The ERISA Industry Committee

Representing the Employee Benefits Interests of America's Largest Employers

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RE: Legislation Affecting Hybrid Defined Benefit Pension Plans July 22, 2005

Dear Senator:

Unless Congress acts to confirm comprehensively (for the past, present, and future) that hybrid pension plans, such as cash balance and pension equity plans, are and always have been lawful, approximately one quarter of the participants in defined benefit pension plans will be in danger of losing their plans in the near future. A prospective-only clarification of the law, which some have proposed, significantly increases the risk that existing hybrid plans, covering some 8.4 million workers, will be suspended or terminated.

Until recently, hybrid plans had been the favored option for employers who wanted to establish defined benefit plans, or to modify their existing plans, to address the 21st Century needs of employers and employees, including many older employees, short-service employees, and employees, many of who are women, who interrupt their careers to raise a family or assist an aging parent. Because hybrid plans provide portable defined benefit pensions that employees earn automatically without having to make contributions and that protect employees against investment risk, hybrid plans also enjoy the strong support of an increasing number of employees. Importantly, they offer the option of receiving benefits as an annuity that protects the retiree against the threat of outliving his or her retirement benefits. Recently, however, such plans have been thrown into uncertainty due to litigation.

A single district court adopted a line of argument that had been rejected by every other district court that had considered the issue and which was subsequently repudiated by another district court. That court argued that hybrid plan designs were unlawful because, in essence, the time value of money is age-discriminatory. But if this were so, any indexed benefit such as social security benefits, any plan (such as a 401(k) plan) that provides benefits that grow with investment earnings, , and even an interest-bearing savings account could be considered age-discriminatory. This is not a credible argument, and legislation confirming the lawfulness of hybrid plans -- prospectively and retroactively -- is entirely appropriate and desirable.

If Congress enacts legislation that confirms the lawfulness of hybrid plan designs only on a prospective basis, there is a significant risk that -- regardless of any "no inference" language that might be included -- a court will infer from the prospective effective date that the law was different (and less hospitable to hybrid plans) in the past. The liability exposure is significant. In order to comply with such a ruling, employers could be required to ramp up benefits dramatically for older employees. Instead of crediting, for example, 5% of pay for each employee regardless of age, a plan that credits 5% of pay for a 25-year old could be required to credit 100% of pay for a 65 year old.

Exposure to such potential liabilities explains why affected employers are deeply concerned about the prospect of legislation that addresses the lawfulness of hybrid plans on a "prospective-only" basis. Even if employers ultimately win their cases, they would still have to endure expensive and unwarranted litigation. For many, the prudent course will be to suspend or terminate their plans. This would be an unnecessary and tragic result that benefits no one.

We strongly urge Congress to affirm the design of hybrid plans so that employers will be able to continue to offer both new and existing plans that provide valuable and secure benefits to their employees.

Sincerely,

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