

September 7, 2005

The Honorable Michael B. Enzi
Chairman
Committee on Health, Education, Labor,
and Pensions
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The undersigned organizations, representing the broad spectrum of large and small employer retirement plan sponsors and retirement plan service providers, believe that the best way to protect pensions for future retirees and working Americans is for Congress to address the status of hybrid defined benefit plans (cash balance and pension equity plans). In order to preserve the retirement security of millions of Americans and the solvency of the Pension Benefit Guaranty Corporation, it is essential that Congress comprehensively clarify that the design of hybrid plans is not age discriminatory.

Moreover, we strongly oppose proposals that would, in effect, retroactively place mandates on how companies converted to hybrid plans. As you are aware, a multitude of conversion methods were used as individual companies tailored conversions to best benefit their workforce. Thus, the law should not retroactively create winners and losers, nor should Congress seek to retroactively create new law. This approach would have real and negative implications beyond hybrid plans. If Congress changes the rules retroactively – and thus puts companies at new risk of litigation for actions the company took that were legal at the time they were taken – corporate benefit directors, general counsel and HR executives are not going to feel comfortable about any of the company's benefit programs -- healthcare included, which is at a critical stage in terms of continuing employer support.

Finally, a litigation carve-out would have several negative consequences including an unfair treatment of companies that have been sued, encouraging litigation and possibly a “rush to the courthouse” against companies that have converted but have not yet been sued as well as setting a precedent for future carve-outs in the benefits area and forcing companies to cap liabilities by freezing their plan.

We again urge Congress to comprehensively clarify that the design of hybrid plans is not age discriminatory. We appreciate your continued support of the defined benefit plan system and strongly urge you to maintain the vitality of this system with legislation that clarifies the validity of the design of hybrid plans but does not include specific conversion requirements or a litigation carve-out.

Sincerely,

American Benefits Council
Business Roundtable
The ERISA Industry Committee
HR Policy Association
National Association of Manufacturers
National Mining Association
Profit Sharing / 401k Council of America
U.S. Chamber of Commerce