



April 6, 2006

ACTION REQUESTED: Vote "no" on the motion to instruct conferees to adopt Senate provisions on hybrid pension plans.

BACKGROUND: On April 6, members of the House of Representatives will be asked to vote on a Motion to Instruct the Conferees, who are currently reconciling pension legislation, which would direct conferees to accept the Senate bill's (S. 1783) provisions on hybrid pension plans. The Senate provisions are prospective only and propose onerous new mandates on plan sponsors maintaining hybrid plans, which would discourage their establishment and increase plan freezes.

- It is critical that comprehensive legislation clarify the law for all employers, including those that in good faith reliance on the law voluntarily established such plans. These plans can have the exact same type of benefit structure regardless of whether they have been sued. It would not be fair or appropriate to treat a plan or company differently purely on the basis of whether they have been sued.
- Hybrid plans provide contribution credits or other benefits that are a uniform percentage of pay (such as 5% of pay) or that are actually larger for older, longer service employees. Employees participating in hybrid plans and employers need Congress to clarify that it is not age discriminatory to contribute the same percentage of compensation (or an increasing percentage based on age) on behalf of all plan workers. There are at least 8.5 million Americans participating in more than 1,500 existing hybrid plans.
- If Congress clarifies the validity of hybrid plans, all employees will receive exactly what they were promised. Nothing earned is taken away.
- The plaintiffs in the hybrid plan litigation are seeking windfalls that are far greater than any benefits ever promised. Such windfall awards would lead to more plan freezes.
- The Treasury Department has repeatedly recognized the validity of hybrid plans by issuing guidance as to how they work and by approving large numbers of individual plans. And with one exception, hybrid plans have been held valid by the courts.
- The vast majority of employers have provided very significant transition benefits in connection with conversions. In fact, many recent hybrid conversions have actually increased the employer's retirement plan costs.
- The House approach more thoughtfully focuses on the legitimacy of the hybrid plan design without precluding plaintiffs from pursuing their legal rights.
- **It is a voluntary system.** Companies have been leaving the defined benefit plan system at an accelerating rate. If costly new mandates are added to plans, either retroactively or prospectively, it will increase these departures and thus severely hurt workers.