



Dear Majority Leader McConnell and Chairman Hatch:

On behalf of the American Benefits Council (Council), the Committee on Investment of Employee Benefit Assets (CIEBA) and the ERISA Industry Committee (ERIC), we are writing to express our strong support for non-controversial bipartisan retirement savings legislation. The legislation would protect participants in, and enable employers to continue to offer, partially frozen defined benefit pension plans, and avoid the unintended 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.

CIEBA members are the chief investment officer fiduciaries of more than 100 of the Fortune 500 companies who individually manage and administer retirement plan assets. CIEBA members voluntarily sponsor plans and manage as fiduciaries almost \$2 trillion of retirement assets on behalf of 15 million participants, representing a very significant portion of the largest private defined benefit plans in the United States.

ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation public policies at the federal, state, and local levels. ERIC members provide comprehensive health, retirement, and compensation benefits to tens of millions of active and retired workers and their families, providing them with income security and wellbeing.

Legislation to continue participant coverage in partially frozen DB Plans. The legislation at issue was included in section 205 of the Retirement Enhancement and Savings Act of 2016 (S. 3471) (RESA), as approved unanimously by the Senate Finance Committee in September of 2016. Updated versions of the same legislation were then introduced this year by Senators Portman and Cardin (S. 852) and by Representatives Tiberi and Neal (H.R. 1962). The RESA version was included in the House-passed tax reform bill.

We recognize that the negligible revenue score for this proposal poses procedural challenges in the context of accepting this House-passed provision in tax reform. *We are asking you to consider ways to address those challenges or to include this proposal in year-end, must-pass legislation because of its time-sensitive nature. As explained below, with every year that passes, more participants lose benefits by reason of the adverse effects of the current rules.*

Fixing unintended adverse impact of nondiscrimination rules on employers trying to continue to offer partially frozen DB plan benefits to participants. As the environment for sponsoring traditional defined benefit pension plans has become more challenging, many companies reluctantly have been compelled to modify the plans so that new employees hired after a certain date are not

eligible to participate. However, despite costs and complexities, many employers have tried to remain fully committed to their longer-term employees by enabling them to continue accruing additional benefits under the pension plan, for the duration of their employment. This practice is commonly referred to as a “closing” or a “soft or partial 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 longer-service 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 employer sponsor has 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) plan to make up for the loss of the defined benefit plan accrual.

Asking for your support of an appropriate legislative fix to the problem. The proposals at issue would very appropriately clarify that a plan that passed the nondiscrimination tests at the time it was closed will be deemed to pass the tests as long as it is not amended in any discriminatory manner and meets certain other conditions. This is the correct approach to solving this serious problem.

Based on data gathered from several major consulting and actuarial firms, more than 600,000 participants nationwide 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 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 this proposal 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.

Moreover, this issue is very time sensitive. Not all of the 600,000 or more participants affected by this issue will lose benefits this year or next year, but based on hard data, we estimate that tens of thousands of participants will lose benefits each year until this is fixed. Thus, the sooner we can fix this issue, the more benefits can be preserved for participants.

The Council, CIEBA and ERIC appreciate your leadership on this matter and encourage you to call upon us if we can be of assistance.

Sincerely,

American Benefits Council

Committee on Investment of Employee Benefit Assets

ERISA Industry Committee