



AMERICAN BENEFITS COUNCIL

September 20, 2016

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 strong support for your proposed amendment to the Retirement Enhancement and Savings Act of 2016. This amendment, based on a bill you introduced in the prior Congress, the Retirement Security Preservation Act of 2014, would protect participants in closed defined benefit pension plans from the inadvertent adverse impact of nondiscrimination rules. According to surveys conducted by two major actuarial firms, this legislation could help *hundreds of thousands of participants avoid losing future benefits*.

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 many companies have been compelled by a variety of circumstances to transition away from traditional defined benefit plans, a number of plans have been changed so that new employees hired after a certain date are not eligible to participate in the pension, but instead will typically have enhanced benefits in a 401(k) plan. However, employees who already participate in the defined benefit pension plan continue to accrue additional benefits under the plan. This is commonly referred to as a "closing" or "soft freeze." Even where such a plan passed all nondiscrimination tests at the time it was soft 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 those 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 sponsors have few options but to “hard freeze” the plan – that is, discontinue additional benefit accruals for all plan participants, including nonhighly compensated employees, 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) to make up for the loss of the defined benefit plan accrual.

Your amendment would start with the excellent bill you introduced, and modify it to address issues identified by the Treasury Department in its proposed regulations on this issue. In this manner, your amendment combines the best elements of both your bill and the Treasury proposal, while ensuring that participants are protected from loss of benefits.

More specifically, your amendment would clarify that a plan that passed the nondiscrimination tests at the time it was soft frozen and for the next two years will be deemed to pass the tests as long as it is not amended in any discriminatory manner. This is an excellent approach to solving the problem. Based on data gathered from just these two major actuarial firms, more than 600,000 participants could lose benefits without this legislation, and the total would climb much higher based on more comprehensive data.

Proposed regulatory solutions are very welcome, but they would only cover a small portion of the affected plans, leaving hundreds of thousands of participants without future defined benefit accruals. We support enactment of your amendment 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 thanks you for your leadership on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Lynn D. Dudley".

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