



The ERISA Industry Committee

Representing the Employee Benefits Interests of America's Largest Employers

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Dear Senator/Representative:

An amendment added to the Transportation-Treasury appropriations bill (H.R.2989) will endanger the pension benefits of over 7 million American workers. The amendment must be modified before the bill is enacted.

The amendment has the practical effect of calling into question the legality of over 1200 hybrid design (cash balance) pension plans. These plans are provided voluntarily by employers, many of whom already are considering freezing or terminating their plans because of the legal uncertainties surrounding them.

After long and careful study and extensive public comment and hearings, the Treasury Department has been developing regulations that describe how the age discrimination laws apply to all pension plans, including hybrid plans. Proposed regulations, issued last December, stated that the basic design of a cash balance plan did not violate the age discrimination laws.

The amendment to H.R.2989, originally proposed by Sen. Tom Harkin (D-IA), prohibits the publication of final regulations. As modified by the conferees, the amendment also requires the Treasury Department to make legislative recommendations concerning conversions of traditional pension plans to hybrid design plans.

Because the amendment prohibits the publication of final regulations – which were focused primarily on basic plan designs and not on conversions – courts could construe Congress's action to mean that Congress doubts that hybrid plans are permissible under age discrimination laws. It is intolerable and irresponsible for Congress to create the unfounded and unintended impression.

Cash balance plans are legitimate employee benefit programs that provide secure retirement benefits where the employer bears the investment risk. Regardless of the views that members hold on conversions, Congress must avoid casting aspersions on the basic design of cash balance and other hybrid plans if Congress does not want to cause the loss of guaranteed, employer-provided retirement benefits that are highly valued by the vast majority of employees participating in these plans.

Congress should amend the appropriations bill by deleting the prohibition on issuing regulations – or at least by adding language that makes it clear that Congress does not question the basic design of hybrid plans. Draft language that would accomplish this objective is attached.

If you would like to discuss this important issue further, please contact us at your earliest convenience.

Sincerely,

Janice M. Gregory, Senior Vice President

The ERISA Industry Committee

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