

# United States Senate

WASHINGTON, DC 20510

Honorable Timothy J. Geithner  
Secretary  
United States Department of Treasury  
1500 Pennsylvania Avenue  
Washington, D.C. 20220

Honorable Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

February 14, 2011

Dear Secretary Geithner and Commissioner Shulman:

We understand that the Internal Revenue Service intends this year to issue guidance regarding the process for determining that a pension plan is a “church plan” not subject to the Employee Retirement Income Security Act of 1974 (“ERISA”). We write to encourage the Service to ensure that such guidance protects workers and retirees who may be adversely affected if a plan is re-designated as a church plan and, as such, is stripped of the protections afforded by ERISA. Additionally, we note our strong concerns with the possibility that the Service might (1) interpret the term church plan very broadly in the context of plans attempting to convert from being ERISA-covered plans to church plans exempt from ERISA and (2) merely require converted plans to disclose to participants the loss of benefits they had counted on receiving, which does not seem sufficient redress for plan participants.

The protections put in place by ERISA are critical to the retirement security of working Americans. ERISA helps to ensure that employers are able to make good on their pension promises, plan participants are treated fairly, and pension plan assets are managed prudently. ERISA-covered plans also are insured by the Pension Benefit Guaranty Corporation (“PBGC”). Given the importance of these protections and the clear intent of Congress to create an expansive regulatory scheme, exceptions to ERISA should be construed narrowly and in the best interest of workers and retirees.

We are increasingly concerned that some companies with pension plans initially covered by ERISA may be seeking a determination that they are church plans so as to opt out of ERISA, only to have their plans become insolvent and leave employees and retirees with virtually nothing. For example, a number of major media outlets have reported that the pension plans sponsored by the Hospital Center at Orange and Saint Peter’s Healthcare System in New Jersey – that claim to be “church plans” (despite being neither established by a church nor maintained by a church pension board) – are seriously underfunded or on the brink of insolvency. That means thousands of employees and retirees may be left with nothing but empty promises, since their benefits are not even insured by the PBGC.

This is particularly troubling because the Hospital Center at Orange and Saint Peter’s Healthcare System treated their plans as being subject to ERISA and paid insurance premiums to the PBGC for more than 20 years. Then, after having been advised that an affiliation with a religious organization would enable them to opt out of ERISA, they claimed that their plans were exempt church plans. In these cases, it is reported that participants had been repeatedly told that their benefits were protected by ERISA and insured by the PBGC. Upon conversion, even if participants were provided notice, there was little they could have done to protect themselves.

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Unfortunately, the Hospital Center at Orange and Saint Peter's Healthcare System are not isolated examples. It is our understanding that, between 1999 and 2007, 85 ERISA-covered defined benefit pension plans claimed they were church plans and asked for PBGC premium refunds.

There is a plausible case that under the statutory framework, the Service's position on plans like these might overstep the narrow statutory exemption for church plans. There are certainly plans legitimately maintained by a church that were intended to fall within the exemption. However, we question whether Code Sections 414(e)(1) and 414(e)(3)(A) extend to plans that are neither established by a church nor maintained by a church pension board-type organization.


We commend the Service for examining its church plan determination process. Because the retirement security of too many plan participants can be jeopardized when a plan is inappropriately characterized as a church plan after they have been led to believe they were subject to the protections of ERISA, the Service must ensure that any such determination comports with the narrow statutory exemption. We also encourage the Service to take participant expectations into consideration when making determinations as to a plan's status. Workers in ERISA-covered plans participate with the understanding that they will be afforded certain legal protections, and those protections should not be denied unless the plan fits the narrow church plan exception.

We look forward to hearing from you. Should you have any questions please contact our staff members copied on this letter.

Sincerely yours,



Jeff Bingaman  
United States Senator



Tom Harkin  
United States Senator  
Chairman, Committee on Health, Education,  
Labor and Pensions



Herb Kohl  
United States Senator  
Chairman, Senate Special Committee on Aging



Max Baucus  
United States Senator  
Chairman, Senate Committee on Finance

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cc: Honorable Phyllis Borzi, Assistant Secretary of Labor, EBSA  
Honorable Joshua Gotbaum, Director, PBGC  
Mr. Andrew Zuckerman, Director of Rulings and Agreements, IRS - EP  
Derek Dorn, Senior Counsel, Senator Bingaman  
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