Boehner and Gregg Letter to Secretary Snow

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Congress of the United States
Washington, DC 20515
June 24, 2003
The Honorable John W. Snow
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Secretary:

Last year we wrote to your predecessor, Secretary O'Neill, expressing our concern about the "whipsaw" effect of current law on cash balance pension plans. Over seven years ago, the Treasury Department issued Notice 96-8 requesting public comment on the informal guidance in anticipation of the publication of proposed regulations. However, the Treasury Department has yet to provide further guidance on this issue. We are writing to you to renew our concern and to urge the Treasury Department to deal promptly with the issue in order to resolve the unintended, negative effects of whipsaw on both employers and employees.

As you are aware, the whipsaw effect prescribed in Notice 96-8 concerns the proposed calculation required for lump sum distributions from cash balance pension plans. The proposed calculation described in Notice 96-8 appears to produce results that are illogical and contrary to federal law. The problem arises in the case of generous plan sponsors who offer greater interest credits in their plans, in order to calculate lump sums, and are penalized by the inflated payouts and potential age discrimination lawsuits resulting from the calculation. The absence of formal guidance has created such significant legal and financial uncertainty for employers thereby discouraging many not only from using a generous interest-crediting rate, but also establishing or maintaining cash balance plans.

Furthermore, the method in the notice systematically penalizes employees for waiting until retirement age to receive their benefits because the calculation produces a windfall result for younger workers. Though surely unintended, this nonetheless constitutes a discriminatory effect that should be immediately rectified.

The additional funding liabilities that Notice 96-8 creates imposes additional funding obligations on plan sponsors, which can only exacerbate the underfunding issues already present throughout the private pension system. Underfunding poses a threat to participants and beneficiaries, to the PBGC, and to the defined benefit pension system as a whole.

Given the unintentional results of Notice 96-8, we encourage the Treasury Department to withdraw Notice 96-8 and promptly issue regulations in order to provide employers with the certainty they need to offer cash balance plans for their employees. We believe the Treasury Department should prescribe a method that is consistent with federal law and gives employers adequate protections and incentives to provide meaningful retirement benefits to their employees.

It would be helpful to know when the Treasury Department will be proposing regulations on this subject. We thank you in advance for your attention to this pressing issue.

Sincerely,

John A. Boehner
Chairman
Committee on Education & the Workforce
Judd Gregg
Committee on
Health, Education, Labor and
Pensions
cc: Robert E.Wenzel, Acting Commissioner, Internal Revenue Service
Pamela F. Olsen, Assistant Secretary for Tax Policy
William F. Sweetnam, Benefits Tax Counsel
The Honorable Elaine Chao, Secretary of Labor