

April 13, 2021

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2020-80), Room 5203  
Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

## RE: Guidance Needed under American Rescue Plan Act

The American Retirement Association ("ARA") is writing to the Internal Revenue Service ("Service") to request guidance on certain provisions of the American Rescue Plan Act ("ARPA" or the "Act") regarding single-employer pension plan funding relief. ARA thanks the Service and the Department of the Treasury for the opportunity to provide input on these important matters.

The ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the American Society of Enrolled Actuaries ("ASEA"), and the Plan Sponsor Council of America ("PSCA"). ARA's members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer-sponsored plans. In addition, ARA has nearly 31,000 individual members who provide consulting and administrative services to sponsors of retirement plans. ARA's members are diverse but united in their common dedication to the success of America's private retirement system.

ARA recommends that the Service issue guidance on all of the matters on which the Service issued guidance with respect to implementation of MAP-21 (as reflected in Notice 2012-61). ARA also respectfully requests that guidance be issued on the following issues:

- Whether Section 9705 of the Act requires the shortfall amortization bases to be set to zero for all plan years preceding the first plan year to which such section applies.
- How implementation of Section 9705 and 9706 will impact a plan's prefunding or funding standard carryover balances and the extent to which a plan sponsor may revoke a prior election with respect to a balance.
- The extent to which the Form 5500 and Schedule SB for a plan that elects to utilize these provisions must be amended to reflect provisions of the Act.
- The manner in which plan sponsor elections permitted by Section 9705 and 9706 may be made and, specifically, that filing the Form 5500 Schedule SB may be treated as a deemed election.
- How a plan sponsor that paid an excise tax on unpaid minimum funding may recover such tax if, following implementation of the Act, the excise tax is reduced or eliminated.
- Whether implementation of Section 9705 and/or 9706 will be treated as an immaterial change in the adjusted funding target attainment percentage (AFTAP).
- To the extent that a plan amendment is required to reflect the provisions of Section 9705 and/or 9706, the deadline for adoption of such amendment.

## Clarification of Section 9705 Reset of Shortfall Amortization Bases

Section 9705 of the Act provides that the shortfall amortization bases for all plan years preceding the first plan year beginning after December 31, 2021 (or preceding whichever earlier date is elected pursuant to that section), and all shortfall amortization installments determined with respect to such bases, "shall be reduced to zero." Amortization bases may be positive or negative—therefore the use of the word "reduced" makes it unclear whether this provision applies only to positive amortization bases or, as the statute purports, to all amortization bases. **ARA recommends** that the Service clarify that this provision applies to all amortization bases and thereby causes all amortization bases to be set to zero, regardless of whether they were positive or negative. This interpretation appears to be consistent with the intent of the statute by applying it to *all* amortization bases. This interpretation is further supported by the Description of the Budget Reconciliation Legislative Recommendations Relating to Pensions prepared by the Joint Committee on Taxation, which specifically acknowledged that the amortization bases may be positive or negative and still provided that this adjustment applied to "all" amortization bases.

## Impact on Prefunding Balances and Prior Elections

Sections 9705 and 9706 of the Act both provide for relief that, if applied retroactively as permitted, would reduce a plan's required minimum contributions for prior years and hence on the determination of the excess contributions that may be added to the prefunding balance under § 430(f)(6)(B). In addition, § 430(f)(5) and § 436(f)(3) provide that the funding standard carryover balance and the prefunding balance may be reduced by voluntary or deemed elections to avoid benefit restrictions based on the certified AFTAP for the plan year or to increase the value of plan assets (for example, so that the plan can reach various funding thresholds). Also, § 430(f)(3) permits plan sponsors to elect to use these balances to offset minimum required contributions. Generally, these elections are irrevocable. **ARA recommends** that the Service issue guidance on the impact of a retroactive application of Sections 9705 and 9706 on prefunding and carryover balances (including calculation of such balances and elections to use such balances) and on elections already made with respect to such balances consistent with that guidance set forth in Notice 2012-61 (with respect to MAP-21). **ARA also recommends** that, similar to the provision in Notice 2012-61 permitting the reassignment of contributions between the 2011 and 2012 plan years, the Service permit plan sponsors to redesignate contributions among the 2019 and 2020 plan years, specifically permitting plan sponsors to reassignment of a contribution originally designated for the 2019 plan year to apply to the 2020 plan year.

## Impact on Previously Filed Forms 5500 and Schedules SB

Sections 9705 and 9706 of the Act potentially apply to plan years that have already closed and for which a Form 5500 and Schedule SB have already been filed for such plan. The changes may affect a number of items appearing on the Schedule SB, including the prefunding and carryover balances, contributions allocated toward minimum required contributions, amortization installments, etc. **ARA recommends** that, to the extent possible, the Service minimize the need for plan administrators to amend prior Form 5500 filings to reflect ARPA-related elections. Rather, similar to the guidance issued in Notice 2012-61 for MAP-21's retroactive impacts, plans should be permitted to provide a reconciliation of the changes to prior filings with the first Schedule SB that is filed after the provisions take effect for the Plan.

## Manner of Plan Sponsor Elections for Early Adoption of Section 9705

Section 9705 of the Act (regarding changes to the amortization period) is effective for plan years beginning after December 31, 2021, unless the plan sponsor elects to apply it beginning with a plan

year beginning after December 31, 2018. **ARA recommends** the Service provide guidance regarding the form in which such elections may be made, and consistent with the Notice 2014-53 (re: implementation of HATFA relief), specifically recommends that if an employer files a 2019, 2020, or 2021 Form 5500 Schedule SB after the date of the Act's enactment that reflects early adoption of Section 9705 relief, the employer will be deemed to have made an election to apply Section 9705 early to the extent reflected on the Schedule SB. **ARA recommends** that if an employer wishes to apply the Section 9705 relief to the 2019 and/or 2020 plan year, and has already filed the Form 5500 for the 2020 plan year, then the Service permit such an employer to have until the funding deadline for the 2020 plan year to file an amended 2020 Form 5500 and Schedule SB to reflect that election to have Section 9705 apply to an earlier plan year (and if a plan does not file an amended Form 5500 in such time period, the plan will be deemed to have not made an election to apply Section 9705 to the 2019 and 2020 plan years).

## Manner of Plan Sponsor Elections for Deferred Adoption of Section 9706

Section 9706 of the Act (regarding modifications to the 25-year average) is effective for plan years beginning after December 31, 2019, unless the plan sponsor elects that it will not apply to a plan year beginning before January 1, 2022. **ARA recommends** the Service provide guidance regarding the form in which such elections may be made and, consistent with the Revenue Notice 2014-53 (re: implementation of HATFA relief), specifically recommends that the interest rates reflected on the Form 5500 Schedule SB be treated as deemed elections by a plan sponsor. Thus, if an employer files a 2020 or 2021 Form 5500 Schedule SB and such Schedule SB does not reflect the ARPA rates, the employer will be deemed to have made an election for Section 9706 to not apply to such plan year. **ARA recommends** that if an employer has already filed the Form 5500 for the 2020 plan year and wishes to apply the Section 9706 relief to that plan year, then the Service permit such an employer to have until the funding deadline for the 2020 plan year to file an amended 2020 Form 5500 and Schedule SB to reflect that election to not defer application of Section 9706 (and if a plan does not file an amended Form 5500 in such time period, the plan will be deemed to have made an election to defer application of Section 9706).

## Previously Paid Excise Tax on Missed Minimum Contributions

If an employer maintains a single-employer plan and does not satisfy the minimum required contributions, then § 4971 imposes an excise tax equal to 10% of the aggregate minimum contributions remaining unpaid at the end of the plan year. Sections 9705 and 9706 of the Act potentially reduce the minimum required contributions for plan years beginning after December 31, 2018, and therefore would reduce the amount of excise taxes owed under § 4971, potentially with respect to excise tax returns that have already been filed. **ARA recommends** the Service issue guidance on how the Act impacts § 4971 excise tax calculations and how a plan sponsor should seek recovery of excise taxes paid (to the extent such amount exceeds the amount owed).

## Immaterial Change in the AFTAP

Plans are required to impose certain funding-based benefit restrictions in accordance with § 436 if the plan's AFTAP is below 80%. The application of Sections 9705 and 9706 of the Act may cause the plan's AFTAP to change, which could result in the plan no longer being required to impose funding-based benefit restrictions that had previously applied. If the change in the AFTAP is considered immaterial, then the change to the AFTAP applies prospectively only and does not impact change the applicability of presumptions the plan had applied to date. Treasury regulation § 1.436-1(h)(4)(iii)(C) provides a list of immaterial changes, including "any other event prescribed in guidance published in the Internal Revenue Bulletin." **ARA recommends** that the Service issue

guidance providing that changes in the AFTAP due to application of Sections 9705 and 9706 of the Act are immaterial changes for purposes of §436.

## Deadline for Adoption of Amendments

Plans (both preapproved and individually-designed plans) may be required to be amended to reflect provisions of the Act (such as the plan's description of interest rates). **ARA recommends** that the Service provide guidance regarding the deadline for adopting plan amendments, and specifically recommends that the Service (1) exercise its discretion to provide a later deadline than the date specified in section 15.04 of Revenue Procedure 2016-37 and (2) align that deadline with the date by which individually-designed plans will have to be amended following addition of this provision to the Required Amendments List.

If you have any questions regarding the matters discussed herein, please contact Kelsey Mayo at [KMayo@USRetirement.org](mailto:KMayo@USRetirement.org). Thank you for your time and consideration.

Sincerely,

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