

TEXT OF ERIC LETTER TO MEMBERS OF THE HOUSE OF REPRESENTATIVES:

Dear Representative:

For the following reasons, the ERISA Industry Committee (ERIC) urges you to vote against an amendment to the Transportation/Treasury Appropriations bill (H.R.2989) by Rep. Bernie Sanders (I-VT) and others to require certain regulations affecting defined benefit pension plans to comply with a questionable and controversial district court decision. In *Cooper v. IBM Personal Pension Plan* a federal district court recently held that IBM's cash balance pension plan violates the provisions of ERISA prohibiting age discrimination in retirement plans.

* The Sanders amendment abrogates the federal court process. The district court decision, which conflicts with the decisions of other courts, will be appealed. The Sanders amendment has the effect of asking Congress to express views favoring one decision without the benefit of consideration of other courts' views.

* The Sanders amendment abrogates the federal regulatory process. In particular it would impair the government's ability to resolve critically important issues regarding how our age discrimination laws apply to hybrid pension plans as well as to traditional defined benefit plans. The continued uncertainty in this field is harming workers. It makes it difficult for employers to sponsor pension plans such as hybrid plans that are suited to the modern workforce because they extend meaningful benefits to American workers throughout their careers and regardless of their career choices.

* The Sanders amendment abrogates the legislative process. It seeks to address a complex and technical pension policy issue through an appropriations bill and without benefit of hearings.

* The Sanders would undercut the basic design of hybrid plans -- ignoring the facts that more than 400 major employers sponsor such plans, millions of employees depend on them, and these plans hold 40% of all defined benefit plan assets invested in the U.S. economy.

* The Sanders amendment endorses the decision of a single district court that ignores the policy behind the age discrimination rules, the wording of the statute, the views of the IRS and Treasury Department, the considered opinions of other federal courts, and plain common sense in order to embrace an age discrimination test that others had rejected. Under the reasoning in the *Cooper* decision, 401(k) plans and even the Social Security system would be age discriminatory. Additional information on the *Cooper* case is available in an August 25 brief on the ERIC web site [www.eric.org].

We urge you to vote "no" on the Sanders amendment.

If you have questions about this matter, please do not hesitate to call.

Sincerely yours,

Janice M. Gregory
Vice President