



AMERICAN BENEFITS

COUNCIL

TESTIMONY OF

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BEFORE THE

**U.S. SENATE
COMMITTEE ON HEALTH, EDUCATION,
LABOR AND PENSIONS**

HEARING ON

**PBGC: IS STRONGER MANAGEMENT
AND OVERSIGHT NEEDED?**

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My name is Ken Porter and I am an Actuarial and International Benefits Consultant for the American Benefits Council (the "Council"). I also serve as Executive Director of the Council's research and education affiliate, the American Benefits Institute. Previously, I worked for 35 years for The DuPont Company, from which I retired as the Finance Director for Corporate Insurance and Global Benefits Financial Planning. I also served as Global Risk Manager and Corporate Chief Actuary with responsibilities that included DuPont's defined benefit pension plans covering more than 160,000 participants in the United States and with about \$18 billion in U.S defined benefit plan assets. I also had actuarial oversight responsibility for defined benefit pension plans in every other country where the company sponsored defined benefit pension plans. In my capacity as a DuPont employee, I served on the Council's Board of Directors and I am a former Chairman of the Council's Board. Thank you very much for the opportunity to testify.

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 Council applauds Chairman Harkin, Ranking Member Enzi, and the Members of this Committee for holding this hearing to examine the management and oversight of the Pension Benefit Guaranty Corporation (the PBGC). The Council believes this is a topic that merits a full public policy discussion.

The PBGC has a very challenging mission. The PBGC needs to ensure that it has adequate funds to provide benefits to participants and beneficiaries whose plans are terminated with insufficient assets. We believe that the PBGC works hard to fulfill this part of its mission. For that, we are very grateful.

The PBGC has an additional very complementary responsibility that is critical to enabling it to meet its first goal. That is to be a champion of the defined benefit pension plan system and to encourage the continuation and maintenance of pension plans. In no way should this role be viewed as at odds with the need to have adequate funds to pay benefits to participants in terminated plans. To the contrary, the future financial integrity of the PBGC depends upon the maintenance of defined benefit pension plans.

I would like to focus my testimony on one key issue: the relationship between the PBGC and the defined benefit pension plan sponsor community. The American Benefits Council, which represents the PBGC's customers who pay the premiums that support the agency, appreciates its longstanding relationship with the PBGC and the opportunities that have been afforded to share our views on a range of issues over the years. We certainly also welcome suggestions on how we, the plan sponsor community, can more effectively communicate with the PBGC. It is very important that the

relationship be strengthened and we would of course like to continue working with Congress and the PBGC in that regard, so that all parties can better understand the others' concerns. Such strengthening is critical to fulfilling the PBGC's statutory mission "to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants". We believe that this mission can be served through better communication between the PBGC and business community.

The core problem we see is that PBGC and the business community need to communicate more effectively about why employers are fleeing the defined benefit plan system, why they are freezing their plans, and how certain well-intended PBGC policies and actions can actually threaten business viability and *increase* PBGC liability. The following examples illustrate this issue:

- The PBGC recently proposed regulations regarding various corporate transactions, including the shutdown of operations. These proposed regulations would reverse longstanding PBGC written policy and would impose potentially enormous liabilities with respect to routine transactions that involve no layoffs or shutdowns and pose no threat to the PBGC. Companies will find it extremely difficult to continue sponsoring defined benefit pension plans if their routine business transactions trigger large liabilities unrelated to any risk to the PBGC. In our view, this regulatory project is a critical test of PBGC/business community communication. Given the depth of our concerns, we were very encouraged recently when PBGC Director Joshua Gotbaum recognized the importance of these proposed regulations and extended the comment period to receive further input. We thank the Chairman and Ranking Member of this committee for their leadership with respect to that extension. We further hope that this hearing will lead to an open dialogue among Congress, plan sponsors, and the PBGC so that the PBGC rules will encourage rather than discourage plan maintenance.
- The PBGC has not joined in the broad bipartisan support that has been evidenced in both the Senate and the House of Representatives over the past two years for defined benefit pension plan funding relief. Congress has wisely recognized that pension funding relief legislation is critical not only to saving jobs, but also to saving pensions by forestalling the termination of underfunded plans and thereby protecting the PBGC as well. However, the PBGC itself has resisted the efforts to help companies recover from the economic downturn and smooth out the extraordinary losses suffered by the plans. The lack of support for essential relief has understandably led long-time defined benefit plan sponsors to question their own commitment to the system. Again, better communication might help the agency and its customers (i.e. the plan sponsors who pay the PBGC premiums) be in better alignment on such a critical policy matter.

- We believe it is essential that there be a continuing and open dialogue with the PBGC about:
 - The PBGC's economic modeling system, which has been actively used in public policy debates but has not been made available for public discussion;
 - The PBGC's investment policy, which we believe should be based on a diversified portfolio; The investment decisions made by the PBGC affect us all, of course, but we also believe the trustees should have appropriate discretion in the selection of investments because that is an important part of their job.
 - The PBGC's assumptions underlying its reported deficit. In that regard, a report was prepared for us in 2005 by former staff on the Joint Committee on Taxation that raised questions regarding the assumptions used by PBGC in determining that deficit. That report, Promises to Keep: The True Nature of the Risks to the Defined Benefit Pension System, is attached to this testimony and we ask that it be included in the official hearing record.
- The PBGC has on occasion proposed that it should operate in a manner similar to a true insurance company. However, a true insurance company would balance its insurance business needs against the needs of its customers. Further, an insurance company's products would be designed to dynamically meet the changing needs of its customers. We believe that enhanced communication with the plan sponsor community is needed in order for the PBGC to function more like an insurance company in these respects.

We applaud Senator Kohl for his continuing interest in addressing PBGC governance. In our view, the theme of the Pension Benefit Guaranty Corporation Governance Improvement Act of 2009, S. 1544, as introduced by Senator Kohl, is to provide improved management of the PBGC through (1) greater involvement of private sector representatives, (2) strengthened communication among affected parties, and (3) enhanced management consistency. We believe that these are all important first steps.

The PBGC and the business community each play a critical role in the defined benefit plan system and each faces many challenges. The economic difficulties of the last several years have contributed to erosion of the most effective communication that is needed between the PBGC and the community with which it works. We all need to look for opportunities to do more, through legislation or simply through open dialogue.

Again, we thank you for the opportunity to testify and I would be happy to answer any questions the Committee may have.