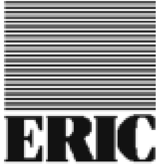

# The ERISA Industry Committee

***Representing the Employee Benefits Interests of America's Largest Employers***
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November 5, 2003

The Honorable Richard Shelby, Chairman
Subcommittee on Transportation, Treasury and General Government
Committee on Appropriations
United States Senate
133 Dirksen Senate Office Building
Washington, D.C. 20510
FAX: (202)224-4401 (Attn: Paul Doerrer)

The Honorable Ernest Istook, Chairman
Subcommittee on Transportation, Treasury and Independent Agencies
Committee on Appropriations
U.S. House of Representatives
2358 Rayburn House Office Building
Washington, D.C. 20515
FAX: (202)226-1463 (Attn: Kurt Conrad)

Dear Chairman Shelby and Chairman Istook:

RE: Sanders and Harkin Amendments to H.R.2989

The ERISA Industry Committee (ERIC) strongly urges that you delete from the conference agreement to the Transportation/Treasury appropriations bill (H.R.2989) amendments proposed by Representative Bernie Sanders (I-VT) and Senator Tom Harkin (D-IA) that would jeopardize the legal status and continued existence of pension plans covering more than seven million workers.

While the two amendments differ, both would have severe adverse consequences for workers in hybrid pension plans such as cash balance and pension equity plans. The Sanders amendment seeks to put Congress on record as favoring a single district court decision (Cooper v. IBM Personal Pension Plan) that is not a final judgment, that will be appealed, and that is out of step with the considered opinions of other federal courts, the policy behind age discrimination rules, the wording of the statute, the views of the Internal Revenue Service and the Department of Treasury, and plain common sense. The Harkin amendment seeks to prohibit the Treasury Department from completing work on regulations that make it clear that cash balance plans are not inherently age discriminatory and that create age discrimination standards for all forms of pension plans.

It is important to understand that the Sanders and Harkin amendments to H.R. 2989 do not focus on the issues that Members of Congress may have heard of regarding conversions of traditional pension plans to hybrid-plan designs. Instead both would

endanger the basic design of a hybrid plan – a design that has proved highly popular among millions of employees and that delivers meaningful and secure benefits to those employees whether they work for an employer for a few years or an entire career. Like other defined benefit plans, hybrid plans also offer guaranteed lifetime annuity benefits without placing any investment risk on participants.

The amendments will harm employees:

- If a cash balance plan were found to be age discriminatory, its tax-exempt status would be jeopardized – with the result that a participant's entire vested account balance could become immediately taxable. This is not an outcome that should be advanced through unexamined amendments on appropriations bills. In many instances, employees have actively chosen to participate in a cash balance plan instead of their traditional pension plan, and they are now concerned that their retirement security is being jeopardized. The employees in these plans deserve the protection of consideration through the established procedures available in the courts, the IRS, and the Congress.

- Hybrid pension plan designs have long been recognized as valid. The IRS issued determination letters to many of these plans beginning in the 1980's. When, in 1999, the IRS ceased issuing determination letters to these plans, it did so in order to review issues related to the plans, and the regulations proposed earlier this year were the next step in that process. Members of Congress, employers, individuals, and other interested parties have had the opportunity to present their views on the proposed regulations through written comments and in open hearings held by the IRS. The agency must now complete its work. If it does not, employers that voluntarily sponsor the more than 1200 hybrid plans in existence today will be exposed to enormous and totally unnecessary litigation.

- Exposing employers to legal and regulatory uncertainty and litigation in a situation where Congress has hobbled the rule-making process is unacceptable. These plans are voluntary. Many employers will have no choice but to exit the pension system. This will leave millions of employees with no retirement plan, or only with defined contribution retirement plans under which employees bear the investment risk. This would be ironic since in the past few years many employees have placed increased value on plans, such as cash balance plans under which the employer bears all the investment risk. Incenting employers to drop their defined benefit plans also would undercut the Pension Benefit Guaranty Corporation (PBGC) by further reducing the number of employers that sponsor these secure plans and pay the premiums that finance the PBGC.

For the reasons stated above, we strongly urge you to delete these amendments from H.R.2989. We would be pleased to respond to any questions you may have.

Sincerely,

Janice M. Gregory
Senior Vice President
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