1. INTRODUCTION

1.1. The Pension Reform Act Cap. P4 Laws of the Federation of Nigeria (“LFN”), 2004 (Amendment) Bill, 2016 (“the Bill”) is sponsored by Senator Aliyu Wamako (Sokoto State). The Bill went through first and second reading on 17th May, 2016 and 10th May, 2017 respectively. The Bill has been referred to the Committee on Establishment and Public Services.

1.2. The Bill seeks to amend the Pension Reform Act, Cap P4 LFN, 2004 by providing for a definite percentage a retiree can withdraw from his retirement savings account and to generally ease withdrawals from retirement savings account.

1.3. It is important to point out that the Pension Reform Act, 2004 which the Bill seeks to amend, has been repealed by the Pension Reform Act, 2014. Consequently, the Pension Reform Act, 2004 cannot be the subject of an amendment. On that basis, this bill review will proceed on the assumption that the Act which the Bill seeks to amend is the Pension Reform Act, 2014 and the reference to the Pension Reform Act, 2004 in the Bill was made in error. This assumption is further supported by the fact that the amendments sought to made do not correlate with the provisions of the Pension Reform Act, 2004 but rather correspond with the provisions of the Pension Reform Act, 2014. In the light of the above, the review undertaken herein is that of the Pension Reform Act, 2014 and all references to the Principal Act should be construed as reference to the Pension Reform Act, 2014.

2. PURPOSE OF THE BILL

2.1. The Bill seeks to amend section 7(1), 7(1)(a) and 7(2) of the Principal Act. Section 7(1) and 7(1)(a) of the Principal Act provide that:

“A holder of a retirement savings account shall, upon retirement or attaining the age of 50 years, whichever is later, utilize the amount credited to his retirement savings account for the following benefits:

 a) Withdrawal of a lump sum from the total amount credited to his retirement savings account provided the amount left after the lump sum shall be sufficient to procure a programmed fund withdrawal or annuity for life in accordance with the extant Guidelines issued by the Commission from time to time.”

2.2. Section 7(2) provides that “where an employee voluntarily retires, disengages or is disengaged from employment as provided for under section 16(2) and (5) of this Act, the employee may with the approval of the Commission, withdraw an amount of money not exceeding 25 percent of the total amount credited to his retirement savings account,
provided that such withdrawals shall only be made after four months of such retirement or cessation of employment and the employee does not secure another employment.”

2.3. The Bill proposes to do the following:
   a. Amend section 7(1) by inserting the words “or retires or disengages or is disengaged as provided under section 16(2)(a) and (b) of this Act” immediately after the phrase “whichever is later”.
   b. Amend section 7(1)(a) of the Principal Act by inserting the words “of up to 75 percent” immediately after the words “a lump sum”; and
   c. Amend section 7(2) by inserting sub-paragraph “(c)” immediately after the phrase “section 16(2)”.

3. REVIEW

3.1. Section 7(1) of the Principal Act entitles a retiree to utilize the amounts credited to his Retirement Savings Account (“RSA”) upon retirement or upon attaining the age of 50 years. The conditions for eligibility under this section appears too restrictive and fails to consider the possibility of disengagement from employment on grounds other than by retirement upon the attainment of the age of 50 years. Thus, retirement and disengagement from employment on grounds or circumstances outside those specified under this section would render the retiree ineligible to access the funds in his RSA. It is the hardship resulting from the narrow eligibility grounds under this section that the Bill seeks to remedy by expanding the scope of the section to include those persons who retire, disengage or are disengaged from employment under the provisions of section 16(2)(a) and (b) of the Principal Act.

3.2. However, we note that the provision of section 16(2) of the Principal Act already provides that, a person who retires, disengages or is disengaged from his employment on the advice of a qualified physician or a duly constituted medical board certifying that the employee is no longer physically or mentally capable to continue in his employment; or due to a total or permanent disability of the mind or body; or retires at the age of 50 years in accordance with the terms and conditions of his employment shall be entitled to make withdrawals from his RSA under section 7 of the Act. Therefore, the shortcoming in section 7 of the Principal Act which the Bill seeks to amend has been addressed by the provisions of section 16(2) of the Principal Act. Consequently, the proposed amendment is unnecessary as it adds nothing new to the Principal Act.

3.3. Section 7(1)(a) of the Principal Act provides for the withdrawal of a lump sum from a retiree’s RSA without specifying the withdrawal limit. The provision appears ambiguous and may create difficulties in determining what qualifies as a lump sum. The amendment proposed to be made to section 7(1) (a) of the Principal Act is intended to resolve this
ambiguity as it clearly specifies 75 percent as the limit for any withdrawals to be made under this section.

3.4. Section 7(2) of the Principal Act permits a person who voluntarily retires, disengages or is disengaged under section 16(2) of the Act to withdraw from his RSA, an amount not exceeding 25 percent of the total amount standing to the credit of his RSA. The categories of employees contemplated under sections 16(2) are as contained in section 16(2) (a) – (c). They include:
   a. employees who have been certified by a qualified physician or a duly constituted medical board as no longer physically or mentally capable to continue in his employment;
   b. employees who retire or are disengaged due to a total or permanent disability of the mind or body; or
   c. an employee who retires at the age of 50 years in accordance with the terms and conditions of his employment.

3.5. You would recall that in paragraph 3.2 we noted that the categories of employees contemplated under section 16(2) are entitled to make withdrawals from his RSA under section 7 of the Principal Act. Further, if the Bill becomes law, such an employee can withdraw up to 75 percent from his RSA. To this end, the amendment which the Bill seeks to introduce in section 7(2) is to separate employees categorized under section 16(2) (c) from those contemplated under section 16(2)(a) & (b) by specifying that such employees categorized under section 16(2) (c) can withdraw an amount not exceeding 25 percent from their RSAs with the approval of the Commission. An employee may exercise this right to withdraw up to 25 percent of the amount credited to his RSA provided that such withdrawals can only be made after 4 months of retirement or cessation of employment and the employee does not secure another job.

3.6. The effect of the proposed amendment is that upon retirement or disengagement from employment under the circumstances contained in section 16(2) (a) & (b), an employee can withdraw up to 75 percent of the amount credited to his RSA while retirement at the age of 50 years in accordance with the terms and conditions of employment, as provided under section 16(2) (c), will entitle an employee to withdraw an amount of money not exceeding 25 percent from the amount credited to his RSA.

3.7. A literal interpretation of section 7(2) of the Principal Act means that the employees contemplated under section 16(2) (a) – (c) may make withdrawals not exceeding 25 percent under section 7(2). This is in addition to the withdrawals of up to 75 percent which employees contemplated under section 16(2) (a) & (b) may make under section 7(1) of the Principal Act. The proposed amendment of section 7(2) is necessary to avoid possible conflict.
4. CONCLUSION

4.1. The amendments proposed by the Bill are minor yet significant. The introduction of 75 percent as the maximum limit of withdrawals that can be made on a RSA under section 7(1) (a) of the Principal Act and the clear distinction of employees who may make withdrawals under section 7(1) from those who may withdraw under section 7(2) of the Principal Act are positive recommendations. If the Bill is passed into law, these amendments may prevent ambiguity and possible conflicts.