



AMERICAN BENEFITS COUNCIL

October 10, 2014

The Honorable Tom Harkin
Chair
Senate Committee on Health, Education,
Labor and Pensions
SD-428 Dirksen Senate Office Bldg.
Washington, DC 20510

The Honorable Lamar Alexander
Ranking Member
Senate Committee on Health, Education,
Labor and Pensions
SD-428 Dirksen Senate Office Bldg.
Washington, DC 20510

Re: S. 2511, Legislation Amending ERISA Section 4062(e)

Dear Chairman Harkin and Ranking Member Alexander:

On behalf of the American Benefits Council, I am writing to commend you for your leadership with respect to Senate passage of S. 2511, clarifying the application of Section 4062(e) of the Employee Retirement Income Security Act. Basically, Section 4062(e) requires companies to post security with the Pension Benefit Guaranty Corporation (PBGC) in the event the company shuts down a major facility and, as a result, lays off a substantial portion of its workforce.

While the purpose of Section 4062(e) is laudable, its enforcement (e) has been a longstanding problem that has undermined the willingness of companies to continue maintaining pension plans. It has interfered in a very material way in business transactions that are unrelated to pension issues. For example, plan sponsors have been compelled to pay large amounts under Section 4062(e) when a small business unit has been sold although no employee layoffs resulted, and can be compelled to pay such amounts when a facility is temporarily closed due to re-tooling or repairs. These are not circumstances Section 4062(e) was enacted by Congress to address. Moreover, the rules as recently enforced have also imposed liabilities on employers that are disproportionate to the size of the transactions in question.

The bill you sponsored that has passed by the Senate would very effectively address these problems, thus removing a disincentive to maintain a plan and eliminating an

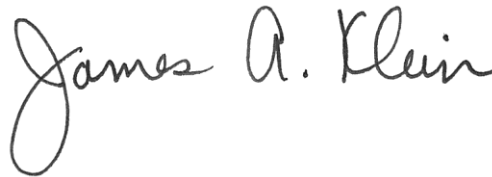
inappropriate penalty on business transactions that are intended to strengthen companies and the economy.

At the same time, your bill would preserve important protections for the PBGC. By fixing one problem that has contributed to the departure of companies from the pension system, you are taking an important step in addressing a serious threat to both the pension system and the single employer program at PBGC. That threat is a substantially reduced premium base for the PBGC and correspondingly less retirement security for millions of employees that would result from companies being effectively encouraged to exit the system because of increased unpredictability, regulatory burdens and costs.

We also want to applaud you for this great example of bipartisanship. There is often insufficient appreciation for bipartisanship achievements like this one. You both identified a problem and worked closely with all stakeholders to draft and pass a consensus bill that serves everyone's interests. That is exactly the way government is intended to work. We cannot thank you enough for your leadership on this issue.

We look forward to working with you toward enactment of this important legislation, hopefully when Congress reconvenes in November.

Sincerely,

A handwritten signature in black ink that reads "James A. Klein". The signature is written in a cursive style with a large, looping initial "J".

James A. Klein
President