



AMERICAN BENEFITS COUNCIL

July 26, 2019

NONDISCRIMINATION TESTING REFORM: WITHOUT RETIREMENT LEGISLATION SOON, AT LEAST 450,000 PARTICIPANTS COULD LOSE FUTURE PENSION BENEFITS AS OF JANUARY 1, 2020

Solely within the client base of one global professional services firm, almost 200,000 participants could lose future benefits as of January 1, 2020, without enactment in the near future of nondiscrimination testing reforms as contained in the Retirement Security Preservation Act. For a second major consulting firm, the number of participants in danger of losing benefits within its client base is around 250,000.

- **Many companies want to protect future benefits for existing employees.** For a number of reasons, many companies have moved away from providing ongoing defined benefit plan accruals for active employees, and more are expected to do so in the future. There are two main ways to do this: (1) stop providing any new benefits to any employees, or (2) allow current employees to continue earning new benefits, but close the plan to new hires (who often receive enhanced benefits under the company's 401(k) plan). The latter approach -- which "grandfathers" existing employees -- allows companies to protect future benefits for their older longer service employees, who generally earn far bigger benefits under a defined benefit plan than under a defined contribution plan.
- **Current IRS regulations effectively prohibit long-term grandfathering of existing employees.** Over time, the group of grandfathered employees becomes disproportionately highly compensated, due to natural turnover and the aging of the grandfathered employees. Because of these regulations, eventually companies are effectively forced to stop providing new benefits to any employees, cutting off defined benefit plan benefits for the previously grandfathered employees completely.

- **Massive benefit loss has already occurred because of the IRS regulations.** There are many reasons why a plan sponsor might decide to close or freeze its defined benefit, including cost, competitiveness, risk management, and other factors. But companies have indicated that in many cases the move from a closed plan to a frozen plan has often been compelled by the IRS regulations, and will continue to be compelled in the future without a change in the law. Over the past several years, defined benefit accruals have been frozen for *many* hundreds of thousands of employees. Every year, many more may lose benefits as their grandfathered group ages.
- **At least 450,000 could lose benefits as of 1/1/2020 without enactment of the Retirement Security Preservation Act.** As noted above, a plan sponsor that has otherwise decided to continue providing defined benefits for certain employees may need to cease such accruals due to a potential nondiscrimination testing failure. This consulting firm and others have estimated that unless this problem is adequately addressed by September, the number of participants who could lose benefits as of January 1, 2020, would be (1) almost 200,000 in the case of the first consulting firm and (2) around 250,000 in the case of another firm. Unlike proposed regulations from the IRS (which are not adequate to address the problem), the Retirement Security Preservation Act contains solutions that would protect those participants.
- **This information only relates to two firms' clients.** The total number of participants across the defined benefit system who could lose benefits certainly exceeds 450,000.