



AMERICAN BENEFITS
COUNCIL

October 1, 2008

**STATEMENT OF THE
AMERICAN BENEFITS COUNCIL
to the
SENATE COMMITTEE
ON HEALTH, EDUCATION, LABOR AND PENSIONS
for the hearing on
401(K) FEE DISCLOSURE: HELPING WORKERS SAVE FOR RETIREMENT**

The American Benefits Council (the Council) welcomes the continued dialogue regarding disclosure of fees with respect to section 401(k) plans. The role of section 401(k) plans in providing retirement security has grown tremendously over the last 25 years and is continuing to grow. In that light, legislative and regulatory actions with respect to such plans similarly take on an increased importance. Applicable legislation and regulations should ensure that these plans function in such a way as to help participants achieve retirement security. The Council supports fee transparency as a critical means of assisting participants in this regard. In the same time, we all must bear in mind that unnecessary burdens and costs imposed on these plans will reduce participants' benefits, thus undermining the very purpose of the plans. In addition, our voluntary retirement plan system depends on the willingness of employers to maintain plans; excessive burdens on employers will undercut their commitment to a system that millions of Americans rely on for their retirement security.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

The Defined Contribution Fee Disclosure Act of 2007 (S. 2473), as introduced by Senators Harkin and Kohl, reflects a constructive dialogue with a broad range of parties in the retirement plan community. We commend Senators Harkin and Kohl for their

openness to such a dialogue and for including many provisions that would improve fee transparency without undue burdens. We do, however, have certain concerns with respect to the bill and look forward to further discussion on a number of issues, including the following:

- **Coordination with Department of Labor fee initiatives.** The Department of Labor is near completion of its plan fee disclosure initiative. One of the three regulations, focused on reporting to the government from the plan sponsor, has been completed and our members are working towards compliance. The second of three, focused on disclosure from the service provider to the plan sponsor, has been sent in final form from the Department of Labor and is currently at OMB for clearance. The Department of Labor publicly stated at this Committee's hearing that it is their goal to have this published as a final regulation in the "next several months." The last of the expected regulations, participant fee disclosure, has been proposed and the Department of Labor has stated that it is their goal to have it published as final by year's end. In its deliberation regarding these regulations, the Department of Labor received over 92 comments from representatives of the employee benefits, participant, and service provider communities. We believe this regulatory approach will best balance input the Department of Labor received from various interested parties. We understand that Congress may review the regulations and conduct oversight of the implementation.
- **Liability protections.** In recent years, there has been significant growth in lawsuits with respect to defined contribution plans, giving rise to increased costs and the potential to stunt the continued growth of defined contribution plans. The bill creates additional potential liabilities even for companies diligently trying to comply with all applicable rules. It is important that safe harbors be added to the bill so that plan fiduciaries and service providers acting reasonably and in good faith are not subjected to such potential liabilities.
- **Unbundling.** Although the bill reflects great strides with respect to the "unbundling" issue, more work needs to be done. Where services are offered only on a bundled basis, disclosure of costs on an unbundled basis provides information with no commercial significance. The expenses incurred in generating such disclosures thus do not generate information that is commercially usable, which is unfortunate since participants ultimately bear those expenses.

Also, to the extent that bundled charges become, in fact, unbundled, many more charges will be applied on a per-participant basis, rather than based on account size. This would result in a dramatic shift of costs from higher income, high-account balance employees to lower income, low-account balance employees.

- **Effective date.** It is extremely important that plan fiduciaries and service providers have sufficient time to modify their data collection, administrative, and communication systems in order to comply with the new disclosure requirements. We commend Senators Harkin and Kohl in this regard; their bill provides that its provisions will not take effect until at least a year after the Department issues final regulations implementing the provisions. We have some thoughts as to how to make the Harkin/Kohl effective date rule work even better, but we deeply appreciate the Senators' recognition of the critical transition issue.

We look forward to working on these and other issues as the legislative process moves forward. We share a common goal with this Committee and with Senators Harkin and Kohl: a vibrant and transparent defined contribution plan system that delivers meaningful retirement security at a fair price and without unnecessary costs and liabilities.