February 20, 2009

The Honorable Nancy Pelosi
Speaker,
U.S. House of Representatives

The Honorable John Boehner
Minority Leader,
U.S. House of Representatives

The Honorable Steny Hoyer
Majority Leader
U.S. House of Representatives

Dear Speaker Pelosi, Majority Leader Hoyer and Minority Leader Boehner:

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Companies are also confronting having to tell their employees that long-promised lump sum benefits will be either fully or partially unavailable. For many companies, this lump sum restriction will take effect as early as April 1, 2009. For older employees who have been planning on receiving this lump sum, this news will be perceived as very unfair, and will further undermine their confidence and morale, especially in conjunction with the large decline in many employees' 401(k) plan balances. These same concerns exist for other popular forms of benefit, such as level income options, which attempt to provide a level combined amount of pension and Social Security benefits to plan participants, before and after the date on which Social Security benefits commence. Many private defined benefit plans in the United States have either a lump sum benefit or a level income option (or both). The benefit restriction rules apply to both options.

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CC: Representative James Clyburn, Majority Whip
Representative Eric Cantor, Minority Whip

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Majority Leader,
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The Honorable Mitch McConnell
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CC: Senator Richard J. Durbin, Majority Whip
Senator Jon Kyl, Minority Whip

February 20, 2009

<table><tr><td>The Honorable Charles B. Rangel
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CC: House Committee on Education and Labor
Senate Committee on Health, Education, Labor and Pensions
Senate Committee on Finance

February 20, 2009

The Honorable Max Baucus
Chairman,
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Committee on Finance

The Honorable Charles Grassley
Ranking Member,
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We have all thought a lot about possible proposals—including other proposals not listed above—that would provide much needed short-term relief. In fact, some of us have developed proposals that have been discussed with Congress. We would all be more than happy to discuss any relief proposals with you further in writing or in person.

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We appreciate your openness to considering our views on the funding situation. We do not believe that plans should remain underfunded and we are not advocating undermining the reforms enacted in the PPA. However, asking companies to make up too much of the 2008 plan losses too quickly will adversely affect job retention and our economic recovery, hurting both employers and employees/plan participants. As we have stated, it is our firm belief that the use of credit balances alone will not solve this serious pension funding problem.

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CC: Senate Committee on Health, Education, Labor and Pensions
House Committee on Ways and Means
House Committee on Education and Labor

February 20, 2009

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

The Honorable Howard P. "Buck" McKeon
Ranking Member,
U.S. House of Representatives
Committee on Education and Labor

Dear Chairman Miller and Ranking Member McKeon:

The undersigned represent many of the major consulting firms that provide actuarial services to single employer defined benefit pension plans and their sponsors in the United States. This letter summarizes our collective views and observations regarding the defined benefit pension funding issues caused by the current crisis in the financial markets.

Congress included important funding provisions in the Worker, Retiree, and Employer Recovery Act of 2008 ("2008 Act"). We very much appreciated the inclusion of these provisions, which were very helpful in reducing the funding burdens on many companies across the country. The 2008 Act also sent a hopeful signal to plan sponsors that Congress recognizes the challenges they are facing. On behalf of our clients, we want to thank Congress for its quick and effective action.

We understand that questions have been raised regarding the need for additional funding relief to address the challenges facing defined benefit plan sponsors. One of the specific questions is whether companies can simply address their funding burdens without the use of cash, i.e., through the use of credit balances (technically, "prefunding balances" and "funding standard carryover balances"). In this letter we address that issue. As described below, in the case of calendar year plans, the credit balances available at January 1, 2008 will generally be greatly diminished as of January 1, 2009; only a much reduced amount will be available for ameliorating the required 2009 contributions. Furthermore, even if remaining credit balances are waived to improve funded status, as measured for the purpose of determining the requirement to impose benefit restrictions on participants, a great number of plans will still be required to impose these restrictions.

Background

Even after taking into account the 2008 Act, our clients are, on the average, facing funding obligations for 2009 that are far above the amounts required for 2008. This is consistent with our discussions with you last year, indicating that the provisions in the 2008 Act were a great first step but a second step would also likely be needed. In fact, we are now finding the burdens are even greater than we had projected in early December. The dramatic fall in interest rates at the end of 2008 had an adverse effect on the funding levels that had been anticipated only two months earlier, thereby exacerbating the funding crisis brought on by the worst six month equity performance since The Great Depression. Needless to say, at the same time that funding

obligations are increasing, companies' cash reserves have shrunk and companies' ability to borrow has diminished. The result is that the economic crisis is forcing companies to consider plan freezes, elimination of 401(k) plan matching contributions, contributions of assets other than cash, borrowing money at high interest rates (if loans are available at all), significant layoffs, or even plant closings, due, in part, to the companies' funding obligations.

Companies are also confronting having to tell their employees that long-promised lump sum benefits will be either fully or partially unavailable. For many companies, this lump sum restriction will take effect as early as April 1, 2009. For older employees who have been planning on receiving this lump sum, this news will be perceived as very unfair, and will further undermine their confidence and morale, especially in conjunction with the large decline in many employees' 401(k) plan balances. These same concerns exist for other popular forms of benefit, such as level income options, which attempt to provide a level combined amount of pension and Social Security benefits to plan participants, before and after the date on which Social Security benefits commence. Many private defined benefit plans in the United States have either a lump sum benefit or a level income option (or both). The benefit restriction rules apply to both options.

Credit Balances

It has been suggested that credit balances are available to address this funding crisis, so that companies do not have to make much in the way of cash contributions. None of us is aware of any up to date national data on credit balances that could lead one to believe that credit balances are available to address this funding crisis. On the contrary, we can state definitively, based on our current day-to-day work with a huge number of clients across the country, including almost all (if not all) major corporations that sponsor defined benefit plans, that credit balances do not solve the funding problem. In a large number of cases, credit balances will not be available to satisfy minimum funding obligations, because the credit balances have been waived in whole or in part. In other cases, credit balances never existed.

Credit balances that existed at the beginning of 2008 are unlikely to provide substantial relief for several reasons:

- Credit balances are reduced by the negative investment results of 2008. This will cause many balances to decrease by 20%-40%, consistent with the investment return for the year.
- Many plans will be faced with a mandatory waiver of credit balances to avoid benefit restrictions. Other plans may voluntarily waive credit balances to improve their funded status, as such funded status is determined in accordance with the Pension Protection Act ("PPA").
- Much higher amortizations in 2009 of the 2008 losses will quickly exhaust most remaining credit balances.
- Especially after the PPA, the existence and use of credit balances varies widely from company to company. And not coincidentally many of the companies with the largest credit balances will be the best funded plans, with respect to which there may not be a funding obligation for 2009.

For example, assume the following facts, which are representative of many plans. As of January 1, 2009, a plan has $10 billion of liabilities, assets with a smoothed value of $8.25 billion, and a $2 billion credit balance. First, as noted, this $2 billion credit balance is already far less than what it was in 2008, since credit balances must be reduced for negative investment return. In 2008, this plan's credit balance could easily have been as high as $3 billion. Second, if this plan provides lump sum distributions or a level income option, the plan sponsor is required by law to waive $1.75 billion of its credit balance, leaving just $250 million of remaining credit balance. So a company that may have had as much as $3 billion of credit balance as of January 1, 2008 is left with just $250 million for use in 2009, a reduction of over 90%. Moreover, the lump sum benefit/level income option restriction is not the only reason to waive credit balances. For example, many companies will need to waive credit balances as of January 1, 2009 to avoid at-risk status in 2010. This is a long way of saying that any data on credit balances from 2008 is almost meaningless for 2009. This also means that for a very large number of companies, credit balances will not be available to satisfy much of their 2009 obligations.

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We would also note that there are critical regulatory issues pending before Treasury right now with respect to funding. One key issue is conforming the regulations to the statute with respect to companies' ability to elect to value plan liabilities based on the full yield curve for any "applicable month". Another important issue is confirming that plan sponsors that did not use asset smoothing for 2008 may do so for 2009.

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CC: House Committee on Ways and Means
Senate Committee on Finance
Senate Committee on Health, Education, Labor and Pensions

February 20, 2009

The Honorable Edward Kennedy
Chairman,
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Committee on Health, Education,
Labor and Pensions

The Honorable Michael Enzi
Ranking Member,
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