

THE ERISA INDUSTRY COMMITTEE

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Advocating the Employee Benefit and Compensation Interests of America's Major Employers

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Dean Clancy
Associate Director
Human Resource Programs
Office of Management and Budget
Executive Office Building Room 357
Washington, DC 20503

Dear Dean:

Thank you for meeting with us today regarding the EEOC's regulation to remedy the negative consequences of the Third Circuit's decision in *Erie County Retirees v. Erie County*. ERIC strongly supports the EEOC regulation which is now before the OMB for final approval. We urge that you approve EEOC regulation.

As we discussed, AARP representatives, at a recent meeting called by CMS that included business groups and organized labor, argued, contrary to the EEOC proposed regulation, that employers should be mandated to provide benefits to Medicare-eligible retirees that are at least equal (after taking into account Medicare) to the benefits they provide to pre-Medicare-eligible retirees. The AARP representatives contend that, if faced with such a mandate, employers that provide only Medicare "bridge" benefits to their pre-Medicare-eligible retirees will respond by increasing the benefits they provide to their Medicare-eligible retirees. That position was opposed by both the business and labor groups at the meeting.

The AARP representatives' claims are unrealistic: their predications about employer behavior are way off the mark. If employers were required to comply with the AARP's proposed mandate, employers would have little choice but to reduce benefits for pre-Medicare-eligible retirees, not increase the benefits they provide to Medicare-eligible retirees. The AARP's proposed mandate would significantly accelerate the retreat of the already diminishing number of employers offering retiree health benefits at a time when we should be finding ways to encourage employers to offer those benefits, including a prescription drug benefit. The AARP position is not merely bad law, it is bad policy.

The facts make this clear. For years, rapidly escalating health costs have endangered retiree health plans and have discouraged employers from offering these plans nationwide. Since the 1980s, there has been a substantial decline in the percentage of employees covered by employer sponsored retiree health plans. With the aging of the baby boom generation, the number and proportion of Americans potentially affected by a decline in employer sponsored health plans is increasing.

In view of the fragile condition and increasing cost of retiree health benefits, there can be no doubt that employers would respond to the mandate proposed by the AARP by cutting back on retiree health benefits or by ceasing to provide retiree health benefits altogether. Clearly, in view of the cost pressures on employers, employers would curtail or eliminate retiree benefits, not increase them. For example, when the *Erie County* case was settled, Erie County's health plan for pre-Medicare retirees was downgraded. The losers were retirees not yet eligible for Medicare and who were forced to either buy additional coverage or go without, while those who were eligible for Medicare gained little if anything.

The last thing the Nation's health system needs is an additional incentive for employers to reduce or to cease providing retiree health benefits. The last thing retirees need is yet another threat to their medical security in retirement. An employer mandate would drive employers out of the retiree health system, harm retirees, weaken public health, and subvert the public interest. For these reasons, and those expressed in our submissions to the EEOC, we urge that OMB approve the EEOC regulation and that it be promulgated as soon as possible.

For your convenience, I am enclosing a copy of the comments that ERIC filed with the EEOC regarding the proposed amendments to its regulations. If you have any questions about our submission, or if you would like to discuss this issue further, please feel free to call me at any time. Again, thank you for your time and your consideration. With warm regards,

Sincerely

Mark Ugoretz
Enclosures

ERIC Submission to EEOC; Sept 12, 2003
ERIC Letter to EEOC; April 21, 2004

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