AMERICAN BENEFITS COUNCIL

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Legislative Issues for Consideration in Connection With Helping Retirement Plan Participants, IRA Owners, Plans and Plan Sponsors Address Crisis-Related Challenges

Prepared for the American Benefits Council
by Kent Mason of Davis & Harman LLP

DAVIS & HARMAN LLP

The current health and economic crises have affected almost every aspect of Americans' lives, including retirement savings. Set forth below is a list of issues that Congress may want to consider addressing in helping retirement plan participants, IRA owners, retirement plans, and retirement plan sponsors face today's challenges.

- **For retirement plan participants and IRA owners**, the most pressing issues are (1) limitations on their access to their savings, which are needed to help them pay bills and provide for their families during 2020 (see No. 1 below), and (2) avoiding unnecessary burdens and taxes (see Nos. 2 and 3 below).

- **For retirement plan sponsors**, the key issues are (1) helping their employees in the ways described above, and (2) relief from the pressures of large defined benefit plan funding obligations, some of which are generated by the economic crisis (see No. 4 below).

- **For retirement plans,** the key issues relate to notice and reporting obligations that will inevitably be delayed by the current state of disruption (see No. 5 below).

Because the national scope of the crisis and the difficulty in determining which individuals are affected by it, we recommend that the relief described below be national in scope and not require that plans, plan participants, IRA owners, or plan sponsors show a specific connection to the coronavirus.

1. DISTRIBUTIONS AND LOANS (BASED ON DISASTER RELIEF IN 2019 SPENDING LEGISLATION)

Access to retirement distributions (based on disaster relief provided in 2019 spending legislation): The proposal would provide tax relief for retirement plan and IRA distributions taken by individuals during the period beginning on the effective date of this proposal (which should be tied to the initial coronavirus case) and ending on December 31, 2020.

For any such distribution, the proposal (1) permits in-service distributions, even if such amounts are not otherwise distributable from the plan; (2) provides an exception to the 10% early distribution penalty; (3) exempts the distribution from the 402(f) requirements and mandatory 20% withholding applicable to eligible rollover distributions; (4) permits the individual to include income attributable to the distribution over the three-year period beginning with the year the distribution would otherwise be taxable; and (5) permits recontribution of the distribution to a plan or IRA within three years, in which case the recontribution is generally treated as a direct trustee-to-trustee transfer within 60 days of the distribution. Employers would be permitted, but not required, to make available distributions described above and accept any repayments.

This special tax treatment would be limited to aggregate distributions of $100,000.

Home purchase repayments: The proposal would also permit individuals to recontribute certain distributions from a retirement plan or IRA, if such distributions were to be used to purchase or construct a principal residence and that principal residence was not purchased or constructed. These repayments must be made by the date which is 180 days after the date of enactment.

Plan loans: First, the proposal would increase the maximum loan limit for qualified individuals to the lesser of: (1) $100,000 (from $50,000); or (2) the greater of $10,000 or 100% (from 50%) of the present value of the participant's vested benefit. This increased loan amount would be available for loans made during the 180-day period beginning on the date of enactment.

Second, the proposal would extend until December 31, 2020 the due date of any individual's loan repayment (including any installment) that would otherwise be due during 2020 before that date.

Plan amendments: The plan amendment deadline for adopting any of the relief provided under the proposals (above or below) would be no earlier than the last day of the first plan year beginning on or after January 1, 2022 (January 1, 2024 for governmental plans).

2. Required Minimum Distribution Relief for 2020

During the last recession, Congress waived required minimum distributions ("RMDs") for a year (2009). https://www.irs.gov/pub/irs-drop/n-09-09.pdf The rationale for waiving RMDs is even stronger now for 2020 than it was for 2009. Here is why:

Assume, for example, that person A's RMD for 2020 is based on A's 12/31/19 account balance; assume that was $100,000. Assume that A's RMD for 2020 based on that amount is $5,000. Assume that currently A's account is worth $80,000 due to the market downturn. So the law is asking A for an RMD based on an account balance A no longer has, in order to reduce A's account from $100,000 to $95,000. The market has already reduced A's account more than that. And it is forcing A to pay tax on the $5,000 at a time when A has less saved to pay the tax.

(The last recession started in 2008, so by 12/31/08, account balances had already fallen a lot and the relief for 2009 was still granted in December of 2008.)

3. Student Loan Provision

Bills introduced by Senator Wyden (S. 1428) and Senators Portman and Cardin (S. 1431) would allow employers to make matching contributions with respect to student loan repayments. During this time when employees with student loans are feeling enormous financial challenges, this provision would allow their employers to ensure that they are still saving for retirement.

4. Defined Benefit Relief

Company revenues are being devastated right now, so that funding obligations that seemed affordable two months ago are no longer affordable or at least are much harder to afford. Please see the results below of a survey conducted by the American Benefits Council (the "Council") last week.

We surveyed our members, so it is not necessarily a representative sample, nor was it scientifically designed. But the results were nevertheless very instructive. We received exactly 200 responses, including 76 companies with defined benefit plans. Here are the results:

- Of those responding organizations that maintain a defined benefit plan:
    - Nearly two-thirds (64%) are concerned about increased pension plan liabilities resulting from the economic impact of COVID-19. (For this and the following questions, it should be noted that most answers were

provided prior to the Federal Reserve Bank's most recent decision to reduce interest rates.)

- 8% anticipate a significant problem meeting defined benefit plan funding obligations during the next six months.
- Nearly two-thirds (64%) expressed either "significant interest" or "very significant interest" in legislation that would stabilize pension funding requirements. An additional 24% expressed "moderate interest."
- More than three-fourths (78%) would be supportive of "emergency legislation providing a delay of required pension funding obligations" while Congress considers more permanent solutions.

As strongly reflected in the survey, Congress needs time to evaluate what funding reforms are needed, so consideration of the following steps may be helpful:

- **Delayed funding obligations:** Provide companies with more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until December 31, 2020. At that time, contributions due earlier would be due with interest.
    - **Objective:** Assume, for example, that a company would owe quarterly contributions of $100 million on April 15, July 15, and October 15 of 2020. Under the proposal, these amounts plus interest would not be due until December 31, 2020. This gives Congress time to evaluate what funding reform is needed to address the current situation. For example, under a possible reform bill enacted later in the year, that company's contributions could be reduced to $75 million per quarter (plus interest), so that the unnecessary higher amounts would never have to have been contributed.
- **Allow 2020 plan year benefit restrictions to be applied based on plan's funded status for the 2019 plan year:** Many plans with non-calendar years in particular will become subject to benefit restrictions, such as restrictions on lump sums or benefit accruals, which are triggered if a plan is less than 80% or 60% funded. As plan asset values drop precipitously, these restrictions can easily be triggered. This can place inappropriate burdens on employees, and/or on employers who may be effectively compelled to fund up to avoid benefit restrictions. Accordingly, under the proposal, a plan may elect to determine the applicability of benefit restrictions for the 2020 plan year based on the plan's funded status for the 2019 plan year.
- **Limit on sum of per-participant flat and variable rate premiums for 2020 plan years, based on 2019 levels:** Plans with non-calendar years in particular could become subject to enormous premium obligations due to the drop in plan asset

values. Accordingly, under the proposal, the sum of the per-participant flat and variable rate premiums for the 2020 plan year cannot exceed such sum for 2019.

- **If substantive reform of the funding rules is being considered, the following is offered for consideration, in lieu of or in addition to the delay in funding contributions.**

  - **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.

In order to preserve the stabilizing effects of smoothing and raise material revenue:

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. And finally, there are precedents for using 5%, such as with respect to the application of the pension benefit limits.

- **Amortization reform:** Seven-year amortization of funding shortfalls is very burdensome and too short in the context of plans that pay benefits over 50 or more years. This short amortization period continually forces employers to divert assets away from business investment and jobs and toward making up for short-term swings in plan asset values and interest rates. Under the proposal, effective for 2020, all past shortfall amortization bases would be reduced to zero and the full funding shortfall would be amortized over 15 years, and the 15-year rule would continue to apply in future years.

- **Asset smoothing:** Depending on how the market performs during the rest of 2020, it may be very important to allow pension plans to recognize extraordinary asset losses over a longer period of time, for 2021 and for 2020 non-calendar year plans.

5. **MISCELLANEOUS**

The proposal would automatically extend, by 90 days, the deadlines for all retirement-related notices, applications, and reporting obligations during 2020.

The proposal would also automatically extend by 90 days the following deadlines during 2020: (A) the deadline for making contributions to IRAs for 2019; (B) the deadline for withdrawing excess IRA contributions; (C) the deadline for recharacterizing IRA contributions; and (D) the deadline for completing rollovers. These issues should be coordinated with decisions made on the due date for tax returns for 2019.

Issue for discussion with participant groups: In order to get spousal consent (such as to non-QJSA distributions), the spouse's consent must be "witnessed by a plan representative or a notary public". In this new social distancing world, that may not be possible in many situations, or at the least it may raise health concerns. Should this be addressed? This is not an industry request in any way. This is for the participant groups to consider.