giant eagle

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August 11, 2011

Via Electronic Mail (*reg.comments@pbgc.gov)*

Regulatory Affairs Division
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005
Attn: Daniel S. Liebman, Esq., Deputy General Counsel

Re: **Comments on Interim Final Regulation - Special Financial Assistance by PBGC [RIN 1212-AB53]**

Dear Mr. Liebman:

Giant Eagle, Inc. appreciates the opportunity to provide comments to the Pension Benefit Guaranty Corporation ("PBGC") on the interim final regulation (the "Regulation") under section 4262 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

Section 4262 of ERISA was added by the American Rescue Plan Act of 2021 (the "Act") to provide special financial assistance to deeply underfunded multiemployer pension plans. The Regulation clarifies many aspects of the Act consistent with this objective, but we believe there are certain areas where the Regulation should be modified to better carry out the Congressional intent.

<u>Amount of Special Financial Assistance</u>

The Act provides that the amount of special financial assistance available to plans "shall be such amount required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment under this section and ending on the last day of the plan year ending in 2051". Notably, this provision does not mention the existing plan resources; it only says that the special financial assistance shall be sufficient to pay all benefits until 2051.

In contrast with the plain wording of the statute, the Regulation provides that the special financial assistance, in conjunction with existing plan resources, should be sufficient to achieve the solvency target. This interpretation will provide plans with less relief than was intended. Further, due to issues related to the actuarial assumptions used in the projection calculations, for many plans it is highly unlikely that the amount of relief provided under the Regulation will actually come close to achieving solvency through 2051.

Giant Eagle participates in several multiemployer pension plans that will be eligible for special financial assistance, but due to the approach taken in the Regulations, these plans are likely to receive either relatively small amounts of assistance, or no assistance at all. PBGC should revise the Regulation to exclude existing plan resources when calculating the amount of special financial assistance, as this interpretation is consistent with the plain language of the statute. Alternatively, the Regulation could follow an alternative approach, such as providing that the amount of special financial assistance should be sufficient for the plan to remain solvent through 2051 and have a funding level that is improving at the end of the projection period.

Interest Rate for Projections

Calculating the amount of special financial assistance to which a plan is entitled requires projecting the cash flows of the plan, including projected returns on plan assets. The Act generally provides that the interest rate used for this purpose is the rate used by plans in their 2020 zone status certifications, subject to a cap that is currently around 5.5%. Since most plans used an interest rate above 5.5% in 2020, this prescribed interest rate for most plans will be approximately 5.5%. The Regulation provides that this interest rate applies to both the existing plan resources, and to the special financial assistance after it is paid.

Special financial assistance must be segregated from other plan assets, and substantially all of the assistance must be invested in investment-grade corporate bonds. These bonds are currently yielding far less than 5.5%, meaning that most plans will be unable to achieve the asset returns underpinning the calculation of the amount of assistance. As a result, under the approach in the Regulation, many plans that receive special financial assistance will actually be projected to be insolvent by as much as 10 to 15 years earlier than 2051. These projected insolvencies are likely to necessitate dramatic increases in the level of PBGC premiums, placing additional cost pressures on plans that are struggling to remain solvent.

Prior to the passage of the Act, plan trustees were fully responsible for the management of all plan assets. The interest rate assumptions used in the most recent zone status certifications were developed taking into account the asset allocations chosen by the trustees. Since the interest rate assumptions are closely associated with existing plan resources, and are completely disconnected from the special financial assistance, it is reasonable to conclude that the prescribed interest rate in the Act (prior to the application of the cap) applies only to existing plan resources and not to special financial assistance.

Since Giant Eagle does not participate in any plans that face imminent insolvency, the interest rate that applies to special financial assistance is likely to have a modest impact on the near-term health of these plans. However, this issue could cause many plans to fail significantly earlier than the 2051 solvency target set by Congress, exposing all plans to the possibility of very high PBGC premium increases. PBGC should limit the scope of the prescribed interest rate to existing plan resources, while allowing the use of a more realistic interest rate with respect to the special financial assistance. This approach would align the Regulation with the Congressional intent that plans remain solvent until 2051.

Actuarial Assumptions

The Act generally treats the actuarial assumptions (except for the interest rate) used in a plan's most recent zone status certification prior to January 1, 2021 as the default assumptions for determining the amount of special financial assistance. Plan sponsors have the ability to propose alternative assumptions if they determine that the default assumptions are unreasonable, and PBGC may accept or reject the proposed change. The Regulation appears to allow PBGC to conclude that one or more of the default assumptions are unreasonable, even if the plan sponsor does not propose a change.

Actuarial assumptions are subject to a high degree of uncertainty, and multiple assumptions may be considered reasonable for a particular measurement. We understand that PBGC is mindful of ensuring that plans do not receive more assistance than is permitted by the Act, but an even more important goal is that plans receive no less than the amount of assistance to which they are entitled. PBGC should refrain from challenging the assumptions used in the most recent zone status certification prior to 2021, as the intent of the statute is for those assumptions to serve as the default assumptions for determining the amount of special financial assistance, and doing so would increase the risk that plans might receive less than the amount of assistance that was intended under the Act.

Investment of Special Financial Assistance

Plans must segregate special financial assistance from other plan assets, and must invest that assistance in investment-grade corporate bonds, or "other investments as permitted by the [PBGC]". The Act places no limitations on the other investments that PBGC can allow, and provides no guidance with respect to the characteristics of those investments. Congress intended for PBGC to exercise its own judgement with respect to the appropriate investment of special financial assistance, consistent with the overall objective of the Act.

Other than a small allowance for bonds that were investment-grade when they were purchased but have subsequently been downgraded, PBGC did not exercise its authority in this area of the Regulation. As a result, many plans will not actually be projected to achieve solvency through 2051, which is the mandate established by Congress in the Act, because the special financial assistance will be unable to achieve the projected investment returns. PBGC should allow plans to invest a portion of the special financial assistance in equities and other return-seeking asset classes, as this is necessary to give highly distressed plans at least a chance of achieving the 2051 solvency target.

Contribution Rate Decreases

The plans that are eligible for special financial assistance have generally required significant contribution rate increases from their contributing employers over a period of many years. These contribution increases have diverted wages away from employees' paychecks and have placed competitive pressure on employers. The Regulation recognizes that in some cases a reduction in contribution rates will actually improve the financial strength of a plan by keeping employers in business and ensuring the continued support of the active employees. The Regulation also provides that plans must receive PBGC approval for contribution rate reductions that exceed a specified threshold.

In reviewing requests to allow reduced contribution rates, PBGC should be mindful of the fact that sustained high contribution rates are placing a heavy burden on contributing employers and participating employees, and that the trustees are in the best position to understand these pressures. PBGC also should clarify that the $10 million dollar threshold for the PBGC approval requirement applies to the *impact* of the proposed contribution rate reduction, and not to the *underlying amount* of annual contributions.

Thank you for considering these comments, and for all of the work that PBGC has done to ensure that plans receive all of the relief to which they are entitled under the Act.

Sincerely,

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David Burnworth
Sr. Vice President & CAO