



**The  
ERISA  
Industry  
Committee**

**Sanders Pension Amendment to Transportation, Treasury Appropriations (H.R.5025)**

Dear Representative:

The ERISA Industry Committee (ERIC) urges you to vote against any of the three amendments (or any similar amendment) to the Transportation, Treasury Appropriations bill (H.R.5025) filed by Rep. Bernie Sanders (I-VT) and others regarding the application of the age discrimination statutes to pensions. The amendments (Nos. 5, 6, & 7; 9/13/04 *Congressional Record* page H7073-4) prohibit the use of funds under the bill to be used to assist in overturning the district court decision in *Cooper v. IBM*; to argue that any defined benefit plan (not just a cash balance plan) does not violate the age discrimination statutes; and to assist in overturning any ruling in an age discrimination suit (apparently even on behalf of a participant), respectively.

These ill-constructed and misguided amendments should be defeated:

- The primary impact of the Cooper decision is not to protect older workers – it is to declare illegal any pension plan that uses the “time value of money” in accruing benefits. Under the logic of the Cooper decision, 401(k) plans and Social Security benefits would be age discriminatory. The Sanders amendments would endorse this questionable and controversial stance.
- The Sanders amendments abrogate the federal court process. The Cooper v. IBM decision is at variance with three other court decisions, one of which was issued after Cooper and which specifically repudiates the approach taken in Cooper. Two of the proposed amendments would muzzle the government’s voice in cases that do not even involve cash balance plans or the issues raised by Cooper.
- The Sanders amendments abrogate the legislative process. Thoughtful Members of Congress on the Committees of jurisdiction are working hard to develop rules for hybrid (cash balance) pension plans that will be fair and that will ensure the future existence of defined benefit plans. These amendments would prejudge that discussion and debate.
- The Sanders amendments endanger the retirement security of American workers. The future existence of defined benefit plans hangs in the balance. Years of burdensome rules have driven many employers away from offering defined benefit pensions – which provide employees a secure retirement income. Changing business conditions such as more mobile employees, more women in the workforce, and the need for businesses to move into new products and new fields have made traditional defined benefit plans less useful in some industries. Hybrid plans are the only hope of retaining a secure retirement for employees in these industries.

The Transportation, Treasury appropriations bill is the wrong place and the wrong time to address the issue of hybrid plans. We urge you to vote “no.”

Sincerely yours,

Janice M. Gregory  
Senior Vice President