



March 20, 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), you have a great opportunity to make decisions that will affect the retirement security of millions of Americans for many years to come. In this letter, we would like to share the views of our members, who include the nation's largest retirement plan sponsors and leading experts in the field of retirement security.

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.

Funding Issues.

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. In doing so, Congress must recognize that the private pension system is a voluntary system, and the defined benefit system faces many challenges. If new rules create unfair funding burdens that are unpredictable even for healthy companies, and that peak when a company is struggling, the exodus from the defined benefit plan system will accelerate among very well-funded and less well-funded plans, alike. If that happens, then all of Congress' 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.

Our priority issues in the funding area include:

- **Smoothing.** The smoothing of interest rates and asset valuations is essential in order to provide companies with the predictability needed to make business plans. If the rules make funding obligations unpredictable, companies will effectively be forced to move away from defined benefit plans. Smoothing does not reduce the amount of contributions made to the plan over time. The House bill provides the minimum smoothing that is needed.
- **Credit balances and deduction rules.** Credit balances need to be preserved. If companies do not receive credit for advance funding, they will generally stop

advance funding. Such a reduction in advance funding would severely undercut benefit security. In addition, both bills would radically change the rules for *existing* credit balances. This is unfair; business plans were made in good faith reliance on the rules in effect when the contributions were made. All the new credit balance rules (other than the mark to market requirement) should not apply to existing credit balances.

It is also very important that the deduction limits applicable to pension contributions be raised as in the Senate bill so that employers can create a funding cushion during strong economic times.

- **Credit rating.** It is critical that the legislation not base any funding-related rule on a company's credit rating. If funding-related burdens are increased when a company is struggling, it will severely undermine the company's ability to recover. That hurts the company, the employees, the retirees, and the PBGC (which only has losses when a company fails). Only the Senate bill considers a company's credit rating in determining whether a plan is at risk.
- **Transition.** Both bills appropriately strengthen the funding rules. But in a voluntary system it is essential that the effect on business be taken into account. Alone, the increase in the funding target from 90% funded to 100% funded is an increase of \$1 billion or more for many large companies. To impose this increased funding target over a three-year period, as in the Senate bill, would create unmanageable burdens that would have adverse effects on jobs and the economy. The House bill's five-year period is also too short, and is very problematic. A large number of plans would have no transition at all under the House bill.

A transition period is also needed with respect to the determination of a plan's normal cost, which can rise dramatically under both bills.

- **Bond quality level.** It is critical that it be clarified, consistent with both bills, that all investment grade corporate bonds be taken into account in constructing the yield curve, including BBB bonds. And AAA bonds should be weighted very lightly since the market for such bonds is so thin.
- **Multiple employer plans.** The Senate bill recognizes that multiple employer plans with numerous participating employers do not pose a risk to the PBGC. Even if many of the employers go bankrupt, the plan continues and no liability is shifted to the PBGC. Thus, many of the funding reforms, which are not structured to apply to ongoing plans, should not apply to the multiple employer plans described in the Senate bill. For these reasons, we support the Senate multiple employer plan provision.

Hybrid plan issues.

- **Effective date.** It is essential that the legislation clarify the legality of the hybrid plan design both prospectively and for existing plans (without any unfair exceptions for existing litigation). If plaintiffs' attorneys are permitted to bankrupt plans across the country, the effect on the retirement plan system, the economy, and the PBGC will be devastating.
- **No costly mandates.** In the context of a conversion to a hybrid plan, the Senate bill would impose costly new mandates that give legal protection to employee *expectations*, and not just employee rights which have been earned. Legal protection of employee expectations would set a very ill-advised precedent and would have a severely chilling effect on companies' willingness to maintain any type of employee benefit plan.
- **Innovative plan designs.** Innovative plan designs should be encouraged so that employers have flexible rules that allow them to combine the best features of different types of plans including the combination of 401(k) plans and defined benefit pension plans.

Retirement savings permanence.

The retirement security provisions enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) have been very effective in encouraging employers to establish and maintain plans, particularly defined contribution plans. Unfortunately, these provisions are set to expire at the end of 2010. The House bill would make these retirement security provisions permanent, including the temporary Saver's Credit. We strongly support the House provision.

It is critical that this provision be enacted now. If Congress waits, the looming expiration will have a material effect on companies' (particularly small businesses) willingness to establish and maintain plans and to expand their plans to include additional savings features such as the catch-up contributions; waiting could also significantly reduce the portability of retirement benefits. Delaying enactment of this provision could alone materially reduce retirement security in this country.

Investment advice.

With the continuing trend from defined benefit plans to participant-directed defined contribution plans, participants have a very acute need for investment advice. Unfortunately, under the current system, those experts who are most familiar with particular investments and can provide needed advice the most efficiently cannot share their expertise with participants. The House bill would extend the availability of investment advice to the greatest number of participants.

Automatic enrollment.

We applaud both the House and the Senate for including provisions to encourage automatic enrollment. Automatic enrollment can have a dramatic effect on the retirement

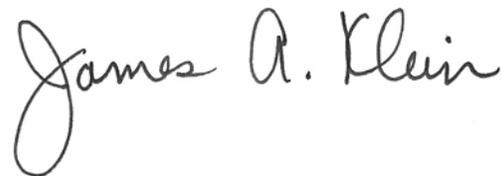
security of younger and moderate income employees who might not otherwise begin saving toward their retirement.

Health benefit issues.

- **Excess FSA amounts.** Today, if participants have unspent amounts in their health flexible spending arrangements (“FSA”) at the end of a plan year (plus the applicable grace period), those amounts are forfeited. The House bill would allow these amounts (up to \$500) to be used for future medical expenses (either through the health FSA or an HSA). This provision would encourage health FSA participation, prevent unnecessary loss of benefits, and broaden health benefit coverage.
- **Recovery of funds by plans for injuries caused by others.** The House bill would clarify ERISA by recognizing the longstanding practice of permitting plans to be reimbursed for amounts paid for injuries caused by a third party. If an injury is caused by a third party who is liable for resulting expenses, it is only fair that the plan be reimbursed if a plan participant recovers damages for injuries caused by the responsible third party. This provision will protect the financial security of benefit plans, which will help ensure the continued viability of such plans for participants.
- **Retiree health provision.** The Senate bill would permit excess pension assets to be used to provide pension plan participants with additional access to retiree health benefits. At the same time, the provision would ensure that the pension plan remains overfunded. This is a win-win provision for pension plan participants who will have broader retirement security if this provision is enacted.

We thank you for your consideration of our views.

Sincerely,

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

James A. Klein
President