ROBIN S. WEINGAST AND ASSOCIATES, INC.

<u>EFFECTS OF COVID-19 RELATED MARKET TURMOIL ON YOUR COMBINATION CASH BALANCE DEFINED BENEFIT PLAN/401(k) PROFIT SHARING PLAN</u>

The recent market turmoil caused by the COVID-19 Pandemic is creating many aspects of concern among all of us, so we would like to take this opportunity to address some concerns that you may have with regard to how it will affect your pension program, with issues ranging from your ability to fund the 2019 contribution (if not funded yet) and/or future contributions to the effect on participants' accumulated balances.

The timing of this crisis and its effect on the market is such that benefits and corresponding contribution credits for the 2020 plan year have yet to accrue and become required with participants not yet completing 1,000 hours in the current plan year. It generally takes until mid to late June for participants to attain 1,000 hours in a plan year. **This gives you the opportunity to FREEZE benefit accruals for 2020 before they become an obligation that you may not be able to afford.**

Given the inherent uncertainly of the long-term effects of the market decline and how the pandemic is likely affecting your business, we suggest that you consider a freeze to 2020 accruals no later than the end of April or sooner (if possible). Such a freeze generally requires an amendment to the plan and a 15-day notice to participants. We will need time to prepare the amendment and notice, so please let us know as soon as possible (preferably by the end of April) if you want to proceed with a freeze on benefits to ensure that amendments are executed and notices are distributed on a timely basis (i.e., no later than the end of May).

A freeze imposed on benefits does not require that it remain intact indefinitely or even for the 2020 plan year. **Benefit accruals can be unfrozen, whenever you feel more comfortable about your future business and ability to resume funding the plan.**

If your plan had contribution credits on behalf of participants for the 2019 plan year and you have not yet funded the contribution, there may be an opportunity to contribute less or even nothing at all, although contribution credits must still be allocated on behalf of participants.

- If we have already calculated and provided your contributions for 2019, you should refer to the email sent accompanying the 2019 contribution report for reference to the opportunity to contribute less than the contribution credits.
- If we have not yet calculated your contributions for 2019, you can contact us so that we can discuss further and direct you accordingly with your options.

If you have not yet funded the 2019 contribution and your 2019 tax return goes on extension beyond the new 7/15/20 deadline (recently granted by the IRS), you will have until 9/15/20 to decide upon an amount and to fund the contribution. If your tax return is not going on extension, the contribution will need to be funded by the time you file your tax return.

Note that an option for no deposit to your companion 401(k) Profit Sharing Plan generally does not exist for the 2019 Safe Harbor/Profit Sharing allocations on behalf of the NON-Highly Compensated Employees (NHCEs), as such contributions are combined with contribution credits of the Cash Balance Plan to ensure that the allocations satisfy IRS non-discrimination requirements. However, one option that may exist is that Profit Sharing contributions on behalf of NHCEs could be lower with lower Profit Sharing contributions on behalf of Highly Compensated Employees (HCEs). If your business is a partnership and you have not yet declared your 2019 salary deferral, no salary deferral on behalf of any partners MIGHT also reduce the required Profit Sharing contributions on behalf of NHCEs. If your plans are top heavy with 60% of accumulated benefits attributable to key employees and you elect to freeze the Cash Balance Plan contribution credits for 2020, you can also avoid any Profit Sharing or Safe Harbor contributions for 2020, as long as no HCEs or key employees have any salary deferrals.

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Note that freezing Cash Balance Plan contribution credits for 2020 does not necessarily imply that there will be no minimum contribution requirement for 2020. While the freeze will not dictate any 2020 contribution credits that would increase the Plan's liability, there are sometimes situations that the value of Plan assets at the end of the year compared to already accumulated liabilities (independent of a freeze) requires some level of minimum contribution. In some instances (albeit rarely), even without a freeze, there could be a minimum contribution required over and above the total of contribution credits, depending on the end of year Plan assets. In either case, a timely freeze of benefits would ensure that your obligation for 2020 is minimized. Whether a minimum contribution will be required for 2020 will be dependent on the value of Plan assets and salaries at the end of the year, by which time there will hopefully be some stabilization and market recovery.

Your participants most likely have valid concerns over how the recent market loss will affect their Cash Balance Plan account balances. While the market performance affects their 401(k) Profit Sharing Plan account balances (based on investments they have selected), what participants may not realize is that a Cash Balance Plan allocates annual interest credits that are specified in the Plan Document and Summary Plan Description. These interest credits are independent of the investment performance of the pooled Plan investment account. Such a rate is generally near 3% and is allocated annually regardless of market loss or investment gain exceeding the specified interest rate, so there should be no concern for the recent market loss as it relates to participants' Cash Balance Plan account balances, as they are entitled to their accumulated account balance on termination of their employment or the Plan with no impact from market loss of the Plan investment account. You may want to consider imparting this information to your participating employees to eliminate any concerns that may have in this regard.

One possible effect of market loss on a pooled plan investment account of a Cash Balance Plan is that Plan assets may drop below the Plan liabilities (i.e., participant's balances accumulated via contribution and interest credits). Such a concern becomes more relevant if the termination of the Plan is imminent. Any unfunded liability that may exist on plan termination could either be made up with a contribution deposit or benefits can be waived by the business owner(s). Participants' Cash Balance Plan account balances cannot be affected by an unfunded liability. If the Plan is not going to be terminating anytime soon, market recovery over time should bring assets more into line with liabilities that have accumulated.

If your plan allocates a Safe Harbor contribution to allow the level of Salary Deferrals on behalf of Highly Compensated Employees without requiring distribution of excess contributions to them and you believe that you may need to suspend the Safe Harbor contribution, please contact your Administrator for further discussion of your options in this regard.

If you have any concerns about the funded status of your Cash Balance Plan or whether a lower level of Profit Sharing might be possible for NHCEs, please do not hesitate to contact us to discuss further. We would be happy to conduct an analysis, so that we could share any important issues with you that are relevant within the context of your plans' particular circumstances.

Lastly, if you would like us to proceed with preparing the necessary documents for freezing the benefits of the Cash Balance Plan, please be sure to send us an email as soon as possible.

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