



## AMERICAN BENEFITS COUNCIL

November 28, 2018

The Honorable Mitch McConnell  
Republican Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Paul D. Ryan  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Charles E. Schumer  
Democratic Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Nancy Pelosi  
Democratic Leader  
U.S. House of Representatives  
Washington, DC 20515

Dear Leader McConnell, Leader Schumer, Speaker Ryan and Leader Pelosi,

On behalf of the American Benefits Council (the Council), I am writing to recommend decisive action on critically important retirement policy matters before the end of the year.

The Council is a public policy organization whose members include over 220 of the world's largest corporations, as ranked by Fortune and Forbes. Collectively, the Council's members either directly sponsor or administer health and retirement benefits for virtually all Americans covered by employer-sponsored plans.

In [an Election Day poll conducted by Public Opinion Strategies](#), nearly eight in 10 American voters (78 percent) showed a strong preference for bipartisan solutions to our retirement policy challenges, saying that compromise and cooperation would most improve their ability to save for a secure retirement.

For many years, retirement policy legislation has enjoyed a proud tradition of bipartisan leadership and support. That is how Congress has achieved so much in the past, and we believe that bipartisanship is the path to future success. A number of measures and provisions now pending in Congress deserve immediate consideration and we emphatically recommend their enactment before the end of this year, including a number of retirement policy provisions.

These provisions are largely based on elements of the Family Savings Act (H.R. 6757) and the Retirement Enhancement and Savings Act (S. 2526), which themselves include many bipartisan bicameral proposals that are very important to improving personal financial security. In fact, S. 2526 earned unanimous approval in the Senate Finance Committee in 2016 and enjoys broad bipartisan support in the Senate today. The House and Senate bills do have differences, however, and final legislation requires blending these proposals. We urge Congress to work on a bipartisan, bicameral basis to finalize compromise legislation.

## **RELIEF FOR FROZEN DEFINED BENEFIT PENSION PLANS**

As the environment for sponsoring traditional defined benefit pension plans has become more challenging, many companies have been compelled, reluctantly, to modify their plans so that new employees hired after a certain date are not eligible to participate. However, under current law, companies that seek to protect older, longer-service employees by continuing to accrue benefits for them until they retire are generally precluded from doing so by the clearly unintended impact of so-called “nondiscrimination rules.” With every year that passes, more participants lose benefits by reason of the adverse effects of the current rules.

**We strongly urge you to approve nondiscrimination testing reform that would allow employers to continue to accrue benefits for older, longer-service participants in defined benefit pension plans.** This valuable provision is included in S. 2526 and H.R. 6757, as well as the recent proposal from Ways and Means Committee Chairman Kevin Brady.

## **OPEN MEP REFORMS**

Policymakers are constantly searching for ways to improve retirement plan coverage and the Council believes the best way is to build on the employer-based system. Open multiple employer plans (MEPs), which enjoy bipartisan support in Congress as well as the administration, present a valuable opportunity to do so.

We urge Congress to approve legislation to eliminate the punitive “one bad apple rule” (under which compliant employers in a MEP are penalized for violations by other participating employers) and permit open MEPs by eliminating the “nexus” requirement (under which all participating employers must share a pre-existing relationship or common business purpose). **Facilitating the use of MEPs will create greater economies of scale, thereby reducing plan participation costs and broadening coverage for many, including the independent and contingent workforce.** This proposal is also included in both S. 2526 and H.R. 6757, as well as the Brady proposal.

## PENSION PREMIUMS FOR CSEC PLANS

There are a number of additional bipartisan, bicameral proposals included in S. 2526 that would advance retirement security, and we urge their inclusion in any retirement policy reform legislation. Among them is a key provision (also contained in the bipartisan Rightsizing Pension Premiums Act (H.R. 3596) and in the Retirement Enhancement and Savings Act (H.R. 5282)) that would conform Pension Benefit Guaranty Corporation (PBGC) premiums for pension plans serving multiple charities or cooperatives (CSECs) to the funding rules put in place for such plans by Congress in 2014. This provision is also included in the Brady proposal.

CSEC plans have different funding rules than single-employer plans because they pose very little risk the plans will not be appropriately funded and able to pay promised benefits. That same reasoning is applicable to premium levels. These should be lower because CSEC plans pose far less risk than is reflected in their current premiums.

## EXPANSION OF ELECTRONIC DISCLOSURE OF PLAN COMMUNICATIONS

Under current law, there are no fewer than four separate regulatory standards governing the circumstances under which an employee can be provided with a retirement plan statement, notice, or disclosure in an electronic format. There is longtime, bipartisan interest in modernizing these disclosures.

The Council has long supported updating the means of fulfilling disclosure requirements. Our public policy strategic plan, [A 2020 Vision: Flexibility and the Future of Employee Benefits](#), includes recommendations to advance the use of technology in delivering benefits information while ensuring appropriate protections for participants. **Our member companies report that a majority of their plan participants prefer to receive notices electronically, providing information in real time that can be easily accessed and encouraging timely interaction among participants, their accounts and the plan sponsor or administrator.** The result will be better retirement outcomes.

Consistent with these recommendations would be enactment of legislation that gives employers the option to provide required notices and statements in an electronic format while preserving participants' right to opt-out and receive paper copies of notices at no charge. Participants would also be provided an annual written notice of the availability of receiving paper notices. One such proposal, the Receiving Electronic Statements to Improve Retiree Earnings Act (H.R. 4610), has been introduced in the House on a bipartisan basis and should be included in year-end legislation.

## RESOLUTION OF THE MULTIEMPLOYER PENSION PLAN CRISIS

It is well-known that the multiemployer pension plan system is in crisis. The Pension Benefit Guaranty Corporation 2018 Annual Report projects that, absent changes, the multiemployer program is likely to be insolvent by 2026. The Council supports efforts to develop a path forward being undertaken by the select committee established by the Bipartisan Budget Act of 2018. We believe that such a bipartisan bicameral solution will maximize the chance of a much needed sustainable solution to enhance retirement security and renew confidence in the multiemployer system without inadvertently imposing enormous costs on plan sponsors contributing to plans.

**In addition, we have been heartened by extensive informal discussions that indicate that Congress is not looking to raise funds for the multiemployer plan system from the single-employer plan system.** A bipartisan solution to the multiemployer plan crisis is vital. But using assets from the single-employer plan system is not the answer. The programs are entirely separate and operate under distinctly different rules. The companies that continue to support the single employer system are under enormous pressure and have adapted to greater funding requirements and numerous increases in premiums (many enacted as a source of revenue for unrelated spending).

Greater premium increases or financing the multi-employer system through the single employer system would accelerate the rate at which single-employer sponsors are exiting the system, exacerbating a decline in companies participating in the PBGC's single-employer insurance program and thereby worsening the PBGC's problems.

We again urge that premium levels be *decreased* for all single employer plans. The dramatic increases in PBGC premiums have been, and continue to be, a key driver in company decisions to reduce exposure to uncontrolled costs through de-risking and exiting the system altogether. A reduction in future premiums would have a significant beneficial impact on preserving the remaining defined benefit plans..

## REDUCING BARRIERS TO SAVING THROUGH STUDENT LOAN REPAYMENT PROGRAMS

The burden of student loan debt serves as an unfortunate barrier to saving for retirement. With the benefit of compound interest, putting money away early in one's career – especially through an employer-provided plan with matching contributions and low fees – can have a powerful effect on one's balance at retirement age. But student debt prevents many individuals in their 20s and 30s from saving optimally.

Many employers are interested in helping employees save for retirement despite student tuition or debt obligations and are considering a variety of innovative

approaches to do so. We urge Congress to support these programs with policies that embrace innovation.

For example, the Council supports proposals facilitating employers' ability to provide matching contributions to 401(k) retirement plans based on student loan repayment. Such a provision is included in legislation being drafted by Senators Rob Portman and Ben Cardin based on a proposal first floated by Senator Ron Wyden.

Measures that leverage the tax code and behavioral economics to encourage student loan repayment will go a long way toward reducing barriers to retirement savings. Just like saving early, enacting supportive policy as soon as possible will have a positive effect on retirement outcomes.

#### **REMOVING LIMITATIONS ON SUBSIDIES RESULTING FROM ACCUMULATION OF RETIREMENT ASSETS**

Effective retirement saving can facilitate income mobility and improve overall health and financial well-being. Individuals and families should not be penalized for preparing for retirement. The Council urges you to pass legislation that excludes current retirement plan assets and future retirement plan benefits from eligibility calculations for state and federal housing and food subsidies.

Along these same lines, the Council supports efforts to allow employers to deposit any employer contributions that would otherwise be made on the behalf of special needs employees to the employee's Section 529A (ABLE) account instead of the company's 401(k) plan. Special needs employees frequently choose not to participate in a 401(k) plan, or must withdraw funds with corresponding taxes and penalties, because the funds accumulated in the plan can imperil their eligibility for much needed means-tested benefits they would otherwise be qualified to receive. Under the proposed solution, the employee would have to opt into the ABLE account, if offered by the plan sponsor. The employer contribution would be subject to the same deduction rules applicable to 401(k) employer contributions and the employee would be taxed on the contribution made to the account. The amounts would be subject to the Section 529A rules.

#### **SELF-CORRECTION PROCEDURES**

Plan sponsors should generally be permitted to self-correct inadvertent plan violations under the Internal Revenue Service's (IRS) Employee Plans Compliance Resolution System (EPCRS) without a submission to the IRS. Under a proposal included in the Protecting Taxpayers Act (S. 3278), sponsored by Senators Portman and Cardin and supported by the Council, all inadvertent plan violations could be self-corrected

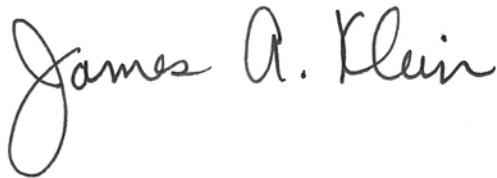
under EPCRS without submission to the IRS. This rule would not apply if the IRS discovers the violation on audit and the employer has not at that point taken actions demonstrating a commitment to correct the violation. The bill would also make improvements to the self-correction process to make self-correction a more reliable and effective process.

## CONCLUSION

The ability to save for retirement is a critically important part of Americans' sense of economic security. Employer-provided plans are widely understood to be a uniquely positive influence on financial well-being in retirement. Public policy should encourage participation and adequate saving in these plans whenever possible.

In the remaining days of the 115<sup>th</sup> Congress, lawmakers can enact reforms to expand and enhance retirement security. We urge you to seize this opportunity and look forward to working with you in the future to advance our shared goals.

Sincerely,

A handwritten signature in black ink that reads "James A. Klein". The signature is written in a cursive style with a large, looping initial "J".

President

cc: All members, U.S. Senate and House of Representatives