



AMERICAN BENEFITS COUNCIL

March 14, 2017

The Honorable Ben Cardin
United States Senator
509 Hart Senate Office Building
Washington, DC 20510

The Honorable Rob Portman
United States Senator
448 Russell Senate Office Building
Washington, DC 20510

Dear Senator Cardin and Senator Portman:

On behalf of the American Benefits Council (Council), I am writing to express our strong support for your legislation to protect participants in, and sponsors of, so-called “frozen” defined benefit pension plans from the inadvertent adverse impact of nondiscrimination rules on those plans’ tax qualified status.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

As the environment for sponsoring traditional defined benefit pension plans has become more challenging, many companies reluctantly have been compelled to modify the plans so that new employees hired after a certain date are not eligible to participate. However, despite costs and complexities, many employers have tried to remain fully committed to their longer-term employees by enabling them to continue accruing additional benefits under the pension plan, for the duration of their employment. This practice is commonly referred to as a “soft freeze.”

Even where such a plan passed all nondiscrimination tests at the time it was frozen, over time it can run afoul of nondiscrimination rules notwithstanding that the plan, itself, is not changed in any material way, or may not have changed at all. This happens simply because newly-hired non-highly compensated employees are not participating in that particular plan, while longer-service employees remaining in the plan become more highly-compensated over time. This includes non-highly compensated employees who become highly compensated by reason of tenure and experience.

If a plan cannot pass the nondiscrimination tests, and therefore would become tax disqualified, the employer sponsor has few options but to “hard freeze” the plan – that is, discontinue additional benefit accruals for plan participants who continue to work for the employer. This is obviously a result that neither the employer sponsor nor its employees want to see happen. A hard freeze can disadvantage long-service workers, many of whom may be close to retirement. They would also have less time to save in their 401(k) plan to make up for the loss of the defined benefit plan accrual.

Your bill wisely would clarify that a plan that passed the nondiscrimination tests at the time it was soft-frozen, will be deemed to pass the tests as long as it is not amended in any discriminatory manner and meets certain other conditions. This is the correct approach to solving this serious problem. Based on data gathered from several major consulting and actuarial firms, more than 600,000 participants nationwide are potentially affected by the nondiscrimination testing issue and the total could climb much higher. Solutions proposed through regulatory agencies might address the problem for a very small number of plans. But the vast majority of plans covering a large total number of participants unfortunately will not be helped by proposed regulatory solutions. We support enactment of your bill as soon as possible to help mitigate the necessity of “hard freezes” of plans that might otherwise be able to continue to accrue benefits for their participants.

The Council appreciates your leadership on this matter and encourages you to call upon us if we can assist your efforts to enact your bill.

Sincerely,

A handwritten signature in cursive script that reads "Lynn D. Dudley". The signature is written in black ink and is positioned above the typed name and title.

Lynn D. Dudley
Senior Vice President,
Global Retirement and Compensation Policy
American Benefits Council