THE ERISA INDUSTRY COMMITTEE
Shaping benefit policies before they shape you.

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March 19, 2020

The Honorable Lamar Alexander
Chairman
Committee on Health, Education, Labor, and Pensions
United States Senate
455 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate
154 Russell Senate Office Building
Washington, DC 20515

Dear Chairman Alexander and Ranking Member Murray,

As Congress continues to address the Coronavirus situation, The ERISA Industry Committee (ERIC) urges action to provide relief to retirement plan participants and to plan sponsors during the current crisis. As workers, retirees and employers are working together to ensure the safety of the nation, the recommendations below would go a long way towards shoring up the financial security of American workers and retirees.

Provide Benefit Flexibility to Workers

To ensure the safety of the nation, many workers are being asked to make significant changes to their normal routine. For many, this can create a financial strain. The following are benefits changes that can help workers and retirees during this time.

***Streamline loan procedures and liberalize rules regarding hardship distribution rules*.** As we've seen in other emergencies, allowing participants to have more immediate access to their account balances and to relax repayment rules would be helpful – particularly to those who might not be getting paid at this time. As such, we recommend the following changes that are similar to those that were included in the Further Consolidated Appropriations Act of 2020: [1]

- Waive the Section 72(t) additional ten percent tax on early withdrawals from retirement plans for impacted individuals.
- Permit individuals three years to repay in-service distributions and to allow individuals to include the distribution in income ratably over three years.
- Double the current plan loan limits to the lesser of $100,000 or 100 percent of the participant's vested account balance in the plan.
- Allow three years to repay income tax associated with a plan loan default.
- Allow individuals who borrow from their plan and have a repayment due during the months following the Coronavirus outbreak to delay their loan repayment for up to one year (or during the period of furlough, if longer).
- Direct the Treasury Department to issue regulations providing that the current Coronavirus situation should qualify participants throughout the country to take hardship withdrawals in a manner consistent with current Treasury Regulation 1.401(k)-1(d)(3)(ii)(B)(7)

[1] Further Consolidated Appropriations Act, 2020 (PL 116-94) Division Q, Title II, Section 202.

(applicable to FEMA-declared disasters) with respect to living expenses (as distinct from medical expenses, to the extent those are already covered by the 401(k) safe harbor hardship provision regarding medical expenses).

Temporarily Waive the Required Minimum Distribution Rules. Considering the significant decline in the stock market due to concerns over the COVID-19 pandemic, there is widespread concern about individuals taking required distributions when there has not been enough time to recover losses. We recommend that Congress provide a temporary waiver for plan year 2020 of the rules for required minimum distribution from defined contribution plans. A similar waiver was included in the Worker, Retiree, and Employer Recovery Act of 2008.[2]

Provide Flexibility for Dependent Care Expenses. Many participants are facing very different dependent care arrangements from what they might have expected at the beginning of the year. As such, providing flexibility in dependent care accounts would help many participants deal with these changes. We recommend allowing mid-year election changes, based on changes in circumstances due to the current situation surrounding the Coronavirus outbreak and/or to allow employees to use dependent care contributions in 2021 by suspending the "use it or lose it" rule for 2020.

Protect Defined Benefit Plan Benefits

Defined benefit plans provide sustained benefits at the time of retirement. However, the current economic decline has put unexpected financial pressure on employers who maintain these plans. Therefore, to ensure that employers are able to continue to provide these important benefits, we make the following recommendations.

Interest Rate Relief for defined benefit plans. With the recent drop in asset values and the corresponding continued declines in interest rates, defined benefit plan sponsors are looking at unexpectedly large contribution requirements. There are several ways to assist defined benefit plans with this situation:

- Provide that the interest rate used to determine minimum funding should be no lower than it was pre-Coronavirus, e.g., that sponsors not be required to use an interest rate for the first two plan years beginning on or after January 1, 2020 any lower than the one used for the 2019 plan year. In addition, or as an alternative, provide pension rate stabilization by re-setting the corridors established by MAP-21, and extended by HAFTA, starting in 2020, using a thirty-year average of discount rates (so that, for example, funding interest rates for 2020 would not be less than 90% of the thirty-year average).
- Extend or remove quarterly contribution due dates. This would have an immediate impact on cash flow as many plan sponsors have a quarterly contribution due in April.
- Extend dates for making all funding balance elections.
- Implement a simplified process for funding waivers for 2019 and 2020, with relaxed qualification criteria.
- For 2020 to 2022 – relax benefit restrictions – i.e. allow lump sums to be paid if more than 60% funded instead of 80%.

[2] Worker, Retiree, and Employer Recovery Act of 2008 (PL 110-458) Title II, Section 201.

- Relax the requirement to use credit balances so that for 2019 (and suggested through 2022) a credit balance can be used even if the plan was not 80% funded the prior year.
- Relax the rules regarding funding amortization. For example, a fresh start of funding amortization along with an extension between 10 and 15 years or a pause from any amortization payments for 2019, 2020 and 2021

Relief from Single-Employer PBGC premiums. ERIC recommends that Congress remove or reduce single-employer PBGC premiums for 2020 (e.g., eliminate variable-rate premiums). The PBGC's trust fund for the single-employer system does not face – by the PBGC's own estimates – any immediate or long-term threat of default. In fact, the PBGC's 2019 Annual Report shows that the single-employer program is overfunded by $8.7 billion dollars. Therefore, single-employer plan sponsors could use the relief from PBGC payments to make up for unplanned increases in contributions.

Provide Flexibility for Plan Sponsors

Employers across the nation are responding to the need to protect public safety by slowing or even stopping business operations with significant financial repercussions. In order to help employers to continue to maintain benefit plans in this challenging environment, they need additional flexibility in the rules and administration of these plans.

Extend filing and notification deadlines. We urge Congress to extend the time to file the Form 5500 and the 4010 filing with the PBGC. In addition, we request an extension of time to provide the annual funding notice. We believe that an extension of at least 120 days would be appropriate. Although plan sponsors and their service providers are working on this information, having additional time for these filings would free up to resources to contend with the Coronavirus crisis. Precedent for extending these deadlines can be found in the Further Consolidated Appropriations Act, 2020. [3]

Flexibility in the suspension of safe harbor contributions. We encourage Congress to allow plan sponsors who do not qualify for "economic loss"[4] and who did not provide a safe harbor notice[5] in late 2019 to prospectively suspend safe harbor matching contributions without the need to prorate the Section 401(a)(17) limit for the pre-suspension period. In addition, we recommend extending by two years the period during which corrective QNECs can be made for a failed ADP test triggered by a suspension of non-safe harbor matching contributions.

Liberalize rules related to an accelerated vesting incident to a partial termination. Congress should update Revenue Ruling 2007-43 to provide that an "affected employee" who enjoys accelerated full vesting incident to a partial termination does not include, for partial terminations occurring in 2020 and 2021, an employee who voluntarily terminates employment.

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[3] Further Consolidated Appropriations Act, 2020 (PL 116-94) Division Q, Title II, Section 205.
[4] Treasury Regulation 1.401(k)-3(g)(1)(i)(A)(1).
[5] Treasury Regulation 1.401(k)-3(g)(1)(i)(A)(2).

Protect Retiree Health Care though Code section 420 Transfers

At this time, all health care coverage is vital and should be encouraged. One method of doing so is to extend and modify Section 420 of the Internal Revenue Code, which allows employers with overfunded pension plans to use a portion of the plans' surplus assets to fund retiree welfare benefits for pension retirees. Doing so ensures that companies with such plans can continue to provide retiree welfare benefits in a financially prudent manner, without jeopardizing pension security. ERIC supports extending Code Section 420 for five years and modifying the funded status threshold required for qualified transfers and qualified future-year transfers to 110% of the plan's funding target and target normal cost, from the current 125% and 120%. Encouraging employers to maintain retiree health care coverage should be a critical goal at this time.

Thank you in advance for your consideration of these recommendations. We look forward to working with you and your staff to advance legislation that will assist all of the employers, workers, and retirees who are doing all they can to protect the health of the nation. Please do not hesitate to me with any questions.

Aliya Robinson

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The ERISA Industry Committee

CC: Members of the Senate Health, Education, Labor, and Pensions Committee
Members of the Senate Finance Committee
Members of the House Education and Labor Committee
Members of the House Ways and Means Committee