

# United States Senate

WASHINGTON, DC 20510

November 21, 2013

The Honorable Jacob J. Lew  
Secretary of the Treasury  
United States Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Dear Secretary Lew:

We write to request action concerning a Treasury regulation that could unintentionally weaken the retirement security of many American workers. The regulation in question was created in order to strengthen retirement security, so repairing this flaw would support the Treasury's original intent. It's a regulation that can be improved without new legislation.

Over the past several years, many companies have transitioned from defined benefit to defined contribution retirement plans. In doing so, many have elected to grandfather existing employees into the defined benefit plans in order to avoid disruptions and save them from having to build retirement savings in a new pension model mid-career. After "soft freezing" the existing pension plan, the company places new hires within a new defined contribution pension system.

Over time, the existing employees grandfathered into the old system typically build seniority and become more highly-compensated than the younger, newer employees who also are more likely to have greater job turnover. This widens the income gap between the two pension groups.

Unfortunately, soft freezes may cause plans to inadvertently violate a Treasury rule that requires qualified plans to meet certain nondiscrimination testing requirements. These requirements are intended to enforce a degree of pension benefit parity between higher- and lower-compensated employees. The split between having mostly higher-compensated employees in a defined benefit plan and mostly lower-paid employees in a defined contribution plan may trigger the nondiscrimination rules even if the level of pension benefits between the two groups is comparable. This is because current nondiscrimination rules do not adequately allow for the comparison between defined benefit and defined contribution benefits in these circumstances.

Companies failing their nondiscrimination tests risk losing their pensions' qualified status, resulting in immediate taxation of their employees' pension benefits. To avoid this expensive outcome, many companies feel compelled to instead implement a "hard freeze" that completely closes the defined benefit plan and forces all employees into the new plan.

This is clearly not the intended effect of the nondiscrimination rules, which were written to strengthen retirement security, rather than to force many older employees into new pension plans that may not provide enough time to accumulate sufficient benefits before retirement.

Some companies are already facing the prospect of triggering the nondiscrimination rules, and nearly every company that wishes to soft freeze its defined benefit plan will face this problem over the next several years. The sooner Treasury can implement a practical, non-regulatory solution to this issue, the sooner companies can avoid having to hard freeze their pensions when they would prefer a soft freeze.

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 contact Brian Riedl in Sen. Portman's office or Beth Bell in Sen. Cardin's office.

Sincerely,



Rob Portman  
United States Senator



Benjamin L. Cardin  
United States Senator