AMERICAN BENEFITS COUNCIL

February 15, 2008

Filed Electronically

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: Civil Penalties Under 502(c)(4)

Re: Comment on Proposed Civil Penalty Regulations;
RIN 1210-AB24.

Dear Sir or Madam,

The American Benefits Council (Council) appreciates the opportunity to comment on the proposed regulations concerning civil penalties that may be assessed by the Department of Labor (the Department) under Section 502(c)(4) of the Employee Retirement Income Security Act (ERISA) which were issued in December 2007. The regulations were necessary to reflect amendments to that section by the Pension Protection Act of 2006 (PPA). The Council 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 and health plans that cover more than 100 million Americans.

The focus of this comment letter is on the potential civil penalty of up to $1,000 per day for each violation of Section 514(e)(3) of ERISA, added by the PPA. Section 514(e)(3) requires the administrator of a plan with an automatic contribution arrangement to provide each participant to whom the arrangement applies, notice of the participant's rights and obligations under the arrangement. As you know, the Department of Treasury/Internal Revenue Service (Treasury) has issued guidance that affects the contents and appropriate timing for the notice with respect to Qualified Automatic Contribution Arrangements (QACA) and Eligible Automatic Contribution Arrangements (EACA). The Council's February 6 comment letter to Treasury requested clarification of several issues related to automatic contribution arrangements (ACA) not intended to meet the requirements of a QACA or an EACA. However, the Council believes the issue addressed in this letter is more appropriately addressed by the Department in connection with its civil penalty regulatory project.

Basically, the Council requests clarification on whether the new 514(e)(3) penalties should apply to an ERISA plan that includes an ACA that is not intended to meet the requirements of a QACA or an EACA. Furthermore, the clarification should specify if the answer depends upon whether the arrangement defaults into an investment intended to meet the qualified default investment alternative (QDIA) regulations.

With both QACAs and EACAs, the plan obtains benefits by meeting the regulatory requirements. QACAs avoid non-discrimination testing and EACAs are allowed to implement permissive withdrawals and receive an extension of time in which to make penalty-free refunds in order to pass non-discrimination testing. Plan sponsors which implement ACAs, on the other hand, are simply facilitating more retirement savings among employees without the benefit of plan design or operation incentives.

In order to encourage plan sponsors to adopt automatic enrollment, which was clearly the purpose of the PPA provisions, the Council believes it makes sense to impose the penalty with respect to QACAs and EACAs, but not with respect to ACAs, at least with respect to the regulatory timing and content requirements spelled out in the Treasury regulation. The statute clearly anticipates that the participant will receive a notice of the ACA with sufficient time to opt out of the arrangement but failing to meet the regulatory requirements for QACAs or EACAs should not result in $1,000 per day per participant penalties for plans with simple ACAs.

Again, we appreciate the opportunity to comment on the proposed civil penalty regulations. We believe that the American Benefits Council offers an important and unique perspective of both the employer sponsors of retirement plans and the service providers that assist them, and we look forward to working with you on these important changes.

Sincerely,

Jan M. Jacobson
Senior Counsel, Retirement Policy
American Benefits Council