



★ ★ ★ ★ United States Senator for Ohio ★ ★ ★ ★
Sherrod Brown



Media Advisory

For Planning Purposes

Thursday, May 14, 2015

Contact: Meghan Dubyak/Rachel Petri

(202) 224-3978

**SEN. BROWN JOINS FINANCE COMMITTEE COLLEAGUES IN
URGING TREASURY TO MAKE SURE WORKERS ARE
PROTECTED FOLLOWING PENSION REFORM**

WASHINGTON, D.C. – U.S. Sen. Sherrod Brown (D-OH) – the ranking member of the Senate Finance Committee’s Subcommittee on Social Security, Pensions, and Family Policy – this week urged U.S. Treasury Secretary Jacob Lew to protect pension participants and retirees as the Treasury Department implements reforms to pension plans under the *Multiemployer Pension Reform Act of 2014*.

“Ohio’s workers, pensioners, and unions should always have a voice when it comes to their hard-earned retirement benefits,” said Brown. “As the Treasury considers proposed changes to multiemployer pension plans, we must preserve the voice of our workers and retirees in this process. That means ensuring that participants and retirees are fairly represented during the Treasury’s consideration of any changes that will impact them.”

Under the *Multiemployer Pension Reform Act* – legislation that Brown voted against – multiemployer pension trustees are now able to propose cuts to the earned benefits of participants and retirees if the plans are in “critical and declining” status. Pension trustees for plans in “critical and declining” status may submit an application for proposed benefit cuts to the Treasury. After the Treasury, the Department of Labor, and the Pension Benefit Guaranty Corporation (PBGC) approve the proposed cuts, participants vote to implement the cuts or block them. But even if the participants vote down the cuts, Treasury, Labor, and the PBGC can still approve the cuts for certain large plans.

In a letter to the Secretary Lew, Brown and the Senators asked that plan participants and retirees are protected as the Treasury begins its oversight of benefit suspension provisions of the *Multiemployer Pension Reform Act of 2014*. In particular, the Senators urged Lew to give retiree representatives adequate time to review documents and data related to the application and process; encourage plans with under 10,000 participants to appoint a retiree representative; give participants comprehensive and detailed information upon notice of benefit suspension; and provide clear and detailed information on the ballot used to vote on the proposal.

Text of the Senators’ letter is available below.

ORRIN G. HATCH, UTAH, CHAIRMAN

CHUCK GRASSLEY, IOWA
MIKE CRAPO, IDAHO
PAT ROBERTS, KANSAS
MICHAEL B. ENZI, WYOMING
JOHN CORNYN, TEXAS
JOHN THUNE, SOUTH DAKOTA
RICHARD BURR, NORTH CAROLINA
JOHNNY ISAKSON, GEORGIA
ROB PORTMAN, OHIO
PATRICK J. TOOMEY, PENNSYLVANIA
DANIEL GAYN, INDIANA
DEAN HELLER, NEVADA
TIM SCOTT, SOUTH CAROLINA

HON WYDEN, OREGON
CHARLES E. SCHUMER, NEW YORK
DEBBIE STABENOW, MICHIGAN
MARIA CANTWELL, WASHINGTON
BILL NELSON, FLORIDA
ROBERT MENENDEZ, NEW JERSEY
THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
SHERROD BROWN, OHIO
MICHAEL P. BENNET, COLORADO
ROBERT P. CASEY, JR., PENNSYLVANIA
MARK R. WARNER, VIRGINIA

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

CHRIS CAMPBELL, STAFF DIRECTOR
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

May 13, 2015

The Honorable Jacob Lew
Secretary of Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Lew:

We are writing to you regarding the benefit suspension provisions in the recently passed Multiemployer Pension Reform Act of 2014, which allow multiemployer pension plans under certain circumstances to reduce participants' and retirees' earned benefits. These reforms are unprecedented and, therefore, we ask the Treasury Department to take its role in overseeing the benefit suspension provisions very seriously. In particular, it is critical that you ensure that participants' and retirees' rights are protected. Accordingly, as Treasury develops guidance to implement the benefit suspension provisions, we ask you to consider the following.

Retiree Representative

Under Code section 432(e)(9)(B)(v), plan sponsors of multiemployer pensions with 10,000 or more participants must appoint a retiree representative no less than 60 days prior to submitting an application the Treasury Department for benefit suspensions. The purpose of the retiree representative is to ensure that retirees' voices are heard during the benefit suspension application process. However, 60 days does not provide the retiree representative with very much time to do its due diligence in representing retirees' interests appropriately, such as reviewing documents and data. Therefore, the Treasury Department should require plan sponsors to provide any relevant information, such as plan documents and data, to the retiree representative in a timely fashion.

In addition, to ensure that the retiree representative is selected fairly, we suggest that you require plans to disclose how such representative was selected. And to ensure that the retiree representative has the qualifications and time to effectively act as a representative, the Treasury Department should provide retiree representatives with technical assistance as needed.

Furthermore, even though the Treasury Department cannot require plans with less than 10,000 participants to appoint a retiree representative, to ensure that participants' and retirees' rights are protected, the Treasury Department should recommend and encourage such plans to also appoint a retiree representative when going through the benefit suspension process.

Initial Notice to Participants

Under Code Section 432(e)(9)(F), no suspension of benefits may be made unless notice of such proposed suspension has been given by the plan sponsor at the same time its application is submitted to the Treasury Department. This may be the first time that participants are learning about potential cuts to their earned pension benefits. Therefore, it is critical that this initial notice to participants provide comprehensive and detailed information. Under the voting ballot rules, the ballot must include statements in support and opposition to the benefit cuts. Likewise, it also is important that the initial notice be unbiased and simply provide the facts related to the financial status of the plan.

Furthermore, Code Section 432(e)(9)(F)(iii) provides that the initial notice may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided. The statute provides further that plans must take "reasonable efforts" to contact participants and beneficiaries. Again, many participants and retirees will be learning about potential cuts to their earned benefits for the first time with this notice. Therefore, it is critical that participants and retirees receive this notice. The Treasury Department should keep in mind the importance of this notice in determining what efforts and forms of the notice are reasonable.

Voting Ballot

The voting requirements and ballot under Code Section 432(e)(9)(H) are another means to educate participants and retirees about potential benefit cuts. As with the initial notice to participants, Treasury should require that the ballot include an individualized estimate of the effect of the cuts on each participant. Since plans are already required to include this individualized information in the initial notice, this additional requirement should not create a significant burden on plans. Also, as the ballot plays a key role in educating participants and retirees and the individualized information is critical information for the participant in making a decision on how to vote, it is important that this individualized information be included with the ballot as well. To make it easier on plan sponsors and to ensure that participants are provided with the appropriate information, we also recommend that Treasury develop a model ballot.

Additional Comments

In addition, we ask that you consider the following.

- Some basic information to orient participants is key at every stage of the application process. That is, each communication to participants should be comprehensive and not presume that the recipient has received, opened, read, or retained any previous communication. For example, as discussed above, once an individualized estimate of the effect of benefit cuts on each participant has been issued, it should be included in total, or at a minimum, in a meaningful stand-alone summary, in every subsequent communication.
- Before a plan proposes cutting benefits as provided under the new law, consistent with the requirements of Code Section 432(e)(9)(C)(ii), including subclause (III), Treasury should require plan sponsors to first take all reasonable efforts to cut adjustable benefits (e.g., early retirement subsidies) as permitted by the Pension Protection Act.

- Treasury should issue guidance under Code Section 432(e)(9)(D)(iii) providing that the pensions of disabled participants should never be cut, even if their entitlement to a pension is no longer based on disabled status, such as when the participant reaches normal retirement age.
- Under Code Section 432(b)(6), “critical and declining status” is based on projected insolvency within 15 or 20 years, but no standards for this projection are provided. Therefore, to assist plan actuaries in determining whether a plan is projected to become insolvent, Treasury should issue guidance, including specifics on what assumptions must be made.

In developing guidance to implement the benefit suspension provisions, it is critically important that the Treasury Department ensure that participants’ and retirees’ rights are protected. We ask that you respond to this letter by June 12, 2015. If you have any questions or need additional information, please contact Kara Getz at 202-224-4515. Thank you for your consideration of this important matter.

Sincerely,



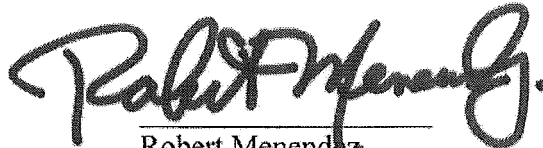
Ron Wyden
Ranking Member



Debbie Stabenow
Senator



Bill Nelson
Senator



Robert Menendez
Senator



Benjamin L. Cardin
Senator



Sherrod Brown
Senator



Robert P. Casey
Senator

Copy: The Honorable Thomas E. Perez, U.S. Labor Department
Alice C. Maroni, Chief Management Officer, Pension Benefit Guaranty Corporation