The ERISA Industry Committee

Advocating the Employee Benefits Interests of America's Largest Employers

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May 3, 2004

Dear Senator:

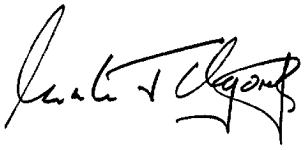
We are deeply concerned that S. 1637 (the "Jumpstart Our Business Strength Act of 2004") restrictions on nonqualified deferred compensation have gone much too far—and well beyond what is necessary to curb potential abuse.

Approximately 92% of Fortune 1000 Companies maintain nonqualified deferred compensation plans, up from 86% in 2002.[1] These plans are an integral part of the benefits and recruiting landscape for companies, and cover an increasing number of middle management employees.

As S. 1637 is debated this week, ERIC urges you to consider the attached modifications to these nonqualified deferred compensation provisions to protect employees' benefits and to allow employers to continue to maintain these arrangements.

Nonqualified deferred compensation plans provide valuable benefits to employees, to shareholders, and to our economy. They complement qualified plans and provide employees with additional options for compensation and retirement planning. We ask you to help preserve this important employee benefit by adopting the aforementioned amendments to this measure.

Sincerely,



Mark J. Ugoretz
President

[1] Clark Consulting, "Executive Benefits—A Survey of Current Trends (2003)". April, 2004.

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Proposed amendments to the nonqualified deferred compensation provisions of S. 1637, the "Jumpstart Our Business Strength Act (JOBS) of 2004"

- **Accelerate taxes only for those participants in the plan whose deferrals do not comply with the new rules.** As now written, the bill penalizes **all** plan participants even if **one** participant fails to comply with the new deferred compensation rules. The accelerated tax provisions should apply only to participants and deferrals that fail to comply with the new rules.

- **Amend the bill's limit on investment options to allow a nonqualified plan to provide investment options that are comparable to those provided by the employer's tax-qualified defined contribution plan with the greatest number of participants.** As now written, the bill would limit the investment options to those provided by the tax-qualified plan with the fewest investment options. For employers that sponsor a tax-qualified defined benefit plan, this means that their deferred compensation plans could not provide **any** investment options, since defined benefit plans typically do not have investment options. We do not believe that the drafters intended to penalize employers for maintaining a defined benefit plan for their employees.

- **Allow supplemental (or "mirror") plans to distribute benefits on the basis of the same schedule that applies to the benefits under the employer's tax-qualified plan.** Many deferred compensation plans "mirror" the employer's tax-qualified plan and are used to pay out those benefits that the Internal Revenue Code limits prevent the qualified plan from distributing. Because of the bill's rigid restrictions on benefit elections, these supplemental or "mirror" plans will not be able to function as intended. The bill's restrictions on benefit distributions should be reformed to allow these supplemental plans to mirror the operation of the employer's tax-qualified plan.