AMERICAN BENEFITS COUNCIL

March 12, 2008

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable John Boehner
Republican Leader
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi and Republican Leader Boehner:

I am writing on behalf of the members of the American Benefits Council (Council) regarding legislation to clarify the "asset smoothing" rules for defined benefit pension plan funding, since such legislation may be considered with the Pension Protection Act of 2006 (PPA) technical correction bill (H.R. 3361) this week. The Council represents major employers and other organizations that collectively sponsor and administer health and retirement benefit plans covering more than 100 million Americans.

One of the key policy debates with respect to the PPA was the extent to which smoothing of interest rates and asset values would be permitted. Asset smoothing provides an employer with greater predictability with respect to the value of its pension assets and thus greater predictability with respect to its funding obligations. If an employer's funding obligations were subject to the constant fluctuations of the market, funding obligations would be so unpredictable that business planning would be exceedingly difficult. Since unpredictability is a primary reason for pension freezes and terminations, it is essential that some asset smoothing be preserved.

The PPA preserved a degree of predictability by preserving interest rate and asset smoothing, but reduced asset smoothing to a 24-month period, down from 48 months. Unfortunately, the U.S. Treasury (Treasury) and Internal Revenue Service (IRS) have interpreted the PPA differently, and essentially eliminated all asset smoothing in its proposed regulations. In addition, a subsequent Notice issued by Treasury and the IRS would make this proposed regulation immediately effective. As we testified on May 3, 2007, before the House Education and Labor Committee's Subcommittee on Health, Employment, Labor and Pensions, Congress needs to clarify in a technical correction that asset smoothing, not asset averaging, was intended. Over time, asset smoothing neither understates nor overstates asset values. On the contrary, over time, the average of a plan's smoothed values is the same as the average of the plan's fair market values.

Absent congressional action, employers will be forced to make their quarterly pension plan contribution based on marked-to-market values rather than the more appropriate values using asset smoothing. The problem is an immediate one since the first quarterly contribution is due April 15th. With the current economic downturn further reducing the market value of pension assets, employers may soon be forced to choose between freezing their plan or redirecting resources that would otherwise be dedicated to other critical business purposes.

This issue is of the utmost urgency for employer plan sponsors that have remained committed to the defined benefit pension plan system. It has the bipartisan support of all the relevant committee leadership. It is as urgent as the technical corrections legislation and would comport perfectly with the aims of H.R. 3361. In the spirit of cooperation and bipartisanship, and for the sake of millions of pension plan participants, we urge the House to approve a clarification of asset smoothing in concert with PPA technical corrections legislation at the earliest possible opportunity.

Sincerely,

James A. Klein

James A. Klein
President
American Benefits Council