

## United States Senate

WASHINGTON, DC 20510

August 1, 2007

The Honorable Henry M. Paulson, Jr.  
Secretary of the Treasury  
Main Treasury Building, Room 3330  
1500 Pennsylvania Ave.  
Washington, DC

Dear Secretary Paulson:

We write to express concern about views enumerated by several colleagues in a May 8<sup>th</sup> letter regarding cash balance plan provisions contained in the Pension Protection Act (PPA). We recognize the importance of guidance on issues involving hybrid pension plans, including cash balance plans, and we concur that such issues must be addressed in a manner consistent with Congressional intent. It is therefore essential to understand that the Pension Protection Act struck an accommodation with respect to such plans. Congress intended that these reforms were to apply solely on a prospective basis.

A clear example is the Act's resolution of the "whipsaw" issue for hybrid plans. Sections 701(a)(2) and (b)(2) of the Act set guidelines for the calculation of lump sum distributions. In Section 701(e)(2), however, Congress specified that these rules would apply only to distributions made *after* the effective date of the Act, and thus would not apply to pending cases involving alleged underpayments of lump sum distributions made prior to the Act's effective date. In addition, Section 701(d)(2) of the Act contains a "no inference" clause, expressly prohibiting the drawing of any inference from the Act with respect to pre-Act events or conduct.

Congress' intent that the new rules would apply only to distributions made after the Act's effective date — and thus would not apply to pending cases involving alleged underpayments of pre-Act distributions — is plainly stated in the legislative history. For example, the ranking member of the Senate Finance Committee, Senator Max Baucus, said, "We have dealt with the law going forward. We intend no inference to what the rules were prior to enactment. We will leave the past to the courts."

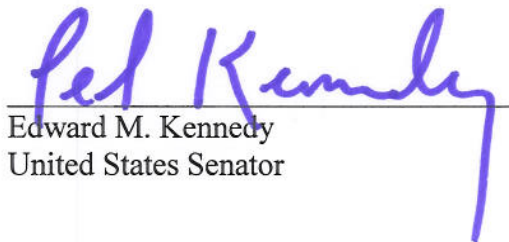
The recent court decision in *West v. AK Steel Corp. Retirement Accumulation Pension Plan* correctly construed the Act's prospective application. The district court ruled that the retirees' lump sum distributions had been miscalculated, and ordered monetary relief in the amount of the underpayments. Despite the fact that the initial distributions were clearly made before PPA's enactment date, on appeal, AK Steel argued that "any monetary relief paid to West and the other class plaintiffs would be a 'distribution' made after August 17, 2006," and therefore subject to PPA's new rules. The Court of Appeals rejected AK Steel's argument concluding that "[c]haracterizing the damages award in the present case as a distribution subject to the parameters of the PPA would make the PPA effectively retroactive despite specific language in the statute to the contrary."

The Court of Appeals correctly construed the Act's effective date and no-inference clause, and applied them in accordance with Congressional intent. This prospective-only application was an integral part of the Pension Protection Act, and must be incorporated into any guidance issued concerning the application of the Act.

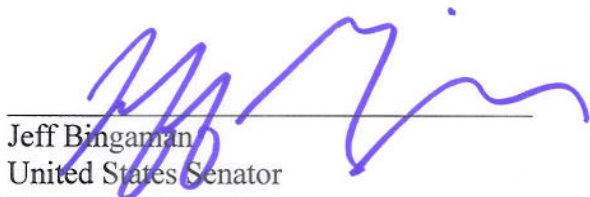
Sincerely,



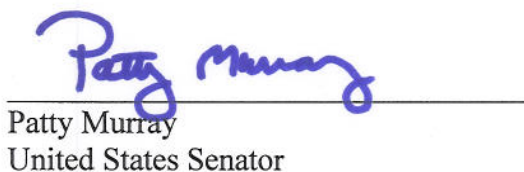
Sherrod Brown  
United States Senator



Edward M. Kennedy  
United States Senator



Jeff Bingaman  
United States Senator



Patty Murray  
United States Senator



Tom Harkin  
United States Senator



Barbara A. Mikulski  
United States Senator