Pension Rights Center

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November 14, 2008

The Honorable Max Baucus, Chair
The Honorable Charles Grassley, Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Chairman Baucus and Ranking Member Grassley:

The current economic crisis has had a devastating impact on the retirement security of millions of American workers. It has also demonstrated the critical importance of defined benefit pension plans. While asset values in both defined contribution plans and defined benefit plans have experienced their sharpest decline in recent history, workers covered by single employer defined benefit plans have been protected from the devastating losses that participants in 401(k) plans have suffered.

As Congress considers new actions to address the economic crisis – by rescuing financial institutions, bailing out the auto industry, and aiding homeowners who face foreclosure – we urge you to also address the equally important issue of erosion in retirement financial security. Specifically, we ask that you move expeditiously to mitigate the consequences of the financial crisis on participants in defined benefit pension plans.

In particular, we ask that you (1) provide relief to ongoing single-employer defined benefit pension plans from certain funding requirements in the Pension Protection Act of 2006 (PPA); (2) provide relief to employees whose benefits will be frozen under the PPA because of declines in the funding levels of their plans; (3) provide additional protections for defined benefit plan participants whose employers seek bankruptcy relief; and (4) provide rules that will help deter companies from freezing and terminating their plans by more closely correlating the benefits of regular working men and women with those of highly-paid executives.

1. Provide Funding Relief

The Pension Protection Act of 2006 reshaped the funding rules for employers who sponsor defined benefit plans by accelerating funding requirements. Steep declines in asset values will thus result in substantial increases in plan funding obligations at a time when businesses are facing enormous financial challenges. Employers are urging the adoption of a number of technical proposals to ease temporarily this burden, including proposals to allow greater smoothing of assets and amortization of recent losses.

We are concerned that, if some funding relief is not extended, some companies will freeze their single-employer defined benefit plans. The financial crisis has demonstrated that defined benefit plans are superior to 401(k) plans, where the market decline has wiped out years of retirement savings. Steps should be taken to support employers who continue to sponsor defined benefit plans in which employees are continuing to earn benefits.

There is, however, absolutely no reason to grant funding relief to employers that have frozen benefits. Extending relief to frozen plans will harm employees without giving them anything in return and will unnecessarily compromise the solvency of the Pension Benefit Guaranty Corporation (PBGC). We also ask you to make relief conditional on an employer's commitment to continue accruals for the plan for five years following the period of funding relief.

We also advocate a permanent change to the provisions in the PPA that now requires employers to fund their unfunded liabilities over a seven-year period. Extending the amortization period to at least 10 years will help protect companies from extreme fluctuations in the value of plan assets and liabilities.

2. Suspend the PPA Rule Requiring Benefit Freezes for Certain Plans

The PPA bars employees from earning new benefits when a plan's funding level falls below 60 percent, essentially rewarding employers for not properly funding their plans by reducing their benefit obligations to their employees. In effect, the PPA provision is a statutory reduction in employees' compensation. This provision was ill-advised when enacted and is particularly unfair to employees in the current economic environment, where the unprecedented market meltdown will force many new plans into mandatory benefit freezes. We urge you to repeal the PPA requirement.

3. Adopt New Protections in Bankruptcy

The financial crisis will increase the number of companies that file for bankruptcy. It is time for Congress to provide stronger protections for employees when employers terminate their plans during bankruptcy proceedings. At a minimum, we should return to the pre-PPA rule in which guaranteed benefits are determined as of the date the employer terminates a plan rather than an earlier date when the employer files for bankruptcy protection. The PPA rule can retroactively strip employees of benefits when a plan terminates during a bankruptcy proceeding by treating a company's bankruptcy filing date as the calculation date for PBGC-guaranteed benefits even if the plan does not terminate for several years. This can deprive the employees of critically important earned benefits. We also urge Congress to ensure that, if a plan terminates, employees have a claim in bankruptcy court for the difference between what the PBGC provides the benefits actually promised by the plan.

4. Link Employee and Executive Retirement Plans

We are concerned that some employers may use the financial crisis as a pretext for freezing or terminating their defined benefit plans. We recommend that you amend the PPA to require that any employer that freezes a defined benefit plan must also freeze all non-qualified deferred compensation arrangements for their management and other highly-paid employees.

At a time when the country is facing the most monumental financial disaster since the Great Depression, protecting retirement income security must be a national priority. Congress should move quickly to provide limited relief to employers to help them continue funding defined benefit plans and enact critical protections for employees and retirees. In the longer term, we look forward to working with you to improve retirement security for all Americans.

Sincerely,

Karen Friedman
Policy Director

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Senior Policy Advisor