

via facsimile 202-224-4639

June 19, 2003

The Honorable Bill Frist
Senate Majority Leader
461 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Majority Leader Frist:

Several Senators have recently suggested that an amendment be added to pending Medicare legislation to prohibit employers who voluntarily provide health care coverage to retirees from reducing or terminating such coverage following creation of a Medicare prescription drug benefit. This “maintenance-of-effort” mandate will result in the opposite of its intended effect: it will cause employers to cease offering coverage entirely rather than risk having their voluntary benefit programs turned into mandatory, irrevocable financial liabilities. *On behalf of ERIC's* member companies, I am writing to strongly urge you to actively oppose adding any maintenance-of-effort mandate to the bill.*

1. *The proposed maintenance-of-effort mandate is based on the false premise that current law fails to ensure that retirees will receive the health benefits they have been promised under the terms of their benefit plans. In fact, current law already prohibits employers from reducing or terminating such coverage unless: (a) an employer expressly reserves the right to reduce or terminate coverage in the terms of the plan; and (b) the employer fully discloses, in accordance with the requirements of the Employee Retirement Income Security Act (ERISA), its right to reduce or terminate retiree health coverage. Congress should not abrogate plan provisions that legally reserved the right to modify the coverage offered.*
2. *It is fundamentally unfair to impose a “maintenance-of-effort” mandate on employers that voluntarily provided coverage in the absence of a Medicare prescription drug benefit when the vast majority of employers provide no retiree health benefits at all. Employers that provided prescription drug coverage to their retirees during the years when public policymakers abrogated their responsibility to do so should not be punished for voluntarily filling the void by being forced to continue to bear those costs even after Medicare prescription drug coverage is made available to the retirees of companies that never provided coverage.*

3. *A maintenance-of-effort mandate would have a profoundly anti-stimulus effect on affected employers.* Saddling employers with a maintenance-of-effort mandate would make them far less competitive in an already tough economic environment. The result would be lost stock value, lost jobs, and the potential for corporate bankruptcies on an unprecedented scale. Many of the companies that would be saddled with a maintenance of effort mandate compete globally and domestically with companies that do not now offer comparable benefits and have not offered them in the past. In order to meet the competition, companies that offer generous health benefits to their workers would be forced to reduce other employee benefits and compensation as well as export jobs overseas.
4. *Threatening employers with a maintenance-of-effort mandate would have a chilling effect on continued coverage for active employees, not just retirees.* Employers will continue to voluntarily offer health care coverage only if they have the flexibility to modify, reduce or terminate such coverage when changing economics or altered business conditions necessitate they do so. A retiree health maintenance-of-effort mandate sets a terrible precedent for voluntary employer-provided coverage generally, and would cause employers to rethink their willingness to provide coverage to active employees if doing so means they risk being locked into an irrevocable commitment at some point in the future.

In conclusion, the proposed maintenance-of-effort mandate creates a strong disincentive to the continued provision of retiree health coverage and has a chilling effect on employer sponsorship of many other benefits. Any steps Congress takes toward consideration or enactment of such legislation will precipitate the reduction, if not abandonment, of retiree health coverage by a significant proportion of the employers who offer such coverage to current or future retirees. Therefore, *we urge you to send a clear signal in support of voluntary employer-provided retiree health coverage by actively opposing any maintenance-of-effort mandate on employers.*

Sincerely,

Mark J. Ugoretz
President

** The ERISA Industry Committee (ERIC) is a non-profit association committed to the advancement of employee retirement, health, and welfare benefit plans of America's largest employers. ERIC represents exclusively the employee benefits interests of major employers all of which provide comprehensive retirement, health care coverage and other economic security benefits directly to tens of millions of active and retired workers and their families. The association has a strong interest in proposals affecting its members' ability to deliver those benefits, their cost and their effectiveness, as well as the role of those benefits in the American economy.*