"*After a lifetime of hard work, people deserve the opportunity to live out their golden years with dignity and financial independence. But for most of the middle class, the dream of a secure retirement is slipping out of reach. We are facing a retirement crisis.*" – HELP Chairman Tom Harkin (D-IA)

HELP Chairman Tom Harkin Introduces the *USA Retirement Funds Act*

The *USA Retirement Funds Act* (the "Act") tackles the retirement crisis head-on by ensuring that the 75 million working people without a retirement plan would, for the first time, have the opportunity to earn a safe and secure pension benefit. USA Retirement Funds would drastically increase retirement savings through automatic enrollment while reducing the cost of retirement by up to 50 percent. USA Retirement Funds would shield individuals from market volatility and other risks by utilizing a shared-risk design. In additional to establishing USA Retirement Funds, the Act would make it easier for small employers to offer pooled retirement plans, encourage plan sponsors to incorporate lifetime income solutions into their defined contribution plans, provide increased fiduciary and other protections for plan participants, simplify the administration of defined benefit pension plans, and improve the pension insurance system. Together with Senator Harkin's *Strengthening Social Security Act* (S.567), the Act would put our country on a path toward restoring the "three-legged stool" of retirement security and ensuring that every American has a pension, Social Security, and the opportunity to save.

Title I – USA Retirement Funds

Title I would establish USA Retirement Funds. Key elements of the Title are described in more detail below.

Universal Coverage: USA Retirement Funds would provide every working person in America with access to a retirement plan through an automatic payroll deduction. Employers with more than 10 employees would have to offer a retirement plan with automatic enrollment and a lifetime income option or automatically enroll their employees in a USA Retirement Fund. Employees would have the option of choosing a USA Retirement Fund or simply using a fund selected by their employers. Employees would be able to select a different USA Retirement Fund once a year.

Enrolling employees in a USA Retirement Fund would utilize existing payroll withholding systems, so it would involve little, if any, additional administrative burden. Employers who already have pension plans or defined contribution plans with automatic enrollment and lifetime income options would not have to change anything. Self-employed individuals and people working for very small businesses could also participate in USA Retirement Funds. They would simply sign up and make periodic contributions like they would with any other individual retirement plan.

Contributions. Employees would be automatically enrolled in a USA Retirement Fund at 6 percent of pay, but they could increase their contributions, decrease their contributions, or opt out at any time. Individuals could contribute up to $10,000 per year pre-tax, and employers would also be able to

contribute up to $5,000 per year for each employee, provided the contributions are made uniformly. Low-income individuals would be eligible for a refundable savers credit.

Oversight and Fiduciary Protection. USA Retirement Funds would be privately-run retirement plans approved and overseen by the Department of Labor. Each USA Retirement Fund would be managed and administered by a board of qualified trustees able to represent the interests of employees, retirees, and employers. The trustees would be fiduciaries required to act prudently and in the best interests of plan participants and beneficiaries. They would also have to avoid conflicts of interest, remain independent of service providers to the fund, be bonded, and have fiduciary liability insurance.

Professional Management. The assets held by each USA Retirement Fund would be pooled and professionally managed by the trustees. The trustees would manage the fund with the intention of providing each participant with a cost-effective stream of income in retirement and reducing benefit level volatility for those approaching retirement. Trustees would be specifically required to protect participants from longevity risk – *i.e.*, the risk of outliving one's savings – and market volatility.

Lifetime Income Benefit and Risk Sharing. People participating in a USA Retirement Fund would earn a benefit paid out over the course of their retirement, with survivor benefits and spousal protections, like a traditional pension. The amount of a person's monthly benefit would be determined based on the total amount of contributions made by, or on behalf of, the participant and investment performance over time.

Pension plans have traditionally placed all of the risk, primarily investment and longevity risk, on employers. Those risks have discouraged employers from offering a pension. USA Retirement Funds would make offering a pension benefit more attractive by eliminating virtually all risk to employers. Instead, USA Retirement Funds would spread the risks inherent in running a pension across large groups of employees and retirees. That kind of broad risk pooling would provide significant protection to individuals and would reduce overall costs.

The risk sharing component of the USA Retirement Funds would make benefit levels responsive to long-term market conditions. For example, USA Retirement Funds would be conservatively managed, but if there were a severe and long-term economic downturn, the trustees could, under specified procedures, gradually adjust benefits (no more than 5% per year without approval) to reflect market realities while still providing a steady income stream to retirees. Conversely, if a USA Retirement Fund had better-than-expected returns, those returns would be conservatively allocated as increased benefits for employees and retirees. This type of risk sharing is beneficial to participants and gives them an opportunity to earn a cost-effective source of retirement income.

Transparency and Fund Democracy. Each USA Retirement Fund would be completely transparent. The trustees would be required to publicly disclose the fund's performance and fees as well as the fund's investment policy, procedures for providing lifetime income, and conflicts of interest policy. Participants would receive an annual statement explaining the terms and conditions of the fund and an estimate of their benefit in retirement.

Unlike most retirement plans, USA Retirement Funds would be democratic. Participants would have the ability to petition the trustees to remove services providers, comment on the management and administration of the fund, and approve or disapprove of the compensation for the trustees.

Portability. Participants would be permitted to change USA Retirement Funds every year and would be allowed to roll their 401(k) or IRA balances into a fund. Additionally, a person under 60 with a small account balance would be able to roll that account balance over to another retirement plan. A person over 60 who has sufficient retirement income outside the fund or is facing a substantial hardship could elect to take a one-time, lump sum withdrawal of the greater of $10,000 or 50 percent of his or her benefit.

Employer Responsibility. Because USA Retirement Funds would be approved by the Department of Labor and overseen by a board of trustees, employers would not have any fiduciary responsibilities in selecting, administering, or managing the funds. Employers' only obligation with regard to the USA Retirement Funds would be to automatically enroll employees and ensure that employee contributions are processed. Importantly, employers would not "guarantee" the USA Retirement Funds nor have any residual responsibility to provide additional funding or make up for shortfalls.

Coordination with Other Retirement Plans. There are many people for whom the current system is working, and it is important that systemic reforms not compromise their retirement security. Thus, USA Retirement Funds are not intended to replace existing pensions. Many employers and employees have developed excellent pension arrangements that benefit everyone involved, and those arrangements should be allowed to continue to flourish. Additionally, individual retirement savings is a critical component of retirement security, so USA Retirement Funds are intended to supplement, not supplant, defined contribution plans. Employers could certainly offer both a USA Retirement Fund and a defined contribution plan to their employees.

Title II – Defined Contribution Plan Reforms

Title II of the Act includes provisions intended to strengthen the defined contribution system by making it easier for employers to offer plans and by encouraging employers to help participants convert their savings into a secure stream of retirement income for life. It also includes provisions that would strengthen important consumer protections.

Subtitle A – Saving Enhancements

Sec. 201. Pooled Employer Plans. This section would permit multiple employers to participate in a single, individual account plan regardless of whether the employers share any common interest. The pooled plan must have a designated provider responsible for administering the plan and providing key disclosures. The pooled plan would not be permitted to have unreasonable fees designed to lock in employers. Employers would remain liable for, among other things, prudently selecting the pooled provider. Employers that share a common interest would still be permitted to participate in defined benefit and defined contribution multiple employer plans to the extent permissible under current law.

Sec. 202. Pooled Employer and Multiple Employer Plan Reporting. This section would require multiple employer plans and pooled employer plans to file with their annual Form 5500s a list of all the

employers contributing to the plan along with a good faith estimate of the amount of contributions from each employer.

Subtitle B – Participant Protections

Sec. 211. Alternative Fiduciary Arrangements to Protect Plan Participants. This section is intended to provide additional protections to plan participants by allowing small employers to shift some of the responsibility for managing the plan to professionals who register with the Department of Labor and meet certain requirements. The Department of Labor would also have added authority to issue cease-and-desist orders to providers when plan professionals are not satisfying their obligations.

Sec. 212. Rollover Protections. This section clarifies that Congress intended the fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") to apply to advice provided with respect to certain rollover investments. It further compels the Department of Labor to issue regulations clarifying the issue and asks the Government Accountability Office to study, among other things, whether financial professionals are aware of the fiduciary and prohibited transaction requirements.

Subtitle C – Lifetime Income

Sec. 221. Lifetime Income Disclosure. This section ensures that participants would receive an annual statement of how their savings translates into a lifetime stream of income. That information will make it easier for people to understand how their savings relates to their month-to-month living expenses and will encourage participants to take proactive steps to improve their retirement readiness.

Sec. 222. Lifetime Income Safe Harbor. This section provides a safe harbor for employers that want to include investment options in their plans that produce lifetime income. In particular, a plan fiduciary will be deemed to satisfy his duty of prudence provided the fiduciary determines that the insurer is capable of satisfying its obligations under the contract and the cost is reasonable.

Sec. 223. Default Investment Safe Harbor Clarification. This section clarifies that an investment does not fail to qualify as a "qualified default investment alternative" merely because such investment includes features such as guarantees. This section codifies the Department of Labor's interpretation of current law.

Sec. 224. Administration of Joint and Survivor Annuity Requirements. In order to make administration easier for employers, this section would allow a plan fiduciary to appoint a third-party to administer the spousal protections under ERISA. The administrator would be a fiduciary.

Title III – Defined Benefit System Reforms

Title III of the Act includes provisions designed to make it easier for employers to offer defined benefit pension plans. It would streamline and simplify plan administration and ensure that employers running innovative, hybrid pension plans have clear and consistent rules. Title III would also make a number of modifications intended to improve the pension insurance system.

Subtitle A – Defined Benefit Pension Plan Reforms

Sec. 301. Hybrid Plans. This section encourages employers to create and maintain pension plans by clarifying the rules for hybrid plans. In particular, it provides guidance regarding appropriate crediting rates by clarifying what constitutes a "market rate of return" rule under the Pension Protection Act ("PPA") and permitting plans to use certain fixed rates of return. It would also provide transition relief for plans to come into compliance with the new rules.

Sec. 302. Clarification of the Normal Retirement Age. This section allows the continuation of existing defined benefit plans that define normal retirement age as the earlier of an otherwise permitted age or the attainment of 30 or more years of benefit accrual service.

Sec. 303. Moratorium on Imposition of Shutdown Liability. This section places a two-year moratorium on enforcement under ERISA section 4062(e) while the Government Accountability Office studies the rule and develops alternatives.

Sec. 304. AFTAP Determination without Regard to Reduction for Credit Balances. This section simplifies the operation of defined benefit plans by eliminating the credit balance offset for purposes of applying benefit restrictions and determining the plans adjusted funding target attainment percentage.

Sec. 305. Method for Determining Changes for Quarterly Contributions. This section would simplify the method sponsors of small plans use for determining whether quarterly contributions are required by not reducing the plan's assets by pre-funding or carryover balances.

Sec. 306. Election to Discount Contributions from Final Due Date. This section would simplify defined benefit plan administration by giving a plan sponsor the option of discounting contributions from the later of the date of the actual employer contribution and eight and a half months after the end of the plan year for purposes of adding employer contributions to the prefunding balance and determining the value of plan assets.

Sec. 307. Simplification of Elections and Notices. This section would eliminate the confusion caused by the lack of uniformity in the timing of elections. Specifically, it would consider all PPA elections timely if made no later than the filing date of the Schedule SB for that plan year. It would also provide a single Annual Funding Notice deadline for small plans and large plans that were at least 80% funded in the preceding plan year which coincides with the deadline for providing the Summary Annual Report.

Section 308. Improved Multiemployer Plan Disclosures. This section provides for earlier reporting of financial information from multiemployer pension plans to the Department of Labor, the Pension Benefit Guaranty Corporation ("PBGC"), and the Department of the Treasury. It also establishes a

centralized database so the three regulating agencies can share access to the reports provided by multiemployer plans.

Subtitle B – Improvements to the Pension Insurance Program

Sec. 311. Modifications of Technical Changes to Termination Liability. This section would correct errors in PPA Section 107, which made technical and conforming amendments to the termination liability calculation under ERISA section 4062(c). Current law is a source of confusion and poses a litigation risk for PBGC.

Sec. 312. Payment of Lump Sums in Bankruptcy. This section ensures that the funding assumption changes made by The Moving Ahead for Progress in the 21st Century Act of 2012 are disregarded for purposes of determining whether the restrictions on lump sums and other accelerated distributions of benefits apply in bankruptcy.

Sec. 313. Trusteeship Clarifications. ERISA section 4042 contemplates that there may be trustees other than PBGC for a plan terminated under section 4042. However, in practice, there are never other trustees, and the extraneous statutory language creates a litigation risk for PBGC. This section would remove the extraneous language and clarify that PBGC is the only termination trustee. In addition, PBGC has interpreted ERISA section 4042 to provide for a PBGC final determination that could be enforced in court under Administrative Procedure Act standards. After years of court acceptance, the Seventh Circuit decided that section 4042 only allows the agency to go to court and re-establish grounds at a trial *de novo*. This section clarifies Congressional intent by making it clear that PBGC's long-standing interpretation of the law is correct.

Sec. 314. Recordkeeping for Terminating Plans. PBGC uses plan and sponsor records to verify participant information and determine benefit entitlements under Title IV of ERISA. When a plan terminates while the sponsor is in a bankruptcy proceeding, the date the petition for bankruptcy is filed determines benefits guaranteed and benefits in priority category 3 of the asset allocation. This section allows PBGC to issue regulations to require plan sponsors or plan administrators to maintain records necessary to enable PBGC to make these benefit determinations and provides that the regulations may require plan sponsors or plan administrators to certify to PBGC that such records are being maintained.

Sec. 315. Termination Date in Bankruptcy. PBGC generally guarantees benefits accrued up through the date the plan is terminated. Prior to PPA, the date of termination for a company in bankruptcy was the date on which a court the court ordered the plan to be terminated. PPA changed the date of termination to the date on which bankruptcy is filed. Because companies sometimes spend years in bankruptcy, the PPA change has resulted in participants losing a significant amount of their accrued benefit. This section would undo the PPA change in order to protect participants.

Title IV – Other Systemic Improvements and Technical Amendments

Title IV of the Act includes provisions that would improve quality of all employee benefit plans. Importantly, it would strengthen the quality of plan audits, bolster existing protections for whistleblowers, and protect beneficiaries' rights during a divorce.

Sec. 401. Plan Audit Quality Improvement. This section makes several changes to improve benefit plan audit standards in response to recommendations by the Office of the Inspector General. First, it provides the Secretary of Labor with authority to establish accounting principles and audit standards to address, among other things, financial reporting issues that are either unique to or have substantial impact upon employee benefit plans. Second, it would add new requirements and qualifications for pension auditors. Third, the section would make sure the annual reporting civil penalties under current law are enforceable against non-compliant auditors, rather than just against the employer sponsoring the plan. Finally, this section would give the Secretary of Labor regulatory authority to broaden or narrow the "limited scope audit" under current law to ensure that plan audits contain the information necessary to protect participants.

Sec. 402. Special Rules Relating to Treatment of Qualified Domestic Relations Orders. This section would change the qualified domestic relations order rules to require plans to segregate 50% of a participant's benefits for at least 90 days after receipt of a notice that there is a domestic relations proceeding. It would also impose a $100 per day penalty for failure or refusal to provide information required to be provided to alternative payees under a domestic relations order.

Sec. 403. Correction to Bonding Requirement. This section would correct a drafting error in ERISA section 412. Specifically, PPA amended section 412(a) by redesignating paragraph (2) as paragraph (3) and inserting a new paragraph (2) (relating to bond requirements of registered broker/dealers). However, the internal reference within newly redesignated paragraph (3) was not modified to reflect the change.

Sec. 404. Retaliation Protections. This section would resolve a split in the circuits regarding the scope of the anti-retaliation protections in ERISA section 510. Specifically, it would clarify that protected activity includes internal complaints relating to ERISA plans, such as complaints made to fiduciaries and employers about ERISA violations or other plan mismanagement.

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For more information, please visit http://www.harkin.senate.gov or contact any of Senator Harkin's offices in Washington, D.C. or Iowa.