

Union Lawyers Alliance
2024 Advanced ERISA Seminar



Special Financial Assistance Program Update

September 27, 2024

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Topics for Discussion



- SFA Application
 - Assumptions

- SFA Receipt / Post Receipt
 - Investment Options
 - Withdrawal Liability
 - Annual Funding Notice Guidance
 - Compliance Audit



- Discount Rates are prescribed by PBGC; 4262.4(e)(1) and (e)(2)
- All other assumptions should be consistent with the pre-2020 PPA Certification unless no longer reasonable; 4262.4(e)(3) and (e)(4)
- Review PBGC SFA 22-07; Special Financial Assistance Assumptions Guidance (last updated Nov 2023)
 - Acceptable assumption changes
 - Generally acceptable assumption changes
 - Generally not acceptable assumption changes



- Consider Assumptions for:
 - Mortality, Termination, Retirement, Disability
 - Changes in Membership
 - New Entrants
 - Withdrawal Liability Payments
 - Form of Payment
 - Administrative Expenses
- Assumptions cannot be based on speculative changes in industry trends (i.e. self-driving trucks replacing all human truck drivers)



- Procedural Items:
 - Request a pre-application conference
 - PBGC Death Audit
 - Final audited assets
 - Application timeline
 - Timing of SFA payment
- Assumptions:
 - PBGC Assumption Guidance (note the date last-updated)
 - CBUs
 - Form of Payment
 - Past and Future Withdrawal Liability Payments
 - Administrative Expenses



Investment Options and Analysis

SFA Investment Options



- 29 CFR 4262.14 Permissible Investments
 - Must segregate SFA in a separate account
 - Up to 33% return-seeking assets (RSA) (see 4262.14(c))
 - Every time RSA purchased
 - At least one day every rolling period of 12 consecutive months
 - Investment grade fixed income securities and cash for all other amounts (see 4262.14(d))
- Reinvestment does not count as purchase
- RSA percentage could increase over time due to
 - Downgrades of investment grade fixed income
 - Higher returns on RSA vs investment grade
- 4262.16(c) – During SFA coverage period fixed income (SFA plus Legacy) must cover one year of benefit payments and administrative expenses



- Full cash match
- Cash match N years, duration after
- Above with 0% - 33% Return-Seeking Assets (RSA)
- Considerations
 - Funds that “make it” with SFA infusion tend to lean on cash match for security
 - Funds with longer duration of SFA coverage tend to cash match for several years and duration match thereafter
 - RSA percentage restrictions can be difficult to manage with any meaningful RSA allocation
- Current fixed income environment generally allows effective return greater than SFA assumption
 - results in cash match portfolios with higher return than SFA assumption
 - No need for RSA to outlive original projections
- Every Fund is different, especially regarding what to do with the Legacy assets



Permissible Investments

What do terms like “investment grade,” “fixed rate,” “debt security,” “leverage,” and “common stock” mean in the context of permissible investments for SFA?	+
Will PBGC identify whether a particular asset class, sub-asset class, fund structure, or investment strategy is permissible before a plan invests?	+
What are some examples of permissible investment grade fixed income securities?	+
What is an IGFI permissible fund vehicle?	+
What are some examples of permissible return-seeking asset securities?	+
What is a return-seeking asset permissible fund vehicle?	+
What is a “Rule 144A” security? How are “Rule 144A” debt securities, which are permissible RSA under the SFA regulation, different from private credit, which isn’t a permissible investment?	+
When does the 33 percent limit on RSA apply?	+
What does “predominantly” mean in the context of the type of permissible fund vehicles SFA assets may be invested in?	+

Last Updated: July 16, 2024

www.pbgc.gov/arp-faqs

Legacy Asset Options



Portfolio	Legacy Assets				SFA Assets*	
	% Equities	% Fixed	Return	Risk	Return**	Risk**
Current Allocation	80%	20%	7.30%	10.70%	5.10%	5.30%
1	0%	100%	3.90%	5.30%	5.10%	5.30%
2	20%	80%	5.00%	5.70%	5.10%	5.30%
3	50%	50%	6.60%	8.30%	5.10%	5.30%
4	100%	0%	9.20%	13.80%	5.10%	5.30%

* Assume no equity component for SFA assets in initial legacy asset allocation review

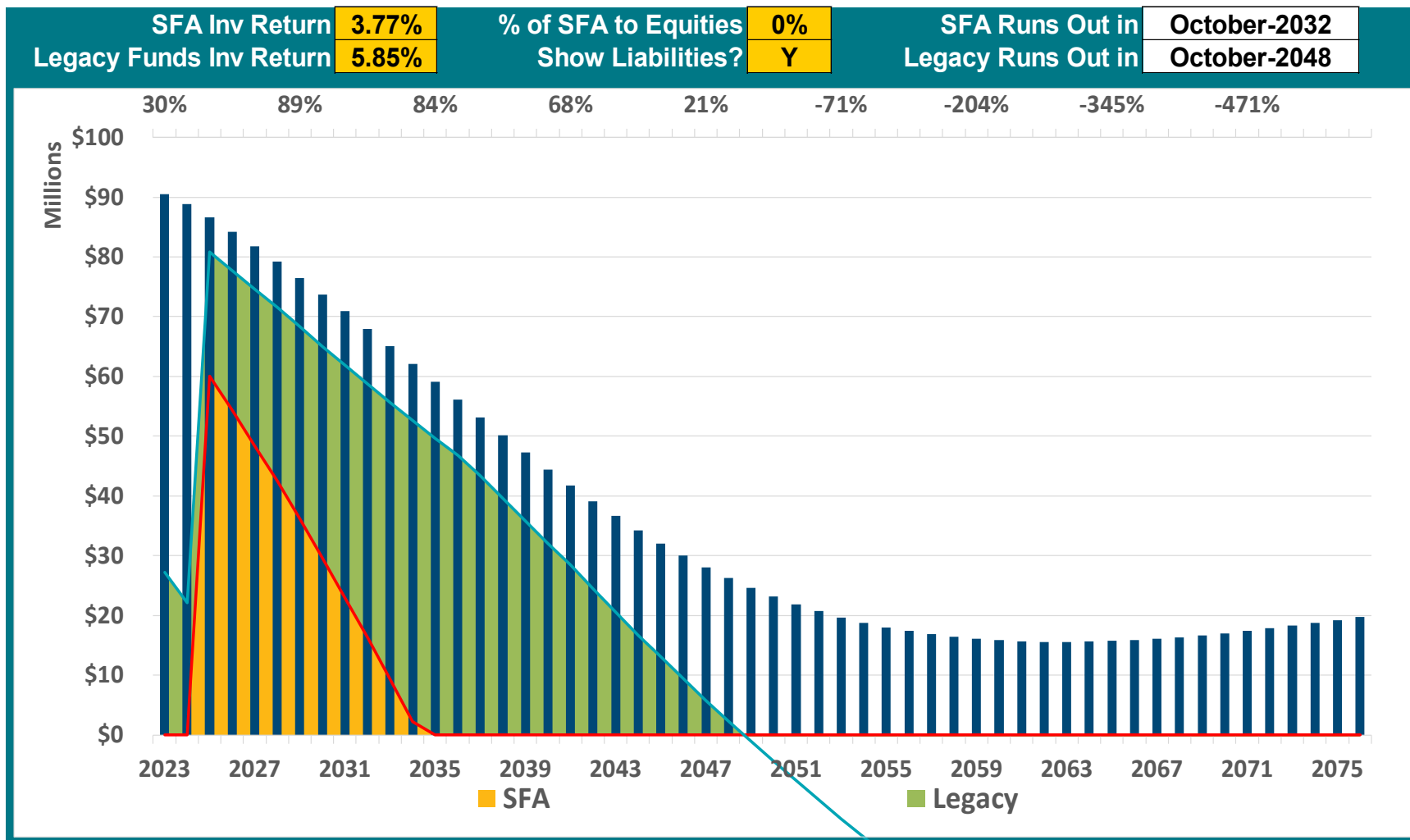
** Risk / Return for fixed income component of SFA assets

Current actuarial assumption is 6.00%

Deterministic Projection: SFA Application



Reflects Prescribed Return Assumptions and Actual Amount and Timing of SFA Payment

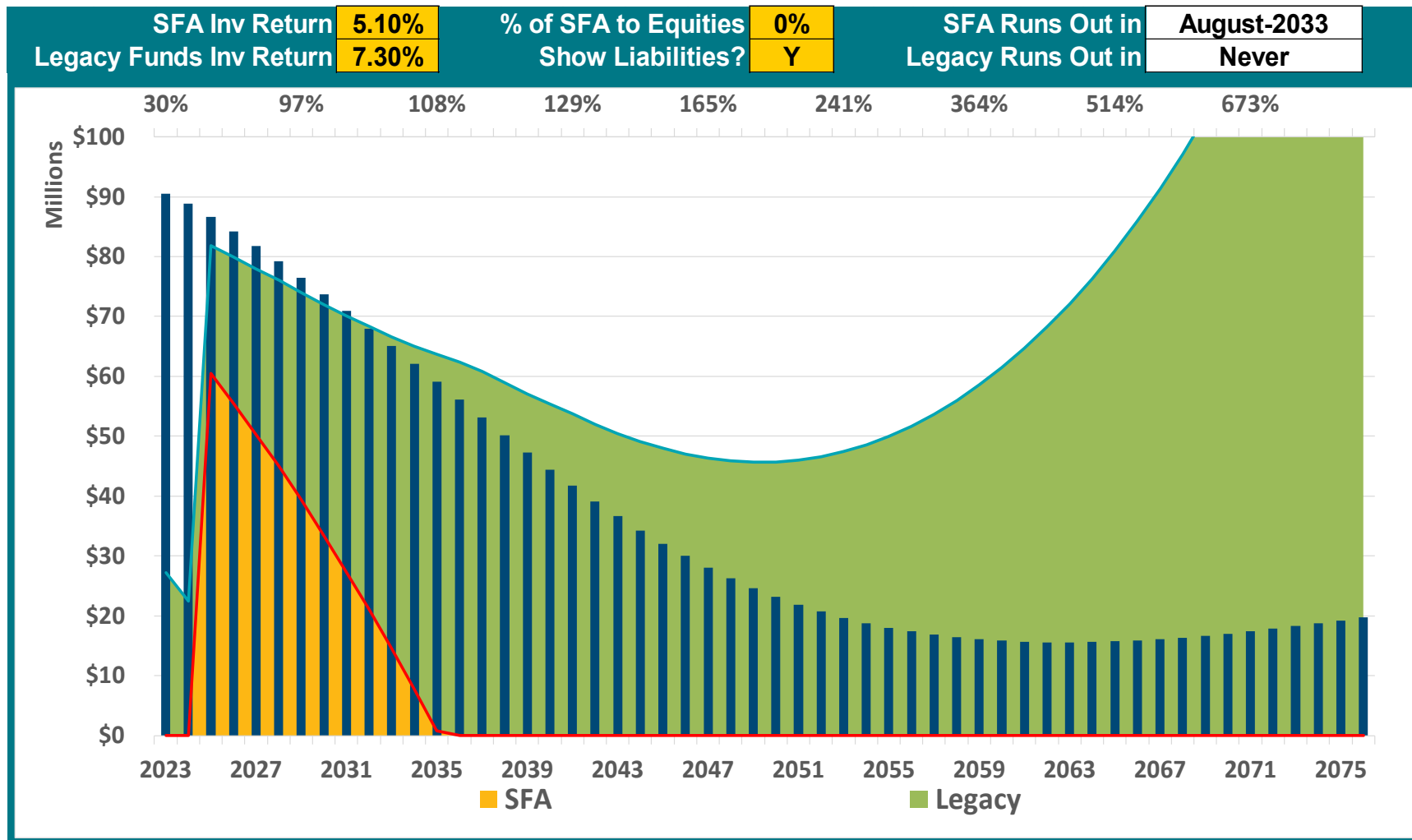


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Deterministic Projection: Current Allocation



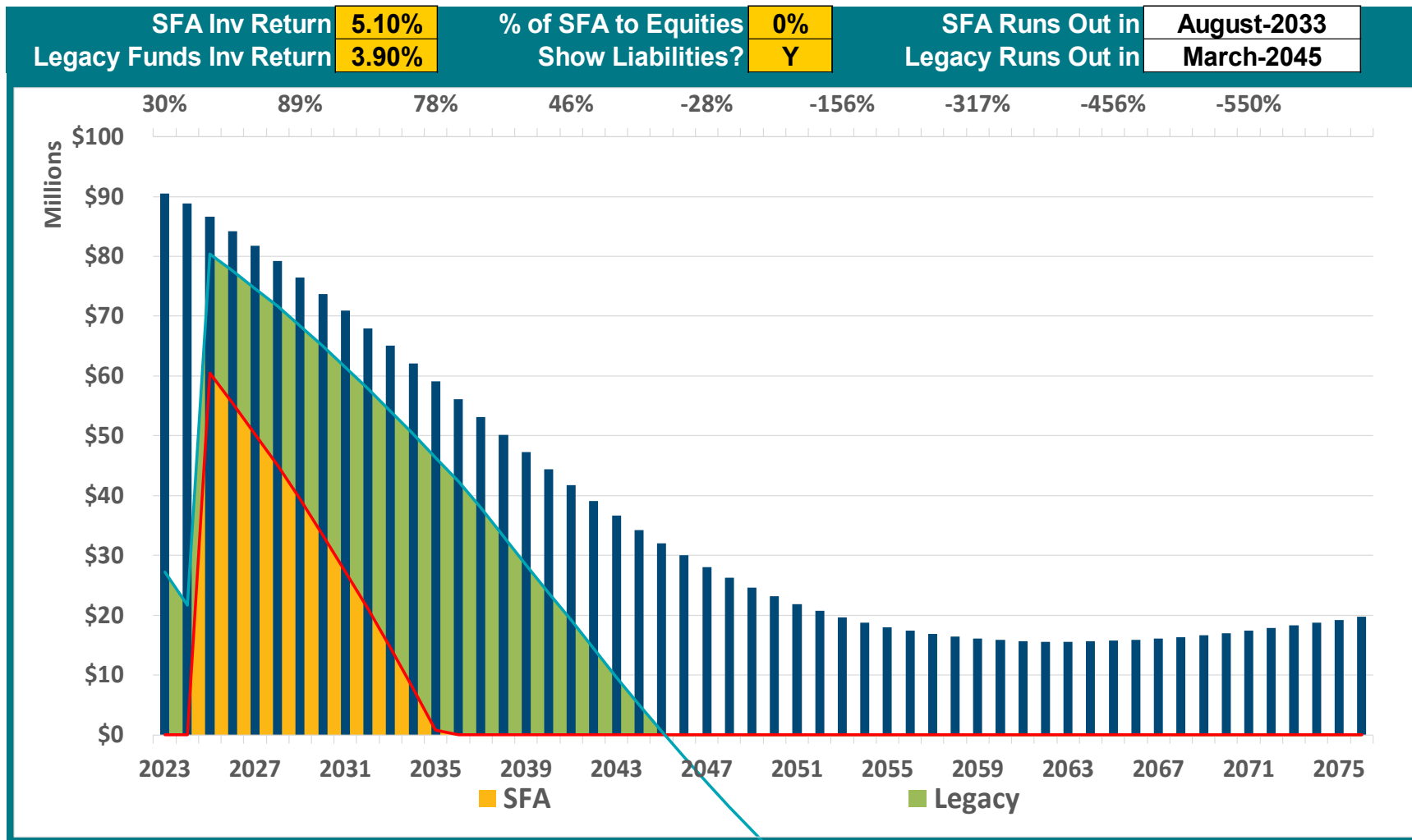
Legacy Assets: 80% Equities / 20% Fixed Income



Deterministic Projection – Portfolio 1



Legacy Assets: 0% Equities / 100% Fixed Income

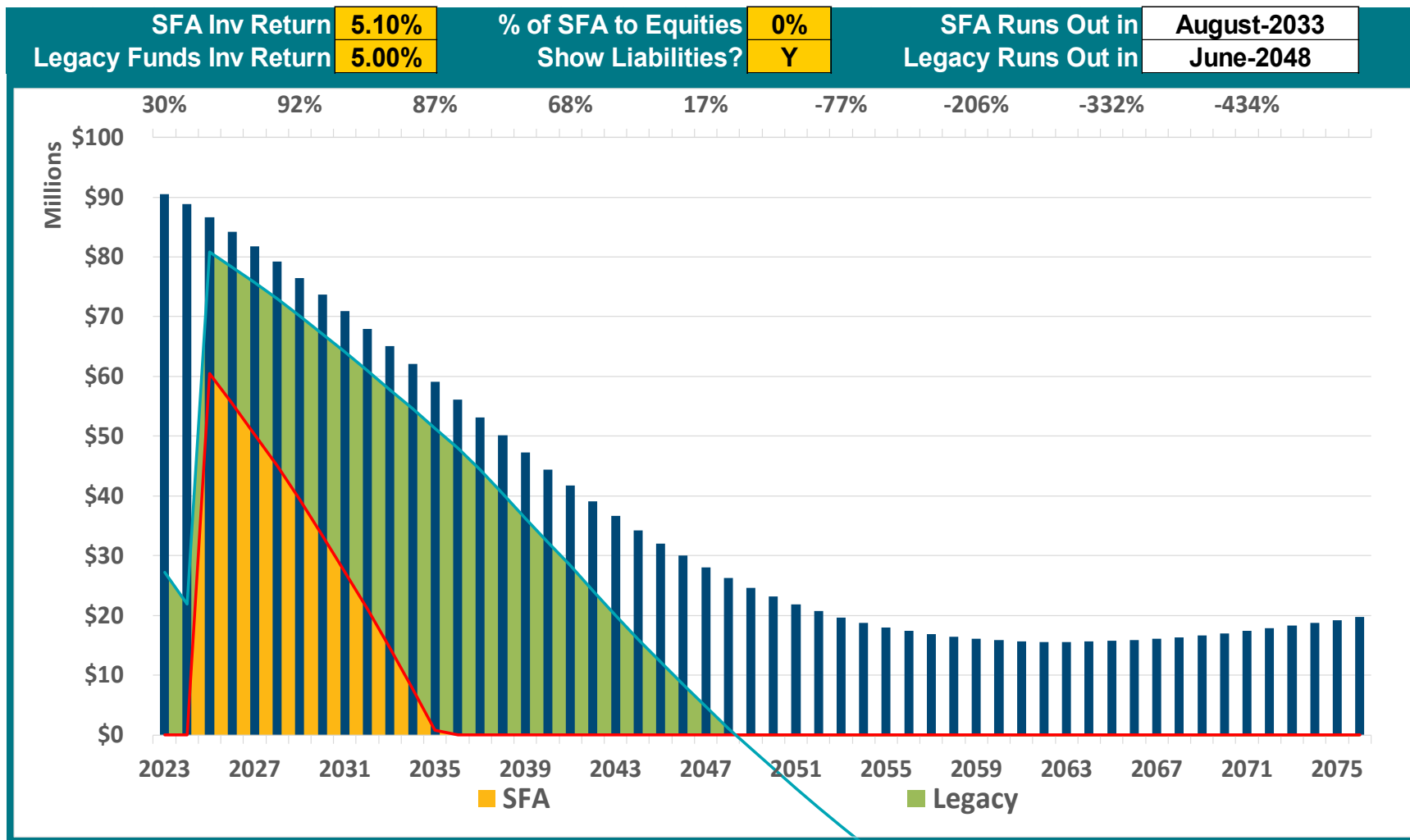


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Deterministic Projection – Portfolio 2



Legacy Assets: 20% Equities / 80% Fixed Income

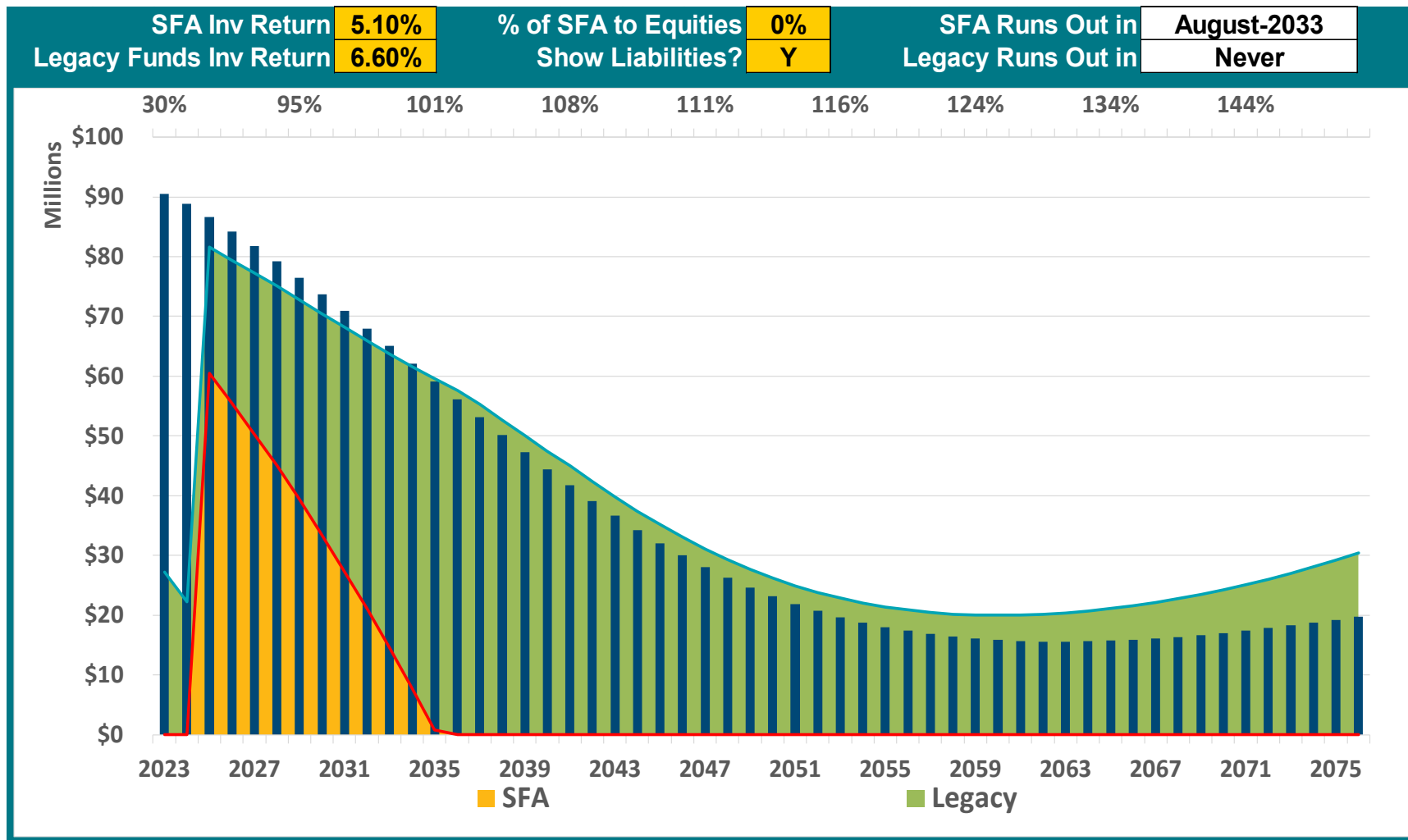


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Deterministic Projection – Portfolio 3



Legacy Assets: 50% Equities / 50% Fixed Income

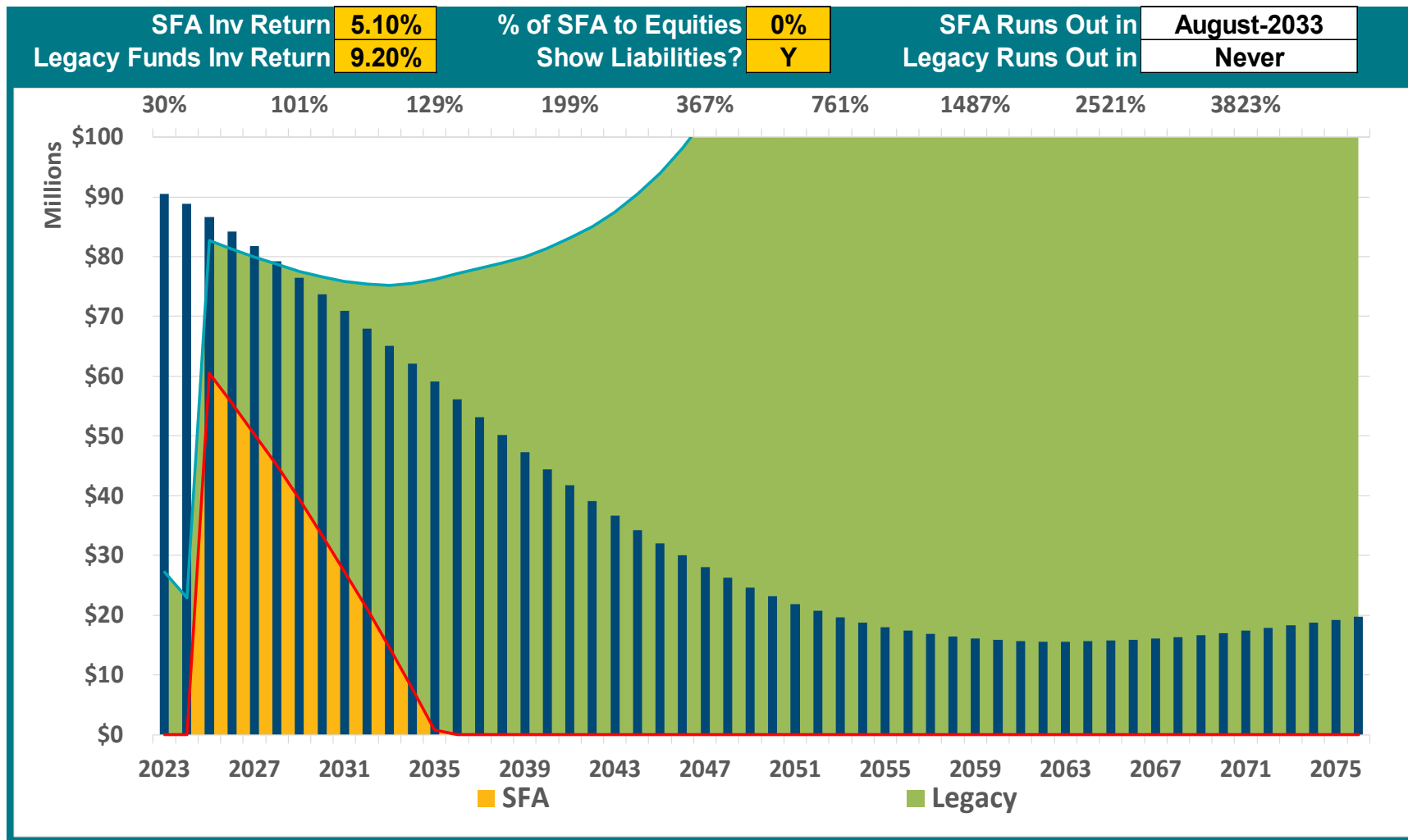


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Deterministic Projection – Portfolio 4

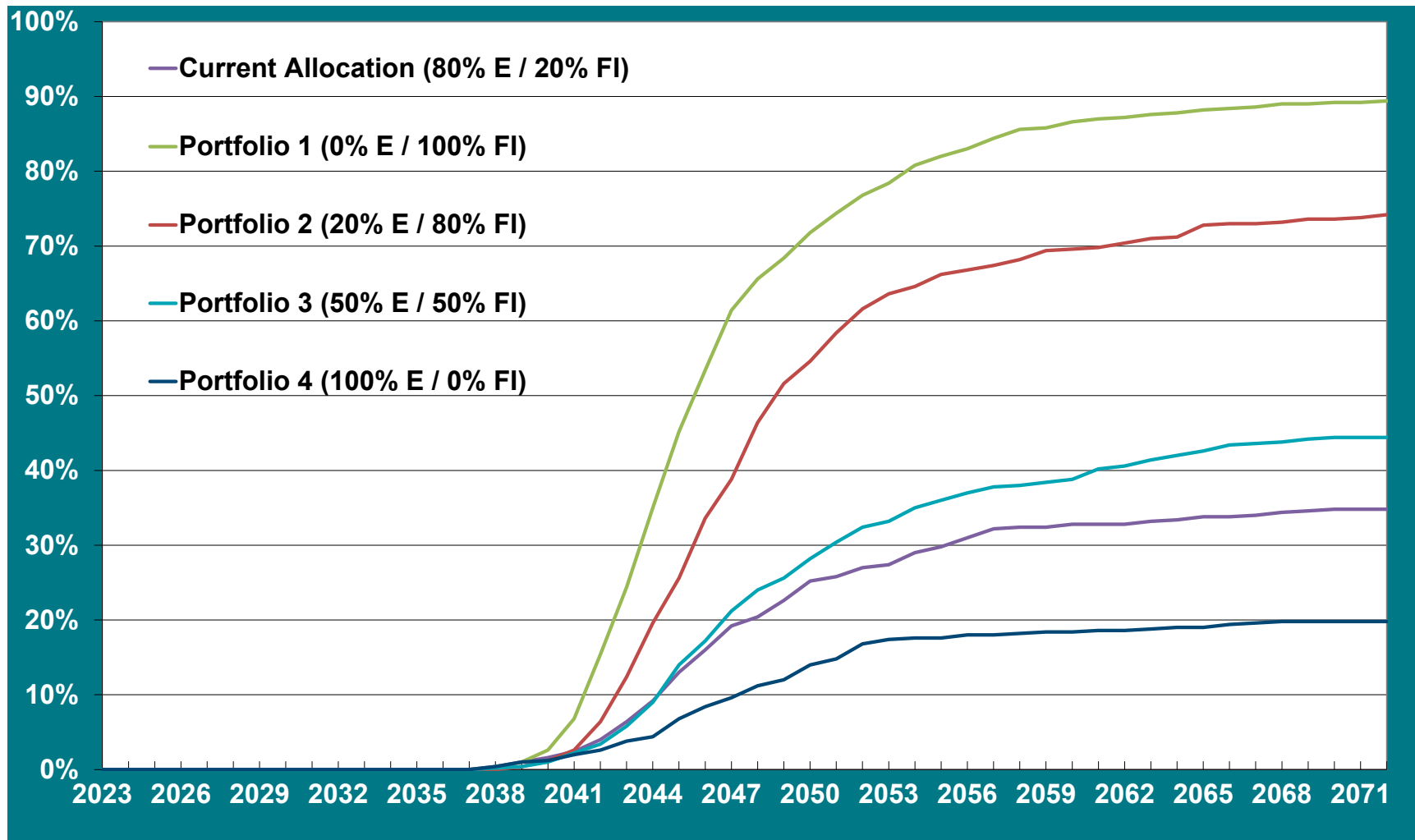


Legacy Assets: 100% Equities / 0% Fixed Income



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Stochastic Projections – Probability of Insolvency





Post Approval



- Applies for withdrawals in Plan Years (PY) after the Payment Year
- SFA Assets are phased-in each year through the end of the Exhaustion Year
- Liability is determined using 4044 interest rate assumptions until the later of:
 - The end of the 10th PY after the Payment Year, or
 - The end of the Exhaustion Year
- Exhaustion Year = PY SFA is projected to be exhausted in the application
 - extended by number of PYs the Payment Year is after the PY that includes the SFA measurement date
- No changes to Payment Schedule; still limited to 20-years

Withdrawal Liability Post SFA: Example



Plan Year	Calendar	Payment Year	2024
SFA Measurement Date	12/31/2022	Exhaustion Year	2030
SFA Payment Date	3/15/2024	Denominator	7
Exhausted in	2028		
Total SFA Received	\$ 200,000,000		
Lump Sum Make-Up	\$ 50,000,000		

Year of Withdrawal	Determination Year	(A) (B) (C) = (A) + (B)			(D) (E) (F)			(C) - (F) Assets Used
		ACTUAL Assets			SFA Assets Excluded			
		Non-SFA	SFA	Total	Numerator	Ratio	Amount	
2023	12/31/2022	\$ 155,700,000		\$155,700,000				\$ 155,700,000
2024	12/31/2023	\$ 138,700,000		\$138,700,000				\$ 138,700,000
2025	12/31/2024	\$ 145,100,000	\$ 184,100,000	\$329,200,000	7	1.0000	\$150,000,000	\$ 179,200,000
2026	12/31/2025	\$ 159,900,000	\$ 162,200,000	\$322,100,000	6	0.8571	\$ 128,571,429	\$ 193,528,571
2027	12/31/2026	\$ 174,800,000	\$ 139,600,000	\$314,400,000	5	0.7143	\$ 107,142,857	\$ 207,257,143
2028	12/31/2027	\$ 190,400,000	\$ 116,200,000	\$306,600,000	4	0.5714	\$ 85,714,286	\$ 220,885,714
2029	12/31/2028	\$ 206,900,000	\$ 92,100,000	\$299,000,000	3	0.4286	\$ 64,285,714	\$ 234,714,286
2030	12/31/2029	\$ 224,300,000	\$ 67,300,000	\$291,600,000	2	0.2857	\$ 42,857,143	\$ 248,742,857
2031	12/31/2030	\$ 242,700,000	\$ 41,700,000	\$284,400,000	1	0.1429	\$ 21,428,571	\$ 262,971,429
2032	12/31/2031	\$ 261,000,000	\$ 15,500,000	\$276,500,000	0	-	\$ -	\$ 276,500,000
2033	12/31/2032	\$ 269,000,000		\$269,000,000				\$ 269,000,000
2034	12/31/2033	\$ 261,700,000		\$261,700,000				\$ 261,700,000
2035	12/31/2034	\$ 254,600,000		\$254,600,000				\$ 254,600,000



- Field Assistance Bulletin No. 2023-01
 - Funding %
 - Market Value of Assets
 - “Material Effect” explanation
 - PPA Status
 - Investment Policy
 - Rules governing insolvency
 - Prohibition against future suspensions
- Recommend including a cover letter to provide more information to plan participants

Post Approval: Annual Compliance



- PBGC's annual reporting requirement for Plans to certify compliance with all conditions and restrictions; 4262.16(i)
- Must file with PBGC for each plan year through 2051
 - Due no later than 90 days after the end of the plan year
 - No statement of compliance due if SFA paid in the last 6 months of the plan year
- Signed by Trustee or Authorized Representative of the plan sponsor
- <https://www.pbgc.gov/sites/default/files/documents/annual-statement-compliance.pdf>

Post Approval: Annual Compliance



- Part I: Plan Information
- Part II: Compliance with restrictions and conditions (not merged plans)
- Part III: Compliance with restrictions and conditions (merged plans)
- Part IV: Compliance with requirement to reinstate benefits and pay make-up payments
- Part V: Required documents
- Part VI: Certification



- Restrictions and Conditions (Part II & III)
 - Confirmation that SFA was only used to pay benefits and expenses, is segregated from other plan assets, invested in only permissible investments, and maintains allocation restrictions on RSAs
 - Did the plan adopt retrospective and/or prospective benefit increase?
 - Has the plan complied with the conditions relating to the allocation of plan assets?
 - During the plan year, did the plan experience a
 - contribution decrease?
 - reallocation of expenses?
 - reallocation of contributions?
 - transfer of assets or liabilities, or merger?



- Restrictions and Conditions (Part II & III)
 - Confirmation of Withdrawal Liability Rules
 - Withdrawals after receipt of SFA?
 - Did the plan comply with the use of prescribed interest assumptions?
 - Did the plan comply with the SFA phase-in?
 - Did the plan make any settlement over \$50M?
 - Any fraud, bribery, or gratuity violations potentially affecting SFA funds?



- Required Documentation
 - Most recent audited financial statements
 - Most recent actuarial valuation report
 - Plan document and recent amendments
 - Account statements (Banks and Investment Accounts)
 - SFA Investment Allocation (Excel worksheet)
 - Most recent zone certification
 - Updated Template 4A through SFA projection period or insolvency
 - Other as requested by PBGC