Representing the Employee Benefits Interests of America's Largest Employers
1400 L Street N.W., Suite 350, Washington, D.C. 20005
phone 202-789-1400 / fax 202-789-1120 / e-mail eric@eric.org

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RE: PENSION FUNDING LEGISLATION (S.1783)

Dear Senator:

The Senate is expected soon to consider legislation (S.1783) that re-writes long-standing funding rules for defined benefit pension plans. The legislation combines aspects of bills approved earlier by the Finance Committee and the Health, Education, Labor and Pensions Committee. The resulting bill will have a dramatic impact on the ability of employers to sponsor pension plans in the future and on the retirement security of tens of millions of workers. This is a large bill, and we will have additional comments as we further analyze it. However, some issues, outlined below, are of immediate concern.

S.1783 incorporates important safeguards that allow employers to put extra money in their plans during good times in order better to weather downturns such as the economy experienced a few years ago. Specifically, S.1783 provides that an employer can make larger contributions on a deductible basis than is the case under present law. S,1783 also provides that money contributed in advance of the time a contribution is required can be used to offset that required contribution when it comes due. Both of these important provisions are essential to creating a framework that encourages soundly funded pension plans in the future.

S.1783 contains other provisions, however, that will be entirely counterproductive and make it difficult, and in some cases impossible, for employers to establish and maintain these vital and secure pensions for their employees.

Funding rules must result in predictable, rational and stable funding over time.

An employer must be able to anticipate required pension contributions several years into the future in order to plan its business investment and operations. Required contributions also cannot be too volatile; otherwise they will be too difficult to accommodate in cash flow operations of the business. To determine the amount of money an employer must contribute to its pension plan, assets in the plan are compared to the estimated liabilities of the plan. S.1783 would compute required contributions using asset values averaged over only 12 months and liabilities calculated using an interest rate also averaged over only 12 months. This simply is too short a time to provide any meaningful predictability to the business – and it also will result in very volatile funding requirements. The potential for dramatic and unpredictable upticks in funding will play havoc with business investment planning and will result in fewer and fewer pension plans being maintained in the future. The bill approved by the Senate should follow instead the three-year averaging provisions that were included in the HELP Committee bill, which themselves substantially shorten the averaging periods allowed under present law.

A plan's liability must not be linked to the credit rating of the sponsoring employer.

S.1783's proposal to impose a higher liability calculation on plans sponsored by an employer with a below investment grate credit rating is off point and likely to set off the death-spirals and plan terminations it seeks to avoid. For a company that drops below investment grade, the proposals will impose sharp cash calls at precisely the wrong time – endangering both the plan and the company. The company's credit rating does not determine whether the company's pension plan is adequately funded. Most companies that are below investment grade never pose any threat to the PBGC. In some instances, a company's credit rating reflects the rating companies'

views of the industry and does not reflect the soundness of a particular company. Moreover, the methods used by the credit companies to set their ratings are far from transparent and are under scrutiny in Congress and elsewhere in the government. Pension plans should not be held hostage to a measuring mechanism that is both unrelated to the plan and under scrutiny. If an "at risk" liability is to be imposed, it should be based solely on the funded status of the plan, should be reasonably constructed, and should avoid excess charges of any sort. The Senate should substitute the provisions of the HELP Committee bill, which imposes "at risk" liability on plans that are less than 60% funded, for those in S.1783.

Increased funding requirements must be phased in gradually.

Under current law, plans that are funded at a 90% or higher level are not required to make deficit reduction contributions in recognition of the facts that (1) plans funded at this level are well able to meet their benefit obligations and (2) some fluctuation in the funded status of plans is entirely normal. S.1783 sets a new, 100% funding standard. If companies are asked to meet this new standard too quickly, they will be faced in the near term with sharp, unrealistic, and – since these plans are solid and well funded – entirely unnecessary cash calls. Pension plans will be frozen and jobs lost due to an unsound national policy. S.1783's three-year phase-in is simply insufficient to avoid these unnecessary and harmful consequences. The Senate should replace this with a longer phase in period. The HELP Committee bill phased in the higher target over a 10-year period (limited to plans not making deficit reduction contributions). This is an entirely rational approach for plans that pose no threat to participants, the PBGC, or the taxpayer.

The ERISA Industry Committee (ERIC) has long supported rules that support sound funding of pension plans. Such rules both must ensure that plans are well funded over time and must accommodate the realities of operating a business. ERIC has crafted comprehensive recommendations to address issues raised by recent events (see www.eric.org). We would be please to discuss these issues with you in more depth.

Thank you for your consideration of our views. If you have questions, please contact us.

Sincerely,

Janice M. Gregory
Senior Vice President
jgregory@eric.org