

October 29, 2008

The Honorable George Miller  
Chairman  
Committee on Education and Labor  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Howard McKeon  
Ranking Member  
Committee on Education and Labor  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Miller and Ranking Member McKeon:

Thank you for holding hearings and highlighting the increasing importance of retirement security. As you are aware, the current financial crisis not only impacts workers today but also will likely have severe negative effects on the pension plans in which they participate. These negative effects will reduce retirement benefits, undermine retirement security, cause significant job loss and slow down the national economic recovery. On behalf of the thousands of employers that we represent and their millions of employees, the undersigned organizations urge you to consider legislation that would help companies navigate the current economic crisis while minimizing adverse impacts on the pension benefit plans they sponsor.

The drop in the value of pension plan assets coupled with the current credit crunch has placed plan sponsors in an untenable position. At a time when companies need cash to keep their businesses afloat, they are also required to make unexpectedly large contributions to their plans in order to meet funding requirements. Consequently, many companies will have to consider whether to freeze or terminate their pension plans or reduce retirement benefit accruals in order to survive. We do not believe that in enacting the Pension Protection Act of 2006 ("PPA"), Congress intended companies to be forced to make this kind of decision. Moreover, freezing a pension plan does not eliminate the huge funding obligations triggered by the sudden market downturn. These large funding obligations will, if not modified, divert assets away from job retention, job creation and needed business investments, thus increasing the number of Americans who are unemployed and slowing our economic recovery.

We are in no way advocating an overhaul of the PPA funding changes. Our recommendations today only include technical corrections to the PPA that we believe implement Congressional intent, and temporary provisions that deal with the financial crisis facing us today. Specifically, we support provisions that will:

**Permit Smoothing of Unexpected Losses** – Prior to the PPA, pension plans could spread unexpected gains and losses over 48 months (commonly referred to as smoothing). The PPA changed this period to 24 months. However, the IRS interpretation of the PPA makes this accounting method so unattractive that companies are effectively forced to use fair market value. Given the current market situation, the use of fair market value is creating unexpectedly large

funding obligations. Consistent with Congressional intent, the law needs to be clarified that 24-month asset smoothing is permitted.

**Remove Restrictions on Extent of Asset Smoothing** – In order to fully address the smoothing problem, it also is necessary to address the smoothing corridor. The PPA allows unexpected gains and losses to be smoothed out to a very limited extent, so that the smoothed value stays within 10% of fair market value. Prior to the PPA, the smoothed value could be used as long as it was within 20% of the fair market value. Given that the equity markets have fallen by far more than 20%, even a 20% limit on smoothing would be excessive. It is critical that asset smoothing apply without percentage limitations in 2009 and 2010.

**Allow Sufficient Transition to New Funding Rules** – In order to take advantage of the transition period under the PPA, a plan must meet the funding level of the current transition year. The funding level for 2008 is 92% and for 2009 is 94%. However, if a plan is below the phase-in level, it cannot use the transition rule. For example, if a plan is only 91% funded for 2008, it must fund toward a funding target of 100%, instead of 92% thus losing the benefit of the transition rule. Because so many plans will be below the phase-in level for 2009 due to the market, it is critical that the transitional funding rule be modified so that it applies to plans below the phase-in level, as well as plans above the phase-in level. We also recommend that the phase-in level remain at 92% for another year.

**Permit New Funding Election Methods to Keep Plans Viable** – Broader flexibility in the election of funding methods is very much needed, and would go a long way toward helping companies weather this pension storm. Generally, IRS approval is required to change funding methods. Given the enormous changes over the past several months, companies need to reassess their funding methods to find those best suited to maintaining their plans going forward. For 2009 and 2010, we recommend allowing funding methods to be changed without IRS approval.

**Clarify End-of-year Valuations** – Small plans need clarification of the date plan assets are valued for purposes of applying current year benefit restriction rules – specifically to provide Treasury with the authority to write rules providing that the adjusted funding target attainment percentage (“AFTAP”) for a year is based on the funded status as of the end of the preceding year. For example, December 31, 2008 valuation results, including asset values, should be the basis for the 2009 AFTAP, not the 2008 AFTAP.

**Permit Fixed Interest Rate for Code Section 415 limits** – The current financial crisis is causing interest rates to rise. Pre-PPA, a plan could use a fixed interest rate to calculate lump sum benefits, including the limit on cash balance account accumulations. PPA added a variable rate limitation. Higher interest rates will create lower Code section 415 limits; therefore, we recommend that the 5.5%

provision included in technical corrections be implemented and expanded to all plans.

Thank you in advance for considering our request for critical pension legislation. Our members are extremely concerned about the viability of their pension plans during this economic recovery and are continually analyzing these issues. As such, we will continue to share ideas and concerns with you as they arise. Thank you again for your consideration, and we look forward working with you and your staff on legislation that will help our country's economic recovery and job retention and creation.

Sincerely,

Aerospace Industries Association  
American Benefits Council  
American Council of Life Insurers  
American Public Power Association  
ASPPA College of Pension Actuaries  
Association for Advanced Life Underwriting  
Business Roundtable  
Committee on Investment of Employee Benefit Assets  
Edison Electric Institute  
ERISA Industry Committee  
Financial Executives International's Committee on Benefits Finance  
HR Policy Association  
National Association of Manufacturers  
National Federation of Independent Business  
National Mining Association  
U.S. Chamber of Commerce

cc: Members of the House Committee on Education and Labor