



AMERICAN BENEFITS  
COUNCIL

December 7, 2016

*Filed via email to Retirement\_Savings@finance.senate.gov*

The Honorable Ron Wyden  
United States Senate  
SD-221 Dirksen Senate Office Building  
Washington, DC 20510-3703  
Retirement\_Savings@finance.senate.gov

**Re: The Retirement Improvements and Savings Enhancements Act of 2016**

Dear Ranking Member Wyden:

On behalf of the American Benefits Council (the “Council”), I am writing today to provide comments on the discussion draft of the Retirement Improvements and Savings Enhancements (“RISE”) Act, released on September 8.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

We are very appreciative of your leadership on retirement issues, including your work on the bipartisan Retirement Enhancement and Savings Act of 2016 (“RESA”). That bill would improve both retirement plan coverage and benefit adequacy, leading to significant improvements in retirement security for millions of Americans. We are working to support enactment of that bill as soon as possible.

We also appreciate the opportunity to comment on your thoughtful discussion draft, the RISE Act, and your commitment to working with all stakeholders to improve our country’s retirement system.

Our comments below are focused on those elements of the bill that affect employer-sponsored plans, rather than the elements solely affecting IRAs. As an organization

supporting the employer-based retirement system, we feel that our voice and expertise are best suited to the issues related to employer plans.

#### **COMMENTS ON SECTION 104: TREATMENT OF STUDENT LOAN PAYMENTS AS ELECTIVE DEFERRALS FOR PURPOSES OF MATCHING CONTRIBUTIONS**

Under the discussion draft, an employer would be permitted to make matching contributions under a 401(k) plan, 403(b) plan, or SIMPLE IRA with respect to “qualified student loan repayments,” which are broadly defined as repayments of any indebtedness incurred by the employee solely to pay qualified higher education expenses *of the employee*” (emphasis added) (expenses of a dependent would not be covered). For almost all purposes, the student loan repayment would *not* be treated as an elective contribution to the plan, but any matching contribution made with respect to such repayment would be treated as a matching contribution for all purposes. The following rules would apply:

- The amount of student loan repayments taken into account for this purpose cannot exceed the applicable current law limit on the employee’s elective contributions to the plan, reduced by the employee’s actual elective contributions.
- The employee must provide “evidence” of the loan and repayments to the employer.
- Matching contributions on student loan repayments can only be made:
  - On behalf of employees eligible to make elective contributions,
  - At the same rate as matching contributions on elective contributions, and
  - If all employees eligible for matches on elective contributions are also eligible for matches on student loan repayments.

We applaud the innovation reflected in this proposal, which in many cases would increase retirement savings for participants struggling to save because of burdensome student loans. We are still gathering input on this proposal and plan to follow up with further input in the near future. In the meantime, we offer these initial thoughts.

First, the proposal requires employees to provide “evidence” of the student loan and payments. We would observe that use of this proposal would be very materially limited if “evidence” is more than an employee representation. Many plans will not undergo the burden of requiring and reviewing loan and payment documentation, nor will they run the risk of disqualification if their review was inadvertently insufficient.

Second, if an employee prepays a student loan, you may wish to consider making the prepayment ineligible to be matched. Otherwise, we could be encouraging loan prepayments in lieu of retirement contributions.

Third, we are exploring options that would, in lieu of or in addition to the current proposal, facilitate plan loans to cover student loan payments. This could encourage plan contributions that could be used later to make student loan repayments. This approach could also respond to administrative concerns about simplicity and about providing a match where no actual participant contributions have been made to the plan.

## **COMMENTS ON SECTION 206: MODIFICATIONS OF REQUIRED MINIMUM DISTRIBUTION RULES FOR RETIREMENT PLANS**

Required minimum distribution (“RMD”) rules generally require that IRA and plan distributions start shortly after the IRA owner or participant attains age 70-1/2 (subject to an exception for plans in the case of non-owner employees working past age 70-1/2). There are also RMD rules applicable after the death of the IRA owner or participant. Generally, under current law, if an IRA owner or participant dies, the beneficiary is permitted to draw down the IRA or plan benefit over the beneficiary’s life expectancy.

### **I. Section 206 of discussion draft**

Under the discussion draft, generally, IRA and plan beneficiaries would be required to draw down all assets in the IRA or plan within five years of the death of the IRA owner or plan participant, subject to exceptions for “eligible beneficiaries,” i.e., beneficiaries who are (1) the surviving spouse of the IRA owner or plan participant, (2) a child who has not attained the age of majority, (3) disabled, (4) chronically ill, or (5) not more than 10 years younger than the IRA owner or plan participant. In the case of a child who has not attained the age of majority, the five-year rule would apply as of the date the child attains the age of majority.

The proposal would generally apply to distributions with respect to IRA owners and plan participants who die after 2016, subject to delayed effective dates for governmental plans and collectively bargained plans. In general, the change would not apply to certain commercial or defined benefit plan annuities that have been irrevocably elected before the date of enactment of the legislation. Because many defined benefit plans will be forced to eliminate distribution options by reason of the legislation, anti-cutback relief is provided permitting such eliminations.

## II. Implications of proposal

**In general:** Very generally, the proposal would eliminate the ability of many plan and IRA beneficiaries to receive benefits over a period longer than five years. The concern prompting the proposal appears to be the scenario where, for example, an 85-year old IRA owner leaves her IRA assets to a two-year old great grandson who can take the assets over his life expectancy. However, the effects will be much broader, and will in many instances reduce retirement savings for beneficiaries. For example, a 90-year old IRA owner may want to leave his IRA assets to a 65-year old son, who is ready to retire. The son may even have relied on receipt of a material portion of his father's IRA assets in planning his own retirement. Instead of being able to receive those assets over his life expectancy to support himself during his retirement, the son will need to receive – and pay tax on -- those assets over five years.

The theory underlying the proposal is that retirement savings should be used for the retirement of the participant or IRA owner, and not to pass on to the next generation. One policy issue for Congress is whether that theory requires the prohibition of the very legitimate use described above with respect to the 65-year old son. This issue is probably most acute for middle-income individuals, and is actually less significant for wealthier beneficiaries who may be relying less on their parents' IRA or plan for retirement.

Another narrower issue relates to the five year rule applying when a minor beneficiary attains the age of majority. Two concerns have been raised. First, and most importantly, the age of majority is 18 in the vast majority of states. Is that too early for a beneficiary to be compelled to begin to receive what could be a very large amount of money? Second, due to the fact that the age of majority varies under state law, use of the age of majority rather than a fixed age may give rise to administrative burdens. Using a fixed age such as 26, in lieu of the age of majority, would address both concerns.

**Lifetime income:** The proposal will also make it less likely that individuals select distribution options that provide lifetime income. More Americans are relying on savings in 401(k) plans and IRAs to provide for their retirement security. In the absence of guaranteed income for life offered by defined benefit pension plans, these Americans run a very material risk of outliving their private retirement savings. Many have been concerned about this issue and have sought to encourage or facilitate guaranteed retirement income for life in the form of life annuities or joint and survivor annuities, including through several provisions in RESA.

Many individuals are hesitant to purchase life annuities under which their family gets nothing (or very little) in the event that the individual dies early. So life annuities can be much more attractive if they contain provisions providing material benefits to beneficiaries. For example, instead of a single life annuity, an individual may wish to

purchase a joint and survivor annuity or a single life annuity with a term certain of, for example, 10 years (i.e., a guarantee that regardless of when the individual dies, at least 10 years of payments will be made to the individual and the individual's beneficiary).

The proposal, as currently structured, would make these attractive annuity options unavailable in many cases. For example, a joint and survivor annuity with a non-eligible beneficiary would be prohibited. Similarly, a single life annuity with a 10-year certain would be prohibited if the beneficiary is not an eligible beneficiary. So assume that a 70-year old unmarried individual wants to share her IRA savings with her adult son, who is 45. Today, she could buy a joint and survivor annuity with her son as beneficiary, or she could purchase a single life annuity with a 10- or 15-year term certain to ensure that her son receives material benefits in case she dies early.

Under current law, the minimum distribution rules restrict the amount of the survivor benefit that can be provided to a younger beneficiary like the 45-year old son. The proposal goes much further, prohibiting these types of annuities, which may well encourage the IRA owner in this example not to purchase an annuity, but rather make withdrawals that can be shared with her son.

The rationale for the proposal is again that retirement savings should be used for the individual's retirement, not for the next generation. This rationale creates a tension with the policy objective of encouraging annuitization.

**Complications for eligible beneficiaries:** There has been a perception that the proposal does not raise issues if an individual has an eligible beneficiary (other than a minor child). This is not always the case. For example, assume that a defined benefit plan allows single life annuities with a 10-year term certain, and that a participant's beneficiary is his spouse. At first blush, this seems fine under the proposal. Actually, there are significant issues raised.

Assume, for example, that the annuity commences in 2018, the participant dies in 2019, and the spouse dies in 2020. In that case, there are seven years left under the 10-year certain component of the annuity. However, the next beneficiary in line is the couple's adult child, who is not an eligible beneficiary. That means that payments must be completed by 2026, five years after the death of the eligible beneficiary (the spouse), which is two years before the expiration of the 10-year period. As we understand it, the intent of the proposal is for the value of the remaining seven years of annuity payments to be paid over the five-year period from 2021 to 2026.

There are two difficulties with this possible solution. First, it is not clear that accelerating payments, so that the value of seven years of payments is paid over five years, is permissible under the required minimum distribution regulations. In other words, the intent of the legislation may be to permit such accelerations, but there is nothing in the proposal that would permit such accelerations. And current law is

unclear as to whether such an acceleration is permitted. If such an acceleration is not permitted, then there is no way to provide the value of those last two years of payments in this example. That would mean that defined benefit plan annuities with a term certain longer than five years are not workable, regardless of whether the beneficiary is an eligible beneficiary. Different rules apply to commercial annuity contracts so that such accelerations *might* be permitted in a defined contribution plan or IRA where commercial annuities are used.

Acceleration of payments is also impermissible under a defined benefit plan that is subject to a restriction on “prohibited payments,” as is confirmed by the proposal.

Even if the above concerns were addressed so that the acceleration is permitted, the proposal will significantly complicate the offering of annuities in defined benefit plans, defined contribution plans, and IRAs. For example, assume that a plan offers a single life annuity with a 10-year term certain. When describing this distribution option today, it is very simple: an individual will receive payments for his lifetime, but in no event for less than 10 years. Under the new rule, here is the required communication:

- This option is only available in the case of “eligible beneficiaries,” a term that includes five different categories and a special rule applicable to one of the categories.
- Even if the beneficiary is an eligible beneficiary, the plan or IRA cannot guarantee 10 years of payments. The plan or IRA must say that payments will be made over somewhere between five and 10 years, depending on numerous factors, including (1) whether the beneficiary ceases to be an eligible beneficiary before the death of the participant, and (2) when the beneficiary dies and who the next beneficiary is. But the “actuarial value” of the payments made will always be at least equal to 10 years of scheduled payments.

One of the complaints about annuity offerings is their complexity, which discourages some individuals from choosing to annuitize. Unfortunately, this complexity will increase materially by reason of the new provision, as illustrated above.

The above problems can be fixed in a straightforward way without potential for abuse. In the case of a single life annuity with a term certain, the rule should be that if the beneficiary is an eligible beneficiary at the annuity starting date, the individual shall not fail to be treated as having an eligible beneficiary by reason of the subsequent death of the beneficiary or a subsequent change in status so that the beneficiary is no longer an eligible beneficiary. This solves the problem in a way that is very similar to the proposal’s rules applicable to joint and survivor annuities where the determination of eligible beneficiary status is made as of the annuity starting date.

**Defined benefit plan issues:** Two key examples of the effects of the proposal on defined benefit plans are provided below.

Many defined benefit plans offer joint and survivor annuity options with non-spouse beneficiaries. At a minimum, such plans will need to eliminate such options with respect to non-eligible beneficiaries and set up new administrative systems to track which beneficiaries are eligible at the annuity starting date. In addition to the new systems, there would be burdens in determining whether a beneficiary is “eligible;” for example, would plans have to determine if a beneficiary is disabled or chronically ill? If the cost and uncertainty of these new administrative systems and burdens are too much, a plan may wish to eliminate all joint and survivor annuities with non-spouse beneficiaries. It is unclear whether the proposal’s anti-cutback relief would permit this. If not, plans could be saddled with additional costs and burdens. If, on the other hand, the anti-cutback relief is broad enough to permit such eliminations, the proposal could lead to much less offering of the more attractive annuity options, leading to more lump sum distributions.

Similarly, it is very common for defined benefit plans to offer life annuities with a term certain longer than five years. All such plans will have to delete this option for non-eligible beneficiaries (and for eligible beneficiaries if the acceleration issue described above is not resolved favorably). And for eligible beneficiaries, plans will need (1) the new administrative systems described above to identify eligible beneficiaries, and (2) complex new communications to describe when and how the acceleration feature works, also as described above. Again, many plans will not want to incur these burdens, raising the question as to whether the anti-cutback relief would permit the elimination of term certain longer than five years with respect to eligible beneficiaries.

Government plans and church plans may face unique challenges in complying with these new rules.

**Transition issue:** In defined contribution plans or IRAs, some participants may have purchased deferred annuities as investments, under which they have effectively paid a fee to lock in future payment streams, but retain the right to change to a different investment. If those future payment streams are impermissible under the proposal, those participants might have paid those fees for nothing.

### **III. Recommendation**

Consideration should be given to focusing the provision on the abuses that gave rise to the proposal without affecting appropriate forms of distribution like the ones discussed above. We recognize that this provision, in a modified form, is included in RESA. The RESA provision includes components addressing certain of our concerns (such as an exemption for defined benefit plans), which we commend.

#### **COMMENTS ON SECTION 204: AN INCREASE IN THE AGE FOR REQUIRED BEGINNING DATE**

We support this provision, which would provide a much needed update to the required beginning date of 70 ½, which was originally set in 1962, when life expectancies were far shorter. We would also ask you to consider two other needed reforms to the RMD rules. First, the legislation should require Treasury to similarly update the life expectancy assumptions underlying the rules regarding the amount required to be distributed under an account-based plan. Second, the proposal should reduce the punitive 50% tax on inadvertent violations of the RMD rules.

#### **COMMENTS ON SECTION 202: THE ELIMINATION OF ROTH CONVERSIONS**

We need to be doing everything we can to encourage plan sponsorship and plan participation. Roth conversions within a plan are an option that may appeal to many participants, including rank and file employees. Many lower paid employees may benefit substantially from converting amounts contributed by an employer. For example, a young low-paid employee in a low tax bracket might find it very advantageous to convert employer matching contributions to Roth amounts. The proposal would eliminate this right, thus adversely affecting the retirement savings of any such low-paid employee. In short, we do not see a need for additional restrictions on Roth conversions.

We would ask you to consider deleting this provision.

#### **COMMENTS ON SECTION 205: AN EXCEPTION FROM REQUIRED DISTRIBUTIONS WHERE AGGREGATE RETIREMENT SAVINGS DO NOT EXCEED \$150,000**

Generally, under the discussion draft, if an individual's total benefits under all defined benefit and defined contribution plans and IRAs do not exceed \$150,000 (indexed) as of the "measurement date," the individual would be exempt from the RMD rules. Generally, the measurement date is the first day of the calendar year in which the individual attains age 70 ½ (or the later age applicable under the proposal referenced above).

The \$150,000 threshold is phased out over the next \$10,000 of savings, so that no exemption is applicable to an individual with \$160,000 of savings. The only amounts disregarded in determining an individual's total savings are life annuity benefits in pay status under a defined benefit plan as of the measurement date.

We support the policy underlying this proposal. Small accounts should be exempted from the complexities and potential liabilities of the RMD rules. However, we urge you to modify this proposal to eliminate what could be much greater burdens on plans.



First, under the proposal, individuals will have to rely on reporting from defined benefit plans and insurers in order to know the value of the defined benefit plan benefits and annuitized benefits under defined contribution plans and IRAs. This would be an extensive and unjustified reporting obligation. Defined benefit plan benefits and annuitized benefits under defined contribution plans and IRAs should be exempted from the calculation of whether an individual's benefits exceed \$150,000.

Second, plans will not have a means to determine whether a participant's total benefits exceed \$150,000. Plans that are subject to the RMD rules on a plan basis should be authorized to treat all participants as subject to the RMD rules. In such situations, exempting participants from the RMD rules does not relieve the participants of any burdens since plans, not participants, calculate the plan RMD amounts. In addition, if a plan does not use this option, such plan should be entitled to rely on participants' representations regarding whether they are subject to the RMD rules.

#### **COMMENTS ON SECTION 103, RELATING TO 60-DAY ROLLOVER TO INHERITED INDIVIDUAL RETIREMENT PLAN OF NON-SPOUSE BENEFICIARY**

Under current law, non-spouse beneficiaries who are entitled to an eligible rollover distribution from a plan may directly roll over that distribution to an inherited IRA, but may not roll over the distribution in a "60-day rollover," i.e., a rollover where the beneficiary receives the distribution and then rolls it over to an IRA within 60 days. Under the discussion draft, (1) non-spouse beneficiaries are permitted to do 60-day rollovers, and (2) non-spouse beneficiaries are permitted to roll over IRA distributions to an inherited IRA, which previously was not permitted.

These are excellent changes that promote retirement savings and reduce leakage. We support these changes.

#### **COMMENTS ON SECTION 101, RELATING TO MATCHING PAYMENTS FOR ELECTIVE DEFERRAL AND IRA CONTRIBUTIONS BY CERTAIN INDIVIDUALS**

Under the discussion draft, the Saver's Credit, which is nonrefundable, would be replaced by a refundable tax credit. Generally, the refundable tax credit would equal 50% of plan or IRA contributions up to \$1,000 made by an individual. However, this credit would begin to phase out for joint returns with more than \$65,000 (indexed) of modified adjusted gross income, with the phase-out complete by \$85,000. For single returns, the phase-out starts at \$32,500 and ends at \$42,500.

This refundable tax credit would not be available in cash, but rather must be deposited directly by the Federal government into a Roth plan account or a Roth IRA

designated by the individual, provided that no plan or IRA is required to accept this deposit. In the absence of a designation by the individual, the amount would be contributed to a *myRA* account on behalf of the individual. The contribution by the Federal government would not be taxable to the individual and would not count against applicable limits.

It is critical to note that no plan or IRA is required to accept the Federal deposits. This is appropriate and this structure should be retained. Such a requirement would add new costs and complexities to plan maintenance, as opposed to desired simplification. At a time that we are trying to encourage coverage, it would not be appropriate to add a new burden.

We would also urge you to consider two additional Saver's Credit provisions. First, as under a bill introduced by Senators Collins and Nelson, we suggest that Treasury be directed to permit the Saver's Credit to be claimed on the Form 1040-EZ. This form is filed by many individuals who would benefit from the Saver's Credit yet the current form precludes them from claiming it.

Second, awareness of the Saver's Credit is far lower than it should be, leading to underutilization and less retirement savings. We would ask you to consider directing Treasury and DOL to promote awareness of the Saver's Credit on their websites and through other communications.

Finally, we call your attention to A 2020 Vision: Flexibility and the Future of Employee Benefits, in which the Council outlines recommendations for improvements in retirement and health policy, a number of which are embraced in your discussion draft and in RESA. In particular we call your attention to the need to provide a comprehensive holistic approach to financial security, the integration of health and retirement policy and the need to help employers help employees successfully prepare for unanticipated events such as disability and longevity as part of their overall financial plan.

We thank you for your leadership on retirement issues and look forward to working with you on these issues in 2017.

Sincerely,

A handwritten signature in black ink that reads "Lynn D. Dudley". The signature is written in a cursive, flowing style.

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