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BRETT LOPER,
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September 19, 2007

Employers should not be penalized for providing "greater of" transition pension benefits to their employees

Dear Colleague:

The 1990s gave us a period of significant transition in the pension world. Many employers reevaluated how they were delivering pension benefits to their workers, and looked for ways to offer these benefits in a more employer-employee friendly arrangement.

Many employers examined the legacy costs of traditional defined benefit pension plans and began to look for more sustainable alternatives. Younger employees expressed a desire to have access to a pension benefit that rewarded all of their years of experience rather than staying with one employer for 25 or 30 years before they could secure a meaningful pension. In addition, younger workers wanted their retirement benefits delivered through a portable plan they could transfer from employer-to-employer. Moreover, employers who offered traditional pension plans were seeking ways to compete in the area of providing retirement benefits to their workers without switching to a defined contribution plan (most commonly the 401(k) plan).

The conversion of traditional defined benefit plans to cash balance or other hybrid plans brought much dissertation in the pension community. Employers who converted their traditional pension plans adopted varying plan designs and transition arrangements. Some transition formulas were more desirable for the workers than others. Among the transition formulas was one referred to as the "greater of." Under this benefit formula, the employee's benefit was calculated separately under the formula for the traditional pension plan and the cash balance or hybrid pension plan. The employee's pension benefit was the greater of the two computations. Many employers adopted this "greater of" transition benefit design to protect the retirement benefits of the longer-service older workers, as it provides workers with the most generous pension benefit during the transition period.

After enactment of the Pension Protection Act of 2006 (PPA), the Internal Revenue Service resumed issuing requested determination letters by plan sponsors who had converted to a cash balance or other hybrid pension plan from as early as the mid- 1990s. A moratorium was imposed on issuing determination letters in this area in late 1999. It has come to our attention that the Internal Revenue Service (IRS), in initiating its process for issuing determination letters on plan conversions, has adopted a position that could put many of these plans in jeopardy. The Service's position would hold that the "greater of" benefit design is in violation of the anti-backloading rules set forth in Section 411(b)(1)(B) of the Internal Revenue Code. These rules exist to ensure that worker benefits vest as required by the Employee Retirement Income Security Act of 1974 (ERISA) and that these benefits are not substantially backloaded in the participant's last years of service under the plan.

The "greater of" plan design is not intended to be end-run around the ERISA vesting rules. On the contrary, the benefit formula was adopted by employers who wanted to make sure that their long-term workers were treated fairly in the transition from one type of pension plan to another plan. This benefit formula was encouraged during the height of plan conversions and was hailed as a "best practice."

We urge the Department of the Treasury and the IRS to reconsider their position on this issue. We strongly believe that employers should not be penalized for doing what was one of the best things for their employees as far back as 15 years ago. Employers who provided this benefit for their employees, believing they were being more generous than they could have been, should not be put in a worse position than employers who adopted no such standard. The plans of the employers who adopted the "greater of" transition benefit formula should be ruled to be on-going qualified pension plans. Neither the employers nor their participating employees should not be subject to the undesirable tax consequences of plan non-qualification.

Attached please find a letter we will send to Treasury Secretary Henry Paulson. Please let us know if you would like to cosign this letter by contacting Mildeen Worrell at 5-5522 or Libby Coffin at 5-4021.

Sincerely,

Charles B. Rangel
Chairman

Jim McCrery
Ranking Member