



May 11, 2007

Submitted Electronically

Ms. Stephanie Weakley
Director, Office of Resource Management
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: Request for Public Comments on Department of Energy Contractor Pension and Medical Benefits Cost Challenges

Dear Ms. Weakley:

The American Benefits Council (the "Council") appreciates the opportunity to offer comments regarding the challenges faced by the Department of Energy ("DOE") regarding the increasing costs associated with contractor employee pension and medical benefits.¹ As a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees, the Council is acutely aware of the challenges faced by employers in both the private and public sector with respect to accrued pension liabilities and the high costs of medical coverage today. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

The following is a summary of the Council's comments and recommendations:

- DOE policy should focus on curtailing actual costs not benefit design and should continue to allow employers to design the benefits programs offered to new employees.
- Defined benefit plans play an integral role in helping employees prepare for retirement and should be supported by DOE policy.
- A government agency's decision to preclude the use of defined benefit plans for future hires would set a dangerous policy precedent and would be inconsistent with the recent collective efforts of Congress, the Administration, and employers to amend federal laws to strengthen the defined benefit plan system.

¹ 72 Fed. Reg. 14266 (March 27, 2007).

- The cost data presented in the Federal Register is not representative of the actual cost increase for DOE with respect to pension plan benefits.
- Mandating the use of defined contribution plan participation for future hires will likely increase costs in the short-term and fails to address the cost volatility attributable to current defined benefit plan participation.
- Although defined benefit plans are subject to a certain degree of cost volatility (*i.e.*, interest rate risk, investment return risk, mortality risk), this volatility could be reduced through the alteration of plan features and future benefit accruals and the use of more effective funding and asset management policies.

1. **DOE policy should focus on curtailing actual costs not benefit design and should continue to allow employers to design the benefits programs offered to new employees.**

The Council understands DOE's concerns regarding its increasing costs attributable to contractor pension and medical benefits for employees. The issue of pension liabilities and high medical coverage costs are issues currently being confronted by our members. The Council believes precluding future participation in defined benefit plans, however, is unlikely to achieve DOE's intended goal of constraining future cost increases. Instead of focusing on limiting benefit plan *design*, the Council urges DOE to focus instead on implementing comprehensive and effective policies that focus on reducing or otherwise constraining actual pension and medical plan benefit *costs*.

Under current DOE rules, contractors are free to design their compensation and benefit programs as they deem necessary to attract and retain a qualified workforce; this includes the ability to offer defined benefit plan coverage for new hires. The current rules make good policy sense because employers, not the federal government, are in the best position to know the benefits that are most desired by current and future employees and likely to contribute to effective recruitment, increased job tenure, and enhanced productivity. Some contractors may find moving to an exclusively defined contribution approach works very well for their workforce; other contractors may have workforces well-suited to a defined benefit plan approach. As is well documented, the defined benefit plan system has been in decline for many years and the rate of decline has accelerated in recent years. Yet despite this decline and other competitive pressures, many companies remain committed to the defined benefit plan system because of how well it serves both the company and its employees. It would be counterproductive and inappropriate for the federal government to push those companies out of the defined benefit plan system.

Notice 351.1, if implemented, would establish a dangerous policy precedent because it would interject the federal government into benefit plan design and circumscribe an employer's ability to best determine benefit design in order to attract and retain a qualified workforce. Although DOE is operating in many ways like an employer with respect to its Management and Operating ("M&O") contracts, DOE is first and foremost a federal

agency. In this regard, a ban on defined benefit plans would be strikingly inconsistent with the sweeping pension reform recently enacted based on an Administrative proposal. That reform was intended to strengthen the defined benefit plan system so that workers can receive guaranteed benefits for life. It would be inappropriate for a part of the Administration to then announce a ban on the very type of plan that the Administration set out to strengthen. Moreover, the legislation confirmed the national commitment to an open marketplace for different types of retirement plans, including hybrid plans. The federal government should not now send signals favoring one type of plan over another, but rather should show consistent and united support for all aspects of the voluntary private retirement plan system (including the provision of guaranteed benefits to workers) and for employers' ability to choose the type of plan best suited to their workforces.

The inappropriateness of an agency ban on defined benefit plans can be further illustrated by the possibility that another agency could potentially establish a conflicting policy, which could put contractors serving both agencies in an untenable position. This further underscores the need for the federal government to be united in permitting contractors to choose the types of plans best suited to their workforces.

The ability of DOE contractors to choose among benefit plan options for their new employees, including defined benefit plans, is also very important to ensure that DOE contractors remain able to compete in the marketplace for the best qualified workers. As DOE's request in the Federal Register dated March 27, 2007, expressly acknowledges, "[t]he Department of Energy relies on contractors to manage and operate its specialized scientific, engineering, production and clean-up sites and facilities." Additionally, many of the DOE facilities are in remote geographic locations, which in many instances may make it more difficult for DOE contractors to recruit and retain experienced workers. Accordingly, DOE contractors must be permitted to design their benefits in order to attract and retain an effective and qualified workforce. To handcuff DOE contractors by precluding future defined benefit plan participation is to ignore the realities of the marketplace and to place DOE contractors at a significant disadvantage in recruiting and retaining a skilled workforce.

2. **Defined benefit plans play an integral role in helping employees prepare for retirement and should be supported by DOE policy.**

In addition to the role that defined benefit plans play in the recruitment and retention of skilled workers, defined benefit plans are, for many employees, an integral part of a comprehensive retirement planning strategy. In conjunction with defined contribution plans, defined benefit plans can help ensure that employees have an adequate and accessible source of retirement income. Moreover, for many employees, the guaranteed retirement income stream from a defined benefit plan (for example, in the case of a benefit payable as a single life annuity) provides important financial security and allows individuals to better plan for their retirement. This is especially so given that defined benefit plan participants are generally insulated from mortality and investment risk. Given the important role that defined benefit plans play in helping American

workers prepare for retirement for themselves and their families, federal policies should reinforce the continued use of defined benefit plans by employers.

3. **The cost data presented in the Federal Register is not representative of the actual cost increase for DOE with respect to pension plan benefits.**

In its March 27, 2007 request, DOE states that reimbursements have increased by 226% percent since the close of fiscal year 2000. The Council believes this statistic may be somewhat misleading because fiscal year 2000 is used as the starting point for DOE's cost comparison. Based on DOE's Performance and Accountability Reports, it appears that as of fiscal year 2000, the vast majority of contractors had pension plans that were funded at or above 100% of current liabilities. Thus, few, if any, pension plans required contributions in 2000 by DOE contractors (subject to reimbursement from DOE as an allowable cost). Comparing current year costs to those faced in 2000, when DOE's pension costs were near zero, provides little guidance regarding the actual cost increase for DOE. This is because any increase in comparison to a near-zero baseline number is likely to result in a very large percentage increase. In fact, had the contractors been funding their plans in 2000 and the years thereafter to reflect additional benefit accruals under their plans (regardless of the plan's status as fully funded), the percentage increase would likely be much lower than the stated 226%. Moreover, a much more problematic issue for DOE in curbing future cost increases pertains to those contractor costs attributable to accrued but unfunded health liabilities.

4. **Mandating the use of defined contribution plan participation for future hires will likely increase costs in the short-term and fails to address the cost volatility attributable to current defined benefit plan participation.**

Notice 351.1 provides that DOE will not reimburse costs attributable to defined benefit plan coverage of future hires. The practical effect of this new rule, if implemented, is that DOE contractors will be forced to look to defined contribution plans as the sole mechanism for helping their future employees save for retirement. Although intended to reduce costs for DOE, the proposed rule likely would increase costs at least in the short-term for both contractors and DOE. This is due in large part to the age profile of new employees, which is typically younger than the age profile of the average employee in the workforce. Defined contribution plans typically provide for the same contribution amount regardless of an employee's age. This is in marked contrast to traditional defined benefit plans where the cost of the benefit accrual increases with age, with younger employees costing much less than older employees (because of the longer time horizon to normal retirement age under a defined benefit plan). Thus, the practical effect of DOE's proposed rule in the short-term is that costs for both contractors and DOE are likely to increase.

Regardless of whether DOE contractors sponsor defined benefit or defined contribution plans, actual benefit costs will not decrease unless contractors establish defined contribution plans with benefits that are less generous than those provided under

their current defined benefit plans. Thus, the better approach for DOE in establishing new rules would be to focus more on actual benefit levels and less on employer plan choice.

In addition to the likely short-term increase in costs under the proposed rule of Notice 351.1, unless and until DOE addresses the cost volatility associated with current defined benefit plan participants, DOE and its contractors are likely to confront long-term cost volatility associated with unpredictable and significant upward spikes in funding liabilities and benefit costs.

5. Cost volatility can be reduced.

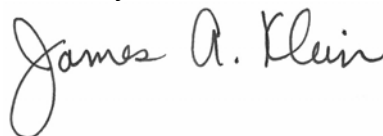
The Council is not unaware of the cost volatility that is typically associated with the sponsorship of a defined benefit plan. This volatility is often related to the uncertainty regarding mortality rates, interest rates, retirement rates, and investment return, among others. Nevertheless, the Council believes that the cost volatility can in fact be reduced by altering certain plan features and future benefit accruals and by implementing more effective funding and asset management policies. For example, investment strategies can be modified to reduce volatility. Actuarial assumptions, such as mortality tables and retirement rates, can also be scrutinized to reduce the risk of unexpected increases in costs. Funding patterns can be reexamined to ensure a steady flow of contributions. Accordingly, we urge DOE to work with our members that have expertise in this area to discuss appropriate tools to address the real cost issues confronting DOE. We are not recommending that DOE develop mandates regarding funding, investments, and assumptions. Any type of one-size-fits-all mandate would not be appropriate in light of the variety of plans and workforces. But the dialogue could be helpful in identifying further areas to explore in the effort to control costs.

We are not suggesting that there are simple answers. But we are suggesting that there are tools available to reduce the volatility associated with defined benefit plans. The Council believes that for some employers the challenges posed by volatility are offset by the value they are able to still receive by continuing to sponsor defined benefit pension plans for their employees.

* * *

The Council appreciates the opportunity to share with you our comments and recommendations.

Sincerely,



James A. Klein
President