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WEB's ***Benefits Insider*** is a member exclusive publication providing the latest developments from the Nation's Capital on matters of interest to benefits professionals. The content of this newsletter is being provided as a result of a partnership with the American Benefits Council, a premier benefits advocacy organization, which provides much of its core content.

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Articles in this Edition

RECENT REGULATIONS AND GUIDANCE **2**

- AARP v. EEOC Retiree Health Case to be Reconsidered at District Court Level 2
- CMS Issues Guidance on Account-Based Health Plans 2
- President Kicks Off National Outreach Campaign on Medicare Prescription Drug Benefit 3
- Council testifies before IRS on Supplemental Wage Withholding Requirements 3
- HHS to Create Advisory Panel on Electronic Medical Records 4
- Medicare Retiree Drug Subsidy Application Issued 5
- DOL/SEC Issue Guidance on Pension Consultants 5

RECENT LEGISLATION AND ACTIVITY **5**

- Education and the Workforce Committee Approves Boehner Pension Bill 5
- Grassley and Baucus Introduce Bill to Move Medicare to Performance-based Payments 6
- House Energy and Commerce Committee Chairman Promises Consideration of Bill to Change Rules in Individual Health Insurance Market 7
- Council Endorses Long-Term Care Bills Introduced in the Senate and House 7
- Senate Finance Committee Requests Information on Pension Plans 8
- PBGC-United Airlines Pension Update 8
- Social Security Update: Legislation Introduced as Congressional Hearings Continue 9
- Council Urges Senators to Cosponsor FSA Rollover Bill (S. 309); Use Capitol Connection Feature of Council's Web Site Today 10
- Smith and Conrad Introduce Automatic Enrollment Bill in Senate 10
- Council says hybrid plans can help staunch the defined benefit system's decline in Senate HELP subpanel hearing 11

RECENT REGULATIONS AND GUIDANCE

AARP v. EEOC Retiree Health Case to be Reconsidered at District Court Level
On March 30, the U.S. District Court for the Eastern District of Pennsylvania issued an order that delayed the effective date of the Equal Employment Opportunity Commission's (EEOC) final regulations on age discrimination and retiree health plans. These rules would clarify that an employer-sponsored retiree health plan would not violate the Age Discrimination in Employment Act (ADEA) even if it does not provide the same level of benefits to early retirees and to older retirees who are eligible for coverage under Medicare.

Judge Brody, who issued the District Court order, has asked both the AARP and the U.S. Justice Department on behalf of the EEOC to file briefs for her to reconsider AARP v. EEOC in light of the Supreme Court's recent decision in *National Cable & Telecommunications Assoc. v. Brand X Internet Services*. A key question addressed in the case is what standard courts should use to evaluate whether an agency appropriately interpreted a specific statute. Judge Brody's opinion in EEOC v. AARP analyzed whether the EEOC's final rule on retiree health appropriately interpreted the Age Discrimination in Employment Act. While the Brand X case does not relate to age discrimination, presumably Judge Brody intends to review whether applying the new test established by the Supreme Court would lead to a different result in AARP v. EEOC.

Both parties have agreed to submit briefs to Judge Brody, due July 14; the court's schedule for review has not yet been announced. Previously the Justice Department filed a notice of appeal with the U.S. Court of Appeals for the Third Circuit. However, Judge Brody has also requested the parties to file a motion in the Third Circuit asking for the case to be remanded to Judge Brody so that she may re-examine her decision in light of the Brand X Supreme Court decision.

These are important developments because had the case gone to the Third Circuit for appeal, it was expected that the Justice Department's primary argument would have been that the EEOC had discretion granted by Congress to issue its retiree health rule. That question will now be addressed by the lower court under the reconsideration action. The Council, which joined in an amicus (friend of the court) brief in support of the EEOC in the District Court case, will continue to support the EEOC's efforts.

CMS Issues Guidance on Account-Based Health Plans
The Centers for Medicare and Medicaid Services (CMS) has released guidance on the Treatment of Account-Based Health Arrangements under the employer provisions of the Medicare Modernization Act (MMA). The guidance addresses the extent to which Health Reimbursement Arrangements (HRAs), Flexible Spending Arrangements (FSAs), Health Savings Accounts (HSAs), and Medical Savings Accounts (MSAs) will count as creditable coverage and can qualify for retiree drug subsidy payments. As a general matter, under the MMA an employer that provides retiree drug coverage that is actuarially equivalent to Medicare can apply to receive a subsidy of 28 percent of prescription drug claims incurred between $250 and $5000 per Medicare-eligible retiree per year. Previously issued CMS guidance requires an employer to notify Medicare eligible health plan participants whether or not they are enrolled in "creditable coverage." The new guidance concludes HRAs may qualify as creditable coverage and may be included in an employer's calculation when determining whether its retiree benefits are

actuarially equivalent for drug subsidy purposes. Employer contributions to FSAs, HSAs, and MSAs will not count in the calculation of determining whether the employer provides creditable coverage or can qualify to receive a retiree drug subsidy. However, the high deductible health plan coverage often provided in combination with these accounts may qualify depending on the level of benefits provided.

President Kicks Off National Outreach Campaign on Medicare Prescription Drug Benefit

At an event at the Department of Health and Human Services, President Bush launched a national campaign on June 16 to educate seniors and disabled individuals about the new Medicare prescription drug benefit scheduled to begin on January 1, 2006. The President called on a coalition of groups attending the event, including the American Benefits Council, to help Medicare beneficiaries in their own families and communities make well informed choices about the different prescription drug plans that will be offered in the marketplace starting in October 2005. He also mentioned that for many seniors their best choice may be to keep the coverage they already have through an employer retiree health plan, which Medicare will be able to maintain through the retiree drug subsidy (RDS) program and other options available to employers as the new drug benefit begins. For millions of other seniors with no other source of coverage, the President said that the prescription drug benefit available under Medicare starting next year was long overdue and will help many individuals avoid more costly and life-threatening diseases that can be treated effectively by medications.

The Centers for Medicare and Medicaid Services (CMS) will have three major sources of information on the prescription drug coverage. All beneficiaries will receive a new handbook ("Medicare and You") in October which will contain information on the prescription drug plans available to choose in the marketplace as well as customer service representatives available to answer questions at 1-800-MEDICARE. Beneficiaries will also be able to obtain detailed information at www.medicare.gov. The agency will also be working closely with many groups representing seniors, disabled individuals, lower-income families and many others to help educate targeted populations before the benefit begins. A summary of the President's remarks on the Medicare drug benefit is available on the White House Web site.

Council testifies before IRS on Supplemental Wage Withholding Requirements

On June 9, the American Benefits Council presented testimony before the Internal Revenue Service on the proposed regulations on supplemental wage withholding requirements. The Council was represented by Melissa Davis Hartranft, senior legal counsel at Fidelity Investments.

Hartranft began her testimony by noting that although the mandatory flat withholding rate only applies to a limited group of employees, in order to ensure compliance, every employer must change its payroll practices to identify, track on a real-time basis, and withhold the proper amount of taxes on all supplemental wage payments. The system changes needed to identify and track supplemental payments from multiple internal sources are substantial, and the development of such systems will be very difficult and time-consuming. These administrative challenges are exacerbated by the fact that all supplemental wage payments made within the employer's controlled group as well as payments made by third-party agents must be identified, tracked, and communicated on a "real-time" basis to ensure that the proper amount of income taxes are withheld.

Additionally, she said that employers' failure to comply with the new 35 percent mandatory rate may result in their being liable for the missed withholding, as well as reporting, withholding, and deposit penalties and related interest. Moreover, errors with respect to equity-based compensation may result in negative accounting treatment.

Based on the difficulties of administrating the mandatory 35 percent withholding rate and the risk of tax liability for failure to comply, Hartranft then outlined a set of changes that the Council suggested be included in the final regulations. These included a delayed effective date and permanent good faith relief from reporting and withholding penalties. Of particular importance is the request to allow a choice of safe harbor approaches for compliance in regard to all supplemental wage payments exceeding $1 million. The Council suggests that employers be allowed to elect one of four safe harbor methods that permit withholding at the 35 percent rate:

- on all supplemental wage payments paid after total wages (both regular and supplemental) exceed $1 million,
- on (1) all supplemental wage payments paid to an employee whose total W-2 compensation for the prior year exceeded $1 million, and (2) a single payment that exceeds $1 million, with respect to any other employee;
- by third-party agents based only on supplemental payments it makes in excess of its own $1 million threshold, and exclude such payments for purposes of applying the employer's $1 million threshold;
- only on full payments made after an employee has reached the $1 million threshold, rather than requiring two withholding rates for a single payment.

During her testimony, Hartranft answered a question that IRS representatives had asked of a prior witness as to whether the IRS has the authority to issue the relief described by both of these witnesses. Hartranft said that she believes the IRS does have broad authority to provide administrative relief in the employment tax area and specifically referenced the legislative history (the "Blue Book") resulting from the American Jobs Creation Act (P.L. 108-357).

HHS to Create Advisory Panel on Electronic Medical Records

On June 6, Secretary of Health and Human Services (HHS) Mike Leavitt announced the formation of an advisory panel to recommend ways to meet the President's goal to have electronic medical records for most Americans within 10 years. Secretary Leavitt said the advisory panel will provide a way for patients, doctors, hospitals, insurance companies, and employers to agree on standards for electronic health records and ways to achieve interoperability securely and without infringing on personal privacy. The HHS press release describes an electronic medical record as a "a digital collection of a patient's medical history and could include items like diagnosed medical conditions, prescribed medications, vital signs, immunizations, lab results, and personal characteristics like age and weight." The advisory panel will be called the American Health Information Community (AHIC) and will be chaired by Secretary Leavitt. Up to 17 members will be appointed and the panel is expected to provide recommendations to HHS within two years. More information on AHIC and the Department's Requests for Proposals (RFPs) to help implement the Administration's health IT strategy are available at www.hhs.gov/healthit.

Medicare Retiree Drug Subsidy Application Issued

The Centers for Medicare and Medicaid Services (CMS) has released a new Retiree Drug Subsidy (RDS) Plan Sponsor Application and Instructions. Under the Medicare Modernization Act of 2003 (MMA) an employer that sponsors retiree drug coverage that is actuarially equivalent to the new Medicare Part D prescription drug benefit may receive a subsidy of 28 percent of eligible claims between $250 and $5,000 per retiree per year. For plan years beginning January 1, 2006, employers must complete an electronic application via the secure RDS website by September 30, 2005. On June 1, CMS launched the new RDS Center, which will serve as a comprehensive resource for sponsors' informational and operational needs.

DOL/SEC Issue Guidance on Pension Consultants

On June 1, the U.S. Department of Labor (DOL) and the Securities and Exchange Commission (SEC) published tips for plan fiduciaries in selecting and monitoring pension consultants. According to the press release issued in connection with the tips for plan fiduciaries, consulting services include "assisting in determining the plan's investment objectives and restrictions, allocating plan assets, selecting money managers, choosing mutual fund options, tracking investment performance, and selecting other service providers," and might include brokerage or money management services.

The tips, which focus on discovering and addressing potential conflicts of interest of pension consultants, directly resulted from findings in an SEC report released on May 16. The report resulted from an SEC examination of the practices of 24 pension consultants who were registered with the SEC as investment advisers. The SEC report found that many pension consultants do not adequately disclose material conflicts of interest.

In the press release accompanying the tips, the DOL clearly indicates that all investment advisers to plans (regardless of whether they are registered with the SEC) have a fiduciary duty to the plan and indirectly suggests that plans have advisers acknowledge in writing that they have fiduciary obligations. In the earlier SEC report, the SEC stated that some of the 24 investment advisers had erroneously concluded that they were not fiduciaries to their clients. The report clearly focused on the fiduciary duties of an investment adviser to its clients instead of the duties of a fiduciary of the plan under the Employee Retirement Income Security Act (ERISA), and the tips from the DOL notes this distinction, pointing out that certain fees may be prohibited transactions if received by an ERISA fiduciary.

RECENT LEGISLATION AND ACTIVITY

Education and the Workforce Committee Approves Boehner Pension Bill

On June 30, the House of Representatives Education and the Workforce Committee approved The Pension Protection Act (H.R. 2830), a comprehensive pension reform bill sponsored by Committee Chairman John Boehner. The committee approved the substitute amendment offered by Boehner, containing a number of minor and technical changes, by a vote of 27 to 22. The Democrats registered votes of "present," reflecting their support for some portions of the bill, including the multiemployer provisions.

The bill contains extensive reforms of the funding rules for defined benefit pension plans, as well as provisions intended to clarify the law prospectively with respect to the

application of the age discrimination rules to hybrid plans and an exception to the prohibited transaction rules for investment advice. A number of modifications were made via the substitute amendment and numerous other amendments were offered as well. Changes include:

- five-year phase-in of the new 100 percent funding target;
- expanded disclosure requirements;
- relief under certain circumstances from the new mandated mortality tables;
- a compromise coalition agreement on multiemployer plan funding rules and credit balances; and
- preservation of the existing credit balances in the event the plan is 100 percent funded.

The committee defeated Democratic amendments regarding cash balance conversions, investment advice, and parity between executives and rank-and-file workers.

The bill will now be scheduled for a mark-up by the House Ways and Means Committee, chaired by Rep. Bill Thomas (R-CA), an original cosponsor of the bill.

Grassley and Baucus Introduce Bill to Move Medicare to Performance-based Payments

Senate Finance Committee Chairman Charles Grassley (R-IA) and the committee's ranking Democratic member, Max Baucus (D-MT), introduced on June 29 the Medicare Value Purchasing Act to begin to link Medicare payments to how health care providers perform on a set of quality measures. The American Benefits Council sent a letter in support of the measure, stating that it would "build on and accelerate the efforts already underway among consumers, employers, health care providers and health plans to drive our health care system to achieve higher levels of performance and greater efficiency."

Under the legislation, initial performance incentive payments of 1 percent of base payments would be made to health providers who meet quality and efficiency standards to be developed in consultation with a standard-setting body such as the National Quality Forum (NQF), a multi-stakeholder organization which has already developed numerous quality standards for hospital, nursing homes and other health services. Performance payments would gradually increase under the bill to 2 percent of Medicare's base payment amounts. The legislation calls on the Centers for Medicare and Medicaid Services (CMS) to apply these performance payments to services provided by home health agencies, hospitals, physicians, end-stage renal disease facilities and Medicare Advantage plans.

CMS Administrator Mark McClellan strongly supports efforts to move Medicare toward value-based purchasing, in part because early evidence from employers and health plans indicates that even relatively modest incentive payments can lead providers to higher levels of performance and greater efficiency. Medicare currently does not reimburse providers on the basis of performance or quality improvement, but the sponsors of the legislation believe that the incentive payments can improve the delivery of appropriate care to patients and help consumers and purchasers make better-informed decisions about health care providers and services.

The Grassley-Baucus measure is expected to be combined with a health information technology bill, also introduced on June 29, by Senate HELP Committee Chairman Mike Enzi (R-WY) and the committee's ranking Democratic member Senator Edward Kennedy (D-MA). The combined bills could be considered by the Senate Finance Committee and the Senate HELP Committee in September as part of their efforts to report out legislation to meet deficit reduction targets set by the annual Congressional budget resolution process.

House Ways and Means Committee chairman Bill Thomas (R-CA) and Health Subcommittee Chair Nancy Johnson (R-CT) have also expressed interest in developing quality and performance measures for Medicare, a move that could result in companion legislation to the Grassley-Baucus effort also being considered by the Ways and Means panel this fall.

House Energy and Commerce Committee Chairman Promises Consideration of Bill to Change Rules in Individual Health Insurance Market

On June 28, House Energy and Commerce Committee Chairman Joe Barton (R-TX) said at a hearing on the Health Care Choice Act (H.R. 2355) that his committee will hold a markup of H.R. 2355 and attempt to move the legislation to the House floor. H.R. 2355, which was introduced by Representative John Shadegg (R-AZ) in the House and Senator Jim DeMint (R-SC) in the Senate (S. 1015), would allow health insurance companies to file an individual health policy in the state they choose (called the "primary state") and sell the coverage in any state ("secondary state") under the laws of the primary state. This would allow health insurers to be exempt from state mandates and rating rules of the secondary states and according to the bill's sponsor it would allow consumers to purchase the coverage they need at more affordable prices and reduce the number of uninsured.

House Speaker Dennis Hastert (R-IL) has endorsed the bill. Many Democrats are opposed to the measure and consumer advocacy groups and the National Association of Insurance Commissioners (NAIC) have expressed serious concerns with the plan and fear it could encourage a "race to the bottom" with insurers licensing their individual policies in states with the fewest regulations and consumer protections.

While the bill would exempt health insurers in primary states from mandates and rating rules in the secondary states, they would still be required to pay premium and other taxes such as high-risk pool assessments; participate in state guaranty funds; and comply with state laws governing fraud and abuse and unfair claims practices.

Council Endorses Long-Term Care Bills Introduced in the Senate and House

On June 14, Senate Finance Committee Chairman Charles Grassley (R-IA) and Senator Blanche Lincoln (D-AR) introduced the Long-Term Care and Retirement Security Act (S. 1244) that would provide federal tax incentives for the purchase of long-term care insurance. Representative Nancy Johnson (R-CT), who chairs the House Ways and Means Subcommittee on Health, and Rep. Earl Pomeroy (D-ND) introduced the companion bill (H.R. 2682) in the House on May 26. The bills would provide an above-the-line tax deduction for long-term care insurance premiums; a tax credit for caregivers; and it would allow long-term care insurance to be offered under employer-sponsored cafeteria plans and for premiums to be paid premiums to be paid through cafeteria plans and flexible spending arrangements (FSAs).

The American Benefits Council has sent letters of support to all of the sponsors of the bills and will actively lobby in support of the measures, particularly the provision to allow long-term care insurance to be offered under cafeteria plans. Long-term care issues may be wrapped into the Social Security reform debate so there may be a chance for action on the legislation this session.

Senate Finance Committee Requests Information on Pension Plans
In letters dated June 23 and sent to 36 companies, the Senate Finance Committee requested detailed information about those companies' pension plans. According to a press release from Committee Chairman Charles Grassley (R-IA), "These requests are part of an ongoing effort by the senators to understand the scope of pension underfunding and to assist in crafting comprehensive pension reform legislation that will help to prevent dramatic underfunding in the future." The press release provides a copy of the letter sent to these companies, requesting financial information by July 1, 2005.

PBGC-United Airlines Pension Update
On June 7, the Senate Finance Committee held a hearing entitled Preventing the Next Pension Collapse: Lessons from the United Airline Case in which airline industry union officials warned that other airlines that sponsor defined benefit plans (sometimes called the "legacy" airlines) will likely follow the same path as United to bankruptcy court and plan termination unless Congress acts immediately. The Committee heard from the Chief Executive Officer of United, Delta and Northwest Airlines as well as officials from the Association of Flight Attendants-CWA, AFL-CIO, the International Association of Machinists and Aerospace Workers and the Airline Pilots Association International. A separate panel included a series of government witnesses. A complete list of witnesses at the hearing and their testimony is available on the Committee's Web site.

Gerald Grinstein, Chief Executive Officer of Delta Airlines, and Douglas Steenland, President and Chief Executive Officer of Northwest Airlines, both expressed support for the Employee Pension Preservation Act (S. 861) introduced by Representative John D. Rockefeller (D-WV), a member of the Finance committee, and Johnny Isakson (R-GA). S. 861 would allow airlines that freeze their defined benefit plans to stretch out required contributions to the plans. When asked why United did not support the legislation and whether United might seek to reinstate the United plans, Glenn F. Tilton, Chairman, President and Chief Executive Officer of United Airlines, responded that United was in a different place than the other legacy airlines.

Patricia Friend, International President of the Association of Flight Attendants, and Robert Roach, Jr., General Vice President of the International Association of Machinists and Aerospace Workers, both spoke in favor of legislation that would place a six-month moratorium on terminations of defined benefit plans instituted by the Pension Benefit Guaranty Corporation (PBGC). The "Stop Terminating Our Pensions Act," S. 1158, was introduced by Senators Edward M. Kennedy (D-MA), Daniel K. Akaka (D-HI) and Frank R. Lautenberg (D-NJ) on May 26, but would be retroactive to May 1, a date which precedes the commencement of termination proceedings for the United Airlines plans. The bill would require the PBGC to take whatever action is necessary, and within its power, to restore the plans to their pre-termination status.

PBGC Executive Director Bradley D. Belt, a witness on the hearing's government panel, indicated that much has happened since the Administration unveiled its pension funding

reform proposals earlier this year that has bolstered the Administration's case for funding reform. He indicated the total amount of underfunding by plans that file under ERISA Section 4010 (plans underfunded by at least $50 million) had increased to approximately $354 billion from $279 billion in 2003.

During the June 24 debate of H.R. 3010, the Fiscal Year 2006 appropriations bill for the U.S. Departments of Labor, Health and Human Services and Education, the House of Representatives approved an amendment that would effectively halt the recent bankruptcy agreement between United Airlines and the Pension Benefit Guaranty Corporation. The amendment, proposed by Representative George Miller (D-CA), would prohibit funds appropriated by H.R. 3010 from being used by PBGC to "enforce or implement" the settlement between the agency and United Airlines. This amendment passed by a vote of 219-185.

The House passed H.R. 3010 on June 24 by a vote of 250-151. Before this provision becomes law, it must be reconciled with a similar appropriations bill passed by the Senate and signed by the President. Final appropriations measures typically are enacted late in the fall and frequently Congress does not pass them until well into the fiscal year for which the measure applies.

Social Security Update: Legislation Introduced as Congressional Hearings Continue

On June 22, four members of the Social Security Subcommittee of the House Ways and Means committee announced new legislation to "spend Social Security dollars on Social Security." The new bill would use the current Social Security surplus to fund personal accounts. The bill is sponsored by Subcommittee Chairman Jim McCrery (R-LA), and Representatives Clay Shaw (R-FL), Sam Johnson (R-TX) and Paul Ryan (R-WI). All except Congressman McCrery have previously introduced Social Security legislation.

The "Growing Real Ownership for Workers" or GROW accounts would be created using the Social Security surplus for workers under age 55, unless they choose not to participate, and would initially be invested in marketable Treasury securities. The bill calls for an independent Board to manage and administer the GROW accounts. In 2009, the Board would submit a plan to Congress that would allow individuals to diversify into other prudent investment options (although they could choose to keep the GROW account in Treasury bonds). While the accounts are invested in Treasury bonds, the monies would be considered "borrowed" money that the government could use for other programs. This borrowed money would be reflected as part of the budget deficit, whereas today it is used to offset part of the budget deficit.

Meanwhile, the Subcommittee continued its series of hearings on Social Security reform with two more hearings on June 21 and 23. The June 21 hearing focused on the impact of economic trends on Social Security's financing and retirement security and the June 23 hearing discussed options for the administration of personal accounts.

On June 23, Senator Jim DeMint (R-SC) led ten other senators in announcing similar legislation entitled "the Stop the Raid on Social Security Act." One of the primary differences in the Senate version is that it would allow individuals to diversify into investments selected by an independent board in 2008 instead of 2009 and no act of Congress would be necessary to change the investments. Other cosponsors include

Senators Rick Santorum (R-PA), Lindsey Graham (R-SC), Mike Crapo (R-ID), Tom Coburn (R-OK), John Sununu (R-NH), Johnny Isakson (R-GA), Mike Enzi (R-WY), John Cornyn (R-TX), Trent Lott (R-MS) and Sam Brownback (R-KS).

Senator Bob Bennett (R-UT), reportedly with President Bush's blessing, also announced plans to introduce a bill intended to address the solvency of Social Security that does not include personal accounts. Bennett is expected to introduce two separate bills; the first bill, addressing solvency, would phase-in progressive indexing beginning in 2012, accelerate the present law increase of the Social Security retirement age to 67, and index the initial benefits to account for changes in the expected average lifetimes of future retirees (longevity). The second Bennett bill is expected to include optional "carve in" personal accounts of a total of 4 percent with the worker electing to contribute 2 percent of wages coupled with a 2 percent match from Social Security taxes. The bill is also expected to include automatic enrollment/acceleration provisions for 401(k) and similar plans. The details of these bills are still subject to change.

Senators Urged to Cosponsor FSA Rollover Bill (S. 309);
Use Capitol Connection Feature of American Benefits Council's Web Site Today
The American Benefits Council has strongly supported modifying or eliminating the use-it-or-lose-it rule as a way to encourage increased enrollment in flexible spending arrangements (FSAs) and greater employee control over health spending. Senators Jim DeMint (R-SC), Ken Salazar (D-CO) and John Ensign (R-NV) have introduced a bill (S. 309) that would permit up to $500 in unused FSA funds to be carried forward to the following year's FSA or transferred to a health savings account (HSA). The Council supports S. 309 and sent a letter to all senators asking them to cosponsor the bill. In addition, the Council urges employers and their employees to use the Capitol Connection section of their Web site to urge senators to cosponsor S. 309.

To access the Capitol Connection Center, click on one of the following links and enter your zip code: Letter from Employer: http://snipurl.com/s309employer; Letter from Employee: http://snipurl.com/s309employee

It is important to have a solid list of cosponsors for S. 309 since the prospects for congressional action on the issue have increased in recent weeks — largely because House Ways and Means Committee Chairman Bill Thomas (R-CA) has mentioned FSAs when discussing Social Security reform and the need to expand options to help individuals save for retiree health. Please contact your senators today and urge your employees to send a message as well. This is a great way for companies to get employees engaged on a public policy issue that is obviously of great value to employees and their families.

Smith and Conrad Introduce Automatic Enrollment Bill in Senate
Senators Gordon Smith (R-OR) and Kent Conrad (D-ND) have introduced the Retirement Savings and Security Act. Among other provisions, the bill promotes automatic enrollment and automatic contribution increases in defined contribution plans, expands the successful "saver's credit" designed to help moderate-income savers, facilitates rolling over flexible spending account surpluses to employer-sponsored retirement plans and IRAs, and permits tax refunds to go directly into retirement accounts.

During a June 9 media briefing at which the senators invited American Benefits Council President James Klein to speak, Klein noted that “as the defined benefit pension system has declined, it is even more important that attention focus on how to build upon the successes of the defined contribution system. We know that automatic enrollment and automatic contribution increase provisions to these plans enable more workers to begin saving for their retirements and to make contributions on a more practical and useful scale. Senator Smith and Senator Conrad are to be highly commended for taking on the difficult task of crafting legislation that can help overcome, in practical ways, a number of the impediments to retirement security that now exist and to help promote retirement plan coverage for more Americans.”

Council says hybrid plans can help staunch the defined benefit system's decline in Senate HELP subpanel hearing

Bill Sweetnam, principal and chair of the Groom Law Group's Public Policy and Legislation Practice Group, testified on June 7 on behalf of the American Benefits Council during a hearing before the Senate Health, Education, Labor and Pensions (HELP) Committee’s Subcommittee Retirement Security and Aging in a hearing on reforming hybrid defined benefit plans and multi-employer pension plans. Sweetnam appeared in the second of two panels to offer testimony.

The first panel, composed of union representatives and employers who participate in multi-employer plans, discussed proposals to improve plan funding and information disclosure reforms. Changes to the rules governing the funding of multi-employer plans are expected to be an important component in overall funding reform legislation. The witnesses each spoke to the issues challenging multi-employer plans and to the differences in the primary proposals that have been suggested by the multi-employer and business communities. The Council continues to provide educational support on multi-employer issues and is engaged in efforts to ensure that the multi-employer and affected business community members are successful in finding a satisfactory solution without delaying efforts to enact a permanent replacement to the expiring interest rate for defined benefit funding calculations.

Joining Sweetnam in the second panel’s discussion of hybrid plans sponsored by single employers was David Certner, AARP director of federal affairs, and Ellen Collier, director of benefits for Eaton Corporation. Sweetnam told the panel that "the most important step for Congress to take — and to take quickly — is to clarify that the cash balance and pension equity designs satisfy current age discrimination rules. Congress must make clear that the isolated legal interpretation holding these designs discriminatory merely because the accounts of younger workers have more years to earn interest is unfounded. Congress should also offer legal protection for past hybrid conversions and remedy a number of hybrid uncertainties that have frustrated pro-employee plan design features." Eaton Corporation's Collier agreed that without clear legal guidance on the age appropriateness of these plans, sponsors such as her company would freeze or terminate their cash balance plans and instead replace them with defined contribution plans. Sweetnam also testified that "Congress should avoid imposing benefit mandates on hybrid conversions that would guarantee future retirement plan benefits and prevent employers from changing their benefit programs."