants additional review, while another could determine a 10 percent impact is reasonable. Risk tolerances and related procedures would better standardize the process and ensure consistency. The Corporation has employed a collaborative process that focuses on team discussions and multiple layers of review to assess areas requiring professional judgment. We view this as an important part of the agency's process as team discussions should promote better understanding of important issues, and layers of review provide opportunities for additional points of view. However, it may prove difficult to manage given the more than 200 SFA applications PBGC expects to receive, and the 120-day review limit. The Corporation cannot ensure consistent interpretations of reasonableness across all review teams and applications without a more standardized review process that utilizes internal control guidelines, such as risk tolerances. As noted earlier, the Corporation established a key control with the specific objective of accurate SFA payments. It also identified the risk of an inconsistent or arbitrary process.

An early version of one of the Corporation's template checkers, which reviewed unchanged assumptions, included thresholds for multiple areas, including benefit payments, liabilities, administrative expenses, and contributions. For example, the template compared the projected benefits in the first full plan year to the historical benefit payments and set a 5 percent threshold. In an interview, Corporation officials said an early version of the templates included thresholds, but the resulting thresholds were arbitrary. In the end, the Corporation determined thresholds did not add value to the application review process.

The assessment of the SFA amount and related assumptions require significant use of professional judgment. The use of internal control tools such as risk tolerances, aligned with risk management concepts such as risk appetite, could better standardize the application of professional judgment by reducing unwanted variance in the review process. The addition of thresholds related to key changed assumptions that significantly impact the amount of SFA requested will increase the quality of reviews.

We note the Corporation recently announced plans to review its risk appetite and work with Corporation departments to determine risk tolerances for the SFA program. The decision came as part of the Corporation's annual Enterprise Risk Management review. In November 2021, the Corporation began a formal risk assessment of the SFA program, and, in May 2022 announced plans to revisit its risk appetite. A Corporation official said the move was a result of its growing experience with the SFA program. In addition, OIG's recent risk assessment report, contracted to Ernst & Young, highlighted risks the Corporation faces with SFA. We view this as a significant step forward as it should provide a better sense of how the Corporation views and manages SFA risk and determines what risk tolerances to apply.

Procedures for Exceptions

The Corporation did develop a kind of risk tolerance or threshold for two important assumptions − administrative expenses and CBUs. However, the Corporation has not developed procedures to require certain review steps if plan expenses exceed the Corporation's guidance, or procedures to ensure sufficient documentation of the review and decision process.

For administrative expenses, PBGC set tiered limits for expenses as a percentage of benefits paid. Smaller pension plans do not have the same economies-of-scale as larger plans, so expenses as a percentage of benefits are often higher. The varying limits mean the guidance is not one-size-fits-all. Plans are not *required* to keep expenses below the caps, but those with expenses that exceed the caps are expected to demonstrate that the projections are reasonable.

Corporation officials stated in an interview that the facts and circumstances of each plan are different, and the Corporation must maintain flexibility in its reviews of administrative expenses to accommodate the reality of different plans. Officials emphasized that exceptions to guidance would have to be fully documented. Without explicit procedures, it may be difficult to deal consistently with potential exceptions.

Procedures for Reviewing Data

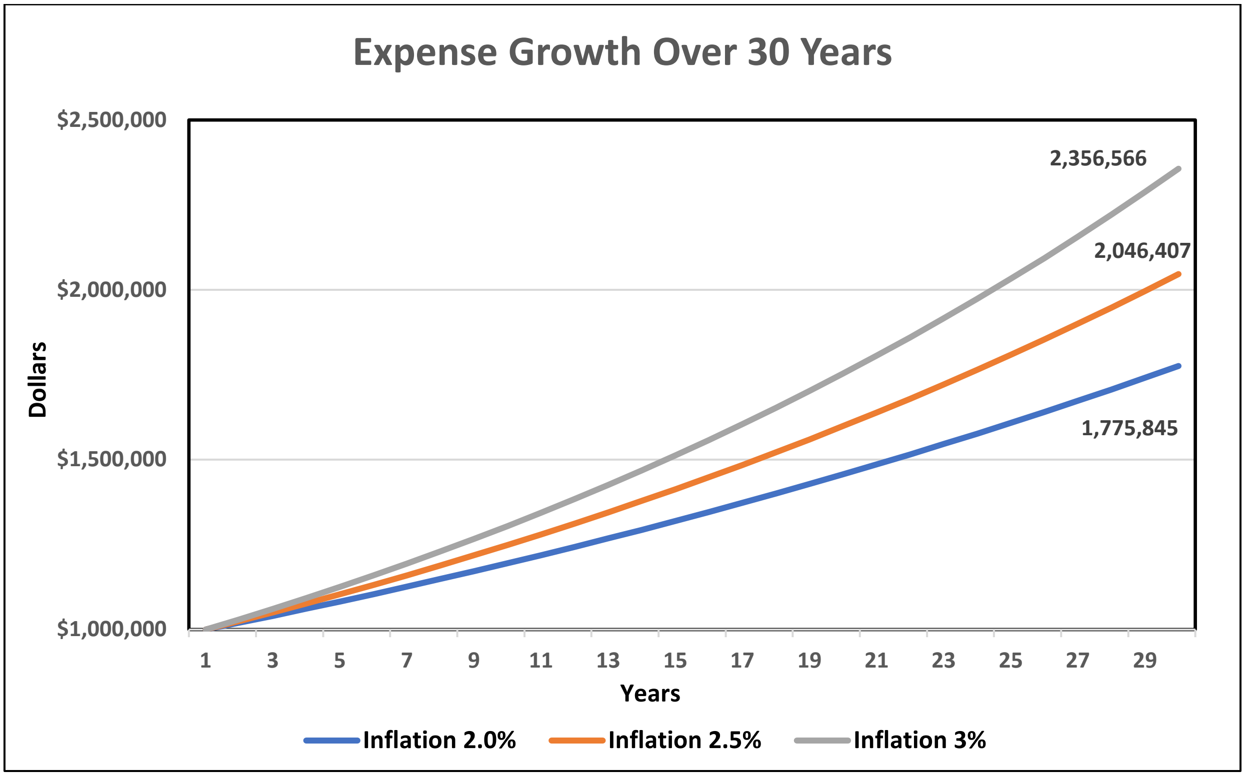
As noted earlier, PBGC developed comprehensive templates to collect data, validate arithmetic in the applications and standardize analysis. These tools require mostly mechanical checks. It is uncertain how PBGC can ensure sufficient analytical reviews are performed for each of the applications. The Corporation collects historical data, and procedures specify reviews of the historical data. But the Corporation has not developed procedures to address issues and exceptions that commonly arise in data analysis, such as review of historical data for significant issues such as large year-over-year changes, outliers, and one-time items. For example, the Corporation's process requires review of historical data for CBUs (one aspect of employer contributions that ultimately helps determine an SFA amount). The process requires reviewers to calculate the 10-year geometric average and compare it to Corporation guidance. But there are no procedures requiring additional review steps to ensure, for example, the ten-year average is the appropriate benchmark based on the data. For example, if the average contained a large one-time item, or inappropriately excluded one, it could significantly change the overall calculation and the SFA amount.

Procedures requiring specific steps to be taken in the event data questions arise would help ensure a consistent review process through in-depth analysis and standardization. At present, the Corporation's procedures do not require such steps. Based on interviews we conducted, the Corporation conducts multiple weekly meetings among teams and management for discussion of issues. The issues raised, however, rely solely on professional judgment, and there is no mechanism in place beyond multiple reviews and meetings aimed at standardizing the application of professional judgment.

Potential Risk: Inflation Assumption

Inflation is an implicit factor in the SFA's administrative expense assumption, which affects the total SFA calculation. PBGC has set caps for administrative expenses but has not provided separate, specific guidance for the inflation rate assumption to plans or instructions to reviewers. As a result, plans use different inflation rate assumptions in the projection of administrative expenses. Higher inflation rate assumptions mean higher administrative expenses, which in turn translates to higher SFA amounts. Because the SFA calculation requires a long projection period − until 2051 − even small differences in the inflation rate materially impact the administrative expenses. For example, a 2.5 percent inflation rate doubles current expenses by the end of the projection period; a 3 percent inflation rate would increase expenses 136 percent over the same period.

Figure 4: Inflation Rate Effects on Administrative Expenses Over 30 Years



Source: OIG Analysis.

Using current SFA procedures, PBGC does not segregate the assumed inflation rate as part of its analysis of administrative expenses. For example, assuming 2 percent inflation growth is the top end of PBGC's internal guidance and Plan A estimated 3 percent, procedures should ensure the Corporation controlled for the 1 percent difference in its review and documented its analysis. Plan A should attribute higher expenses to facts and circumstances justified by the plan's business situation rather than mixing in a speculative macro assumption. Otherwise, Plan A would receive more SFA − not because it required it and provided sufficient support − but because it assumed a higher inflation rate. Plans could take advantage of this by selecting a higher inflation rate assumption, especially when it becomes more well-known that the Corporation does not segregate the inflation rate as part of its analysis. Expenses cannot be consistently assessed when viewed through a different inflation-rate lens with every application. Procedures controlling for this aspect of the SFA calculation would help ensure in-depth analysis of expenses and equitable treatment across plans.

Although the Corporation quickly established procedures and policies for SFA application reviews, without documented risk tolerances and procedures for reviewing exceptions and anomalies, some important matters may be considered while others may not. Also, the lack of procedures around inflation rates could encourage unwarranted higher inflation assumptions and inconsistency in the Corporation's reviews of administrative expenses. And although the Corporation has quickly developed an extensive, collaborative process, we think additional procedures to ensure consistent analysis and decision-making are needed.

Recommendations

We recommend that the Office of Negotiations and Restructuring:

4. Define specific and measurable risk tolerances for changes in key assumptions that impact the SFA amount and develop related review procedures.

PBGC's Response and OIG's Evaluation

Resolved. PBGC concurred with the recommendation. ONR plans to develop and add procedures calling for an additional layer of review for any generally acceptable or reasonable assumption changes that individually impact the requested SFA amount by a threshold percentage. The existence of changes exceeding this threshold percentage would be documented in the concurrence package, thereby clearly notifying all reviewers and signers. See additional details in Appendix II. ONR's goal is to complete the planned actions by June 30, 2023.

Closure of this recommendation will occur when the Corporation submits the new procedures and threshold percentage(s) to the PBGC OIG.

5. Design specific procedures for the SFA program to ensure (1) appropriate in-depth analysis and review of exceptions, as well as consistent review of historical data for outliers, one-time items and other anomalies, and (2) ensure the review and decision-making process for exceptions and historical data is fully documented in the concurrence package.

PBGC's Response and OIG's Evaluation

Resolved. PBGC concurred with the recommendation. NRAD plans to design specific procedures documenting the appropriate analysis and review that should be conducted on data exceptions, historical data outliers, one-time items, and other anomalies, including the Template Checkers' role in this analysis. NRAD's goal is to complete the planned actions by September 30, 2023

Closure of this recommendation will occur when the Corporation submits the new procedures to the PBGC OIG.

6. Develop procedures for reviewing the impact of inflation on administrative expenses, and ensure supporting documentation is included in the case file.

PBGC's Response and OIG's Evaluation

Resolved. PBGC concurred with the recommendation. NRAD plans to document its procedures for reviewing the impact of inflation on administrative expenses, and the requirement to save documentation specifically supporting the administrative expense inflation assumption to the case file. NRAD's goal is to complete the planned actions by June 30, 2023.

Closure of this recommendation will occur when the Corporation submits the review procedures and documentation requirements to the PBGC OIG.

Finding 3: The Corporation Lacks Procedures for its Final Review of SFA Applications

According to federal internal control standards, management should implement control activities through policies. It is recommended management documents in policies for each unit its responsibility for an operational process's objectives, related risks, and control activity design, implementation, and operational effectiveness. PBGC implemented a key control − the concurrence package − to ensure SFA applications meet the requirements necessary to issue payment of SFA as defined by ERISA and PBGC regulations.

The concurrence package is a combination of final documents reviewed by management prior to approving an application. It is comprised of analytical reports, such as MEPD and NRAD's reviews of an application and its ultimate recommendation. PBGC management's review of the concurrence package is a key part of the Corporation's overall application review and risk-reduction process and was designed to ensure sufficient reviews and to reduce the risk of improper payments.

No Formal Procedures Exist for Review of the Concurrence Package

The Corporation did not design procedures to specify the steps senior managers should take in its reviews of the concurrence package. There are no procedures in place for the MEPD Division Manager, the NRAD Director, the Director of the Plan Compliance Department, or Chief of ONR to adhere to in their reviews of the concurrence package. With several levels of review, it is unclear what was intended to be accomplished with each review, what the expectations were for each review, or how consistency would be maintained. It was also unclear how risk of an information cascade − where a chain of reviewers, knowing the previous reviewer's conclusion, all reach the same decision − would be mitigated. Given the importance the Corporation's key controls have placed on management reviews, adding procedures to the review process could better offset some of the risks that arise in a chain of complex decision-making.

PRAD Review and SFA Practices

In December 2021, the director of the Corporation's Policy, Research and Analysis Department (PRAD) was added to the list of executives reviewing the concurrence package for plans in the first priority group and larger plans. PRAD develops policy for PBGC's insurance programs, conducts research, and models actuarial products, such as the Corporation's Projections Report. PRAD's inclusion in the review of the concurrence package provided the only review by actuaries outside the teams in ONR − the department principally responsible for reviewing SFA eligibility and amount. PRAD's review added an independent check of ONR's review process, which relies largely on collaboration, meetings, and discussions to ensure the consistent application of professional judgment and strengthens the Corporation's overall application review process.

PRAD developed a process for its review of the concurrence package that included separate checks by three actuaries. The reviews included analyzing additional documents, such as application templates – not just those included as part of the concurrence package − and a final reconciliation of discrepancies. PRAD did not initially formalize the procedures, and we were concerned the lack of a documented process could reduce the effectiveness of its reviews. However, subsequent to discussions with the OIG, PRAD documented and implemented its procedures, and has continued to update the process. Given the importance of the SFA program and technical nature of the actuarial review PRAD performs documented procedures should improve the quality of the Corporations reviews.

ONR has developed a detailed process for accepting applications, standardizing the data collected, and reviewing applications at the staff level; nonetheless, formalized procedures for management reviews of the concurrence package would better ensure that reviews add value, maintain consistency, and achieve objectives of the SFA program.

Recommendation

We recommend that the Office of Negotiations and Restructuring:

7. Develop and document procedures for management reviews of the concurrence package for SFA applications.

PBGC's Response and OIG's Evaluation

Resolved. PBGC concurred with the recommendation. ONR plans to work with the departments involved in the review of the concurrence package to develop and document procedures for management review of the concurrence package for SFA applications. ONR's goal is to complete the planned actions by June 30, 2023.

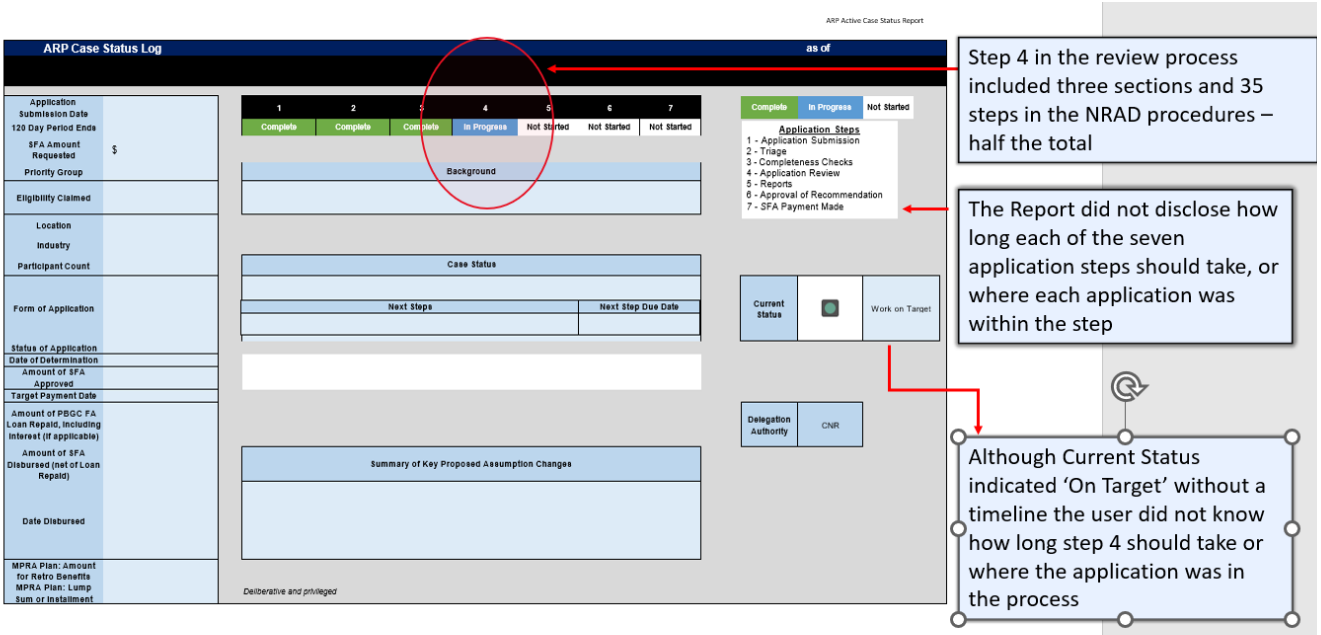
Closure of this recommendation will occur when the Corporation submits the procedures for review of the concurrence package to the PBGC OIG.

Finding 4: PBGC's Key Control to Ensure Timely Processing of SFA Applications is Not Adequate

PBGC management established a Key Control – SFA/MEPD-3, "*To ensure that ONR's case management system includes all submitted applications and to ensure timely processing of SFA applications."* This control requires MEPD's Triage Team to send a weekly report via email to PBGC leadership with the status of SFA applications, after confirming all applications submitted through the e-filing portal have been received in TeamConnect, ONR's case management system.

The control, however, does not ensure timely processing of SFA applications because the weekly report sent to PBGC leadership did not provide sufficient information for leadership to monitor the progress or timeliness of the review of individual applications. The purpose of the report was to assist PBGC management with ensuring PBGC meets the 120-day requirement for a decision on the application. The report provided information on the seven application steps. We note the report also details step 7, *SFA Payment Made*, which is outside the 120-day period.

Figure 5: Example of Weekly Report Case Status



Source: PBGC Weekly Report Template and OIG annotations.

Although one of the stated objectives of the control was to ensure timely processing of SFA applications, management did not have enough information to determine if applications were on target during processing. The seven-step chart indicating which step in the process the application was in did not disclose that *Step 4 Application Review* contained 35 procedure steps in the NRAD Procedure Guide and, as such, likely required the bulk of the 120-day process. In our review of two reports (October 22, 2021 and December 10, 2021), we found a wide variance − 29 to 91 days − remaining for an application decision for cases in Step 4; however, all of the applications were listed as on time. (See Figure 6.)

Figure 6: Number of Applications Moved to Step 4 and Range of Days Remaining

ARP Case Status Report	Number of Applications in Step 4	Range of Days Remaining
As of 10/22/2021	5	50 - 91
As of 12/10/2021	14	29 - 69

Source: OIG Analysis of Applications.

Without knowing how long the step should take and where the application was within the step, management could not judge timeliness by reviewing the weekly report.

Recommendations

We recommend that the Office of Negotiations and Restructuring:

8. Review the control to ensure the weekly report provides enough context for the reader to determine the status of an application, including how much time was allotted for each step and where the application was within the step.

PBGC's Response and OIG's Evaluation

Resolved. PBGC concurred with the recommendation. PBGC plans to review and modify (as necessary) the control in the context of ensuring timely processing of applications, and consider any changes needed to provide sufficient information for leadership to monitor the progress of the review of individual applications. PBGC's goal is to complete the planned actions by June 30, 2023.

Closure of this recommendation will occur when the Corporation submits evidence of its review of the control and modifications (as necessary), and consideration of changes needed for leadership to monitor application progress to the PBGC OIG.

Appendix I: Objective, Scope, and Methodology

Objective

Our objectives were to determine whether PBGC's policies, procedures and controls are sufficient to deliver timely and appropriate SFA to eligible multiemployer plans and determine the adequacy of the procedures PBGC used in identifying plans eligible for SFA.

Scope and Methodology

Our scope was limited to reviewing PBGC's Special Financial Assistance Program policies, procedures and guides. Due to the COVID-19 pandemic and related telework guidelines, we conducted this evaluation remotely.

To answer our objectives, we reviewed and gained an understanding of all pertinent SFA criteria captured in ERISA section 4262, OMB Circular A-123, PBGC's Final Rule posted in the Federal Register, GAO's Standard for Internal Control in the Government, GAO's Managing Fraud Risk in Federal Programs, and PBGC's internal policies and procedures related to SFA.

The evaluation team interviewed program officials in the Negotiations and Restructuring Actuarial Division (NRAD), Policy Research and Analysis Department (PRAD), Multiemployer Program Division (MEPD), Office of Management and Administration (OMA), and Corporate Controls and Reviews Department (CCRD) to gain an understanding of the PBGC policies and procedures as it pertains to SFA. We reviewed the agency's procedures, guidance, templates, and checkers to assess the sufficiency of procedures to deliver the correct amount of SFA to eligible plans. We reviewed the Corporation's ARP Case Status Reports, NRAD Individual Case Tracker, Case Issue Summary Report and TeamConnect (PBGC's case management system) used to monitor progress. We also reviewed the Corporation's FY 2021 and FY 2022 Enterprise Risk Management Profile, FY 2022 SFA Risk Register and SFA Program Risk Assessment to identify steps taken to review agency risks. Accordingly, the evaluation included a review of the Corporation's internal controls to the extent necessary to satisfy our objective.

Standards

We conducted this engagement in accordance with the Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Inspection and Evaluation.

Those standards require that we plan and perform the engagement to obtain sufficient and appropriate evidence to provide a reasonable basis for our conclusions and observations based on our objective. We believe that the evidence obtained provided a reasonable basis for our conclusions and observations based on our engagement objective.

Accordingly, the engagement included review of internal controls and compliance with laws and regulations to the extent necessary to satisfy the evaluation objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our evaluation. In addition, tests of internal controls were limited to review and analysis of the controls and related documentation. The SFA program was new at the time of the engagement, and the scope therefore did not include tests of actual SFA applications. Finally, we partially relied on computer processed data to satisfy our evaluation objective. We found the data to be sufficiently reliable for the purposes of this report.

Appendix II: Corporation Response

PBGC Pension Benefit Guaranty Corporation

445 12th Street SW
Washington, DC 20024-2101
202-229-4000
PBGC.gov

January 23, 2023

To: Nick Novak
Inspector General

From: John Hanley JOHN HANLEY Digitally signed by JOHN HANLEY Date: 2023.01.23 17:17:31 -05'00'
Acting Chief of Negotiations and Restructuring

Subject: Response to OIG's Draft Report EV-21-161, Evaluation of PBGC's Implementation of SFA

Thank you for the opportunity to comment on the Office of Inspector General's (OIG) draft report, received December 21, 2022, relating to the evaluation of PBGC's implementation of the Special Financial Assistance (SFA) program (Project No. EV-21-161). Your office's work on this is sincerely appreciated.

PBGC management met with the representatives from the OIG on December 12, 2022, to discuss the findings and recommendations. The dialogue was both informative and insightful and PBGC is grateful for the opportunity to respond to the recommendations suggested by the OIG.

Management concurs with the report's findings and recommendations. In the attachment to this memorandum, you will find our specific responses to each recommendation included in the report, as well as our planned corrective actions and scheduled completion dates. Addressing these recommendations in a timely manner is an important priority for PBGC.

cc: Frank Pace, Director, Corporate Controls and Reviews Department
Latreece Wade, Risk Management Officer
Karen Morris, General Counsel
Ann Orr, Chief Policy Officer

Our comments on the specific recommendations in the draft report are as follows:

1. **Conduct a fraud risk assessment for the SFA program based on GAO's *A Framework for Managing Fraud Risks in Federal Programs* to fully consider specific fraud risks the Corporation and program faces. (OIG Control Number 2023-08-01)**

PBGC Response: Management concurs with this recommendation. PBGC management continues to review and monitor the observations in the OIG's Risk Assessment of *PBGC's Implementation of Special Financial Assistance (SR-2022-09)* and assess whether existing procedures are commensurate with the risk context. In conjunction, PBGC management continues to implement, manage and strengthen the risk governance of SFA Funds to mitigate these risks to the extent possible. Although not documented in a fraud risk assessment, PBGC addresses the risk of fraud in its development and updates of our SFA regulations, guidance, processes, procedures, and controls to maintain our high standards of stewardship, accountability, and integrity. Accordingly, we are confident that the SFA program has been designed and implemented in such a way as to take reasonable steps to prevent acts of fraud. PBGC's Office of Negotiations and Restructuring (ONR) will conduct a formal fraud risk assessment based on GAO's *Framework for Managing Fraud Risks in Federal Programs* to fully consider any risks that may exist. ONR has recently hired an Enterprise Risk Management Expert with extensive experience in this area who will lead this effort.

In addition, PBGC management will continue to work with the agency's Risk Management Council to identify, monitor and address risks related to the program in the SFA Risk Register. Likewise, as necessary, we will continue to submit and clear any SFA-related changes or additions to key controls through the agency's Internal Controls Committee.

Scheduled Completion Date: June 30, 2023

2. **Based on the fraud risk assessment, develop mitigation strategies for risks that require remediation. (OIG Control Number 2023-08-02)**

PBGC Response: Management concurs with this recommendation. Based on the fraud risk assessment conducted in response to recommendation 1, PBGC, led by our new Enterprise Risk Management Expert, will develop and implement mitigation strategies for risks that require remediation.

Scheduled Completion Date: September 30, 2023

3. **Develop specific eligibility review procedures to detect multiemployer plans taking steps to manipulate ratios to qualify for SFA. (OIG Control Number 2023-08-03)**

PBGC Response: Management concurs with this recommendation. One of the four criteria for eligibility as outlined in the American Rescue Plan Act (ARP) requires that an eligible plan be certified in critical status in any plan year beginning in 2020 thorough 2022, have a modified funded percentage of less than 40 percent, and have a ratio of active to inactive participants which is less than 2 to 3. While PBGC has procedures in place to review eligibility, we will refine these procedures to better document our eligibility review procedures, including those designed to detect any manipulation of these eligibility ratios.

Scheduled Completion Date: June 30, 2023

4. **Define specific and measurable risk tolerances for changes in key assumptions that impact the SFA amount and develop related review procedures. (OIG Control Number 2023-08-04)**

PBGC Response: Management concurs with this recommendation. The Negotiations and Restructuring Actuarial Department (NRAD) scrutinizes every assumptions change that an applicant makes for its for SFA application. As part of this process NRAD classifies assumptions changes into different tiers – acceptable, generally acceptable, and reasonable. According to the published Assumptions Guidance that is followed by applicants, if any changed assumption meets the preset criteria defined in that document (is "acceptable"), the requirements of §4262.5(c)(1)(iii) to demonstrate that the changed assumption is reasonable are not necessary; it is sufficient to include a statement to that effect instead of a detailed demonstration.

Working with key agency colleagues, including the General Counsel and our new Enterprise Risk Management Expert, we will develop and add procedures calling for an additional layer of review for any generally acceptable or reasonable assumptions changes that individually impact the requested SFA amount by a threshold percentage. The existence of changes exceeding this threshold percentage would be documented in the concurrence package, thereby clearly notifying all reviewers and signers. NRAD will determine the threshold percentage at the time when the new procedures are drafted and implemented.

Scheduled Completion Date: June 30, 2023

5. **Design specific procedures for the SFA program to ensure (1) appropriate in-depth analysis and review of exceptions, as well as consistent review of historical data for outliers, one-time items, and other anomalies, and (2) ensure the review and decision-making process for exceptions and historical data is fully documented in the concurrence package. (OIG Control Number 2023-08-05)**

PBGC Response: Management concurs with this recommendation. Numerous Template Checkers examine both historical data and SFA application data for outliers or other anomalies. Should they be found, ONR asks the applicant to explain so that we can be confident that the data is reasonable. The results of these conversations, and conclusions on reasonableness, can be seen in the "NRAD Comments" text boxes within the Template Checkers as well as the Assumptions Review document on a case-by-case basis. Our written procedures manual does not describe this process, however. NRAD will design specific procedures documenting the appropriate analysis and review that should be conducted on data exceptions, historical data outliers, one-time items, and other anomalies, including the Template Checkers' role in this analysis.

NRAD will document the review and decision-making process for exceptions and historical data in the concurrence package.

Scheduled Completion Date: September 30, 2023

6. **Develop procedures for reviewing the impact of inflation on administrative expenses, and ensure supporting documentation is included in the case file. (OIG Control Number 2023-08-06)**

PBGC Response: Management concurs with this recommendation. As part of Template Checkers 4A and 5A, NRAD reviews the impact of inflation on administrative expenses. This procedure has been in place since the inception of SFA and is completed for every application. NRAD will document its procedures for reviewing the impact of inflation on administrative expenses, and the requirement to save documentation specifically supporting the administrative expense inflation assumption to the case file.

Scheduled Completion Date: June 30, 2023

7. **Develop and document procedures for management reviews of the concurrence package for SFA applications. (OIG Control Number 2023-08-07)**

PBGC Response: Management concurs with this recommendation. ONR will work with the departments involved in the review of the concurrence package to develop and document procedures for management review of the concurrence package for SFA applications.

Scheduled Completion Date: June 30, 2023

8. **Review the control [referring to Key Control SFA/MEPD-3 regarding ONR's case management system] to ensure the weekly report provides enough context for the reader to determine the status of an application, including how much time was allotted for each step and where the application was within the step. (OIG Control Number 2023-08-08)**

PBGC Response: Management concurs with this recommendation. PBGC will review, and modify as necessary, the control in the context of ensuring timely processing of applications and consider what changes are necessary to provide sufficient information for leadership to monitor the progress of the review of individual applications. We note that since PBGC received the first SFA Application in August of 2021, 100% of all applications received have been reviewed and decided upon within the 120-day statutory period or withdrawn by the applicant before the 120 days elapsed.

Scheduled Completion Date: June 30, 2023

Appendix III: Acronyms

Acronym	Definition
ARP	American Rescue Plan Act
CCRD	Corporate Controls and Reviews Department
CBU	Contribution Base Units
ERISA	Employee Retirement Income Security Act
GAO	Government Accountability Office
MEPD	Multiemployer Program Division
MPRA	Multiemployer Pension Reform Act of 2014
NRAD	Negotiations and Restructuring Actuarial Department
OIG	Office of Inspector General
OMA	Office of Management and Administration
ONR	Office of Negotiations and Restructuring
OPEA	Office of Policy and External Affairs
PBGC	Pension Benefit Guaranty Corporation
PCD	Plan Compliance Department
PRAD	Policy, Research and Analysis Department
SFA	Special Financial Assistance

Appendix IV: Staff Acknowledgement

Staff Acknowledgement	Charles Yao, Audit Manager; Jensen Chan, Actuary; Richard McCaffery, Audit Manager and Auditor-In-Charge; and Yolanda Young, Auditor, made key contributions to this report.

Appendix V: Feedback

Please send your comments, suggestions, and feedback to OIGFeedback@pbgc.gov and include your name, contact information, and the report number. You may also mail comments to us:

Office of Inspector General
Pension Benefit Guaranty Corporation
445 12th Street SW
Washington, DC 20024

If you want to discuss this report or your comments with a member of the Office of Inspector General staff, please contact our office at (202) 326-4030.