

May 11, 2007

U.S. Department of Energy
Office of Procurement and Assistance Management
1000 Independence Avenue, SW
Washington, DC 20585

Re: **Request for Public Comment on Department of Energy Contractor
Employee Pension and Medical Benefits Challenge**

Dear Sir/ Madam:

The undersigned organizations submit this letter in response to the request for comments from the Department of Energy (“DOE”) as posted in the Federal Register on March 27, 2007.¹ We represent plan sponsors, service providers and plan professionals in the employer-provided defined benefit pension plan system. As such, we believe that the defined benefit plan system should be supported and oppose policies that negatively impact the ability of employers to establish and maintain defined benefit pension plans. We appreciate the opportunity to share our thoughts with the DOE and urge the agency to forego any further consideration of policies that discourage the maintenance of defined benefit plans.

In April 2006, the DOE announced a new policy for reimbursements of allowable costs on certain contracts.² Under this policy, the DOE planned to continue to reimburse contractors for costs associated with current and retired employees' defined benefit pension and medical plans under existing contract requirements but would not reimburse these costs for new employees. Rather, the DOE intended to reimburse contractors only for the costs of defined contribution pension plans and market-based medical benefit plans. In response to the 2006 announcement, there was significant opposition from affected groups and Congress acted to prevent the DOE from carrying out the policy. In June 2006, before any Congressional action was completed, Secretary of Energy Samuel Bodman decided to delay implementation of the controversial policy change by one year.³ For the reasons stated below, we believe that this policy should be permanently rejected.

Refusing to Reimburse Defined Benefit Pension Costs Contradicts the Intent of Recent Pension Reforms. The undersigned organizations have spent the past several years working with Congress, the Administration, and other interested parties to implement comprehensive pension reform. After much debate, the culmination of this extensive and exhaustive effort was the Pension Protection Act of 2006 (“PPA”). One of the biggest issues of debate surrounded defined benefit pension plans and their continued feasibility. Ultimately, all parties concluded that defined benefit plans were viable and set about implementing reforms to address employers’ workforce concerns, participant

¹ 72 Fed. Reg. 14,266 (3/27/07).

² DOE N 351.1 (4/27/06).

³ DOE N 251.66 (6/28/06).

rights, and funding concerns. By stating that it no longer supports defined benefit pension plan designs, the DOE would be effectively stating that it does not view these plans as beneficial or viable. Such a statement would be inconsistent with the intent behind the PPA and would undermine both the work done in the PPA to support the continuation of the defined benefit plan system and the voluntary nature of the system.

The DOE Should Not Dictate Pension Policy for Private Employers.

Employers that maintain pension plans are already subject to the jurisdiction of several government agencies.⁴ If each and every government agency were to dictate benefit policy, even indirectly, then these employers would be subject to the untenable burden of monitoring each government agency just to determine its compliance with the pension and healthcare policies and directives of each individual agency. At the very least, employers might not be able to provide uniform benefits to their workers. At the worst, employers might find that they are not able to simultaneously comply with different directives from different agencies. To avoid conflicting directives, employers might decide it is easier to not offer pension benefits at all. Certainly, this is not a result that should be encouraged by a government agency.

In conclusion, the DOE's April announcement essentially forces companies doing business with the Department to shape their retirement plans to meet contractual requirements rather than selecting the benefits program that fits with their workforce and business needs and is in contradiction to the voluntary nature of the retirement system. In addition, the DOE would be sending the wrong message about the government's support of the private defined benefit system. Consequently, we urge the DOE to permanently reject its earlier proposal. We believe that DOE should not reject defined benefit plans. Instead, DOE should rely on the judgment of the plan sponsor who knows the workforce to determine what kind or kinds of plans are best for its employees.

Sincerely,

American Benefits Council
American Society of Pension Professionals & Actuaries
Business Roundtable
The ERISA Industry Committee
Financial Executives International's Committee on Benefits Finance
The Financial Services Roundtable
HR Policy Association
The National Association of Manufacturers
Society for Human Resource Management
U.S. Chamber of Commerce

⁴ ERISA plans are under the jurisdiction of the Department of Treasury and the Department of Labor. In addition, defined benefit plans are under the jurisdiction of the Pension Benefit Guaranty Corporation.