

SFA Applications for Non-Priority Group Plans – Temporary Closure of E-Filing Portal as of March 11, 2023 and New Waiting List Process

Background

On Friday, March 10, 2023, the priority group application period as specified in the Special Financial Assistance (SFA) regulation will end, and on Saturday, March 11, 2023, the application period begins for all SFA-eligible plans (i.e., including plans that do not fall under any of the six priority groups defined in § 4262.10(d)(2) of PBGC's SFA regulation). PBGC estimates that about 200 plans will ultimately be eligible for SFA, most of which will first apply after the end of the priority group period.

Section 4262.10 of the SFA regulation sets forth a processing system that provides every SFA-eligible plan an opportunity to file its application with PBGC. This system permits PBGC to accept applications via its application filing portal (e-Filing portal) in a manner that allows for a thorough review and processing within the 120-day statutory review period, as required by section 4262(g) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4262.11 of the SFA regulation.

Due to the extensive review process required for SFA applications, PBGC is limited in the number of applications it can review at any time. To facilitate an expeditious and thorough review process, § 4262.10(d)(1) of the SFA regulation includes a metering system that permits the temporary closure of the e-Filing portal until PBGC has capacity to process more applications (see § 4262.10(d)(1)(iii)). Whether full capacity has been reached is determined at the sole discretion of PBGC.

E-Filing portal Closure and SFA Application Waiting List

Due to PBGC's current and anticipated inventory of SFA applications, PBGC has determined it will be at full capacity on, Friday, March 10, 2023, when the priority-group period ends, and must implement the metering system. Accordingly, **the e-Filing portal will be closed temporarily beginning at 12:00 AM Eastern Standard Time (EST) on Saturday, March 11, 2023, to SFA applications (including supplemented applications).**

Beginning at 9:00 AM Eastern Daylight Time (EDT) on Monday, March 13, 2023, PBGC will begin to accept requests to be placed on a waiting list for plans seeking to apply for SFA. To be placed on the waiting list, an authorized plan representative must e-mail SFA@pbgc.gov at any time on or after 9:00 AM EDT on Monday, March 13, 2023. This e-mail must include the plan's name, employer identification number (EIN), contact information of authorized representative (e.g., accountant, actuary, attorney, plan administrator, trustee), and a statement requesting that the plan be placed on the SFA application waiting list. Plans will be placed on the SFA application waiting list in chronological order based on the date and time of PBGC's receipt of the e-mail. The waiting list will be published in full on PBGC's website [here](#) and updated every Friday, beginning Friday, March 17, 2023.

The status of SFA applications under review can be found [here](#). PBGC will provide updates [here](#) of the intended date the e-Filing portal will be re-opened and will provide advance notice to the plans at the top of the waiting list that will be allowed to apply at that time. Once notified, a plan on the waiting list will have seven calendar days, starting on the date the e-Filing portal is opened, to submit a complete application. PBGC is targeting to temporarily reopen the e-Filing portal by April 1, 2023, and will continue to provide updates regarding the status of the e-Filing portal, the waitlist, and the status of applications.

Once the allowed applications have been received, or, if later, the end of the seven calendar days, PBGC will again temporarily close the e-Filing portal, and the waiting list will be updated accordingly. The process of closing and later opening the e-Filing portal will be repeated as needed. Any applications submitted outside the order of the waiting list will not be considered filed (see § 4262.10(e)). If an application is not properly filed, PBGC will notify the applicant that the application must be filed in accordance with this ordering system and other instructions on PBGC's website.

If at any time PBGC's capacity to review SFA applications exceeds the number of plans on the SFA application waiting list, the waiting list will be suspended, and the e-Filing portal will be opened for any eligible plans that wish to apply. The e-Filing portal will remain open until such time as PBGC's maximum capacity is reached once again.

Withdrawals and Revised Applications

Each SFA applicant that has properly submitted a complete application (i.e., not a lock-in application) and then withdrawn it – including priority group plans that are still under review as of March 11, 2023 – may submit up to **two** revised applications after March 11, 2023, directly to PBGC through PBGC's Multiemployer Program Division mailbox at multiemployerprogram@pbgc.gov without having to go back on the waiting list. Any additional

revised applications after March 11, 2023, or any revised application following a denial, would need to be submitted by following the waiting list process outlined above.

Emergency Filings

Eligible plans that are insolvent or expected to be insolvent within 1 year of an application and plans that have suspended benefits under the Multiemployer Pension Reform Act of 2014 (MPRA) as of March 11, 2021, retain the ability to submit emergency filings when the e-Filing portal is closed, and do not need to request to be placed on the waiting list (see § 4262.10(f)). Before submitting an application under the emergency filing process, a filer must send an email to PBGC's Multiemployer Program Division mailbox at multiemployerprogram@pbgc.gov, and include as the subject "Emergency Filing, Special Financial Assistance Application of (Plan Name)." In the email, the filer must substantiate the claim of emergency status and provide other information specified in the SFA instructions for emergency filers.

Lock-in Applications

PBGC has added resources to expand its capacity to review SFA applications. However, due to the large number of eligible plans, some plans may have an extended waiting period before being allowed to submit their SFA applications. For any plan that wishes to submit its initial application at a time when the SFA e-Filing portal is closed, PBGC's SFA regulation provides a mechanism, called a "lock-in" application, that allows plans to set the SFA measurement date and other base data in advance of submitting a complete application. The lock-in application is separate from the waiting list. Plans may submit a "lock-in" application at any time through PBGC's Multiemployer Program Division mailbox at multiemployerprogram@pbgc.gov. A plan will not be disadvantaged by having to wait to submit a complete application after filing a lock-in application. The amount of SFA is not affected by any waiting period as plans also receive interest on the SFA amount approved from the SFA measurement date to the date PBGC sends payment to the plan. In addition, the statute and PBGC's regulation define the amount of SFA each eligible plan may receive, but the law does not cap the overall amount of SFA that PBGC may pay.

Weekly Updates and March 9 Webinar

PBGC appreciates everyone's patience and understanding as PBGC processes incoming applications and requests. PBGC is committed to keeping eligible plans and their stakeholders informed about the status of applications, the SFA application waiting list, and when the e-Filing portal will be opened once the non-priority application period begins and throughout the non-priority application period. PBGC's weekly updates will enable plans and practitioners to see the application process flow to gauge how long they may have to wait before submitting an SFA application.

For further information on the non-priority group application process, PBGC will be holding a webinar on March 9, 2023, and stakeholders are encouraged to attend. Additional information

will be sent via email to the SFA mailing list which you can sign up for [here](#). Webinars are recorded and available [here](#).

FAQs

What happens when my plan is at the top of the waiting list and PBGC announces that it will open the e-Filing portal to allow my plan to submit an application?

PBGC will provide updates [here](#) of the intended date the e-Filing portal will be re-opened and will provide advance notice to the plans at the top of the waiting list that will be allowed to apply at that time. Once notified, a plan will have seven calendar days from the date the e-Filing portal is opened to submit a complete application. If the plan's application is not submitted within this time, the plan's spot on the waiting list will be forfeited and the plan will need to submit a new email request to SFA@pbgc.gov to be placed at the end of the waiting list.

My plan was a priority group plan that did not apply for SFA before March 11, 2023. Does the plan retain priority over non-priority group plans?

No. Except for "emergency applications," all eligible plans are treated the same for the purpose of order of acceptance of applications beginning on March 11, 2023. Plans that are insolvent or expected to be insolvent within 1 year of an application and plans that have suspended benefits under MPRA as of March 11, 2021, retain the ability to submit emergency filings (see § 4262.10(f)).

My plan intends to or has submitted a "lock-in" application. Does submission of the "lock-in" application also place the plan on the SFA application waiting list?

No. A lock-in application will set the plan's SFA measurement date and base data but has no impact on the process PBGC follows for accepting complete SFA applications for review. A plan can be placed on the SFA application waiting list with or without having filed a lock-in application. Plans that have submitted or intend to submit a "lock-in" application and also wish to be on the SFA application waiting list, must submit an email request to be on the waiting list, as set forth above, to SFA@pbgc.gov.

Are plans at the end of the SFA application waiting list disadvantaged because they will submit applications later than other plans?

No. For any plan that wishes to submit its initial application at a time when the SFA e-Filing portal is closed, PBGC's SFA regulation provides a mechanism, called a "lock-in" application that allows plans to set the SFA measurement date and other base data in advance of submitting a complete application. Plans may submit a "lock-in" application at any time, and by so doing, the amount of SFA is not affected by any waiting period. Plans also receive interest on the SFA amount from the SFA measurement date to the date PBGC sends payment to the plan. In addition, the statute and PBGC's regulation define the amount of SFA each eligible plan may receive, but the law does not cap the overall amount of SFA that PBGC may pay.