Statement on
Investment Advice and Defined Benefit Plan Funding
Hearing before
THE HOUSE WAYS AND MEANS COMMITTEE
on behalf of the
U.S. CHAMBER OF COMMERCE
and the
NATIONAL ASSOCIATION OF MANUFACTURERS
October 1, 2009

The U.S. Chamber of Commerce and the National Association of Manufacturers would like to thank Chairman Rangel, Ranking Member Camp, and members of the Committee for the opportunity to provide a statement for the record. The issues raised at today's hearing – defined benefit funding and investment advice – are crucial to the continued success of the private retirement system.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than 3 million businesses and organizations of every size, sector, and region. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large. The Chamber has substantial membership in all 50 states.

The National Association of Manufacturers is the nation's largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states. The NAM's mission is to advocate on behalf of its members to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media and the general public about the vital role of manufacturing in America's economic and national security for today and in the future.

The success of the current employer-provided retirement system is evident in the numbers. In 2007, private employers spent $199.9 billion on retirement income benefits.[1]

[1] EBRI Databook on Employee Benefit, includes both defined benefit and defined contribution plans

81.9% of eligible employees participate in their 401(k) plan.[2] By 2008, 55.1% of all plans and 70.5% of plans with 1,000 or more employees permitted immediate participation in their 401(k) programs, up from 24% of plans in 1998.[3] Defined benefit retirement plans cover 43.8 million participants. Moreover, defined contribution plans have been on the rise, and now cover 79.8 million participants, up from 47 million in 1995.[4]

Nonetheless, the current economic environment has created specific challenges for employers that want to maintain retirement plans. In addition to complying with the normal set of rules and regulations, plan sponsors must make tough decisions about their retirement plans and their businesses based primarily on economic survival. Therefore, the more certainty that plans sponsors have about the rules surrounding retirement plans, the better they will be able to make these important decisions.

The hearing today focuses on two areas where plan sponsors need greater certainty. Defined benefit funding relief is a direct result of the financial crisis and the issue that requires the most immediate attention. Without definitive action from Congress, plan sponsors must take action based on the current law. Issuance of regulations pertaining to investment advice is necessary to provide certainty about the rules to plan sponsors and to provide participants with information useful in making decisions about their plan investments. Thus, we urge Congress to maintain the investment advice provisions under the Pension Protection Act of 2006 ("PPA") and encourage the Department of Labor to issue final regulations.

Defined Benefit Plan Sponsors Need Funding Relief

On August 17, 2006, the Pension Protection Act of 2006 ("PPA") was signed into law. The act fundamentally changes the funding rules for both single- employer and multiemployer defined benefit plans. A major impetus behind the PPA funding rules was to increase the funding level of pension plans. Consequently, most plan sponsors entered 2008 fully ready to comply with the new funding rules and based contribution estimates on these rules. However, the severe market downturn at the end of 2008 drastically changed the situation.

At the beginning of 2008, the average funded level of plans was 100%. Data from a study published by the Center for Retirement Research at Boston College[5] indicates the following as of October 9, 2008:

- In the 12-month period ending October 9, 2008, equities held by private defined benefit plans lost almost a trillion dollars ($.9 trillion).
- For funding purposes, the aggregate funded status of defined benefit plans unpredictably fell from 100% at the end of 2007 to 75% at the end of 2008. (See footnote 5 of the study).

[2] Profit Sharing/401(k) Council of America survey of 1,011 plans with more than 7.4 million participants and $730 billion in plan assets

[3] Profit Sharing/401(k) Council of America survey of 531 companies of all sizes and region

[4] PBGC Pension Insurance Data Book 2007, and BLS Abstract of 2006 form 5500 published in December 2008

[5] "The Financial Crisis and Private Defined Benefit Plans" (November 2008, Number 8-18), Alicia H. Munnell, Jean-Pierre Aubry, and Dan Muldoon.

- Aggregate contributions that employers will be required to make to such plans for 2009 could almost triple, from just over $50 billion to almost $150 billion.

Various reports showed that as a result of the unprecedented downturn in virtually all the investment markets, across the board, pension funding ratios fell significantly. In addition, corporate bond interest rates fell dramatically during December of 2008, triggering a significant increase in pension liabilities.

In December of 2008, Congress took an important first step by passing The Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA") which provided needed technical corrections. However, the business community was very clear that additional legislative relief would still be necessary to fully address the economic downturn and its impact on employee retirement plans.

Third quarterly payments for the unexpectedly high 2008 contribution requirements are due on October 15 and fourth quarterly payments are due January 15, 2010. Moreover, even with the relief provided by WRERA and the regulatory flexibility provided by the Treasury Department, minimum contributions requirements for 2009 and 2010 will still significantly exceed the minimum contribution requirements for 2008.[6]

Because of the importance of this issue to workers' retirement security and the overall U.S. economy, we continue to urge Congress to adopt follow-up, temporary provisions that will ease cash flow constraints and make contributions more predictable and manageable in 2009 and 2010. We believe that relatively modest temporary changes can provide greater stability and improved chances of economic recovery for many companies, non-profits, and charitable organizations.

We encourage Congress to implement funding relief without attaching conditions that could ultimately hurt the defined benefit system. Requiring a maintenance of effort as a condition of receiving relief will limit the legislation in two ways. First, many companies will choose to forego the relief due to concern that if economic challenges continue they will be unable to meet the obligations set forth by Congress. Secondly, and more importantly, a maintenance of effort provision jeopardizes the voluntary nature of the defined benefit system that has served employers and workers so well. If companies believe that the government might eliminate a company's ability to change or suspend its pension plan down the road, they will be more reluctant to continue their current defined benefit plans and certainly unlikely to begin a new defined benefit plan. Other efforts to penalize companies through executive compensation restrictions or targeting some companies over others will not achieve the intended effect, which is in fact to protect and encourage continuation of employer-provided retirement plans.

Without further legislative action, these unexpected funding requirements will continue to require that companies choose between funding their pension plans (which are long-term

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[6] According to a Watson Wyatt study, plans that used the relief under both WRERA and the Treasury Department guidance will have minimum contribution requirements in 2010 that will be triple the contribution required in 2008. For plans that cannot use the Treasury relief, the minimum required contributions are almost triple for both 2009 and 2010. (Watson Wyatt Insider, April 2009 - http://www.watsonwyatt.com/us/pubs/insider/showarticle.asp?ArticleID=20942)

obligations) and laying off workers, closing plants, and postponing capital investments. This could result in increased unemployment and more harm to the economy.

Current Investment Advice Provisions Should be Maintained

The PPA modernized ERISA by better enabling employers to provide workers with access to investment advice pertaining to their retirement plan. Defined contribution plans, which largely did not exist when ERISA was enacted in 1974, require greater employee participation than traditional defined benefit plans, in which the employer pays for the entire benefit and takes on investment risk. With defined contribution plans, employees make investment decisions and take on that risk. Clearly, the need for education and advice on how to invest that money is an important complement to the defined contribution retirement model.

In light of the financial crisis of the past year, it is more important than ever for participants to have access to professional investment advice. The provisions in the PPA will allow plan sponsors to more easily provide employees access to investment advice from regulated professionals. To reduce the potential for a conflict of interest should the retirement plan service provider also be the provider of investment advice, the legislation requires disclosure of fees as well as any potential conflicts.

The PPA was a negotiated compromise between all interested parties. While we were not in agreement with all of the provisions implemented, we have agreed to maintain the compromises as negotiated. We urge Congress to do the same. As such, no legislative changes should be made to the investment advice provisions under the PPA and the Department of Labor should be encouraged to issue and implement final investment advice regulations.

Conclusion

The current economic situation has put a significant strain on the employer-provided retirement system. Therefore, plans sponsors and participants need certainty about the rules surrounding retirement plans to make appropriate decisions. We appreciate the opportunity to share our thoughts and concerns with you and look forward to future discussion on this issue.