



## AMERICAN BENEFITS COUNCIL

May 19, 2010

The Honorable Harry Reid  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Majority Whip  
United States Senate  
Washington, DC 20510

The Honorable Jon Kyl  
Minority Whip  
United States Senate  
Washington, DC 20510

Dear Majority Leader Reid, Minority Leader McConnell, Majority Whip Durbin and Minority Whip Kyl:

On behalf of the American Benefits Council, I would like to express support for the amendment to title VII of S. 3217, the Wall Street Transparency and Accountability Act of 2010, being offered by Senators Harkin and Casey. The Council has been extremely concerned about the requirement that a swap dealer owes a fiduciary duty to a plan solely by reason of entering into a swap with the plan. A swap dealer is the counterparty on the other side of the swap transaction from a plan. As such, the swap dealer cannot have conflicting fiduciary duties – one fiduciary duty to its own shareholders and a second fiduciary duty to act in favor of the plan and against its own shareholders in negotiating the price and terms of a swap. Accordingly, if the bill were to pass in its current form, swap dealers would effectively be precluded from entering into swaps with plans.

The effect of plans losing the ability to enter into swaps would be devastating, which explains the enormous level of concern in the retirement plan community. Major pension plans use swaps to manage interest rate and currency risk, and to rebalance portfolios without disturbing the market. Without the use of swaps, pension plans would lose the ability to manage these risks and would be subject to far greater volatility in their funding obligations. The increase in funding volatility would require companies to reserve much more money to address future funding obligations, which would have an extremely adverse effect on companies' ability to invest in their economic recovery and in jobs.

The fiduciary provision could also eliminate plans' ability to enter into stable value guarantee contracts. Stable value funds are some of the most popular investments nationally in 401(k)

plans, with most plans offering a stable value fund. These funds offer capital preservation with a reasonable rate of return, thus providing a very attractive investment for participants seeking protection from market fluctuations. The fiduciary provision has been interpreted by many to preclude plans from entering into stable value guarantee contracts, so that over a short period of time, stable value funds would gradually disappear, leaving participants across the country without their favorite single investment.

The fiduciary provision is not Wall Street reform. It is a severe blow to Main Street, to the job security of employees at major companies, and to employees participating in 401(k) plans across the country

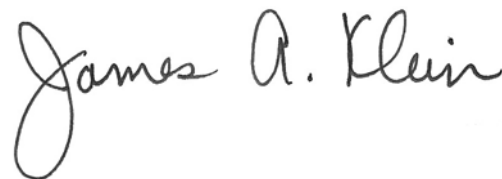
The Harkin/Casey amendment would address our concerns with the fiduciary provision. The amendment would protect plans by ensuring that swap dealers communicate fairly with plans and disclose clearly that they are on the other side of the transaction. And the bill builds in strong disincentives for dealers to make recommendations to plans. Plans should be receiving recommendations from qualified advisors that are independent of the dealer. Although there are ambiguities in the amendment that we would like clarified, we feel strongly that this amendment will stave off the dramatic unintended consequences that we believe would occur under the fiduciary provision (as originally drafted or as modified in a draft circulated last week).

In addition, the amendment does not modify (or address) the other business conduct standards applicable under the bill. Unless changed, those standards would require swap dealers to probe into all aspects of a plan's financial information and require the swap dealers to issue fiduciary-type judgments. In order to ensure that plans continue to have access to swaps, these business conduct standards need to be modified.

In short, the fiduciary provision was intended to protect plans. However, as the voice for plans across the country, we assure you that the provision does exactly the opposite. The fiduciary provision would have grave consequences for plans if the Harkin/Casey amendment is not adopted.

We strongly urge your support of the amendment.

Sincerely,

A handwritten signature in black ink that reads "James A. Klein". The signature is written in a cursive, flowing style with a large initial "J".

James A. Klein  
President

CC: All members, U.S. Senate