AMERICAN BENEFITS COUNCIL

July 10, 2006

Dear pension bill conferee:

The American Benefits Council (the "Council") commends your commitment to retirement security issues. As a conferee on the pension reform legislation (S.1783/H.R. 2830), your decisions will affect the retirement security of millions of Americans for many years to come. In prior communications we outlined the views of our members, which include the nation's largest retirement plan sponsors and leading experts in the field of retirement security. In this supplemental letter, we would like to focus on certain key points.

The Council's more than 250 members include primarily major U.S. employers that provide employee benefits to active and retired workers, and do business in most, if not all, states. The Council's membership also includes organizations that provide services to employers of all sizes regarding their employee benefit programs. Collectively, the Council's members either directly sponsor or provide services to retirement and health benefit plans covering more than 100 million Americans.

The Council supports reform of the defined benefit plan funding rules. The funding rules need to be strengthened so that workers receive the benefits that they have been promised. However, we are concerned that the debate over the structure of the funding rules has not been centered on the foundation of the defined benefit system, which is voluntary plan sponsorship. Instead, the debate is focused almost solely on the effect of funding reform on the Pension Benefit Guaranty Corporation (PBGC). This has become the litmus test for legislation without regard to the effect on the economy, competitiveness, workers benefits, or the stock market.

Moreover, the model that has been used to compare the level of contributions required under the proposed legislation to the funding levels prescribed under current law has not been subject to public examination. In September 2005, the Council alerted Congress to concerns about the assumptions that PBGC uses to calculate its own deficit [See Promises to Keep: The True Nature of the Risks to the Defined Benefit Pension System] and that if more market-based assumptions were used, its deficit would be significantly less than what is reported. If the modeling of the final legislation is flawed there could be serious negative consequences for workers and the economy. As we understand the rules being considered by the conferees, the result also appears to be increased funding volatility and unpredictability, as well as the imposition of inappropriately high contribution requirements on many plan sponsors with healthy plans. Congress should not accept less than transparent and accurate modeling and employers who make the decision on sponsoring a plan, and who have the responsibility to fund it, should logically be included in the determination of proper modeling.

The appropriate approach to successful funding legislation is finding the right balance between stronger funding rules and continued plan sponsorship which requires predictable rules. The private pension system is a voluntary system. Despite challenges, it has been enormously successful, paying more than $120 billion in benefits annually. The vast majority of pension plans are extremely well-funded. Even taking into account the tremendous growth in defined contribution plans, defined benefit plans have played, and should continue to play, a vital role in retirement security. To that end, legislation must include reasonable and predictable funding rules that phase-in over a sufficient transition period. If new rules create unfair funding burdens that (1) are unpredictable even for healthy companies, (2) peak when a company is struggling, or (3) increase dramatically based on arbitrary measures such as plan features or the fact that the company pre-funded its plan, the exodus from the defined benefit pension plan system will accelerate. If that happens, then all of your work on pension reform will actually result in making the situation worse, as millions more Americans will certainly face a future with a diminished retirement security.

In a voluntary retirement system, it is critical that flexibility for plan sponsors to meet the changing needs of the workforce be preserved. In this regard, it is essential that Congress resolve the legal uncertainty surrounding hybrid plans in a comprehensive manner for new and existing plans alike. It is also imperative that this be done without costly new benefit mandates that would signal to employers that it is time to stop providing benefits before the employers incur the cost of these mandates or additional ones on the horizon. It is crucial that ***all three*** applicable laws, the Employee Retirement Income Security Act (ERISA), the Internal Revenue Code and the Age Discrimination in Employment Act (ADEA) be amended. If all three are not amended, the legal uncertainty surrounding these plans will continue. Millions of participants in more than 1,500 hybrid plans are depending on the final resolution of the hybrid plan issue. In addition, the confidence of employers, workers and retirees in the government's regulatory system is at risk since these plans were established with the full approval of federal regulators. The issue placed before Congress is one of design: is it acceptable under the age discrimination rules to contribute to a hybrid plan the same percentage of compensation (or a greater percentage as workers age) for each participant each year? The answer must be an unambiguous "yes."

Many employers and workers are relying more on defined contribution plans to ensure retirement security. It is imperative, with the increased importance of these plans, that Congress facilitate their sponsorship and continued growth through automatic enrollment, default investment provisions and permanence of the improvements enacted on a bipartisan basis in the Economic Growth and Tax Relief Reconciliation Act (EGTRRA). Legislation should encourage innovation so that employers are able to provide employees with plans that are specifically designed to incorporate the best features from defined contribution and defined benefit plans, including the plan design known as DB-K, and facilitate employees' abilities to manage their assets in retirement. In addition, it is essential that Americans have greater access to cost effective investment advice without unnecessary and complicated conditions attached to those providing the advice. Further, an efficient retirement system in this country requires modernization of the applicable ERISA standards regarding plan transactions including the expansion of the definition of "plan assets" to allow equal access to investment funds.

Finally, it is clear that those employers and unions that are affected by the multiemployer pension plan system have together developed a meaningful and strong formula for improving the strength and health of those plans, and we urge Congress to include those provisions in final legislation.

Sincerely,

James A. Klein

James A. Klein
President