TESTIMONY

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Good morning, Mr. Chairman, members of the Committee, and thank you for the opportunity to appear this morning. I am James Klein and I am here on behalf of the American Benefits Council, which is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement, stock and health plans covering more than 100 million Americans.

We at the Council are pleased that this Committee is pursuing a full investigation of the Enron collapse before determining what policy changes may be appropriate. Based on the facts as they are currently known, many of the failures at Enron appear to be general corporate failures rather than specific 401(k) failures. Given this reality, the Council believes strongly that a deliberate and cautious review is absolutely necessary in order to avoid hasty legislative changes that could undermine our nation's successful employer-sponsored retirement savings system. We salute the Committee for its judicious approach to the retirement policy aspects of the Enron bankruptcy.

More than 42 million Americans today participate in 401(k) plans and 14 million more participate in profit-sharing and employee stock ownership plans (ESOPs). These 56 million workers have amassed more than $2.5 trillion in retirement savings and many have built a substantial ownership stake in their company. These successful employer-sponsored plans not only prepare workers for retirement and democratize corporate ownership, but also serve as an engine of economic growth by providing one of our nation's most significant sources of investment capital. Congress has, over many decades, promoted these retirement savings and employee ownership plans through tax and other incentives, with very positive results for tens of millions of American workers.

As Congress turns to an evaluation of the appropriate response to the Enron bankruptcy, we urge you to keep the private retirement system's success squarely in mind and to hold true to the long congressional support for our nation's voluntary, employer-sponsored retirement savings and employee ownership system. We do not believe that the unfortunate developments at Enron merit a retreat from the long-standing bipartisan policy of extending corporate ownership into the hands of rank-and-file workers.

In order not to undermine this successful, voluntary system, the Council believes that Congress should focus any retirement plan reforms on ensuring that 401(k) participants have the information, education and professional advice they need to wisely exercise their investment responsibility. To this end, we support the proposals made recently by the Bush Administration and some in Congress to provide advance notice to employees of transaction suspension periods (so-called "blackout" periods) as well as more regular retirement plan benefit statements that stress the importance of diversification. The Council likewise supports proposals to help employers offer professional investment advice to 401(k) participants and help employees save for the cost of retirement planning services.

We do, however, strongly urge Congress to reject percentage caps on the amount of an employee's 401(k) account that could be invested in company stock. These caps, which are included in legislation put forward by Senators Boxer and Corzine (S. 1838), would be unpopular -- and contrary to the best interests of -- the many employees who benefit from having an ownership stake in their company. Rather than limiting employee opportunity in this way, we believe Congress should empower workers to exercise their freedom of choice wisely through provision of the new educational tools discussed above.

Percentage caps would also prevent employers from continuing to provide 401(k) matching contributions in stock. Unable to achieve their purpose of providing an ownership stake to employees via the stock match -- and given the greater expense of matching in cash -- many employers will respond to caps by reducing their matching contributions. The unfortunate result will be <u>fewer</u> employer match dollars contributed to employee accounts. This will weaken one of the most effective incentives for employee saving and inadvertently harm the very people Congress wishes to protect.

These same concerns inform the Council's skepticism about limiting the holding periods that employers may impose on the sale of shares provided via a 401(k) match. We believe that limiting these holding periods risks reduced matching contributions. In particular, such changes may lead employers to divert resources from 401(k) programs into broad-based stock option programs, where the company can guarantee that employees will maintain an ownership stake. The earlier in a worker's career that he or she is permitted to sell company shares and the greater the percentage of shares the employee may sell, the greater the risk of reduced employer matching contributions.

The losses suffered by Enron 401(k) participants have renewed interest in defined benefit pension plans. These plans, which are funded by the employer and insured by the federal government, make an effective complement to a 401(k) program. Yet the number of these plans has declined from a high of 175,000 in 1983 to fewer than 50,000 today, with the decline partly attributable to over-regulation and its attendant costs and complexities. These sobering numbers offer two important lessons. First, Congress must approach any new regulation of 401(k) plans with extreme caution so as not to produce the same disastrous decline in employer sponsorship of 401(k) plans that we have seen in the traditional pension arena. Second, Congress should use the occasion of its Enron review to streamline the rules that apply to defined benefit pensions so that more companies can provide these employer-funded and insured benefits to their workers.

In closing, the Council urges a cautious approach to the retirement plan dimensions of the Enron collapse so as not to undermine our successful and long-supported retirement savings and employee ownership system. Information and advice -- rather than restricted choice and over-regulation -- are the strategies that will protect workers and retirees while fostering the continued growth of the 401(k).

Thank you, Mr. Chairman, for the opportunity to appear today.

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