



AMERICAN BENEFITS COUNCIL

April 7, 2020

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20515

The Honorable Charles Schumer
Democratic Leader
U.S. Senate
Washington, DC 20515

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi, Leader McConnell, Leader McCarthy, and Minority Leader Schumer:

On behalf of the American Benefits Council (“the Council”), I thank you for your leadership in the enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. This legislation provides much needed help for our country and contains critically important retirement policy provisions to help plan participants and their families as well as plan sponsors providing retirement plans.

The Council is a Washington, D.C.-based employee benefits public policy organization. We advocate for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and families. Council members include over 220 of the world’s largest corporations and collectively either directly sponsor or administer health and retirement benefits for virtually all Americans covered by employer-sponsored plans.

The CARES Act delays all single-employer funding obligations due during 2020 until January 1, 2021, with interest for late payments. In addition, a plan sponsor may elect to apply the plan’s funded status for the 2019 plan year in determining the application of benefit restrictions for “plan years which include calendar year 2020.” These provisions are enormously helpful and provide much needed flexibility for companies in meeting immediate pressures resulting from the coronavirus pandemic.

The pandemic and resulting impact on business operations and the market as a whole have devastated company revenues. In addition, pension asset values have been very severely affected in many instances. The path forward through our national emergency and beyond is fraught with challenge, and now more than ever companies need to be able to count on longer-term pension funding stabilization. Lack of stabilization could mean that companies will face (1) more layoffs than they might otherwise, (2) limited ability to get their business on track and (3) in some cases even more serious challenges staying in business.

This problem could exacerbate the challenges faced by other companies that either supply or purchase from companies experiencing funding challenges. Even before the severity of the pandemic and resulting effects on plan assets and company revenues, a significant number of our plan sponsor members were reporting concerns about the impact on their pension plans. Since that time the number of members raising the issue continues to increase.

We urge you to include pension funding stabilization in the upcoming stimulus package currently under consideration. Our recommendations are outlined in the attached. As you will see, there are two core proposals. One proposal extends and enhances "interest rate stabilization" which adjusts current interest rates to be closer to historical norms. The other proposal allows employers to pay for pension liabilities, including those attributable to the crisis, over 15 years, instead of seven years. These proposals are critical to the economic recovery of broad segments of the economy and the retirement security of millions of Americans. The recommendations also include three more proposals that are very important to these goals.

We thank you for your consideration of these critical issues.

Sincerely,

A handwritten signature in cursive script that reads "Lynn D. Dudley". The signature is written in black ink and is positioned below the word "Sincerely,".

Lynn D. Dudley
Senior Vice President, Global Retirement and Compensation Policy

cc: All members of Congress



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STABILIZING PENSION FUNDING AND PREMIUM OBLIGATIONS

The current crisis has created very significant challenges for defined benefit pension plans and plan sponsors. Pension plans were already under significant pressure due to the continuation of historically low interest rates, which cause the present value of pension liabilities to be treated as very high. But then the plunging stock market caused plan asset values to plummet at the same time that company revenues dropped precipitously. This combination threatens the economic health and even viability of many companies.

In this context, the American Benefits Council developed two proposals that were included in the House bill that was part of the process that led to the CARES Act. One proposal extended and enhanced “interest rate stabilization” which adjusts current interest rates to be closer to historical norms. The other proposal allowed employers to pay for pension liabilities, including those attributable to the crisis, over 15 years, instead of seven years.

Adoption of these two core proposals, which are described further below, are critical to stabilizing broad segments of the American economy and protecting employees and retirees. Also described below are three additional proposals that would be very helpful in furthering those same objectives.

CORE PROPOSALS

Interest Rate Smoothing

In 2012, 2014, and 2015, Congress provided for pension interest rate smoothing in order to address concerns that historically low interest rates were creating inflated pension funding obligations, diverting corporate assets away from jobs and business recovery. Under interest rate smoothing, the interest rates used to value pension liabilities must be within 10% of 25-year interest rate averages.

The smoothed interest rates will begin phasing out in 2021, with the 10% corridor around the 25-year interest rate averages increasing five percentage points each year until interest rates need only be within 30% of the 25-year averages. Because of this phase-out, smoothing will soon cease to have much effect, if any. Moreover, even without the phase-out, the extended period of historically low interest rates has led to a dramatic decline in the 25-year interest rate averages, and thus is undermining pension interest rate smoothing, even with the current 10% corridor.

To preserve the stabilizing effects of smoothing:

- The 10% interest rate corridor would be reduced to 5%, effective in 2020.
- The phase-out of the 5% corridor would be delayed until 2026, at which point the corridor would, as under current law, increase by 5 percentage points each year until it attains 30% in 2030, where it would stay.
- A 5% floor would be put on the 25-year interest rate averages. This floor would establish stability and predictability on a longer term basis, so that interest rate variations do not create excessive volatility. In addition, this floor would protect funding rules from the extremes of interest rate movements.

15-Year Amortization

In light of an ongoing pattern of interest rate and market volatility, the current-law requirement to amortize funding shortfalls over seven years is no longer appropriate. Pension plans, participants, and plan sponsors need more stability and a longer period over which to pay for long-term liabilities that can stretch out for more than 50 years. Accordingly, under this proposal, the following rules would apply to all single employer pension plans, effective for plan years beginning after December 31, 2019:

- All shortfall amortization bases for all plan years beginning before January 1, 2020 (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.
- All shortfalls would be amortized over 15 years, rather than seven years.

ADDITIONAL VERY HELPFUL PROPOSALS

Benefit Restrictions; Temporary Relief from Adverse Effects on Participants

Under the rules applicable to private single-employer defined benefit plans, if a plan's funded level is below specified levels, the plan is restricted in certain ways

("benefit restrictions"). For example, if a plan is less than 80% funded, lump sums otherwise payable to participants have to be limited. If a plan is below 60% funded, then no lump sums are permitted and benefit accruals must stop. Under the CARES Act, a plan may use a prior funded status for purposes of determining if it is under the specified 60% and 80% funding thresholds. Specifically, for plan years that include calendar year 2020, a plan can use its funded status for the last plan year ending before 2020. So, for example, assume that a plan has a 7/1 – 6/30 plan year. The plan's funded status for the 7/1/18 - 6/30/19 plan year can be used to apply the benefit restrictions for the 7/1/19 – 6/30/20 and 7/1/20 – 6/30/21 plan years.

In order to ensure that the current crisis does not interfere with employees' retirement security and needs, the proposal would extend the CARES Act provision. Under the proposal, a plan can use its funded status for the last plan ending before 2020 (or, at the employer's option, the last plan year beginning before 2020) for purposes of applying the benefit restrictions to subsequent plan years beginning no later than July 1, 2021.

Asset Smoothing: Temporary Relief from Enormity of Market Losses

Under current law, a plan may use, for funding purposes, either the fair market value of plan assets or the actuarial value of plan assets. Under the latter, actuarially unexpected gains or losses may be recognized over three years, as long as the actuarial value of assets is within 10% of fair market value.

Companies are facing the daunting challenge of funding for shortfalls created by the severe downturn in the market, which is simply unaffordable for many companies in light of the state of the economy. To address this unprecedented challenge, under the proposal, for plan years beginning after February 29, 2020, and on or before July 1, 2021, the pre-2006 rules regarding actuarial value of assets would apply:

- Unexpected gains and losses in assets would be recognized over five years, and
- The actuarial value of assets must be within 20% of fair market value.

Plans that use the fair market value of assets would be permitted to switch to using the actuarial value of assets. At the end of the temporary period, all unrecognized gains or losses would be treated as new gains and losses under the current rules, including the requirement that the actuarial value of assets be within 10% of fair market value.

PBGC Premiums: Temporary Relief of Current Premiums of \$644 per Participant

There has been an ongoing public policy discussion about whether single-employer plan Pension Benefit Guaranty Corporation (PBGC) premiums are too high. In 2006, the flat rate premium was \$19; today, it is \$83 in 2020, *more than four times* the level 14 years ago. And in 2006, the variable rate premium equal to .9% of plan underfunding. That .9% rate is currently 4.5%, *five times* the prior rate.

This year the cap on the per-participant total premium owed by a plan will be \$644 (\$561 for the variable rate premium and \$83 for the flat rate premium). And this full amount may well be owed by plans that are very well funded – in fact, well over 100% funded for funding purposes.¹

This \$644 per participant tax on defined benefit plan sponsors is clearly excessive in light of the enormous financial strength of the PBGC single employer plan system.² Moreover, in light of the current crisis, it is a critical diversion of funds away from jobs and business survival. Accordingly, under the proposal, for plan years beginning in 2020 and 2021, the cap on the variable rate premium would be reduced to \$83 (i.e., the same as the flat rate premium, so that the maximum per-participant premium would be \$166).

¹ For example, for PBGC purposes, assume that a plan is 90% funded with vested liabilities of \$1 billion, assets of \$900 million, and 7,000 participants. For funding purposes, with smoothing, this plan would be well over 100% funded. But this plan will owe the maximum of \$644 per participant in 2020. (The shortfall is \$100 million, giving rise to a variable rate premium of \$100 million divided by 7,000 participants, multiplied by 4.5%, i.e., \$642 before application of the \$561 cap.)

² According to PBGC itself (using its own very conservative assumptions), the single-employer program had a surplus of \$8.7 billion for FY 2019 – an increase in the surplus of over 260% in one year -- and is projected to likely have a surplus of \$26.7 billion by FY 2028.