AMERICAN ACADEMY *of* ACTUARIES

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September 7, 2018

The Honorable Orrin Hatch
Chairman, Committee on Finance
219 Dirksen Building
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member, Committee on Finance
219 Dirksen Building
Washington, DC 20510

The Honorable Mike Kelly
U.S. House of Representatives
1707 Longworth Building
Washington, DC 20515

RE: Retirement Enhancement and Savings Act of 2018 (S. 2526 and H.R. 5282)

Dear Chairman Hatch; Ranking Member Wyden; and Representative Kelly:

The Pension Practice Council of the American Academy of Actuaries[1] respectfully submits the following comments related to the proposed Retirement Enhancement and Savings Act of 2018 (RESA), which has been introduced in the Senate as S. 2526 and in the House of Representatives as H.R. 5282. The Academy encourages efforts[2] that contribute to retirement security for Americans. We believe that RESA would accomplish this objective by enhancing access to retirement plans and simplifying administrative requirements—particularly the expanded availability of multiple employer defined contribution (DC) plans. However, we have identified several provisions in the bill that we believe could benefit from further consideration. In particular, note that the Academy has previously commented on the acceleration of premium payments to the Pension Benefit Guaranty Corporation (PBGC), which is addressed in Section 505 of the bill and which affects the timing of federal revenues but does not ultimately strengthen the financial position of the PBGC.

Section 204: Fiduciary safe harbor for selection of lifetime income provider

The current reluctance of plan sponsors to provide lifetime income options within DC plans appears to us, based on our professional experience, to largely stem from concerns regarding the

[1] The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.
[2] The Academy's position statement in support of policy and educational initiatives to increase retirement income options within employer-sponsored defined contribution (DC) plans. (October 31, 2017)

fiduciary liability associated with the selection of insurers and annuity products. The current Department of Labor (DOL) guidelines (Field Assistance Bulletin 2015-02) provide for a process to be followed for insurer selection rather than an objective standard, and RESA would continue this approach. Establishment of an objective standard could encourage the inclusion of annuity options in DC plans.

The proposed language in the bill would add subsection (e) to Section 404 of the Employee Retirement Income Security Act of 1974 (ERISA), including requirements that are comparable to a minimum standard to operate an insurance business under state laws and regulations. This is necessary, but perhaps not sufficient, for protecting DC plan participants. The "objective, thorough, and analytical search for the purpose of identifying insurers from which to purchase such contracts" required by the addition of subparagraph (e)(1)(A) provides only subjective criteria as to whether the conditions are met, and would likely lead to fiduciary liability concerns. An alternative approach might be to ensure a specified level of quality for insurers by establishing an objective standard. For example, the bill could require a minimum rating from at least one of a set of nationally recognized statistical rating organizations (e.g., a rating of A- or above from at least one of Standard & Poor's, Moody's, Fitch Ratings, or A.M. Best). A more objective requirement could help address plan sponsors' fiduciary liability concerns.

Section 206: Modification of PBGC premiums for CSEC plans

This section would change the flat and variable PBGC premium rates for Cooperative and Small Employer Charity (CSEC) plans[3] back to the legislated premium rates that were in effect prior to the enactment of the Pension Protection Act of 2006 (PPA). Although CSEC plans are subject to different minimum funding rules than single-employer plans that are subject to PPA, they currently calculate PBGC flat-rate and variable-rate premiums in the same manner as those plans and are covered by the same level of PBGC guarantees. CSEC plans therefore present risks to the PBGC that are on par with those for a similarly funded single-employer plan subject to PPA; thus, there does not appear to be an actuarial basis for these plans to pay PBGC insurance premiums at a significantly different rate from other plans. High levels of PBGC premiums have been a factor in driving pension risk transfer transactions across a range of private sector defined benefit plans. If Congress wishes to encourage plan sponsors to maintain private sector defined benefit plans, it may be more constructive to address the level and structure of PBGC premiums in a broad manner, rather than focusing on a particular subset of plans and plan sponsors.

Section 501: Modifications of required distribution rules for pension plans

ERISA provides that funds earmarked for retirement should be used by a retiree and his or her beneficiary. Consistent with the law's intent, certain provisions of RESA would curtail the use of so-called "stretch Individual Retirement Accounts (IRAs)," a wealth transfer method that allows

[3] As established by the Cooperative and Small Employer Charity Pension Flexibility Act, Pub.L. 113–97

an individual the potential to spread IRA distributions over future generations. However, these provisions of RESA raise some questions and potential concerns:

- Because a retiree could have funds in more than one entity, it is unclear where the responsibility lies to determine whether, and to what extent, the accelerated distribution rules would apply and the extent of the additional administrative burden.
- Some small plan sponsors may contribute less generously to their DC plans because of the potential impact on estate planning for some plan participants. While it is difficult to assess the likelihood of this occurring, it seems reasonable to expect some plans to see reduced employer contributions where a plan sponsor principal has accumulated significant amounts and may be impacted by the proposed $450,000 limit. To address this, a threshold larger than $450,000 or alternatives to the five-year payout period, such as the life expectancy of the decedent at time of death, might be more appropriate.

Addressing these issues could help avoid future questions about implementation and ensure that the bill accomplishes its intended objectives.

Section 505: Pension variable rate premium payment acceleration

This section of the bill would accelerate (to September 30, 2027) the payment of variable-rate PBGC premiums for single-employer pension plans that would otherwise be due after September 30, 2027 and before June 1, 2028. We do not believe this would materially strengthen the financial status of the PBGC's insurance program for single-employer plans. However, it would have the result of being scored as raising revenue under the 10-year congressional budget window, thus creating the perception of a lower budgetary cost for the bill. To the casual observer, this budgetary effect of the bill could be misleading. The impact of the bill should be considered in the context of a longer-term time horizon. The Pension Practice Council has commented on this budgetary aspect in the past. Detailed comments can be found in our letter of April 17, 2017, regarding anomalies in the current Congressional Budget Office (CBO) scoring mechanism.[4]

In addition, we would note that the proposed change in premium due dates results in inconsistent treatment of premiums for certain plan sponsors, as well as adding administrative costs for affected plan sponsors and the PBGC. Using a fixed premium due date that ignores the deadlines by which contributions can be made would adversely affect sponsors of non-calendar year plans, greatly shortening the time available for those plans to calculate and pay premiums in what appears to be an arbitrary and uneven fashion. It would likely lead to premium payments being made when due, followed by amended filings and refund requests after the (later) contribution deadline for those plans has passed.

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[4] Pension Practice Council letter to Congressional leaders on pension-related revenue offsets. (April 18, 2017)

We appreciate your attention to these concerns. We would be happy to meet with you at your convenience to provide additional perspectives on these issues. If you have any questions or need further information, please contact Monica Konaté, the Academy's pension policy analyst (konate@actuary.org; 202-223-8196).

Sincerely,

Josh Shapiro, MAAA, FSA, EA
Chairperson, Pension Practice Council
American Academy of Actuaries

cc: Committee on Ways and Means
Committee on Education and the Workforce