



April 13, 2021

BY E-MAIL

The Honorable Gordon Hartogensis
Director
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005

Re: Regulations or Guidance under the American Rescue Plan Act of 2021

Dear Mr. Hartogensis:

Albertsons Companies, Inc. is one of the largest food and drug retailers in the United States. As of December 5, 2020, it operated 2,253 stores across 34 states and the District of Columbia under 20 well-known banners, including Albertsons, Safeway, Vons, Pavilions, Randalls, Tom Thumb, Carrs, Jewel-Osco, Acme, Shaw's, Star Market, United Supermarkets, Market Street and Haggen. As of December 5, 2020, the Company employed approximately 300,000 full-time and part-time employees, including approximately 185,000 employees covered by collective bargaining agreements. Approximately 100,000 Albertsons employees participate in multiemployer defined benefit pension plans.

Albertsons is a contributing employer to twenty-eight multiemployer defined benefit pension plans. Four of the plans to which Albertsons contributes are in critical and declining status. Albertsons pays withdrawal liability to an additional plan in critical and declining status, the Food Employers Labor Relations Association and United Food and Commercial Workers Pension Fund ("FELRA"), from which it withdrew recently in accordance with an agreement dated December 31, 2020 that the Pension Benefit Guaranty Corporation ("PBGC") reached with Giant of Maryland LLC, NAI Saturn Eastern LLC d/b/a Safeway Eastern Division; Acme Markets, Inc., United Food and Commercial Workers Locals 27 and 400, FELRA, and the Mid-Atlantic UFCW and Participating Employers Pension Fund ("MAP").¹ Under the agreement, FELRA and MAP were merged, at the direction of the PBGC, to form FELRA as it exists today. FELRA is projected to become insolvent in July 2022. Albertsons contributes to twelve plans that are in critical status that are entitled to assistance under the American Rescue Plan Act ("ARPA").

¹ See <https://www.pbtc.gov/news/press/releases/pr21-01>.

Albertsons is committed to supporting multiemployer pension plans to which it contributes and has no intention to withdraw from any of the multiemployer plans to which it contributes. Consequently, it supports the PBGC's creation of regulations or guidance under ARPA that will enable multiemployer plans to provide benefits to participants and beneficiaries through and beyond 2051.

To aid the PBGC in the creation of regulations or guidance we have provided suggestions for the PBGC's review for the successful implementation of ARPA. We would like the opportunity to discuss these suggestions in greater detail with the PBGC at a time convenient for the PBGC.

1. One of the main goals of ARPA is for the PBGC to provide assistance to plans on a timely basis.² To that end, ARPA permits the PBGC to establish a priority system for consideration of applications for assistance.³ The PBGC should take steps to ensure that plans that are projected to become insolvent soon after the PBGC releases its regulations or guidance receive assistance timely so they do not become insolvent. One of the plans in need of such timely assistance is FELRA. We would be happy to work with the PBGC to ensure that FELRA's participants and beneficiaries receive assistance prior to FELRA becoming insolvent in or about mid-2022.

2. The amount of financial assistance to be provided under ARPA is

"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, with no reduction in a participant's or beneficiary's accrued benefit as of the date of enactment of this section"⁴

This statutory mandate is subject to different interpretations. It provides the PBGC with discretion in determining the amount of assistance it is required to provide under ARPA. One expansive interpretation is that the assistance provided is the amount necessary to enable plans to pay benefits and administrative costs through 2051 without regard to the plan's assets or future contributions. We do not support this interpretation because of its large expense to taxpayers. We do, however, believe that Congress did not intend for the plans receiving

² See American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 4262(a)(1), 135 Stat. 4, 190 (2021).

³ See American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 4262(d)(1), 135 Stat. 4, 191 (2021).

⁴ See American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 4262(j)(1), 135 Stat. 4, 193 (2021).

assistance to become insolvent on the last day of their plan year ending in 2051. The best interpretation of ARPA provides for plans to be solvent at the end of their 2051 plan year while also providing a reasonable limit to the cost of providing assistance. These goals may be achieved by the PBGC taking the following measures:

(a) The amount of financial assistance provided should take into account the limitation on how the financial assistance may be invested. At current interest rates, the interest rate for determining the amount of assistance is significantly in excess of the amount plans may earn on the investment of the assistance provided.⁵ The amount of assistance provided should take into account any limitation on investment returns on the assistance. This problem may also be ameliorated by enabling plans receiving assistance to use the assistance first in paying benefits and administrative costs.

(b) ARPA does not replace the detailed provisions in the Internal Revenue Code regarding the creation and amendment of rehabilitation plans for plans in critical and declining and critical status.⁶ Trustees of these plans are still responsible for reviewing and amending, if appropriate, employer contribution obligations under rehabilitation plans.⁷ We recommend that contributions required under rehabilitation plans after March 11, 2021 not be considered in determining the amount of assistance necessary for a plan to pay benefits and administrative assistance through its 2051 plan year. This would both recognize that the law governing rehabilitation plans has not been replaced by ARPA and enable ARPA to be implemented successfully. It also will have enormously beneficial practical effect. It will provide unions and contributing employers an appropriate incentive to provide for rehabilitation plan contributions that will enable plans to remain solvent after 2051.

(c) ARPA provides the PBGC with discretion to create certain withdrawal liability rules for plans that receive assistance. The PBGC should provide an appropriate incentive to contributing employers to continue to participate in plans receiving assistance. We suggest that the PBGC adopt a ten year period during which the amount of the PBGC assistance, and the earnings on the assistance, be deducted from the plan's assets whether or not the plan has used the assets to pay for benefits and administrative expenses. As you know, there is a ten year period for the assistance provided under the Multiemployer Pension Reform Act of 2014 ("MPRA") not to be counted for calculating an employer's withdrawal liability.⁸ A fifteen year period was in the bill passed by the House before it was struck in the Senate as a violation of

⁵ See American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 4262(e)(2), 135 Stat. 4, 192 (2021).

⁶ See 26 U.S.C. § 432(e)(1).

⁷ See 26 U.S.C. § 432(e)(3)(B).

⁸ See 29 U.S.C. § 1413(d)(3), Section 4233(d)(3) of ERISA.

Reconciliation requirements.⁹ At the end of the ten year period, the amount deducted should be reduced in level amounts annually so that no deduction should occur in the plan year commencing in 2052. This will provide a significant incentive for employers to continue participating in multiemployer plans.

3. In its application for financial assistance, a plan may propose that an assumption used to determine its 2020 zone status is no longer reasonable and should be replaced by a different assumption. The PBGC is required to accept such changed assumption unless it determines the change is unreasonable. The PBGC's regulations or guidance should recognize a plan's ability to change assumptions because plans review the assumptions used to certify zone status every year and often change those assumptions. This is particularly important for the assumption plans use to project participation (*i.e.*, the amount of contribution base units). This is the only actuarial assumption that a plan's actuary relies on the plan's trustees for guidance.¹⁰ Projections of participation levels, unlike many actuarial assumptions, are subject to material changes for various reasons including changes in technology and non-union competition. Under ARPA, plans will need to make a projection for thirty years that will determine the amount of assistance they receive.¹¹ That projection will not be reviewed or changed for thirty years. Because of the importance and length of the projection, the PBGC should provide regulations or guidance that defer to a plan's participation projection. These changes are particularly relevant to the supermarket industry. Albertsons expects there will be significant increases in the next thirty years in the use of technology in operating supermarkets. These changes will cause material reductions in contribution base units and must be considered in the amount of assistance the PBGC provides. In addition, the presence of non-union competition in the supermarket industry is only likely to increase over the next thirty years. These competitors have and will continue to reduce employment in unionized supermarkets that, unlike non-union supermarkets, contribute to multiemployer pension plans. We project that both of the factors will have a large effect on the participation levels in multiemployer plans in which Albertsons participates.

We request the opportunity to discuss the implementation of ARPA with you at your earliest convenience.

⁹ See 167 Cong. Rec. 37, 830 ("An employer's withdrawal liability for purposes of this title shall be calculated without taking into account special financial assistance received under this section until the plan year beginning 15 calendar years after the effective date of the special financial assistance.").

¹⁰ See 29 U.S.C. § 1085(b)(3)(B)(iii), Section 305(b)(3)(B)(iii) of ERISA; 26 U.S.C. § 432(b)(3)(B)(iii).

¹¹ See American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 4262(j)(1), 135 Stat. 4, 193 (2021).

Please contact our counsel, Ron Richman of Schulte Roth and Zabel, at ronald.richman@srz.com or 917-733-4706 to set up a meeting. Thank you for your consideration.

Respectfully submitted,

DocuSigned by:

Dan Dosenbach

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Dan Dosenbach

Senior Vice-President of Labor Relations