

April 6, 2017

Dear Members of the U.S. House of Representatives and the U.S. Senate:

The undersigned organizations support H.R. 1962/S. 852, companion bills introduced by Representative Pat Tiberi (R-OH), Ranking Member Richie Neal (D-MA), Senators Rob Portman (R-OH) and Ben Cardin (D-MD), to amend the nondiscrimination provisions of the Internal Revenue Code of 1986 to protect older, longer service participants in employer-sponsored pension plans.

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 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 (1) remove some or all of the highly compensated employees from the DB plan, or (2) more likely, "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.

H.R. 1962 and S. 852 offer 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.

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.

The undersigned organizations encourage your support of H.R. 1962/S. 852.

Sincerely,

American Benefits Council
ArcelorMittal USA LLC
Caterpillar Inc.
Financial Services Roundtable
Finance Executives International (FEI)
The ERISA Industry Committee
Owens-Illinois, Inc.

Ford Motor Company
National Association of Manufacturers
Principal
Raytheon Company
Society for Human Resource Management
U.S. Chamber of Commerce