

September 25, 2003

The Honorable Charles E. Grassley
Chairman
Committee on Finance
United States Senate
SD-219 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

We are writing in support of section 631 of S. 1, the Prescription Drug and Medicare Improvement Act of 2003. Section 631 would clarify that the Age Discrimination in Employment Act (ADEA) does not prohibit an employer from providing health benefits solely to pre-Medicare retirees or from providing different benefits to pre-Medicare retirees than to Medicare-eligible retirees.

Based on explicit legislative history, ADEA has for many years been recognized as permitting employers to provide health benefits solely to pre-Medicare retirees or to coordinate retiree health benefits with Medicare. This understanding of the law has been consistently relied on by employers, State and local governments, and unions. Then in 2000, in Erie County Retirees Association v. County of Erie, the Third Circuit disregarded that legislative history and held that pre-Medicare coverage provided to bridge the gap between retirement and Medicare eligibility violated ADEA. The result of the case was that the employer was forced to reduce benefits for pre-Medicare retirees without any increase in benefits for Medicare-eligible retirees. Section 631 would reiterate Congress' original intent and would prevent the Erie County case from retroactively changing the law.

As employer organizations and unions, we are united in supporting this provision because it would protect an employer's ability to provide critical health benefits to pre-Medicare retirees. Without section 631, we have grave concerns that employers will be forced to follow the result in Erie County, which was a reduction of benefits for pre-Medicare retirees.

The Equal Employment Opportunity Commission (the "EEOC") has recently proposed a regulation that would clarify the law in the same way as section 631 would. In the preamble to the proposed regulation, the EEOC very effectively explains the serious threat to retiree health coverage posed by the Erie County case. We support the proposed regulation, but recognize that the only way to permanently and clearly resolve this issue is through legislation.

Section 631 will not result in the reduction of benefits for Medicare-eligible retirees. Instead, section 631 will prevent a large decrease in coverage among pre-Medicare retirees.

We urge you to support the inclusion of section 631 in the conference on Medicare reform and prescription drug coverage legislation.

American Benefits Council
American Federation of Teachers
Business Roundtable
Employers' Coalition on Medicare
ERISA Industry Committee
HR Policy Association
National Association of Manufacturers
National Education Association
National Rural Electric Cooperative Association
U.S. Chamber of Commerce

September 25, 2003

The Honorable William M. Thomas
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
House of Representatives
Washington, DC 20515

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