



## AMERICAN BENEFITS COUNCIL

October 6, 2014

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 our strong support for the Retirement Security Preservation Act of 2014 (S. 2855), your legislation to protect participants in, and sponsors of, so-called “frozen” defined benefit pension plans from the inadvertent adverse impact of nondiscrimination rules on those plans’ tax qualified status.

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.

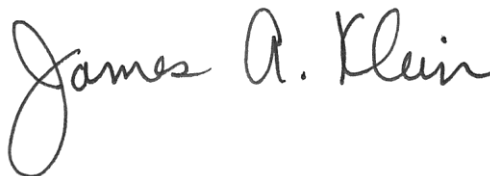
As many companies have been compelled by a variety of circumstances to transition away from traditional defined benefit plans, a number of them have been changed so that new employees hired after a certain date are not eligible to participate in the plans. However, employees who already participate continue to accrue additional benefits under the plan. This is commonly referred to as a “soft freeze.” Even where such a plan passed all nondiscrimination tests at the time it was 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 plan participants 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 bill wisely would clarify that a plan that passed the nondiscrimination tests at the time it was soft frozen, will be deemed to pass the tests as long as it is not amended in any discriminatory manner. This is the correct approach to solving the problem. Based on data gathered from several major consulting and actuarial firms, more than 600,000 participants are potentially affected by the nondiscrimination testing issue and the total could climb much higher. Solutions proposed through regulatory agencies might address the problem for a very small number of plans. But the vast majority of plans covering a large total number of participants unfortunately will not be helped by proposed regulatory solutions. We support enactment of S. 2855 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 appreciates your leadership on this matter and encourages you to call upon us if we can assist your efforts to enact S. 2855.

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".

James A. Klein  
President