AMERICAN BENEFITS COUNCIL

March 24, 2021

Carol Weiser
Benefits Tax Counsel
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Rachel Leiser Levy
Associate Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Carol and Rachel:

We are writing to begin a dialogue with you on the next steps needed to implement the historic changes made by the American Rescue Act Plan Act of 2021 ("the Act") with respect to the single-employer pension plan funding rules. We have gathered information from our member actuarial firms and pension plan sponsors on what guidance is needed – and when -- to implement these funding changes. Based on the input we have received, we believe the guidance described below is needed as soon as possible.

The Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates 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 support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

We will be following up with you to request a time to talk through these issues. We look forward to that discussion.

EFFECTIVE DATE ELECTIONS

Under the Act, 15-year amortization applies in lieu of seven-year amortization for plan years beginning after 2021. However, a plan sponsor may elect to have this apply earlier, i.e., for plan years beginning after 2018, 2019, or 2020. In addition, in the first year to which 15-year amortization applies, the plan has a "fresh start" under which the shortfall amortization bases and installments for prior years are reduced to zero.

The effective date of the interest rate provisions in the bill is susceptible to different interpretations. However, U.S. House of Representatives Ways and Means Committee Chairman Richard Neal has entered a statement into the record[1] specifically endorsing an interpretation under which a plan sponsor may elect to have the interest rate provisions apply beginning in the 2020 plan year, the 2021 plan year, or the 2022 plan year. We believe this is the correct interpretation.

If the employer elects to not apply the interest rate changes to a plan year, the employer has the additional choice of (1) disregarding the changes apply for all purposes or (2) disregarding the changes apply solely for purposes of the Section 436 benefit restrictions. We ask for guidance confirming that a plan sponsor may make different elections for 2020 and 2021 for this purpose. For example, a plan sponsor should be able to elect to disregard the changes entirely for 2020 and disregard them only for benefit restrictions for 2021.

We ask that Treasury and the IRS issue guidance confirming that the above interpretations are correct. We also ask that the process for making elections, and the associated deadlines, provide sufficient flexibility to avoid adverse consequences resulting from an inadvertent failure to make a timely election. In this context, we ask that elections be permitted by the end of the 2021 plan year (or six months after the issuance of guidance, if later). Consistent with IRS Notice 2014-53, we also ask that the elections be permitted to be made by providing written notice to the enrolled actuary of the plan and to the ERISA plan administrator. (We ask that all elections described in this letter be permitted by the same date and be permitted to be made in the same manner.)

We ask that such an election override any previously filed Form 5500 and Schedule SB for a plan year (*i.e.* for the 2019 or 2020 plan year), provided that an amended Form 5500 and Schedule SB must be filed for such plan year by the end of the 2021 plan year.

---

[1] "It has come to my attention that there is some uncertainty about the effective date of one of the provisions in the American Rescue Plan Act of 2021. In Section 9706 of the bill, we allow single-employer pension plans to measure their liabilities by using interest rates that are closer to historical norms, rather than the low interest rates that are in effect today in part because of the pandemic. This provision will enable both plans and participants to weather this crisis far better. I'd like to clarify an issue relating to the effective date of this provision. Plans can choose to have the provision apply starting in 2020. In addition, plans can elect to have the provision apply starting in 2022, so that it does not apply until 2022. It also is our intent that plans can elect for the provision to apply starting in 2021. We believe that is the right interpretation of the language of the bill. We want to give plans the maximum flexibility in this regard so that tomorrow's retirees can achieve a secure retirement. My staff has run this interpretation by the staff of the Joint Committee on Taxation and they also agree that an election to have the interest rate smoothing apply starting in 2021 is permitted by the language in the American Rescue Plan Act of 2021." 167 CONG. REC. H1276 (daily ed. Mar. 10, 2021) (statement of Rep. Neal).

As an alternative to requiring a completely amended Form 5500 for the 2019 plan year, at least under certain circumstances, we also ask you to consider permitting, by such date, an attachment to Schedule SB for a subsequently filed Form 5500, providing relevant updated information regarding the earlier plan year that would have otherwise been provided on an amended Schedule SB for the Form 5500 for such earlier plan year.

FUNDING BALANCES ELECTIONS FOR THE 2019 OR 2020 PLAN YEARS

Consistent with Notice 2014-53, we ask that a plan sponsor be permitted to elect to reverse all or part of any election under Section 1.430(f)-1(e) and (f) to reduce the plan's funding standard carryover balance or prefunding balance (collectively referred to as "funding balances" below) as of the first day of a plan year if (1) either the Act's amortization or interest rate changes apply to such plan year, and (2) the reversal election is made by the end of the 2021 plan year. Such an election should also be permitted to reverse deemed elections to reduce funding balances under Section 1.436-1(a)(5). (We note that any election to use funding balances in excess of the minimum required is considered waived under the regulations, so the ability to reverse waivers will also effectively allow sponsors to address funding balances use in excess of the minimum required.)

There may also be cases where the reduction in the funding obligations give rise to a retroactive need to waive a funding balance. In this regard, we would ask that plans be permitted to waive funding balances for a prior year by the same delayed deadline – the end of the 2021 plan year.

ABILITY TO ADD TO PREFUNDING BALANCE

With respect to a plan sponsor, if the Act's amortization or interest rate rules are applied to a plan year beginning in 2019 or 2020, then the plan sponsor should be permitted to (1) make (or increase) the election under Section 1.430(f)-1(b)(1)(ii) to add excess contributions for such a plan year to the plan's prefunding balance as of the first day of the following plan year (or the first day of the 2021 plan year), provided that such election is made by the end of 2021 plan year, and (2) use such prefunding balance for such following plan year or a subsequent year.

RE-DESIGNATION OF SECTION 436 CONTRIBUTION

We ask that if the interest rate provision applies to plan years beginning in 2020, then any Section 436 contribution within the meaning of Section 1.436-1(j)(7) that was made for such year is applied instead toward the minimum contribution for such year to the extent that the contribution is no longer required to avoid or remove a benefit restriction.

Re-Designation of a Contribution Originally Designated for 2019 or 2020

With respect to a plan sponsor, if the Act's amortization rules apply to a plan year beginning in 2019, then the plan sponsor should be permitted to re-designate all or a portion of a contribution that was originally reported on a Schedule SB as applying to the 2019 plan year to apply instead to the 2020 plan year, to the extent that such amount was contributed during the 2020 plan year or by January 4, 2021. (If the contribution is made during the 2021 plan year, re-designation to the 2021 plan year should also be permitted.) Correspondingly, it should be permitted to re-designate a contribution for the 2020 plan year as made for the 2019 plan year if it was made by the deadline for making 2019 plan year contributions.

Application of Benefit Restrictions

In general, we ask that the benefit restriction rules of Section VI of Notice 2014-53 be applied with respect to plan years beginning after December 31, 2019, and ending with the end of the 2021 plan year.

We also ask that any otherwise applicable modification in the application of Internal Revenue Code Section 436 to the first plan year beginning after December 31, 2019, be disregarded to the extent that such modification is attributable to the application of the amortization rule to the first plan year beginning after December 31, 2018. For example, if the AFTAP for 2020 is lower by reason of a portion of the 2019 contribution being treated as giving rise to a prefunding balance, then such change in the AFTAP for 2020 shall be disregarded for purposes of applying the benefit restrictions for 2020.

Asset Smoothing

Consistent with IRS Notice 2012-61, it would be helpful for the guidance to confirm that the changes to the interest rate rules automatically modify the cap on the assumed earnings rate for purposes of asset smoothing under Code Section 430(g)(3)(B), but only to the extent that the revised interest rates were actually applied under Code Section 430 to each portion of the averaging period.

Full Retroactive Effect

Except as otherwise noted in this letter, we ask that the guidance confirm that for all purposes, such as the determination of at-risk status and the application of penalties for late payments, the Act's changes shall be fully retroactive to the year elected by the plan sponsor under the election rules described at the outset of this letter.

Automatic Approval of an Election to Switch from the Use of Yield Curve

In light of the very material changes to the interest rate rules, we ask that automatic approval be provided with respect to a switch from the use of the corporate bond yield curve under Code Section 430(h)(2)(D)(ii) to the segment rates starting with the 2020, 2021, or 2022 plan year. Any such approval shall only be automatic if the plan sponsor elects to apply the Act's interest rate rules starting with the same plan year.

Top 25 Pre-Termination Restrictions

The Act's interest rate changes may affect the ability of a plan to qualify for an exemption from the top 25 restrictions under Reg. §1.401(a)(4)-5(b). We ask that a plan will not be treated as in violation of such restrictions or as failing to comply with the terms of the plan if, during the 2021 plan year, the plan (1) applies such restrictions under the law in effect prior to the Act, or (2) begins to apply such restrictions in accordance with the Act as of any date during such period.

Transition Relief

There are many deadlines that have already arisen or will arise very shortly, such as (1) the March 15, 2021, deadline for final funding payments for the plan year ending June 30, 2020, and (2) the April 15, 2021 deadline for the first quarterly contribution for 2021 for calendar year plans. With many companies facing extreme financial pressures, many will feel financially compelled to rely on the new law for purposes of the actions or payments required by these dates. These actions taken so quickly may end up needing to be corrected.

Accordingly, we ask for transition relief for actions taken or payments made if (1) such actions or payments are affected by the Act and (2) they occur on or before the last day of the 2021 plan year ("transition period"). Under the transition relief, no penalties would apply to actions taken or payments made reasonably and in good faith during the transition period if such actions are corrected within 90 days after the end of the transition period. Please see the discussion above about how to reflect such a correction on an amended or updated Schedule SB.

We also ask for relief in the following situation. Assume that a plan sponsor used the Coronavirus Aid, Relief, and Economic Security (CARES) Act relief to delay a contribution for 2019 until December 31, 2020. Assume further that the plan sponsor elects to begin applying 15-year amortization and the interest rate changes for the 2020 plan year. In that case, the contribution made on December 31, 2020, could be insufficient to satisfy the plan sponsor's 2019 funding obligation, since the contribution would be discounted at the higher effective rate retroactively in effect for 2020. In this situation, plan sponsors should be allowed to avoid the burden of redoing this calculation and not take into account the effect of the change in interest rates on the contribution discounting to the first day of the 2019 for the 2019 plan year. Similarly, sponsors should be allowed to not take into account the effect of the change in interest rates on the contribution discounting for purposes of determining the asset value as of the first day of the 2020 plan year.

We very much look forward to the opportunity to meet virtually to discuss these issues. If you have any questions regarding this letter, please contact me at ldudley@abcstaff.org.

Sincerely,

Lynn D. Dudley

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

cc: William Evans
Lauson Green
Linda Marshall
Helen Morrison
Neal Sandhu
Michael Spaid
Stephen Tackney
Laura Warshawsky
Harlan Weller
David Ziegler
Carol Zimmerman