



**Summary of Testimony**  
**by James M. Delaplane, Jr., American Benefits Council,**  
**for the June 7, 2005, Senate HELP Retirement Security Subcommittee**  
**Hearing on Hybrid Plans**

The defined benefit pension system helps millions of Americans achieve retirement security by providing employer-funded retirement income (\$119 billion in 1999). Yet we have seen an alarming decline in defined benefit sponsorship and today is a particularly precarious time for these plans.

Hybrid plans (cash balance, pension equity) are defined benefit plans that also incorporate attractive features of defined contribution plans. While offering the security of employer funding and federal insurance guarantees, hybrids show account balances, are portable, and provide a more even benefit accrual pattern across a worker's career. Nearly 80% of employees build higher retirement benefits under a hybrid than a traditional defined benefit plan of equal cost.

Cost reduction is neither the rationale nor the result in most hybrid plan conversions, and employees' earned benefits are protected under current law. Moreover, employers devote significant resources to transition benefits for the longer-service employees who may not accrue as much going forward as under the traditional plan.

Disregarding a wide range of legal authorities, one federal district judge declared in July 2003 in the case of *Cooper v. IBM* that the hybrid plan designs were inherently age discriminatory. According to the court's flawed logic, simple compound interest is illegal in defined benefit plans. While the *Cooper* decision is an isolated one, and there is clear and significant authority to the contrary concluding that hybrid plans are age appropriate, *Cooper* has led to copycat class action lawsuits and exorbitant damage claims against other employers. Employers are extremely anxious about the crippling effects of such lawsuits with their potential damage awards that run into the billions. Absent congressional action, many hybrid plan sponsors are likely to find these risks unbearable and will freeze or terminate their plans. This would be a disastrous result for the more than seven million employees and their families who rely on these plans.

It is important to note that most hybrid plan sponsors are financially strong companies in healthy industries and that these companies pay premiums to the PBGC. If they are forced to exit the system, the loss of premiums would aggravate PBGC's long-term financial challenges.

The most important step for Congress to take -- and to take quickly -- is to clarify that the cash balance and pension equity designs satisfy current age discrimination rules. Congress must make clear that the isolated legal interpretation holding these designs discriminatory merely because the accounts of younger workers have more years to earn interest is unfounded. Congress should also offer legal protection for past hybrid conversions and remedy a number of hybrid uncertainties that have frustrated pro-employee plan design features. Finally, Congress should avoid imposing benefit mandates on hybrid conversions that would guarantee future retirement plan benefits and prevent employers from changing their benefit programs. Such legal enshrinement of mere expectations would be a fundamental departure from the rules of our voluntary benefits system and would only drive employers out of system.