Congress of the United States
Washington, DC 20515

June 20, 2013

The Honorable Jacob J. Lew
Secretary of the Treasury
Main Treasury Building, Room 3330
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Lew:

We are writing to express concern about a Treasury regulation that could inadvertently undermine the retirement security of many Americans and directly cause a substantial number of companies to no longer provide pension benefits. We recognize that this is certainly not Treasury's intent; accordingly, we see this as an opportunity to solve a problem that no one wants to exist. Since the regulatory provision at issue is not in any way compelled by the statute, we urge you to review this issue and address the problem as soon as is practicable.

For a variety of reasons over the past number of years, many employers that sponsor defined benefit pension plans have had to stop providing benefits to newly hired employees. However, many of these companies that have implemented a "soft freeze" by closing the plan to new employees have nonetheless continued to provide benefits for some or all of their existing employees. For those companies, this is a very important step that will prevent existing employees, especially older and longer service employees, from losing the most valuable pension benefits.

As the grandfathered group of employees eligible for the pension plan ages, the group generally becomes more highly compensated. This occurs simply because (1) the younger employees, who began their careers as nonhighly compensated employees gain seniority and grow into higher paid middle or upper management positions, becoming highly compensated over time and (2) turnover among the grandfathered employees is typically greater among younger, shorter service employees, who do not fall into the highly compensated category.

When a soft freeze is implemented for a plan, the grandfathered group remaining in the plan earning benefits can cause the pension plan to inadvertently violate a Treasury rule required by qualified plans to meet nondiscrimination testing requirements. Nondiscrimination testing is a rule intended to prevent pension plans from favoring higher paid employees. For example, a company grandfathers all existing employees—or all existing employees who have met certain age and/or service thresholds— into a pension plan while new employees are covered under a new defined contribution plan. In this case, the company is not favoring higher paid employees, as recognized by other Treasury regulatory provisions that specifically deem very similar arrangements to comply with the law. Nevertheless, the rule at issue can prohibit these grandfather arrangements as time passes by and the grandfathered group becomes more highly compensated.

As a result of this nondiscrimination rule, many companies are required to implement a "hard freeze" by completely closing the plan and eliminating future benefit accruals to all participants in order to avoid failing nondiscrimination testing. This is because the penalties for failing such testing are extreme-all of the benefits in the plan are immediately taxable and the plan loses its qualified status. This is not the right answer and cannot be what Treasury intended when the rules were written since the regulation at issue is designed to help participants, not to undermine their retirement security, particularly for those who do not have the time to accumulate significant benefits in a defined contribution plan. Therefore, we ask you to consider addressing this issue expeditiously. In this regard, since the regulatory process can be a lengthy one, we would encourage you to consider practical, non-regulatory approaches that could be implemented more quickly and thus prevent benefit freezes that could otherwise occur very soon.

We greatly appreciate your attention to this matter. If you have any questions, please feel free to contact any of us, or to have members of your staff discuss this issue with Brad Bailey in Congressman Tiberi's office or Ann Jablon in Congressman Neal's office.

Sincerely,

Patrick J. Tiberi
Member of Congress

Richard E. Neal
Member of Congress

Sam Johnson
Member of Congress

Charles B. Rangel
Member of Congress

Kevin Brady
Member of Congress

John B. Larson
Member of Congress

Devin Nunes
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