December 6, 2018

The Honorable Mitch McConnell
Senate Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles E. Schumer
Senate Minority Leader
United States Senate
Washington, DC 20510

The Honorable Paul Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Ryan and Minority Leader Pelosi:

The undersigned organizations write in support of amending the nondiscrimination provisions of the Internal Revenue Code of 1986 to protect older, longer service participants in employer-sponsored pension plans. The amendment to law that we recommend would be based on the bicameral, bipartisan legislation found in the Retirement Security Preservation Act, introduced by Reps. Pat Tiberi (R-OH) and Richard Neal (D-MA) and Sens. Rob Portman (R-OH) and Ben Cardin (D-MD) (H.R. 1962/S. 852). In addition, these improvements are included in the tax legislation recently proposed by Ways & Means Committee Chairman Kevin Brady (R-TX), and we strongly encourage Congress to enact these essential reforms.

Many companies are transitioning from a defined benefit (DB) pension plan to a defined contribution (DC) pension plan. In the context of such transitions, it is not unusual for companies to grandfather some or all of the existing employees under the benefit formula in effect. A common example is to close a traditional DB pension plan to new workers (who often receive an additional contribution under the company's DC plan), while allowing existing employees to continue to participate in the plan. This is typically known as a "soft freeze". This type of freeze can help those existing employees realize very significant benefits that are provided by a DB formula late in an employee's career.

Since many employers have implemented a "soft freeze" in recent years, but provide grandfathering arrangements to protect longer service employees, these plans are confronted with the prospect of failing nondiscrimination testing requirements over time. Such failure is primarily due to the fact that, with attrition, the employees who remain covered under the DB plan become proportionately higher paid and, in general, have longer tenure under the plan.

Unfortunately, as a practical matter, in the vast majority of cases, the most workable solution to the testing problem described above is to "hard freeze" the plan so that no further benefits are earned. This is an unfortunate result for DB plan participants who will lose the most beneficial years for accruing benefits.

The legislative text offered recently by Chairman Brady provides an alternative solution that would modify the nondiscrimination rules to allow plan sponsors to protect current employees

when transitioning from a DB to a DC plan structure, though it does not include the most recent clarifying changes which are included in the stand-alone bills.

Specifically, under certain circumstances, if a group of employees is grandfathered under a DB plan (*i.e.*, allowed to continue to accrue a benefit after the plan is closed to new entrants) and that plan is permitted to be tested together with the DC plan on a benefits basis either when the DB plan was closed to new hires or at a later date, the DB plan would continue to be permitted to be tested in the same way permanently (unless the group or the benefit formula applicable to the group is changed in a discriminatory manner). This would prevent these frozen plans from unintentionally violating the nondiscrimination rules and thus effectively forcing the employer to stop all pension benefits.

We thank Congress for taking action on this important issue.

Sincerely,

American Benefits Council
Committee on Investment of Employee Benefit Assets (CIEBA)
National Association of Insurance and Financial Advisors (NAIFA)
National Association of Manufacturers (NAM)
The ERISA Industry Committee