RETIREMENT SECURITY: STRENGTHENING PENSION PROTECTIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS

COMMITTEE ON EDUCATION AND LABOR

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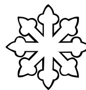

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RETIREMENT SECURITY: STRENGTHENING PENSION PROTECTIONS

Thursday, May 3, 2007
U.S. House of Representatives
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and Labor
Washington, DC

The subcommittee met, pursuant to call, at 2:00 p.m., in Room 2175, Rayburn House Office Building, Hon. Robert Andrews [chairman of the subcommittee] Presiding.

Present: Representatives Andrews, Kildee, Holt, Sestak, Loebsack, Hare, Clarke, Courtney and Kline.

Staff Present: Aaron, Albright, Press Secretary; Tylease Alli, Hearing Clerk; Carlos Fenwick, Policy Advisor for Subcommittee on Health, Employment, Labor and Pensions; Michael Gaffin, Staff Assistant, Labor; Jeffrey Hancuff, Staff Assistant, Labor; Brian Kennedy, General Counsel; Joe Novotny, Chief Clerk; Michele Varnhagen, Labor Policy Director; Robert Borden, Minority General Counsel; Steve Forde, Minority Communications Director; Ed Gilroy, Minority Director of Workforce Policy; Rob Gregg, Minority Legislative Assistant; Victor Klatt, Minority Staff Director; Lindsey Mask, Minority Director of Outreach; Jim Paretti, Minority Workforce Policy Counsel; Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel; and Kenneth Serafin, Minority Professional Staff Member.

Chairman ANDREWS. Ladies and gentlemen, the subcommittee will come to order. I ask you to take your seat.

Good afternoon and welcome. We are pleased to have the participation of the witnesses and the ladies and gentlemen of the audience and, of course, our colleagues.

Pursuant to the committee rules, the record will be open for opening statements from any of the members; without objection, would be entered into the record.

I wanted to welcome everyone here. In January of 1999, the gentleman from Ohio, who is now the minority leader of the House, assumed the chairmanship of the predecessor of this committee, at that time called the Employer-Employee Relations Subcommittee; and I was privileged to be the ranking member. Mr. Boehner and I sat and talked about the need to review the pension provisions under ERISA, which at that time were about two and a half decades old; and, to his credit, he guided a process that was thorough and comprehensive and fair which yielded last summer a landmark

piece of pension legislation which was enacted by the House and Senate and signed into law by the President.

Although I had some disagreements as to the final product of my own, I certainly acknowledge the value of that piece of legislation and commend Mr. Boehner for his efforts, along with Mr. Miller and their counterparts in the Senate.

That legislation I think accomplished a number of things that helped working people and retirees across the country. For those who work for or are retired from single-employer plans, it gave single-employer plans the opportunity to grow their way out of market difficulties and other difficulties which made contributions to plans very difficult.

I think the law strikes a proper balance between plans that ran into external difficulties versus plans that are poorly managed; and, by drawing that line, it has given the plans that are well-managed but have external difficulties the chance to dig their way out to get back to full funding plus.

For taxpayers, that change made it far less likely that taxpayers would have to step in and fund the guarantee made by the Pension Benefit Guaranty Corporation. For smaller businesses, the 2006 law gave some more flexibility, gave some new plan options such as the DBK plan, gave small employers some regulatory relief to make it less burdensome and expensive to maintain plans and clarified some existing ambiguities.

For people who work for or are retired from multi-employer plans, the 2006 law gave those employers—and the funds to which they belong—an opportunity to, again, get some relief from external circumstances that caused those plans to be in some jeopardy, again relieving the taxpayers of potential liability and obligation.

So I would start this review from the premise that there are many beneficial aspects of the 2006 law, and it is my personal bias that none of the major provisions in that law be abrogated or upset in any way. I think the worst thing that we could do would be to tinker with or change the fundamental tenets of the agreement that went into that 2006 law until we have a chance to see how they really play out in the marketplace. So I want to begin with a representation to the tens of millions of people who rely on such plans that we are not interested—at least I am not interested—in any way upsetting the delicate balance that was struck in 2006.

We are, however, interested in two areas of inquiry. The first are more technical changes that ought to be made to make the law work better. But, number two, we are interested in what I would call anomalies that need to be fixed.

The difference between a technical change and an anomaly is this: A technical change is a period or a comma in the wrong place or a paragraph is not properly tied into another one, and those are technical changes that need to be made. An anomaly is where the policy goal of the law that we passed last year is being subverted or not met because of some provision—not usually an intentional one—but because of a deadline that would be missed or because of a definition that is ambiguous or because of some other problem where the very goals that we set out to accomplish—stability in plans, flexibility for plans and, most assuredly, more stable and growing pensions for workers—are not being met.

So the purpose of this inquiry—of which I would hope today would be the first in a series—is to invite from experts in the field their observations about changes that we ought to consider making in the 2006 law.

And I will say this again because I think it is terribly important, I am not interested in upsetting the fundamental agreements that made up that 2006 law. I am interested in vindicating them, I am interested in making them work better, and the purpose of this hearing is to explore ways in which we might accomplish that.

Before I turn to my friend from Minnesota, the ranking member, I would also say that we are by no means interested in limiting comments to the four individuals sitting at the witness table. The record will be open for comments, suggestions and questions from any citizen, any group, any interested party that would like to help us identify the kinds of issues that I raised in this statement. We want this to be an inquisitive process, one that yields—as Mr. Boehner I think did in his tenure on this bill—yields a thoughtful, deliberative process that improves the law.

So, with that, I would ask my friend, the ranking member of the subcommittee, Mr. Kline, for his comments.

[The prepared statement of Mr. Andrews follows:]

Prepared Statement of Hon. Robert E. Andrews, Chairman, Subcommittee on Health, Employment, Labor and Pensions

Good afternoon and welcome to the Health, Employment, Labor and Pensions Subcommittee's hearing entitled "Retirement Security: Strengthening Pensions Protections." The purpose of this hearing is to review the various requested modifications to the Pension Protection Act (HR 4), which passed Congress last year by a vote of 279-131.

During this hearing, we will examine modifications that have been requested regarding the funding rules for single plan large employers, the notice and disclosure requirements for small employers, providing additional relief to airline pilots whose underfunded plans were terminated and shifted to the Pension Benefit Guaranty Corporation (PBGC), and funding rules affecting multiemployer plans.

Today, less than one in five workers in the private sector—20 million workers—have a traditional defined benefit plan. The pension landscape is now dominated by 401(k) plans, which are retirement accounts sponsored by the employer who, along with the employee, make tax-deferred contributions. These plans, now covering over 50 million workers, have the potential to provide participants with adequate savings for retirement, but with median balance of only $28,000, there still remains a great sense of uncertainty as to whether these accounts will provide retirement security to many Americans.

Although the Pension Protection Act (HR 4) conference process was contentious last year, I want to move forward this year with input from both sides on how we can continue to strengthen pension protections and expand retirement security for all Americans. I look forward to hearing the testimony from each of our witnesses today, and would like to extend an invitation to all outside groups to provide the committee with your ideas as to how we can modify and improve the Pension Protection Act.

Mr. KLINE. Thank you, Mr. Chairman, and thanks for holding this hearing.

I want to agree with—well, practically everything you said.

I think that when we put the Pension Protection Act together, it was a very difficult process of balancing interest. We wanted to make sure that pension plans stayed solvent and that workers had a pension plan that they could count on. We addressed a large range of pension plans; and, when we brought the multi-employer plans in, we greatly complicated the bill, but it was an essential

part of what we were trying to do because there were some multiemployer plans that were, frankly, horribly underfunded and workers' pensions were clearly at risk.

We wanted to make sure that the Pension Benefit Guaranty Corporation wasn't put in the position of a massive bailout. So it was—and to get all of these pieces to work together was a long and arduous process.

I was very pleased when we passed that law and the President signed it into law. I went to the signing ceremony over at the White House, and it was a great moment in my tenure here in Congress because it was something that absolutely had to be done. It was overdue.

So as we go forward and look for, as the chairman says, technical corrections—we are clearly are going to need to do that—we do need to be mindful of anomalies. But, in correcting an anomaly, we want to be very careful that we don't undo the balance that was necessary to get this bill passed. So I will be vigilant, I am sure the chairman will be, to make sure that we don't put any pensions at risk or put the PBGC and, therefore, the taxpayers at great exposure in an effort to correct an anomaly.

And, Mr. Chairman, of course I do have a statement for the record which would I like to submit.

Chairman ANDREWS. Without objection.

Mr. KLINE. But in the interest of keeping track of and keeping the hearing moving along and having an opportunity to hear from our witnesses—and I am mindful I think we have a projected vote coming up in an hour or so—I will conclude my remarks by saying thank you to all the witnesses for joining us today and to you again, Mr. Chairman, for holding this hearing.

I yield back.

Chairman ANDREWS. Thank you, Mr. Kline.

[The statement of Mr. Kline follows:]

Prepared Statement of Hon. John Kline, Ranking Republican Member, Subcommittee on Health, Employment, Labor and Pensions

Good afternoon, Mr. Chairman, and welcome to each of our witnesses.

Last year, this Committee took the lead in enacting the most comprehensive reform of our nation's pension laws in more than three decades. The Pension Protection Act of 2006 embodied sweeping reform of these laws on every level. We strengthened funding requirements for defined benefit pension plans to ensure that plan sponsors were meeting their obligations to workers and retirees. We reformed the multiemployer pension plan system to ensure that these pension plans remain stable and viable for the millions of Americans who rely or will rely on them. We greatly enhanced pension plan financial disclosure requirements to participants, and modernized our defined contribution pension plan system to foster greater retirement savings. And we helped shield taxpayers from the possibility of a multi-billion dollar bailout by the federal Pension Benefit Guaranty Corporation.

The Pension Protection Act reformed fixed broken pension rules that no longer served the workers who count on their retirement savings being there for them when they need it, and represented a major victory for American workers, retirees, and taxpayers. The fact that we were able to do it in a bipartisan way—with 76 Democrats supporting the bill, and in an election year, no less—demonstrated the critical nature of this issue.

Of course, in an undertaking that massive in scope, it's to be expected that we would not have anticipated every scenario, or have gotten every detail of this incredibly complex legislation 100 percent correct

In that light, I look forward to today's hearing, and the testimony of our witnesses as to their views on whether and what changes to the Pension Protection Act they

feel are necessary. Before we get into the details of testimony—I would make a few quick observations.

First, I'd note that the Pension Protection Act was the culmination of years of legislative preparation, hearings in our committee and in others, and a steady evolution of proposals, ideas, and language. As reflected, I think, in the overwhelming support this bipartisan bill enjoyed, the final product represented a careful balancing of the interest of various stakeholders and supporters, and most important, the interests of participants, workers, and beneficiaries. I would caution at the outset that while we come to the table today with an open mind, I will be vigilant in ensuring that we do not tamper with carefully balanced policy choices such that we undermine critical portions of the law.

Second, in terms of Congressional speed, the ink on the Pension Protection Act is probably still not completely dry. This means many of the law's provisions are not yet fully effective or have even yet begun to phase in, and as we will hear, most of the regulatory guidance which will determine how the law is implemented and administered has not yet been set forth. That is no fault of Congress in drafting this bill, or of these agencies charged with administering it. As we will hear, they have been and continue to work diligently on the massive task we set before them. But given all of those facts, I do want to caution against changing the law without the benefit of having seen its application in practice, or having that critical regulatory guidance in front of us. I think an effort to do so might still be premature.

Finally, as I said earlier, in enacting the Pension Protection Act, Congress acted to ensure that American workers' pension benefits were protected and would be there for them when they retired—this required shared sacrifice from sponsors, stakeholders, and others. Our witnesses today will make varying recommendations for revisions to the Pension Protection Act. Some of these may be truly "technical" amendments. Others may be more substantive in nature. And still others plainly represent a desire by some to revisit or reverse policy choices we made in the bill. I'll say it again, just to be clear: it will be my priority in this process to ensure that whether deemed "technical" amendments or otherwise, we do not take action now that would threaten to undo the protections we put into place less than a year ago, or that place workers' benefits at greater risk, or increase the need for a federal bailout of pension plans by the PBGC.

With that said, I welcome our witnesses and yield back my time.

Chairman ANDREWS. I understand Mr. Kildee has a unanimous consent request.

Mr. KILDEE. Yes, I ask for consent to submit a statement for inclusion in the record at this point concerning the different manner in which sovereign Indian tribes are treated differently than sovereign States with regard to their pension system.

Chairman ANDREWS. I thank the gentleman. It is one of the issues we would be happy to consider.

[The information follows:]

Prepared Statement of National Congress of American Indians and the Profit Sharing/401k Council of America

Tribal Plans Provision in Pension Protection Act Needs to Be Returned to Original Condition

As Congress shaped the pension policies that are delineated in the Pension Protection Act of 2006, both the Senate Committee on Health, Education, Labor and Pensions and the Senate Committee on Finance pension bills included a provision that clarified that tribal government benefit plans are to be treated as "governmental plans" under federal benefits law. This important provision was included in sections 1311 and 1313 of the Pension Security and Transparency Act of 2005, S 1783, which was passed on November 16, 2005, by a vote of 97-2.

The House pension bill had no similar provision. The final bill, The Pension Protection Act of 2006, which was signed by President Bush on August 17, contains a provision in Section 906 that has the opposite effect of the Senate proposal. By affording governmental plan status for only certain tribal employee plans, those containing only employees performing "essential government functions but not in the performance of commercial activities (whether or not an essential government function)," the final provision has the opposite effect of the Senate language and provides that tribal governments will not be treated equally with other governments

under benefits law. This provision is effective for plan years beginning on or after enactment, with no regulatory guidance regarding the definition of "essential government activity" or "commercial activity." The IRS has struggled with similar definitions under section 7871 for almost twenty years and is just now proposing a definition of an essential government function under section 7871. This provision is already jeopardizing the savings plans of thousands of tribal employees

Fortunately, the Department of the Treasury has provided relief (Notice 2006-89) from the requirement to immediately terminate existing plans that may violate the new provision and create new plans, but tribal plans have to be operationally compliant as of the effective date for their plan. This situation is creating havoc for many tribal health care and retirement plans.

A tribe's entitlement to governmental plan treatment should not be limited to anyone's notion of what is an "essential government function." Governmental plan status is based on the governmental status of the employer, and not on the specific conduct or activity engaged in by the government's employees. For example, selling lottery tickets is not a traditional governmental activity. However, states are not required to exclude employees who sell lottery tickets or administer lottery programs from participation in state benefit programs. Certainly, if this requirement is not applied to state and other local governments, such a limitation should not be applied to tribal government plans. As the Senate language provided, tribal governments should be explicitly entitled to governmental status, and that status should not contain a conduct restriction that is not applied to any other government employer.

As this subcommittee examines modifications to the Pension Protection Act of 2006, we urge it to consider legislation that will provide for the original Senate provision that provides that tribal governments are treated equally with other governments under federal benefits law. On May 2, 2007, Representatives Earl Pomeroy, Tom Cole, and Dale Kildee introduced HR 2119, the Tribal Government Pension Equality Act of 2007 that achieves exactly this goal.

About the Profit Sharing/401k Council of America

The Profit Sharing/401k Council of America (PSCA), a national non-profit association of 1,200 companies and their five million employees, advocates increased retirement security through profit sharing, 401(k), and related defined contribution programs to federal policymakers and makes practical assistance with profit sharing and 401(k) plan design, administration, investment, compliance, and communication available to its members. PSCA, established in 1947, is based on the principle that "defined contribution partnership in the workplace fits today's reality." PSCA's services are tailored to meet the needs of both large and small companies with members ranging in size from Fortune 100 firms to small, entrepreneurial businesses.

About the National Congress of American Indians

The National Congress of American Indians (NCAI) is the oldest and largest inter-governmental body of American Indian and Alaska Native governments. For over sixty years NCAI has advocated for the strengthening of tribal governments by affirming tribes' authority in all areas of federal policy. American Indian and Alaska Native governments' long standing position, through three distinct NCAI resolutions, has sought to clarify the treatment of tribes' pension plans as other governmental plans.

Chairman ANDREWS. We will now proceed to the witnesses.

I think it was explained to the witnesses previously that your written statements will be made part of the record in their entirety. We would ask you to provide an oral summary of those statements within a 5-minute period. Because of the pendency of votes, we are going to try to rigidly hold to that 5-minute period.

I want to introduce the witnesses—all four of you—and then we will yield so that you can begin your presentations.

President John Prater is the eighth President of the Air Line Pilots Association, International. He was elected by the union's board of directors on October 18, 2006, and began his 4-year term recently. As the Association's Chief Executive and Administrative Officer, Mr. Prater presides over meetings of ALPA's governing bodies

that set policy for the organization. He is a 28-year veteran of ALPA, having served extensively at all levels.

He is currently a B-767 captain. He has had the chance to fly a variety of aircraft, including the B-727, the DC-8, the A-300, the B-757 and the B-777 for passenger and cargo carriers during a piloting career that spans nearly three and a half decades. He is a graduate of Park College of Saint Louis University and has a bachelor's degree in meteorology, so he can tell what the weather will be tomorrow.

Scott Macey is testifying on behalf of the American Benefits Council. He is the Senior Vice-President and Director of Government Affairs for Aon Consulting, Inc., an ERISA practice based in Somerset, New Jersey. Excellent choice, Mr. Macey. His primary responsibilities include managing Aon's government affairs practice in Washington as well as serving in a senior role concerning the client and project management and marketing of Aon's services to new clients.

Mr. Macey has over 30 years of experience in compensation and benefit consulting in health care, pensions and executive compensation. He attended the University of California—another good choice, given the chairman of the full committee—and University of San Francisco—given the Speaker's place of origin—and received a BA degree magna cum laude from the latter. He received his JD summa cum laude from University of Santa Clara.

Judith Mazo returns to the committee, as does Mr. Macey. She is speaking on behalf of the Multiemployer Coalition. She is Senior Vice-President and Director of Research for the Segal Company, really one of the more renowned and expert pension firms in the Nation.

Before joining the company, Ms. Mazo was engaged in private law practice in Washington, specializing in ERISA; serving as special counsel to the Pension Benefit Guaranty Corporation; and as a consultant to the Pension Task Force of this committee, the Committee on Education and Labor. She was senior attorney for the PBGC and executive assistant to its general counsel from 1975 to 1979.

Ms. Mazo speaks and writes frequently on employee benefits matters and is also a member of the Pension Research Council of the Wharton School. Ms. Mazo graduated with honors from Yale Law School and Wellesley College.

Welcome back.

And, finally, Sal Tripodi is the President-Elect of ASPPA. ASPPA is the American Society of Pension Professionals and Actuaries. He will become its President for a 1 year term starting at the end of the annual conference in October of this year.

In addition to his duties at ASPPA, he currently maintains a nationally based consulting practice in the employee benefits area, TRI Pension Services. He is an adjunct professor at the University of Denver Graduate Tax Program. He started his employee benefits career with the Internal Revenue Service as tax law specialist with IRS's national office—welcome, glad to have you with us—and he received a JD from Catholic University, the America Law School and LLM at Georgetown University Law School.

So we have, I think, a terrific panel; and we will begin with testimony from Captain Prater.

Welcome, and I would begin, the way the light system works is that the yellow light tells you you have 1 minute left in your 5-minute presentation. The red light, we would ask you to stop.

Thank you.

STATEMENT OF CPT JOHN PRATER, PRESIDENT, AIR LINE PILOTS ASSOCIATION (ALPA)

Mr. PRATER. Good afternoon, Mr. Chairman and members of the subcommittee. I am Captain John Prater, President of the Air Line Pilots Association, International. ALPA represents 60,000 professional pilots who fly for 40 airlines in the United States and Canada. On behalf of our members, I want to thank you for the opportunity to testify today about the need for legislation that would put pilots whose defined benefit pension plans have been terminated on equal footing with non-pilots with respect to the maximum benefits guaranteed by the Pension Benefit Guaranty Corporation. The final version of the Pension Protection Act of 2006, while containing several important items, failed to include this issue.

As you know, the airline industry was turned upside down in the wake of the attacks of 9/11. Many carriers filed for bankruptcy; and workers were forced to make dramatic concessions in wages, benefits, working conditions and pensions. While some of our members were "fortunate" enough to only have their defined benefit plans frozen, a great many others saw their plans terminated as part of their company's plan to exit bankruptcy. Although it seemed at the time a case of your job or your pension, in reality there was no choice. Underfunded plans, while holding significant assets, were terminated at US Airways, United, Aloha and Delta.

Many of our members suffered horrendous losses of up to 75 percent of their earned benefits under these planned terminations. These same pilots now have little or no time left in their careers to recover from such losses.

I am here today because pilots are paying a double penalty on their pensions. Not only have they lost what they had accrued, but they also do not receive the maximum guaranteed benefit payable at their normal retirement age.

In 1974, ERISA defined the PBGC maximum guarantee as a single life annuity payable at age 65, which was considered the normal retirement. Anyone who retires before 65, the so-called normal retirement age, has his or her benefit actuarially reduced and thereby receives a lower benefit payment for as long as that benefit is payable. This unfairly burdens pilots, who are required by Federal aviation regulations to end their flying careers at age 60. In short, a pilot's normal retirement age is not 65, as defined by ERISA, but rather 60, as required by the Federal Aviation Administration.

While the PBGC's limitation may make sense from an actuarial perspective, it is extraordinarily unfair to airline pilots. Through no fault—or choice—of their own, the pensions of affected pilots are being further reduced by 35 percent from what they otherwise would have received without the actuarial reduction. Specifically, for plans that terminated in 2007, the age 65 annual PBGC max-

imum guarantee is $49,500, while the age 60 annual PBGC maximum guarantee is $32,175. Unfortunately, US Airways, United, Aloha and Delta terminated before 2007; and those maximums are even less. In the case of US Airways, the maximum guaranteed to a pilot retiring at age 60 is $28,585.

As an aside, let me note that even at $49,500 many pilots still be are being significantly shortchanged in their accrued benefits. At age 60, a career pilot with 25 to 35 years of service at a major airline might have accrued an annual benefit approaching $100,000. These retirement benefits were earned—that is, bought and paid for—as deferred income accrued over a pilot's career. A further reduction of 35 percent in an already unfair and inadequate payout because of an actuarial convention is simply unconscionable.

We thank the Congress for last year's bill. We understand these new bills will be introduced. We support and applaud the effort of Senator Akaka and now Chairman Miller to correct the unfair treatment of certain pilot pension benefits. ALPA is extremely grateful that these measures have been reintroduced in this session as H.R. 2103, S. 1270.

Altering the maximum guarantee——

Thank you, sir. I will sum up now.

Chairman ANDREWS. Sure, you can take just a moment and sum up. Please do.

Mr. PRATER. Altering the maximum guarantee in this manner limits PBGC liability because many pilots at the upper end of the age spectrum are not affected. Their benefits were not reduced as much as those of more recent retirees or for those approaching retirement. PBGC liability would also be capped at the other end of the age spectrum because it will not affect the younger pilots. We believe by approaching this it would be a fair way to correct the imbalance that some of our pilots have found themselves caught in between pensions terminated and the age 60 retirement rule.

Thank you.

Chairman ANDREWS. Captain, thank you very much.

[The statement of Mr. Prater follows:]

Prepared Statement of CPT John Prater, President, Air Line Pilots Association, International

Good morning Mr. Chairman and members of the Subcommittee, I am Captain John Prater, President of the Air Line Pilots Association, International. ALPA represents 60,000 professional pilots who fly for 40 airlines in the United States and Canada. On behalf of our union, I want to thank you for the opportunity to testify today about the need for legislation that would put pilots whose defined benefit pension plans have been terminated on equal footing with non-pilots with respect to maximum benefits guaranteed by the Pension Benefit Guaranty Corporation. This issue was left out of the final version of the Pension Protection Act of 2006.

As you know, the airline industry was turned upside down in the wake of the attacks of 9-11. Many carriers filed for bankruptcy and airline employees were forced to make dramatic concessions in wages, benefits and working conditions. While some of our members were "fortunate" enough to have their defined benefit plans frozen, a great many saw their plans terminated because their companies saw no other way out of bankruptcy. Although it seemed at the time a case of your job or your pension, in reality there was no choice. Underfunded plans, while holding significant assets, were terminated at US Airways, United, Aloha and Delta.

Many of our members suffered horrendous losses of up to 75% of their earned benefits under these plan terminations. These same pilots now have little or no time left in their careers to recover from such losses. For example, when the US Airways

pilots' defined benefit plan was terminated in 2003, pilots lost $1.9 billion in accrued benefits. United pilots lost $1.8 billion when their plan was terminated in 2004. The pilots at Aloha Airlines lost $33 million in 2005 and their colleagues at Delta lost $2.08 billion in 2006. Airline pilots have lost accrued benefits worth more than $5.5 billion in defined benefit plan terminations since September 11, 2001.

I am here today because pilots are paying a double penalty. Not only have they lost what they had accrued, but they also do not receive the maximum guaranteed benefit payable at their normal retirement age.

In 1974, ERISA provided for the PBGC to guarantee, up to a maximum amount, payment of basic retirement benefits from a terminated defined benefit plan. At that time the maximum guaranteed amount was set at $9,000 per year with a provision for annual cost-of-living adjustments. ERISA also defined the PBGC maximum guarantee as a single life annuity benefit payable at age 65, which was considered "normal" retirement age. Anyone who retires before 65, the "normal" retirement age, has his or her benefit actuarially reduced, and thereby receives a lower benefit payment for as long as the benefit is payable. This is the problem for pilots. A pilot is required by Federal Aviation Regulation to end his or her flying career at age 60. Therefore a pilot's "normal" retirement age is not 65 as defined by ERISA, but rather 60 as required by the Federal Aviation Administration.

Annual PBGC Dollar Guarantees
Based on a Single Life Annuity

Age	2003 Plan Terminations	2004 Plan Terminations	2005 Plan Terminations	2006 Plan Terminations
70	$73,002.24	$73,681.32	$75,718.68	$79,114.08
69	$65,526.12	$66,135.60	$67,964.40	$71,012.04
68	$58,929.48	$59,477.64	$61,122.36	$63,863.16
67	$53,212.44	$53,707.44	$55,192.56	$57,667.44
66	$48,375.00	$48,825.00	$50,175.00	$52,425.00
65	$43,977.24	$44,386.32	$45,613.68	$47,659.08
64	$40,898.88	$41,279.28	$42,420.72	$44,322.96
63	$37,820.40	$38,172.24	$39,227.76	$40,986.84
62	$34,742.04	$35,065.20	$36,034.80	$37,650.72
61	$31,663.56	$31,958.16	$32,841.84	$34,314.48
60	$28,585.20	$28,851.12	$29,648.88	$30,978.36
59	$26,826.12	$27,075.60	$27,824.40	$29,072.04
58	$25,067.04	$25,300.20	$25,999.80	$27,165.72
57	$23,307.96	$23,524.80	$24,175.20	$25,259.28
56	$21,548.88	$21,749.28	$22,350.72	$23,352.96
55	$19,789.80	$19,973.88	$20,526.12	$21,446.64
54	$18,910.20	$19,086.12	$19,613.88	$20,493.36
53	$18,030.72	$18,198.36	$18,701.64	$19,540.20
52	$17,151.12	$17,310.72	$17,789.28	$18,587.04
51	$16,271.52	$16,422.96	$16,877.04	$17,633.88
50	$15,392.04	$15,535.20	$15,964.80	$16,680.72
49	$14,512.44	$14,647.44	$15,052.56	$15,727.44
48	$13,632.96	$13,759.80	$14,140.20	$14,774.28
47	$12,753.36	$12,872.04	$13,227.96	$13,821.12
46	$11,873.88	$11,984.28	$12,315.72	$12,867.96
45	$10,994.28	$11,096.52	$11,403.36	$11,914.80

While this limitation may make sense from an actuarial perspective, it is extraordinarily unfair to airline pilots because it ignores the FAA mandatory retirement rule. Through no fault—or choice—of their own, the pensions of affected pilots are being reduced by 35% from what they otherwise would have received without the

actuarial reduction. Specifically, for plans that terminated in 2007, the age 65 annual PBGC maximum guarantee is $49,500, while the age 60 annual PBGC maximum guarantee is $32,175. Unfortunately, US Airways, United, Aloha and Delta terminated before 2007 and those maximums are less. In the case of US Airways, the maximum guaranteed a pilot at 60 is $28,585.

As an aside, let me note that even at $49,500 many pilots still are being significantly short-changed in their accrued benefits. At age 60, a career pilot at a major airline might have accrued an annual benefit approaching $100,000. These retirement benefits were earned—that is bought and paid for—as deferred income, accrued over the pilots' careers. A further reduction of 35% in an already unfair and inadequate pay-out, because of an actuarial convention, is simply unconscionable.

Efforts were made in the last Congress to correct this problem. S. 685 was introduced in the Senate by Senator Daniel Akaka (D-HI) and H.R. 2926 was introduced by Representative George Miller (D-CA), then the Ranking Member of the full Committee. These measures would have allowed pilots—at age 60—to receive the maximum benefit guarantee calculated as though they had reached the age of 65. In fact, the Senate voted by a margin of 58-41 to add the text of S. 685 to its version of pension reform legislation on November 16, 2005. Although the House did not include similar language in its pension reform bill, it did overwhelmingly vote three times to instruct its conferees to accept this provision in conference with the Senate. Unfortunately, this was not to be, and the final product, HR. 4, which became P.L. 109-280 on August 17, 2006, did not include the Akaka/Miller language.

We again support the efforts of Senator Akaka and now Chairman Miller.

ALPA's goals, then and now, have been as follows:

1. Put airline pilots on equal footing with non-pilots by providing them an unreduced PBGC maximum guarantee at the pilots' recognized "normal" retirement age (that is, the FAA mandatory retirement age).

2. PBGC maximum guarantees for pilots who retire at other than pilots' "normal" retirement age should be adjusted to be actuarially equivalent to full PBGC maximum guarantee payable at the FAA mandatory retirement age.

3. To the extent that higher PBGC maximum guarantees would be payable based upon the increased guarantee for the year in which the plan terminated, pay such increased amounts effective for all payments made by the PBGC after the effective date of the legislation. For example, the US Airways Pilot Plan terminated in the year 2003. The annual PBGC maximum guarantee at age 65 was $43,977, while the age 60 PBGC maximum guarantee was only $28,585. After enactment of the proposed legislation, the $43,977 annual PBGC maximum would be available to US Airways pilots for benefits beginning at age 60. This could result in higher benefits being paid to pilots who retire in the future, as well as, pilots who have retired in the past.

Altering the maximum guarantee in this manner limits PBGC liability because it does not affect pilots who are old enough that their benefits were not reduced as much as more recent retirees or those approaching retirement. (In technical terms, we are referring to examples such as the Priority Category 3 (PC3) classes of recipients.) PBGC liability also would be capped at the other end of the age spectrum because it does not affect younger pilots, who will not have accrued a benefit level high enough to be limited by the actuarial reduction rule. In other words, it is fairly narrowly targeted to bring relief to those most affected by having the retirement rug pulled out from under them.

Assuming pilots continue to work to their mandated retirement age, which I believe is a fair assumption given the decimation of their defined benefit plans, PBGC's exposure from increasing the PBGC maximum guarantee is very limited in the next four to seven years due to pilots having PC-3 benefits that exceed the current PBGC maximum or that proposed by the legislation. Additionally, the PBGC's exposure in the long term, starting 20 years from now, is also quite limited due to the fact that many affected pilots do not presently have plan benefits that exceed the currently applicable age 60 PBGC maximum guarantees.

The overall impact of the proposed change would be to provide an increased floor or enhanced safety net for those most affected by the plan termination they experienced at the mid point of their careers.

Mr. Chairman, I appreciate the opportunity to testify here today and I would be happy to answer any questions you may have.

Chairman ANDREWS. Mr. Macey.

STATEMENT OF SCOTT MACEY, SENIOR COUNSEL, AON CONSULTING, REPRESENTING THE AMERICAN BENEFITS COUNCIL

Mr. MACEY. Thank you.

My name is Scott Macey. Thank you, Mr. Chairman, for the introduction a few minutes ago. I am testifying today on behalf of the American Benefits Council of the National Association of Manufacturers and the ERISA Industry Committee.

The PPA reflects the importance of retirement security to the country and, of course, to Congress. Many of the reforms of the PPA were supported by the organizations and their members who I am testifying for today, and certainly many of those reforms will enhance retirement security for the country and for working Americans.

In any legislation as extensive and complex as the PPA, it is inevitable that some provisions will need modification. Certainly the defined benefit system has been the bulwark of retirement security for several generations for working Americans. However, the defined benefit system has been in significant decline in recent years for a number of reasons. In this context, it is important that public policy achieve an appropriate balance in order to encourage employers to stay in the defined benefit system; and in this spirit I offer some suggested modifications to the PPA that we believe will help carry out the original congressional intent in passing it.

The funding reforms will have an enormous effect on the funding obligations of major employers. Because of this, Congress provided a delayed effective date until 2008 so that companies could plan ahead for the new obligations that they will incur. Congress, however, left much of the details to Treasury to work out the rules regarding the funding, the new funding provisions.

We are impressed and grateful for the dedication, professionalism and responsiveness of Treasury staff and the other agencies. However, they have too many priorities to get everything done in a reasonable and appropriate fashion and in a timely manner. To date, there is no funding guidance.

Congress, of course, could not have foreseen this; and the agencies really could not do anything about it because they are working full out on developing guidance. However, the lack of guidance creates a huge problem. Small differences in several rules such as the yield curve, the mortality table—including individual company mortality tables—and asset smoothing could create huge differences in liabilities and therefore funding. Businesses cannot deal with these types of unanticipated changes.

Thus, we believe it is critical that the effective data of the funding rules be delayed 1 year until 2009 so that final rules can be developed and can be developed in a fashion and subject to public input and comment. And this delayed effective date we believe does not risk at all the funded status of planned and security in plans of participants nor the position of the PBGC because of the well-funded status of pension plans currently.

A second transition issue relates to the phase-in of the funding rules. The old funding rules effectively provided for a 90 percent funding target. The new rules provide for 100 percent funding target phased in, starting in 2008 at 92 percent. The problem is that

companies that are either in the DR, deficit reduction, contribution for 2007 or are below the 92 percent in 2008, are not eligible for the phase-in. This means that there is no transition rule for them. This is an unusual and harsh result, and it is inconsistent with when generally Congress balances important reforms with practical transition rules.

To achieve the real objective of the PPA, we suggest modifying the transitional rules so that all non-DRC plans would be eligible for the transition rule.

A third issue I would like to mention is assets smoothing. It was a key issue—smoothing was a key issue in the discussions leading up to the PPA. The smoothing provides greater predictability of asset values and funding obligations. Smoothing reasonably balances the long-term nature of pension obligations and the desire for well-funded plans currently. The problem is that the PPA uses the term "averaging" instead of "smoothing". The legislative history however is clear that smoothing was intended.

Unfortunately, averaging and smoothing don't mean the same thing, and they don't produce the same result. The failure to clarify this will result in potentially enormous increases in volatility and the failure to recognize asset values relatively—that are normal asset values as they change. We believe this should be corrected by a technical correction.

The final issue I want to mention is that the PPA prohibits lump sums for underfunded plans. Plans with 60 to 80 percent underfunding can only pay half a lump sum. Plans below a 60 percent can't pay any lump sum. We believe this targets a serious problem but also causes a problem in that the——

Chairman ANDREWS. Please take a few seconds to wrap up. I think people heard about the trapdoor comment before. It does exist, but we don't use it all the time.

Mr. MACEY. Appreciate it.

The PPA provides only that employers are to provide advance notice to participants on restrictions of lump sums. However, we believe that most employers will want to provide advance notice rather than after-the-fact notice on lump—on the restriction. The reason for this is the fundamental fairness and employee relations for participants and potentially fiduciary obligations.

We don't believe it is appropriate for employers to have to choose between protecting the plan and protecting its participants. Therefore, we suggest that Congress modify the restriction to provide that any plan that is under 80 percent funded be able to pay lump sums equal to the funded percentage of the plan. We believe this is consistent with the intent of Congress and would maintain the funded level of the plan and would not cause any deterioration in the funded level.

Chairman ANDREWS. Thank you, Mr. Macey, for your testimony.

[The statement of Mr. Macey follows:]

Prepared Statement of Scott Macey, Senior Vice President and Director of Government Affairs, Aon Consulting, Inc., on Behalf of American Benefits Council and the ERISA Industry Committee

My name is Scott Macey and I am Senior Vice President and Director of Government Affairs for Aon Consulting, Inc. I have advised companies on retirement plan issues for over 30 years. Moreover, during that period, I have been an active partici-

pant in the public policy discussions affecting pension plans, both directly on behalf of our clients and through the trade associations in which Aon participates.

I am testifying today on behalf of the American Benefits Council (the "Council ") and The ERISA Industry Committee (ERIC). The Council's members are primarily major U.S. employers that provide employee benefits to active and retired workers and that do business in most if not all states. The Council's membership also includes organizations that provide services to employers of all sizes regarding their employee benefit programs. Collectively, the Council's members either directly sponsor or provide services to retirement and health benefit plans covering more than 100 million Americans. ERIC is committed to the advancement of employee retirement, health, and compensation plans of America's largest employers. ERIC's members provide comprehensive retirement, health care coverage and other benchmark economic security benefits directly to tens of millions of active and retired workers and their families. ERIC has a strong interest in economic policy affecting its members' ability to deliver those benefits, their cost and their effectiveness, as well as the role of those benefits in America's economy.

The Council and ERIC very much appreciate the opportunity to testify with respect to the critical retirement security issues facing our country. We acknowledge the tremendous amount of work that led to the enactment of the Pension Protection Act of 2006 (the "PPA "). The PPA reflected a recognition of the importance of retirement security issues and included many reforms that we supported. It is a comprehensive legislative reform of the retirement system affecting almost every aspect of the private employer- sponsored retirement system.

In legislation as extensive as the PPA, it is inevitable that some provisions need to be modified to achieve Congress' original intent. Beyond the technical correction process, there are issues where modifications are needed to avoid unintended consequences. We applaud you, Chairman Andrews and Ranking Member Kline, for holding this hearing to identify those issues and we hope we can be of assistance in your efforts in this respect.

Precarious State of the Defined Benefit Plan System

The defined benefit system has been one of the key bulwarks of retirement security for working Americans for several generations. However, as we all know, the defined benefit plan system has been in significant decline in recent years. Employers are increasingly exiting the system.[1] The total number of PBGC-insured defined benefit plans has decreased from a high of more than 112,000 in 1985 to fewer than 31,000 in 2005.[2] This downward trend is even more sobering if you look solely at the past several years. Not taking into account pension plan freezes (which are also on the rise but not officially tracked by the government),[3] the PBGC reported that the number of defined benefit plans it insures has decreased by 7,000 (or 20%) in just the last five years.[4]

And today is perhaps the most problematic time for defined benefit plan sponsors. With other companies exiting the system in increasing numbers, remaining defined benefit plan sponsors are asking themselves everyday whether to continue to provide defined benefit plan benefits to their employees. Competitive pressures and the critical need to make long-term business plans are undermining employers' ability to remain committed to the system. And we cannot overestimate the threat to the system posed by what the Financial Accounting Standards Board ("FASB ") is contemplating in "Phase II" of its reexamination of the accounting standards applicable to pension plans. FASB's Phase II could introduce tremendous volatility to corporate income statements, leading to a whole new group of companies freezing or terminating their plans.

For the above reasons, both the Council and ERIC are constantly hearing from their members about possible plan freezes and terminations. In this context, it is critical that public policy achieve an appropriate balance that encourages employers to remain in the system. It is in this spirit that we offer the following thoughts on key modifications of the PPA.

Effective Date of the PPA Funding Provisions

We first want to discuss the effective date of the PPA funding provisions. The funding reforms will have an enormous effect; the reforms will change the funding obligations of major employers by hundreds of millions of dollars, and in some cases billions. For this reason, Congress devoted a huge amount of time to fine-tuning those rules, and Congress further provided a delayed effective date until 2008, so that companies would have the ability to plan ahead as to how to address their new obligations.

The problem we are facing is simply stated. In the context of corporate planning, the 2008 effective date is drawing very close and we have not yet seen proposed reg-

ulations regarding how the funding rules will work. If the proposed regulations were issued today, the final rules could not be issued until late 2007. More than likely, final rules may not be issued in 2007 and sponsors will thus have to rely on temporary guidance. And, even if final guidance were issued, there is likely to be insufficient time to react to it prior to its becoming operative. Moreover, given the enormous task confronting the Treasury, it appears that any regulations issued on the first round will not be complete, leaving employers to guess at—and be at risk for—actions they need to take to ultimately be in compliance with regulations once the "holes" in the regulations are "filled" at a later date. Thus, for reasons discussed below, we urge a reasonable delay in the implementation of the new funding provisions.

Before discussing this issue further, we want to make it very clear that we do not fault the Administration in any way for the absence of funding guidance. The PPA created enormous pressure on the Treasury Department and the Department of Labor. Both agencies have risen to the occasion by devoting tremendous resources to the PPA issues. They have also reached out to the various stakeholders to identify priority issues and they have issued critical guidance to address many of the priorities. I can personally say that I have been extremely impressed and grateful for the dedication, professionalism and responsiveness of agency officials working on PPA guidance. Very simply, however, there have been too many priority issues. Congress could not have foreseen this and the agencies could not have done more to address the problem. That is why we are here today to discuss this unanticipated development.

As I noted, the lack of guidance regarding the funding rules is a huge problem. Let me illustrate why I say that. Small differences in a few of the key rules—the yield curve, the mortality table (including the rules governing the ability of a plan to use its own substitute mortality table), and the asset smoothing rules, for example—could create enormous differences in liability and, thus, funding requirements. For instance, assume that a plan is projected to have as of January 1, 2008, $18.4 billion of assets and an estimated liability of $20 billion. If those measurements are correct, such a plan would be 92% funded and would have no funding shortfall to amortize in 2008, based on the PPA's transition rule (which is discussed further below). Assume, however, that in November of 2007, the Treasury Department issues final guidance on the yield curve, the mortality tables, and the asset smoothing rules. Assume further that under the guidance, the plan assets are valued at $17.3 billion and the plan's liability is valued at $20.5 billion, very modest changes that are distinctly possible as a result of regulatory guidance. That plan would have a funding shortfall of $3.2 billion to begin amortizing in 2008 (only partially attributable to the problem with the PPA's transition rule), triggering a 2008 funding obligation of over $500 million plus the cost of any 2008 benefit accruals.

Businesses cannot absorb that type of sudden increase in costs. In the current defined benefit plan environment, as described above, the reaction to that type of surprise would be swift and decisive in many cases: all new benefit accruals would likely cease and the plan would be frozen in order to control costs.

It was never Congress' intent to surprise companies with $500 million of new costs a couple of months before the costs begin to apply. That is why the effective date of the funding rules was 2008. But Congress left much of the details regarding the funding rules to the Treasury and, in combination with all the other PPA guidance priorities, probably not sufficient time to develop all the rules, especially in light of the necessary input and comment from the public. In light of the current lack of guidance with respect to the PPA funding rules, it is critical that the effective date of the funding rules be delayed until 2009.

Public comment is critical. In this regard, it is very important that the effective date problem not be addressed by the issuance of funding rules that have not been the subject of public comment. The funding rules have enormous public significance and accordingly would benefit greatly from public comment. The give and take between the government and the public is one of the hallmarks of our system and has led to far better rules and far more respect for the system. It is critical that this valuable part of our governmental process remain intact: the funding rules should not go into effect until they have been the subject of public comment.

Current state of plan funding. One question that could be raised is: what is the cost of delaying the effective date? Could a delayed effective date let plans become more underfunded? Happily, the market has helped us a great deal in this respect. A recent study by a national consulting firm—Milliman, Inc.—examined the funded status of plans maintained by 100 very large U.S. corporations. The study made the following findings with respect to the plan's funded status based on the market value of plan assets and the plans' accumulated benefit obligations (which "more

closely approximate the funding target under new funding rules" than other measures used for accounting purposes):

	End of 2006	End of 2005	End of 2004
Median funded status	104.9%	97.9%	96.2%
Aggregate surplus/(deficit)	$73.9 billion	($18 billion)	($34.1 billion)

Thus, a $34.1 billion aggregate deficit as of the end of 2004 has become a $73.9 billion aggregate surplus as of the end of 2006. We recognize that interest rates and the markets can swing at any time, but the clear upward trend and the large current surplus help provide us the ability to have a reasonable one year delay in the effective date of the PPA's funding rules without jeopardizing benefit security or the PBGC's insurance system.

Phase-in of the Funding Target

A second important issue also relates to the transition from the old funding rules to the PPA funding rules. Under pre-PPA law, the funding target with respect to a defined benefit plan was, in a very general sense, 90% of a plan's liability. The PPA increased the 90% figure to 100%, subject to the following phase-in: 92% in 2008, 94% in 2009, 96% in 2010, and 100% in 2011 and thereafter. However, the phase-in was limited to existing plans that (1) were not subject to the deficit reduction contribution ("DRC ") rules in 2007, and (2) were at the phased-in funding target in the current year and each year since 2008. Because of the second requirement, the transition rule has an unusual and very harsh effect.

Assume, for example, that in 2008 a plan has $20 billion of liability and $18.4 billion of assets. Such a plan is 92% funded; because that is the phased-in funding target for 2008, the plan would have no funding shortfall to amortize for 2008. Assume that a second plan has the same $20 billion of liability but only $18 billion of assets, i.e., $400 million less than the first plan, so the plan is 90% funded. One would think that the second plan would have a $400 million shortfall, but that is not how the transition rule works. Because the second plan is funded below the phase-in level, the phase-in does not apply at all, so the second plan's shortfall is determined by reference to a 100% funding target. Thus, although the second plan has only $400 million less than the first plan, the second plan has a shortfall of $2 billion compared to no shortfall for the first plan. A $2 billion shortfall would require an amortization payment of over $300 million.

A national consulting firm analyzed this transition problem and reached the following conclusions. For a typical 90% funded plan, like the one above, the absence of a meaningful transition rule will cause funding costs to double or triple in 2008, as compared to 2007. For an 85% funded plan, for example, the increase will be even greater. Companies cannot absorb this type of increase. Again, we refer back to the precarious state of the defined benefit plan system. In this context, a huge sudden increase in costs will likely cause many companies to eliminate 2008 benefit accruals and to freeze benefits generally. Eliminating the cost of 2008 accruals would be the only way for companies to soften the blow caused by the lack of a real transition rule. Generating more plan freezes is inconsistent with the intent of PPA in enhancing retirement security and would be an unfortunate result of a transition rule intended to mitigate the disruptions of moving from one funding regimen to a new one.

Congress has consistently tried to combine important reforms with practical transition rules that make new obligations manageable. We feel confident that Congress could not have intended the result described above. To achieve the real objectives of the PPA, the transition rule should be modified so that the funding target for all non-DRC plans is phased in.

Asset Smoothing

One of the key policy discussions with respect to the PPA was the extent to which smoothing of interest rates and asset values would be permitted. Asset smoothing provides an employer with greater predictability with respect to the value of its pension assets and thus greater predictability with respect to its funding obligations. If an employer's funding obligations were subject to the constant fluctuations of the market, funding obligations would be so unpredictable that business planning would be exceedingly difficult. Since that unpredictability is a key reason for pension plan freezes and terminations, it is essential that asset smoothing be preserved. And, smoothing strikes a reasonable balance between the long term obligation of pension plans and the continuing desire to keep a plan well-funded on a current basis.

The PPA preserved a degree of predictability by preserving interest rate and asset smoothing, but PPA reduced the smoothing period from 48 months under pre-PPA law to 24 months. (Other reforms to the smoothing rules were also adopted.) The problem is that with respect to asset smoothing, the PPA used the term asset "averaging", rather than asset "smoothing". The legislative history of the PPA is extremely clear that the use of the term "averaging" was intended to refer to smoothing. And the pension plan community clearly contemplates that 24-month asset smoothing is permitted by PPA. But if "averaging" is interpreted in a very technical sense, it has a different meaning. Technically, the term "average value" under current law refers to a valuation technique that is not commonly used because it systematically undervalues plan assets. For example, assume the following facts (which assume a 7.5% rate of return). FMV of assets on: 1/1/09, $100; 1/1/10, $107.50; 1/1/11, $115.56.

Assume further that the increase in value is attributable to unrealized appreciation. In that case, the "average value" of plan assets on 1/1/11 would be the average of three values cited above, i.e., $107.69. That is 6.8% below the fair market value of $115.56. Assets would be consistently undervalued if average value were used.[5]

By understating asset values, "average value" would artificially increase funding obligations. Thus, if employers could only choose average value or fair market value, they would effectively be forced to use fair market value. The use of fair market value would lead to an enormous increase in volatility, resulting in many more plan freezes and terminations.

Congress needs to clarify in a technical correction that asset smoothing, not asset averaging, was intended. Asset smoothing allows plans to take unexpected gains or losses into account over a 24-month period (rather than both expected and unexpected gains and losses). Over time, asset smoothing neither understates nor overstates asset values. On the contrary, over time, the average of a plan's smoothed values is the same as the average of the plan's fair market values.

More specifically, 24-month asset smoothing would work as follow. The following example works exactly the same as under current law except that the smoothing period is reduced from 48 months to 24 months. A plan would determine its expected rate of return based on historical experience and its current investments. Assume that expected rate of return is 7.5%. If actual returns are greater than 7.5%, one third of the "excess return" would be taken into account on each of three valuation dates (separated by 24 months) until the entire excess has been taken into account. Similarly, if actual returns are less than 7.5%, one third of the "shortfall" would be taken into account on each of three valuation dates. For example, assume a plan begins smoothing assets as of 1/1/10:

	Asset FMV	Return for next 12 months	Excess return	Shortfall	Smoothed assets
1/1/09	$100	10.5% ($10.50)	$3	NA	NA
1/1/10	$110.50	4.79% ($5.29)	NA	$3	(6) $108.50
1/1/11	$115.79	7.5% ($8.68)	NA	NA	(7) $116.79
1/1/12	$124.47	7.5% ($9.34)	NA	NA	(8) $125.47
1/1/13	$133.81				(9) $133.81

This example was structured to illustrate a basic point about smoothing. If a plan earns its expected rate of return over time, smoothing does not overstate or understate values, but rather just smoothes out asset value fluctuations, both negative and positive fluctuations. As illustrated, for example, where the plan earns its expected rate of return for two years (2111 and 2112 in this example), market value and smoothed value will be the same in the following year (2113 in the example).

As noted, we strongly believe that clarifying the asset smoothing rule is a technical correction. But it is a technical correction of such impact that it merits discussion here.

Lump Sums

Very generally, the PPA prohibits underfunded defined benefit plans from paying lump sum distributions in full. More specifically, a plan that is at least 60% funded but less than 80% funded can only pay ½ of a participant's lump sum (or the present value of the maximum PBGC guarantee, if less). If a plan is less than 60% funded, no lump sum may be paid. This rule was clearly targeted at a serious problem area, but unfortunately the rule has a very significant problem.

The PPA requires after-the-fact notice to participants that a restriction on lump sums has taken effect. Many companies will be very uncomfortable only providing after-the-fact notice. In the case of an older employee who has been planning to retire in, for example, May of 2008 based on a contemplated lump sum benefit, it

seems very harsh to tell him or her on April 30, 2008 that as of April 1, 2008 lump sum distributions are no longer available. At least a very significant number of companies may feel that advance notice is appropriate from a fairness, employee relations, and/or fiduciary perspective.

So let us work through an example. A company has had business problems and its prospects are uncertain. Its workforce is aging and its plan is poorly funded. Such a company announces in late 2007 that lump sums may not be available starting either January 1, 2008 or April 1, 2008. The workforce reaction is very predictable, as evidenced by recent events with respect to a well-publicized bankrupt employer. Older, longer-service employees with large lump sums will retire in droves, creating an enormous drain on plan assets and a crippling brain drain for the company. In fact, there may not be any single event that could have a worse effect on the plan or the company.

The lump sum rule was well-intentioned but it will clearly cause exactly the problem it was intended to prevent. However, developing a solution to this problem is difficult. The need to restrict lump sum distributions by underfunded plans is understandable. The challenge is to create a rule that does not make the lump sum problem worse, as we fear the current rule does.

We suggest Congress consider the following restriction on lump sum distributions. If a plan is less than 80% funded, the maximum lump sum permitted would be equal to the product of (a) the lump sum otherwise payable to the participant, multiplied by (b) the plan's funded percentage. For example, assume that a plan is 75% funded and a participant would otherwise be entitled to a lump sum distribution of $100,000. In that case, the maximum lump sum would be $75,000.

This rule makes policy sense from two perspectives. First, it is less likely than the current rule to produce the "rush to retire" because the restriction is less severe. Second, the restriction exactly fits the problem. In other words, the problem with lump sums is that, in the context of an underfunded plan, paying one participant 100% of his or her benefit is providing that participant with more than his or her proportionate share of plan assets, leaving other participants with less than their original proportionate share. Under our proposed alternative, all participants get exactly their proportionate share.

This is not an issue that is coming from our membership. This is coming from us as practitioners and advisors. We see the lump sum rule creating very unfortunate situations down the line and we hope that it can be fixed before that happens.

We appreciate the opportunity to offer views on these issues and would be pleased to assist the Committee or Subcommittee in these efforts.

ENDNOTES

[1] In 2004, the Council released a white paper discussing in detail the multiple threats to the defined benefit system. See American Benefits Council, White Paper, Pensions at the Precipice: The Multiple Threats Facing our Nation's Defined Benefit Pension System (May 2004), available at *http://www.americanbenefitscouncil.org/documents/definedbenefits—paper.pdf.*

[2] Pension Benefit Guaranty Corp., Pension Insurance Data Book 2005, at 2 & 8 (2006), available at *http://www.pbgc.gov/docs/2005databook.pdf.*

[3] A plan freeze typically means closing the plan to new hires and/or ceasing future accruals for current participants.

[4] PBGC Pension Insurance Data Book 2005, supra note 5, at 58.

[5] If some of the increased value is attributable to other sources, such as interest or dividends, there is less undervaluation, but there is definitely still undervaluation.

[6] This is determined by starting with the "expected assets" of $107.50 and then adding ⅓ of the $3 excess return.

[7] This is determined by starting with the last year's smoothed value ($108.50), then adding the expected return of $8.29 (which is 7.5% of $110.50), then adding ⅓ of the 2009 excess return, and finally subtracting ⅓ of the 2010 shortfall.

[8] This is determined by starting with the last year's smoothed value ($116.79), then adding the expected return (which is 7.5% of $115.79), then adding ⅓ of the 2009 excess return, and finally subtracting ⅓ of the 2010 shortfall. In 2111, the plan earned its expected rate of return, so no adjustment is needed with respect to 2111.

[9] This is determined by starting with last year's smoothed value ($125.47), then adding the expected return (which is 7.5% of $124.47), and then subtracting ⅓ of the 2010 shortfall. Again, in 2112, the plan earned exactly its expected rate of return.

Chairman ANDREWS. Ms. Mazo, welcome back to the committee.

STATEMENT OF JUDY MAZO, SENIOR VICE PRESIDENT AND DIRECTOR OF RESEARCH, SEGAL CO., REPRESENTING THE NATIONAL MULTIEMPLOYER COORDINATING COMMITTEE FOR PENSION PLANS

Ms. MAZO. Thank you, Mr. Chairman. I am pleased to be here. As you pointed out, I am here on behalf of the Multiemployer Coalition and most especially the National Coordinating Committee for Multiemployer Plans, the NCCMP, which is the premier advocacy organization for multiemployer plans. Since 1980, I have been a member of the NCCMP's Working Committee. That was shortly after I served as a consultant to what was at that time and now is again the Committee on Education and Labor, and I am pleased to be here.

The NCCMP, working through the broad group of employers, business associations, multiemployer plans, labor unions, that came together as the Multiemployer Coalition, supported and advocated for the general design—and many of the particulars—of the multiemployer funding provisions of the Pension Protection Act of 2006. That Act made significant changes to the ERISA multiemployer pension plan funding rules, as Mr. Kline has pointed out, which changes that we think will make the plans significantly stronger and position them in a much better way to meet their promises and the expectations of the people that they cover.

A major achievement of the PPA was the recognition of the special context of multiemployer plans and accommodating the collective bargaining framework within which the plans operate. The distinctive funding rules for multiemployer plans that are established by PPA will, we think, allow our plans to flourish. We think the opposite would have been the case if multiemployer plans had been simply swept into the new single employer-pension funding rules. That would have been a catastrophe. It was averted; and, Mr. Chairman and Mr. Kline, both of you provided significant leadership in achieving that. We are very grateful for that; and, in fact, in recognition of that, the multiemployer plans don't need a delay in the funding rules the way the single-employer plans definitely do.

Before talking about specifics, I do want to mention one overriding principle that we think should guide you all in making policy about pension plans, and that is something that Scott has certainly alluded to; preserving defined benefit plans. Their demise in many sectors of the economy has been widely noted. And indeed yesterday I heard what I thought was a very good description of what it is like to be a defined benefit plan sponsor. It was one word: treacherous. However, in the multiemployer community, the commitment to the defined benefit plans is still strong.

We urge you to be vigilant not only to overt threats to the vitality of defined benefit plans such as the proposal by the Department of Energy to refuse to cover contractors' defined benefit costs but to much more common, subtle threats which are the unintended results of the thousand tiny nicks of regulatory detail.

Turning now to some of the thousand tiny nicks, specific ideas for statutory improvement, we have put together a comprehensive list of technical adjustments to the multiemployer funding rules that we think will make the PPA work more smoothly if adopted.

There are bound to be more issues that are identified as people dig into the implementation. In fact, since we have put that list together a month ago, I have already identified three or four more as they kind of come up.

The full list is appended to our written statement. We think they all deserve careful attention. But I am going to mention just a few to give you a flavor of what we are talking about. This just an illustration. We are not trying to assign priority of one change over the other.

Frankly, these are technical corrections, so the details can be difficult to follow; and the impact is not profound except in the way that there are some tiny things that could make a difference in many millions of dollars. Also, to all but the most intense benefits groups, describing them could be very boring. I am going to try to take a stab at overcoming those problems and giving you a little picture of the kind of thing we are talking about.

First is what we call the revolving door for critical status plans. These are commonly known as Red Zone plans, a terminology very similar to your lighting system. If a plan is in real trouble, it is in red. If it is heading to trouble, it is in yellow—and now I am in yellow, but——

The way the technical rules are to figure out whether a plan is in the Red Zone, there are certain actuarial factors that have to be disregarded. Then they have to be taken into account to figure out if you have gotten out of the Red Zone that you could end up tripping over your toes and getting out. And then the following year, because you have to change your calculation getting back in, we have suggested a sort of, we think, a pragmatic way to get around that.

The other one is simplifying the rules governing the benchmarks for Yellow Zone plans. And bear with me. A plan that trips both measures for being in the yellow is called seriously endangered. Its benchmarks may be different from those of a plain old endangered plan or they may not be; and how a plan measures up can change from year to year, so the benchmarks can change fluctuate from year to year. We have suggested streamlining all of that, ideally boiling it down to one metric so plans don't meet themselves coming and going.

Chairman ANDREWS. Thank you very, very much; and, again, your entire statement has been made part of the record, including the appendix with the list of suggestions.

[The statement of Ms. Mazo follows:]

Prepared Statement of Judy Mazo, Senior Vice President and Director of Research, Segal Co., Representing the National Multiemployer Coordinating Committee for Pension Plans

Chairman Miller, Subcommittee Chairman Andrews, my name is Judy Mazo. I am pleased to appear today on behalf of the National Coordinating Committee for Multiemployer Plans—the NCCMP. I am a Senior Vice President of The Segal Company, a national actuarial and employee benefits consulting firm, and, since 1980, a member of the NCCMP's Working Committee.

The NCCMP, working through the broad group of employers, business associations, multiemployer pension plans and labor unions that came together in the past few years as the Multiemployer Coalition, supported and advocated for the general design—and many of the particulars—of the multiemployer funding provisions of the Pension Protection Act of 2006 (PPA). That Act made significant changes to ERISA's multiemployer pension plan funding rules, changes that will ultimately re-

sult in stronger, better funded defined benefit pension plans for the approximately 10 million active and retired American workers and their families who depend on these plans for their retirement security. Some of these provisions were controversial, yet without bold action, the retirement benefits of millions of these participants as well as the future financial viability of their contributing employers would have been placed in dire jeopardy.

In this regard, a major achievement of the PPA was its recognition of the special context in which multiemployer pension plans operate and the importance of accommodating the collective bargaining arrangements that support the plan. The distinctive funding rules for multiemployer plans established by the PPA will, we think, allow our plans to flourish. The opposite would have been the case if multiemployer plans had been simply swept into the new single-employer pension funding regime.

While the PPA set the proper framework, the intricacies of establishing any new legislative structure in such a massive piece of legislation almost inevitably include unintended consequences and inadvertent technical errors which must be addressed if those charged with its implementation are to be able to carry out their responsibilities. As you know, we have spent a great deal of time analyzing the law in conjunction with a variety of plan administrators and other professional advisors as they attempt to understand the new responsibilities this law places on them and on the plan fiduciaries and settlors whose roles have changed in many ways that are far from inconsequential.

Although there will undoubtedly be additional issues that are identified as plans and the parties assume these new responsibilities, we have identified a reasonably comprehensive list of such issues that need to be clarified and corrected expeditiously if the reforms intended in the PPA are to be fully realized. The full list is appended to this statement, and we believe that they all require careful attention. Nevertheless, it is unnecessary to set forth in this document a point-by-point explanation of each item to reasonably convey why it is necessary to take timely action in this matter. We have listed several illustrations here. It is important to note, however, that the inclusion of any of the following examples should not be construed to imply any priority over any of the other items included in the more comprehensive list.

Examples of Issues Requiring Clarification, Correction or Revision:

1. The *"Revolving Door" for Critical Status Plans*—The rules that apply to Critical Status plans (known popularly as "Red Zone" plans) require that any amortization extension the plan has received [1] be disregarded by the plan's actuary in making the determination of the plan's funded status for purposes of determining whether the plan is in Critical Status. Those rules further require that when the actuary makes a subsequent determination certifying that the plan has met the requirements of deferring a funding deficiency for at least ten years in the future required to exit Critical Status, any such amortization extension must be taken into consideration. The problem is that when the next annual certification is conducted after a plan's emergence from Critical Status, the present language would require that that same extension be disregarded, possibly throwing the plan back into Critical Status; hence the reference to a "Revolving Door". We suggest that the language be modified to disregard any amortization extension only for purposes of the first determination of whether a plan is in Critical Status and to take it into account in any subsequent determination, to break the revolving door cycle. (See item 5 of more extensive list).

2. *Rules governing benchmarks for Endangered Status Plans create confusion and require streamlining.* In particular, it is essential to clarify that the Endangered Status benchmarks are based on the plan's funded status at the time it enters Endangered Status (often called the "Yellow Zone ") rather than at the beginning of the Funding Improvement Period (a year or more later). The plan's funded position upon which the Funding Improvement Plan is based may be sufficiently different at that later date that a more aggressive benchmark would apply (e.g., one-third improvement over 10 years, rather than one-fifth over a fifteen year period), thereby rendering the Funding Improvement Plan itself useless and discouraging early corrective actions. It should also be clarified that once a plan is determined to be "Seriously Endangered" and therefore subject to the one-fifth improvement over fifteen years benchmark, that standard should remain in effect until the plan emerges from Endangered Status rather than have the plan potentially move back-and-forth from one standard to another based on fluctuations in its funded percentage. Such move-

[1] A related comment would clarify that the references to amortization extensions under PPA include extensions granted under pre-PPA ERISA Section 412(e). Clarification of this point is essential if a plan is to determine whether it is, in fact, in Critical Status. (See item 4 of the more extensive list.)

ment would make it virtually impossible for the Trustees to produce meaningful plans to hit such a moving target. (See especially items 7 and 8 of more extensive list).[2]

3. *Rules governing the prohibition of trustees' acceptance of bargaining agreements that permit reductions in contribution rates, contribution holidays or exclusion of new hires in Endangered and Critical Status should be harmonized and the prohibition against exclusion of new hires should be made a permanent exclusion while plans are in either status.* Exclusion of new hires is a virtual death sentence for a multiemployer plan and is inconsistent with the intent of the PPA to encourage continuation and secure the funding for plans on an ongoing basis. (See item 10 of the more extensive list). On the other hand, once a Funding Improvement Plan is underway for an Endangered Status plan, there is no reason to impose tighter restrictions on the bargaining parties' ability to negotiate over contribution levels than those that apply to Critical Status plans.

4. *The rules governing payment of Social Security level income option benefits by multiemployer plans must be made consistent with those for single employer plans.* Plans making such payments to retirees at the time a plan enters Critical Status should be permitted to continue paying out benefits in that form (which typically only lasts until age 65 or 66), but no new awards in this form—a type of partial lump-sum distribution—should be permitted. (See item 18 of the more extensive list).

The NCCMP looks forward to working closely with the Committee and Subcommittee as you work to resolve these and the other issues we have identified that require attention so that the intent and full potential of the Pension Protection Act can be realized for multiemployer plans.

Chairman ANDREWS. Mr. Tripodi, welcome to the committee.

STATEMENT OF SAL TRIPODI, PRESIDENT–ELECT, TRI PENSION SERVICES, REPRESENTING THE AMERICAN SOCIETY OF PENSION PROFESSIONALS AND ACTUARIES (ASPPA)

Mr. TRIPODI. Thank you, Mr. Chairman, members of the committee.

As Mr. Chairman noted in my introduction, I am Sal Tripodi, President-Elect of ASPPA, the American Society of Pension Professionals and Actuaries. ASPPA has over 6,000 retirement plan professional as members who provide consulting and administrative services for plans covering millions of American workers. I am also the founder of TRI Pension Services, an employee benefits consulting firm that provides ERISA-related technical training around the country primarily to service providers in the industry.

ASPPA applauds the committee's leadership in working to fashion necessary corrections to the Pension Protection Act, or PPA, and appreciates this opportunity to testify today.

Improving the PPA is crucial to strengthening working Americans' retirement security, and we stand ready and willing and are uniquely qualified to help accomplish our mutual goals as the PPA modification process moves forward.

I am restricting my comments today to the duplicative and burdensome participant exposure requirements under current law. However, in our written statement, we have identified nine other important issues, including a number of critical issues involving a

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[2] Alternatively, PPA should be amended to eliminate the 80% trigger and rely solely upon a projected funding deficiency within the next 7 plan years in determining which plans are in endangered status. A projected funding deficiency within 7 years is a much more meaningful marker of financially-troubled status in a multiemployer plan as compared to basing such status solely on the plan's funding percentage. The 15-year/20% benchmark would apply to all plans in endangered status—there would be no seriously and non-seriously endangered distinction. (See item 8 on the more extensive list, which proposes other requirements and safeguards for this streamlined approach.)

PPA benefits statement requirement that plan sponsors and administrators are struggling with, a deduction rule correction to encourage full funding of defined benefit plans and the need for delayed effective dates for some PPA provisions.

PPA resulted in what ASPPA is describing as the "Great Flood of 2006," a deluge of new disclosure rules that make victims of millions of the retirement plan participants who are already overwhelmed with information. As participants drown in this sea of disclosure, plan service providers paddle upstream to fulfill these new mandates.

A strong employer-sponsored savings system requires informed, engaged plan participants; and we argue that current disclosure rules hinder rather than help in the attempts to achieve this.

We are not saying that Congress should scrap all the current rules. For example, no one would argue that an employee's automatic enrollment in 401(k) plan should not receive advance information on this feature. Employees with self-directed 401(k) accounts need periodic account value and allocation information, and retiring participants need adequate information about their distribution options. So we agree with the need for participant disclosure, but we question the rules on how and when the information is provided.

ASPPA has created a participant disclosure chart—it is attached to our written statement—that details the breadth and complexity of the current disclosure rules. The chart is a powerful reminder of how burdensome the disclosure rules have become.

A cornerstone of planned transparency is the summary plan description, or SPD; and the SPD was intended to be the central document through which participants would learn about the key features of their retirement plan. SPDs must be periodically updated so that participants need not wade through multiple separate documents trying to understand the plan. But the ERISA disclosure requirements have multiplied without regard to whether the participant already receives the information in the SPD. This means many disclosures are redundant and are contained in unnecessarily lengthy, complicated documents. Many plan participants typically react to a disclosure document that is too long or too compilation by ignoring it. This, of course, completely undermines the disclosure's basic purpose.

Further, the overwhelming majority of plans rely on third-party services to comply with these rules, making third-party service providers responsible for compiling disclosures for thousands of plans. The need for repetitive or lengthy disclosures makes it more difficult to ensure that each disclosure is appropriate for a particular plan and is suitable for its participants; and, worse, the cost to plan participants has increased.

This is particularly true with respect to small business plans where each participant bears a higher proportion of the plan's administrative costs. For example, assume a 401 plan has 10 participants. A single disclosure would easily cost $6 per participant. The PPA-mandated quarterly benefits statements plus an annual vesting statement, which is five annual disclosures, would cost $30. If the plan uses the 401(k) nondiscrimination safe harbor, automatic enrollment and a qualified default investment alternative, there

are three more disclosures, raising the cost to $48 per participant. For a participant who makes $40,000 per year and is saving 5 percent of pay, or $2,000 a year, this adds up to almost a 2 and a half percent charge just for disclosures. This doesn't make sense.

To solve this problem, ASPPA recommends that Congress consider the development of a standard document, a plan operating manual, or POM, to serve as a single source for relevant plan information. The POM would contain all the information that an employee needs to effectively participate in the plan and would be written so that an average participant could easily understand it. When a targeted disclosure is needed, participants would be notified and referred to the relevant sections of the POM for review, rather than getting a full-blown notice.

To further reduce the cost of plan administration, ASPPA suggests that the Department of Labor be directed to produce model POM language that most plans would use. ASPPA would be happy to assist in those efforts. We would submit that we will leave participants with a clearer vision of the retirement road ahead, and we believe everyone wins in that way.

[The statement of Mr. Tripodi follows:]

Prepared Statement of Sal Tripodi, President-Elect of American Society of Pension Professionals & Actuaries (ASPPA), Founder of TRI Pension Services

The American Society of Pension Professionals & Actuaries (ASPPA) appreciates this opportunity to testify before the House Committee on Education and Labor's Subcommittee on Health, Employment, Labor and Pensions on retirement security issues arising from the enactment of the Pension Protection Act of 2006 (PPA). Improving upon PPA is crucial to fulfilling Congress' intention of strengthening the retirement security of the millions of working Americans who participate in employer-sponsored qualified retirement plans.

I am Sal Tripodi, President-Elect of ASPPA and founder of TRI Pension Services, a nationally based employee benefits consulting practice that provides technical training in ERISA-related areas. Through my practice, I provide seminars around the country to groups involved in retirement plan services. I also author a five-volume reference book, aimed primarily at retirement plan service providers, consultants and advisors, regarding the legal and administrative requirements for retirement plans. In addition, I serve as an Adjunct Professor at the University of Denver Graduate Tax Program.

ASPPA is a national organization of over 6,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA unusual insight into current practical problems with ERISA and qualified retirement plans, with a particular focus on the issues faced by small to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the private retirement plan system.

We understand this hearing is in anticipation of crafting a bill to correct technical and other problems with specific PPA provisions that have been identified since the enactment of PPA in August 2006. ASPPA applauds the committee's leadership in working to fashion necessary corrections and improvements to PPA. We share the committee's commitment to make the PPA as effective as possible in strengthening the qualified retirement plan system, the fundamental mechanism used by millions of America's workers to achieve adequate retirement security. We stand ready and willing—and are uniquely qualified—to assist this committee in accomplishing our mutual goals as the PPA modification process moves forward.

There are, of course, many technical and other corrections needed to make PPA's operation smooth. Today, though, we would like to focus on ten specific issues that are of particular importance to the small and medium-sized businesses that do or will sponsor qualified plans for their employees. These ten issues are:

1. Duplicative and Burdensome Participant Disclosure Requirements under ERISA

The enactment of PPA resulted in what ASPPA describes as the "Great Flood of 2006," where, fortunately, there were no casualties. This flood was a result of the deluge of new disclosure requirements enacted by PPA, with the victims being millions of retirement plan participants already overwhelmed with information. As participants drown in this sea of disclosure, plan service providers paddle upstream to fulfill these new mandates, trying to make sure that the intent of the law is carried out.

ASPPA is committed to a strong, employer-sponsored retirement savings system. First and foremost in achieving such a goal is to have informed, engaged plan participants. We would argue, however, that the approach to disclosure under the Employee Retirement Income Security Act of 1974 (ERISA) hinders the furtherance of this goal. Plan participants are swimming in a sea of confusion, and they are being thrown life preservers in the form of cumbersome documents. The end result is more like a concrete anchor, dragging them into murkier waters, rather than a buoy keeping them afloat and providing a clear vision of the retirement horizon.

This is not to say that Congress should scrap all of the current disclosure rules and start anew. We need to first look at the big picture and identify the primary goals served by ERISA's disclosure requirements. No one would argue that an employee who is subject to automatic enrollment provisions in a 401(k) plan should not receive advanced communication of this feature, so that he or she will have time to set a savings goal that fits the employee's needs. An employer maintaining a safe harbor 401(k) plan, where meeting nondiscrimination testing rules are waived, should continue to communicate on a periodic basis with the plan participants to remind them of their right to contribute to the plan and, if applicable, to receive a matching contribution on those amounts. Employees who direct the investment of their account balances in a defined contribution plan have a need to receive periodic information about the value of their account and the current investment allocation in the account. Further, when the right to change investments will be blacked out for a period of time due to a change in the plan's investment options, we believe advance notice of that blackout period is in the best interest of the plan participants. When an employee is eligible for distribution of benefits, the law should require that the employee be adequately informed of his or her distribution options, and, if applicable, be informed of his or her right to postpone distribution to a later, more suitable, retirement age.

So, we do not question that there is a need to disclose information to plan participants. Rather, it is the disclosure delivery requirements at issue. And by delivery, we mean the manner in which information is communicated, the frequency of the information and the usefulness of the information.

ASPPA respectfully asks Congress to consider adopting rules that will consolidate some of the disclosure requirements (where overlapping information can be confusing) so that a more concise, clear disclosure will enhance the purpose for which the disclosure is being required in the first place. To assist in this task, the ASPPA Government Affairs Committee has established a task force that is currently reviewing all of the disclosure requirements, as well as additional disclosures that represent the best practices of retirement plan advisors and third-party service providers. The task force has created a Participant Disclosure Chart (chart) identifying each disclosure item, which is attached to this document. The chart includes a brief description of the content required in the disclosure item; the due date for providing the disclosure; which plans are required to provide the disclosure; the typical length of the disclosure; the penalty for failure to comply; a citation to the law that requires the disclosure; the permissible methods of delivery; and the governmental agency with jurisdiction over the enforcement of the requirement. The chart currently addresses only the disclosure requirements that apply either to retirement plans in general, or specifically to defined contribution plans [including 401(k) plans]. The task force's next assignment is to add the additional disclosures that are unique to defined benefit plans. In addition, the task force will reorganize the items in the chart to distinguish between disclosures that must be provided on a regular basis (typically annually or quarterly), and those that are provided only under certain circumstances.

When ERISA was first enacted in 1974, the need for mandated participant disclosures was apparent. The enactment of the disclosure rules in Title I of ERISA was a watershed event in starting us on a path toward greater transparency for plan participants and their beneficiaries. One of the cornerstones of the new transparency was the summary plan description or SPD. The SPD was intended to be the central document through which plan participants would learn about the key features of the retirement plan established by their employer. In addition, when plan amendments were adopted that modified a participant's rights under the plan,

information about that change had to be provided, either as an addendum to the SPD information, or in the form of an updated SPD. A periodic update of the SPD was also required so that participants wouldn't have to wade through a sea of separate documents to understand the plan. As the ERISA disclosure requirements were amended over the last three decades, and other disclosure requirements were added to the Internal Revenue Code (IRC) with respect to certain requirements that were required for tax code qualification but not for ERISA compliance, the SPD seems to have been relegated to a lesser stature. These additional requirements often ignore whether the information is already available to the participant through the SPD, necessitating duplicative information in often unnecessarily lengthy documents that should be aimed at very specific information. Notwithstanding this, admittedly, the typical SPD today has become somewhat burdensome due to the addition of legalese in response to various cost decisions since ERISA's enactment.

A typical reaction from many plan participants to a separate communication piece that is too long or too complex is to ignore the document altogether, completely eliminating the purpose of the disclosure requirement. For those that attempt to read each communication, the length of the document may cause the individual to lose interest and not finish reading, and the complexity or sheer volume of the information contributes to confusion, misinterpretation and, probably worst of all, the loss of the primary message that was identified as creating a need for a particular disclosure requirement.

Part of solving this disclosure puzzle also requires focusing on the manner in which disclosures are prepared and delivered. The overwhelming majority of plans rely on third-party services to comply with many (if not all) of the legal requirements surrounding retirement plans. Third-party service providers have become responsible for compiling disclosures for thousands of retirement plans. The need for repetitive or lengthy disclosures makes it more difficult to ensure that each disclosure is appropriate for a particular plan and is suitable for the participants in such plan, taking into account the plan features, the participant demographics and the sophistication of the intended audience of the communication piece. All of these considerations also increase the cost of keeping up with the disclosure requirements, which often is passed on by employers to the plans they maintain. When fees are paid by the retirement plan, particularly a defined contribution plan, it is the participants who pay the price. Fees paid by retirement plans have become a hot topic, and ASPPA supports full disclosure of fees as an important step toward better transparency and increased awareness and understanding of the plan by plan participants. Where rules relating to the administration of plans contribute to the bottom-line costs incurred with respect to such administration, ASPPA also believes that there should be sensitivity to those costs.

This is particularly true with respect to small business plans, where participants bear a higher proportion of fixed administrative costs since there are fewer participants over which to spread these costs. For example, assume a 401(k) plan with ten participants. A single disclosure to such participants would easily cost $6 per participant. The PPA-mandated quarterly benefit statements plus an annual vesting statement—a total of five disclosures—would cost $30. If the plan uses the 401(k) nondiscrimination safe harbor, automatic enrollment and a qualified default investment alternative (three more disclosures), the cost would rise to $48 per participant. For a participant making $40,000 per year who saves 5% ($2,000) of his or her pay in a 401(k) plan, this adds up to almost a 2.5% charge for disclosures, not even including other administrative costs. Does that make sense?

This is not to say that we should eliminate disclosures that are essential for participants simply because there is a cost associated with compliance. But if there is a better way to provide disclosures that will preserve the core purpose for the disclosure and not compromise participant understanding, and that better way could reduce the costs of compliance, then that should be a goal as well. We strongly believe that, in fact, a more rational approach to required disclosures will actually enhance understanding of the plan by plan participants and make employees more engaged in the plans in which they participate.

In light of this, ASPPA recommends that, in reviewing the current state of the disclosure rules, Congress consider the development of a standard document—a plan operating manual (POM) that would be a single source for relevant information pertaining to the plan. The POM would contain all the information that an employee needs to effectively participate in the plan and would be written not in legalese, but in a way that could be easily understood by the average participant. When an issue necessitating notification to participants arose, participants would be notified and referred to the relevant sections of the POM for review, rather than being provided a full-blown duplicative notice. Each notification would be in very simple terms highlighting the issue at hand and providing reference to the more substantial ex-

planation in the POM. This, in turn, would help train employees to refer to the POM on a regular basis. To further reduce the cost of plan administration, ASPPA suggests that the Department of Labor (DOL) be directed to produce model POM language that most plans would use. We believe standardization of these disclosures would enormously reduce participant fees to the participant's benefit. We believe that this type of approach will lead to more user-friendly communicating, a better understanding of the plan by plan participants and a reduced chance of error and misunderstanding.

I would like to offer ASPPA's assistance in formulating legislative initiatives that will enhance the disclosure system. I have made this issue a central focus in my upcoming presidential year with ASPPA. We are hopeful that, as the flood waters recede, participants will be left with a clear vision of the retirement road ahead. And that's a win for the system.

2. PPA Effective Dates

PPA contains many provisions with specified effective dates. Given the need for comprehensive regulatory guidance in order to implement many of these PPA provisions, as well as time to assimilate the regulations and consult with plan sponsors, it is necessary to postpone the effective dates of some of the PPA provisions.

A perfect example is the funding rules. In order for actuaries and consultants to properly advise clients on the impact of the funding rules, the IRS must issue regulations detailing the application of the PPA changes for 2008 and beyond, as well as the application of the transition rules. The transition rules are based on the funded status of the plan for 2007 under the funding standards of PPA. Since 2007, valuations are not performed based on the PPA rules, but rather are still subject to the pre-PPA rules. Without IRS guidance, a plan cannot determine its eligibility for the transition rules. Further, employers cannot make informed decisions as to their 2007 contribution strategy without knowing its impact in 2008 and beyond. At this time, no guidance has been issued, and it is not clear that the Service will be able to issue the required regulations in advance of the 2008 plan year.

To make sure that employers have sufficient time to assess their alternatives, ASPPA recommends that the effective date of major provisions of PPA that impose additional restrictions or requirements on plan sponsors not be effective until the first day of the plan year beginning at least 180 days following the issuance of regulations by the IRS.

3. Trustee-Directed Plans—Benefit Statements within 45 Days [PPA §508(a)]

PPA §508(a) requires retirement plans to provide quarterly benefit statements to participants and their beneficiaries in participant-directed defined contribution (DC) plans, annually in the case of all other DC plans, and every three years in the case of defined benefit (DB) plans. PPA requires that the benefit statements be based on "the latest available information." DOL's Field Assistance Bulletin (FAB) 2006-3 stated that in order for plan sponsors to meet good faith compliance, the benefit statements must be provided within 45 days of the end of the relevant period in order to constitute good faith compliance.

The 45-day rule creates an impossible situation for trustee-directed DC plans where investment decisions are made without participant direction. In particular, many small employers (those with fewer than 100 participants) sponsor trustee-directed plans, such as profit-sharing plans, where the plan valuations and plan contributions are done at different points in the plan year. Allocation of earnings, on which many profit-sharing contributions are based, and independently appraised non-publicly traded plan assets, require more time than a 45-day deadline allows. Consequently, as these calculations are generally not available until after the employer's business tax return has been completed, it is literally impossible to value the plan's assets and prepare the benefits statement within 45 days of the relevant period.

To solve this problem, ASPPA recommends that the deadline for trustee-directed DC plan annual benefits statements be no later than the deadline (with extensions) for filing the plan sponsor's Form 5500 (e.g., October 15 in the case of a calendar-year plan).

4. Participant-Directed Quarterly Benefit Statements—Calculation of Vested Benefits (PPA §508)

One of the requirements of the quarterly benefit statement requirement under PPA §508(a) requires the sponsors of self-directed 401(k) plans to provide quarterly benefit statements to plan participants on the value of their benefits, including the value of vested benefits. Under DOL FAB 2006-03, these quarterly reports are due within 45 days of the calendar quarter. Reporting timely quarterly vesting information creates an impossible burden on third-party administrators (TPAs), who most

often do the administrative work for plan sponsors (especially for small plans with 100 or fewer participants). TPAs generally do not receive required contribution information from their plan sponsor clients until three weeks (or, most commonly, even later) after the close of the plan year, at which point they calculate vesting to make sure all contributions are properly allocated. This frequently entails extra discrimination testing (ADP and ACP) for both deferrals and matching contributions. The sheer volume of this work—remember, most TPAs are handling hundreds, thousands, even tens of thousands of plans—makes turning around reports and delivering them in what amounts to a week or two simply impossible.

These problems, real though they are, are largely administrative and are easily fixed. ASPPA recommends that the 45-day deadline be at least doubled to 90 days. A 180-day deadline following the end of the quarterly period would be even more realistic in light of the real-world workload to calculate vested benefits.

5. Benefit Restrictions—Plan Valuations (PPA §113)

PPA §113 provides that benefit restrictions will be triggered if a defined benefit plan's Adjusted Funding Target Attainment Percentage (AFTAP) falls below certain specified percentages. PPA requires that certain restrictions arise if the plan's AFTAP is less than 80 percent; other benefit restrictions apply if the plan's AFTAP is less than 60 percent. PPA §113(h) provides that if an actuary has not yet certified the plan's AFTAP, it is assumed to be the same as last year. It further provides that where the plan's AFTAP has not been certified by the first day of the fourth month of the plan year (April 1 for calendar-year plans), it is assumed to be 10 percent less than the prior year. Finally, where the plan's AFTAP is still not certified by the first day of the tenth month of the plan year (October 1 for calendar-year plans), the plan is permanently deemed to have an AFTAP of less than 60 percent for the plan year. Accordingly, even where the AFTAP for the year is later determined to be greater than 60 percent, the less than 60 percent "deemed AFTAP" is still binding for the year. Thus, the resulting benefit accrual freeze remains in place until the next year's AFTAP is determined.

These requirements present particular problems for end-of-year plan valuations. First, the plan's AFTAP cannot be determined until the valuation date. The demographic and financial data used to determine the plan's valuation and funding level for a plan year is not available until the last day of the plan year and, thus, cannot be determined in time to avoid the "deemed AFTAP" of less than 60 percent and the resulting benefit accrual freeze. In addition, the AFTAP cannot be estimated effectively since the interest rates to determine the AFTAP on December 31 are not yet published as of October 1.

ASPPA recommends a "lookback rule" to correct this problem. Under the suggested lookback rule, the plan's AFTAP for purposes of the PPA's benefit restrictions would be determined as of the plan valuation date, coincident with or immediately preceding the first day of the plan year.

6. Combined Plan Limit (PPA §803)

PPA §803 creates an exemption from the limit under IRC §404(a)(7) on the deductibility of employer contributions when an employer maintains both a defined benefit (DB) and a defined contribution (DC) plan. The exemption eliminates the combined plan limit deduction requirement when the employer contributes six percent or less of aggregate compensation to the DC plan. In Notice 2007-28, Treasury interpreted this relief to apply only to the operation of the limit on the DC plan. The result is that many combined plan sponsors will not get the benefit of the combined plan limit relief with respect to their DB plan contributions, particularly with respect to the PPA-provided ability to fund the DB plan up to150 percent of unfunded current liability. Affected plan sponsors and Congressional staff involved in the PPA conference negotiations believe PPA §803 was intended to apply to both the DB and DC portions of the plan.

The solution to this problem is a clarification of PPA §803. ASPPA recommends that §803 be modified to clarify that the exemption from the combined plan deduction limit for employers who sponsor both DB and DC plans apply to both the DB and DC plan contributions. To clarify the congressional intent of §803 of PPA, the following technical correction should be made:

IRC §404(a)(7)(C)(iii) should be amended by striking all the words preceding the word "exceed" in the first sentence thereof, and replacing such words with the following:

"Subparagraph (A) shall only apply with respect to any defined contribution plans and defined benefit plans if and to the extent that contributions to 1 or more defined contributions plans".

This technical correction should be effective as if included in PPA.

7. Fixed Rate for Computing Section 415 Limit on Lump Sum Payments (PPA §303)

PPA §303 sets the interest rate for determining a lump sum benefit payment as subject to the benefit limitations in IRC §415. Under PPA, the rate will be the greater of a fixed 5.5 percent rate, a rate that produces a benefit of not more than 105 percent of the benefit provided from the applicable interest rate (as determined under the yield curve rules), or the plan rate. Prior to PPA, the Pension Funding Equity Act of 2004 (PFEA) enacted a temporary rate of the greater of 5.5 percent or the plan rate.

The purpose of the fixed 5.5 percent rate enacted under PFEA was to give small plan sponsors simplicity and predictability in calculating their funding requirements for purposes of their lump sum payment liabilities, particularly when business owners or key employees approach retirement age and commence the payment of plan benefits. Inclusion of the "105 percent" prong of the "greater of" test functionally eliminates this certainty. The fixed 5.5 percent rate is a conservative approximation of historically applicable rates and is necessary for small plan sponsors to plan and fund for their liabilities as their key workers retire.

To provide the necessary certainty that will allow small business plan sponsors to establish a plan with the confidence of knowing they can calculate their funding obligations, ASPPA urges Congress to amend PPA §303 so that IRC §415(b)(2)(E) reflects the PFEA language and requires the §415 lump sum calculation to be the greater of 5.5 percent or the plan rate. The end result would be provision of a fixed 5.5 percent rate to be used in calculating the contribution required to fund a lump sum payment as limited by §415. This rate ensures planning consistency by existing defined benefit plans, encourages the establishment of new defined benefit plans by small businesses, and is no more generous than recent law.

8. DB(k) Plans (PPA §903)

PPA §903 creates a new plan design called an "eligible combined plan" [commonly referred to as a "DB(k)"] available to employers with 500 or fewer participants beginning in 2010. The DB(k) plan design allows a qualifying employer to establish a combined DB and 401(k) plan, using one plan document, one summary plan description, one Form 5500 and one audit (if required). The DB(k) would be deemed not top-heavy or subject to non-discrimination testing where it meets specific safe harbor formulas for both the DB and the 401(k) elements of the plan. The DB component is either a 1% of final average pay formula for up to 20 years of service, or a cash balance formula that increases with the participant's age. The 401(k) component would include an automatic enrollment feature (using 4% as the automatic enrollment rate), and provide for a fully vested match of 50% on the first 4% deferred.

ASPPA is concerned that PPA §903 restricts the availability of the DB(k) plan option to situations where the employer is willing/able to contribute amounts to the DB and 401(k) component other than specified under the safe harbor and be willing to meets its antidiscrimination obligations through general nondiscrimination rules (ADP/ACP) and top-heavy testing procedures. Because of unique workforce demographics or other reasons, some small employers will prefer to use the usual discrimination rules, which could result in even more generous contributions on behalf of rank-and-file workers. The required use of the safe harbor could prevent these employers from offering the DB(k) plan option, which combines the best elements of the DB and 401(k) plan designs.

Safe harbors provide ease of administration for small business plan sponsors, but those who wish to sponsor DB(k) plans and customize their plans for the benefit of all their workers should be allowed to do so by being subject to ADP/ACP and top-heavy testing, while still being able to offer the unique DB(k) plan design. ASPPA recommends that PPA §903 be amended to make clear that a DB(k) plan sponsor may choose to use either the provided safe harbor or the regular nondiscrimination rules and top-heavy testing rules when testing the DB and DC components of the DB(k) plan.

9. Automatic Enrollment—ERISA Preemption (PPA §902)

PPA §902 amends ERISA to preempt state wage withholding laws that might otherwise interfere with establishment of an automatic enrollment 401(k) plan. Unlike other preemption provisions of ERISA, the provision relating to automatic enrollment plans includes specific definitional requirements to qualify the plan for preemption. In particular, §514(e)(1) of ERISA authorizes the DOL to issue regulations that would establish minimum standards for an automatic enrollment plan to be eligible for preemption. In addition, §514(e)(2)(C) of ERISA requires an automatic enrollment plan to satisfy the DOL's default investment regulations in order to qualify for preemption.

ASPPA recommends that PPA §902 be clarified to provide that the ERISA preemption provision should apply without regard to whether a plan satisfies specific definitional requirements in the statute or regulations, including any requirement to meet default investment regulations. This would be consistent with how ERISA preemption works in other contexts.

10. Tribal Plans Treated as Governmental Plans (PPA §906)

PPA §906 imposes new restrictions on the treatment of qualified retirement plans maintained by Indian Tribes as governmental plans for purposes of ERISA. PPA limits the governmental plan treatment of tribal plans to situations where the sponsoring tribes earn no income from "commercial activity." As drafted, the "commercial activity" language is very broad. Further, Treasury's Notice 2006-89 adopts such a broad definition of "commercial activity" as to make it very difficult for a tribal government to sponsor a qualified plan under ERISA governmental plan rules. The result is to eliminate government plan treatment for any tribal government that engages in any income-producing activity, no matter how small or no matter how related that activity is to the tribal government's core functions.

ASPPA recommends PPA §906 be amended to treat all retirement plans maintained by Indian tribes as governmental plans. Indian tribes are, in fact, governments in all respects. Their plans can and should be adequately governed under the usual governmental plan rules in both ERISA and the Internal Revenue Code.

Conclusion

Thank you for this opportunity to testify before your subcommittee on these very important issues. ASPPA pledges to you its full support in creating the best possible PPA corrections legislation. I will be happy to answer any questions you may have.

Chairman ANDREWS. Well, thank you very much. I must say that ASPPA and the other organizations represented here have already contributed in a very substantial way to our efforts, and we are very grateful. I think the witnesses were all well-prepared, very thorough and talked about practical problems. Thank you.

I wanted to begin with a couple of questions for Captain Prater to make sure I understood the situation that you described.

If you started work on the same day as a person who was in the administrative office of the airline—and let's say for the sake of argument you made the same amount of money, worked the same number of years—if I understand it correctly the FAA tells you you must retire at 60, is that right?

Mr. PRATER. That is correct.

Chairman ANDREWS. And there is no such rule for the administrative employee. He or she could work as long as the company would have them. Let's say they retire at 65.

So what you are telling me—and let's assume that this is the rare airline that hasn't frozen or abandoned its plan, being purely hypothetical here for a minute. If I understand correctly what you told us is that your—if these are 2007 numbers that you are talking about, your maximum guaranteed benefit would be $32,175, because you had to retire at 60, but your co-worker would have a maximum benefit of $49,000, because he or she would be able to work until they are 65. Is that right?

Mr. PRATER. That is correct, sir. That is the condition that we find ourselves caught under by the terminated plan.

Chairman ANDREWS. So you are really caught between two contradictory Federal laws, as I understand it. You have one Federal law that says you have to stop practicing your profession at the age of 60 and another that says that, when you do, you do not avail yourself of all the benefits of the guaranteed pension that your co-

worker would who works in a different capacity for the airline. Is that right?

Mr. PRATER. That is correct, sir.

Chairman ANDREWS. And the legislation that you are seeking would remedy that by acknowledging the fact that, because of the policy considerations of the FAA, that you should be treated as if you had worked until 65 and get the full guaranteed benefit. Do I understand that correctly?

Mr. PRATER. Yes, sir.

I think there are two points to note. One is that, during the intensive work done in the last session before the legislation was passed, the Senate had adopted this provision known as the Akaka amendment by 58 to 41 and that the House had voted three times to instruct its conferees to include it.

Chairman ANDREWS. Many of us think it is a good idea, even though the Senate approved of it.

I am sorry.

Mr. PRATER. No problem.

I have—you know, I welcome the extra time that you have provided us; and, in exchange, I will ask my members to stay off the PA for 5 minutes to talk about this issue when we are flying home.

Chairman ANDREWS. We understand.

The one thing I wanted to make sure the record reflected is that you are not asking for special treatment. You are in a situation where the law has told you that your years of service are limited by law.

It is hard to think really of any other profession, possibly with the exception of police and fire under State law and State pensions, where that is the case. And I would ask if anybody could supplement the record when the hearing is over, if there are any other occupational categories under ERISA that have similar—private pension plans have similar limitations. I can't think of any.

Mr. PRATER. Best of my knowledge, sir, airline pilots are the only private industry employees that are caught in this situation. And I think it should be noted that better than 95 percent of people who find themselves in the unfortunate situation of having their pensions decimated, terminated, turned over to the PBGC, receive 100 percent of what they thought they were going to get under their plan. Airline pilots are finding themselves at maybe 40, 30 percent.

Chairman ANDREWS. We found, Mr. Miller—I think Mr. Miller's approach is right way to resolve this, and I agree with you.

Mr. Macey, I want to understand the facts that you laid out about a corporate planner—and you have advised a lot of these people over the years—that is in a situation where he or she is uncertain as to how the rules are going to treat their assets and liabilities. An example that you give us is that you assume that the assets are 18.4, but they in fact turn out to be 17.5 billion. You assume the liabilities are 20, but they in fact turn out to be 20 and a half billion. Now—and that dramatically affects the contribution that your client would have to make to his or her plan, is that right?

Mr. MACEY. That is correct.

Chairman ANDREWS. If I understand this, under present law you don't know what those situations are going to be. Because, despite

their best efforts—and we are not being critical, either—despite the best efforts of the Labor Department and the Treasury, they have not promulgated the guidance that would help you figure that out, is that correct?

Ms. MAZO. That is correct.

Chairman ANDREWS. What would the typical magnitude for the difference of an employer be, given the size of the plan like you have talked about? How big of a difference from the employer's optimal scenario, where they put the least in, to the worst case scenario, where they had to put the most in? What is the difference as to how much they would have to spend in their next fiscal year?

Ms. MAZO. The difference, Mr. Chairman, could be very dramatic. Because, in one situation, the employer might be expecting that they are subject to the transition rule and, therefore, have no obligation to put in money for past liabilities and only have to put in normal cost in funding.

In a situation where it turns out that the rules used to value the assets and to value the liabilities turn out that they are not eligible for the transition relief, the funding could be two or three times what it otherwise would be. And our concern is that the employers are then having maybe hundreds of millions—potentially even billions—of dollars of additional funding, that the only relief they can seek then is to freeze the plans so—to limit the normal cost of it.

Chairman ANDREWS. That is right. So the concern that we have is that this law, which has the laudable purpose of preserving the life of defined benefit plans, may have the perverse effect of having people freeze and/or terminated.

I would like to proceed this way, if I could. Mr. Kline would have time for his questions before we go to vote, and we will return so that other members can have their chance for questions. I believe there is three votes—two votes, and those are the last votes of the day.

So we will return for the rest of questions, and I will turn to Mr. Kline for his question now.

Mr. KLINE. Thank you, Mr. Chairman.

Unfortunately, I am afraid after the votes there may be several members starting for the airport, knowing how it works around here.

Chairman ANDREWS. I am sure one of our witnesses will hold people's planes for them.

Mr. KLINE. I suspect that is the case. Sometimes I think—no, that is a whole other subject.

Listen, I want to thank the witnesses. Really, really good testimony. We are trying to look at the effects of the Pension Protection Act and see where there has been harm caused and where we can fix it with a technical correction. As the chairman said, sometimes there are anomalies we can fix, but we are very mindful when you try to fix one anomaly sometimes it has that domino effect and you cause more problems. And we do not want that to happen because I believe that the net effect of the Pension Protection Act was to make pensions across the country much more secure.

But I am interested in going several directions here, and I don't have time to do it. Because where you may not have a trapdoor, I am pretty sure the chairman has one for us if the light turns red.

Ms. Mazo, you talked about the revolving door issue.

Ms. MAZO. Yes, sir.

Mr. KLINE. When we were having these discussions, I don't know that that was heavily underlined. Are you looking at this as a technical correction? Or is there a more substantive issue to this?

Ms. MAZO. This is really a technical correction, and it wasn't underlined. In fact, we were responsible for it. We proposed the disregard going in and the taking it into account going out. And, in all candor, we—you know, it was—we should have noticed it.

It was when people got down and started applying the rules to real plans and they saw if I disregard this going in and then count it going out but the next year I have to decide if I am in again so I have to disregard it again and that puts the plan back in a different situation. We just didn't realize it until we started doing the actual planning for real plans. So it wasn't Congress' fault at all.

Mr. KLINE. I am making a note right here, right now.

Ms. MAZO. Don't tell our clients.

Mr. KLINE. This is an historic moment, and I am making note. You realize this is part the record, and I will be verifying that. Thank you. That is what exactly what we were trying to get at, and I wanted to underscore that point. And, by the way, we couldn't have brought this bill together without the efforts of the coalition such as the one—particularly that coalition—but others we are working together.

Let me move, if I could, very quickly to Mr. Tripodi. You are recommending a standard document, I understand. I was impressed, frankly. I hadn't looked at the numbers. We would go from one annual disclosure to five and potentially to eight; and, clearly, I don't think any of us wanted to impose a burden. We are trying to make these things work, not making make them so cumbersome that they cannot work. And sometimes in our efforts to make—provide clarity and transparency, we end up making things murky just because of the complexity that we put in, the requirements we put in.

I am guessing, though, that trying to put together such a document may not be all that simple. The light is going to turn red here in a minute, but are you suggesting turn it over to the Department and they would devise a simple, standard plan? You obviously have given it some thought. What do you think this thing will look like?

Mr. TRIPODI. One of the reasons to suggest the Department of Labor's involvement is I think it will start a healthy process. We would intend to be looking as well as others in the pension community with the Department of Labor to help develop that.

We are imagining that it would look at an appealing type of booklet type of format for employees, that they would have an easy way to find most of the regular types of hot, hot issue disclosures that they need to be an engaged plan participant during the course of the year.

I think the problem—as you noted, it is not a problem in the need for the information, but I think most of these individual disclosure rules that emerged—a lot through the PPA—were all written separately and not really a lot of coordination between—among them. And I think this would create a process to create a better way to have that—you know, looking at the broad picture, step

back for a minute, see the totality of what we have, weed out the most important things we need and put it into this central document.

Mr. KLINE. Thank you very much; and, Mr. Chairman, in trying to set an example for my colleagues, I am going to yield back before it turns red.

Chairman ANDREWS. Thank you.

The committee will recess, the members will vote, and the returning members will then resume with questions. Thank you.

[Recess.]

Chairman ANDREWS. The committee will reconvene.

We thank the witnesses and ladies and gentlemen in the audience for your patience. We are done voting for the week, which is good news for the Nation.

Mr. Hare, the gentleman is recognized for 5 minutes.

Mr. HARE. Thank you, Mr. Chairman.

By the way, I am glad we are done voting, too. It has been a long week.

Captain, I was very interested in listening to you talk about the situation with the retirement; and the numbers that you gave I found to be staggering in terms of what they are losing. Could you expand a bit more about like how many pilots are affected by that and by the age 60 rule and how much of their pensions are they losing because of it? And then I have a couple more questions for you.

Mr. PRATER. Yes, sir. In this case, we have four pilot groups who have been affected directly by this.

Mr. HARE. How many?

Mr. PRATER. Four pilot groups, specifically, pilots at United, Delta, Aloha and US Airways. By our best estimate, there are approximately 15,000 pilots who would be affected by this trap between 60 and 65.

Mr. HARE. And how much of the pensions did you say they are losing?

Mr. PRATER. Well, the fact is many of them have lost better than 50 percent of their expected pension. The PBGC guarantee—the trap between 60 and 65 would represent about a 35 percent further reduction in what they would have expected.

So it combines easily to see one of these people caught in the worst situation to be receiving maybe 25 to 30 percent of what he had or she had expected to retire with at age 60.

Mr. HARE. What from your perspective then, Captain, would be the best way we could fix this? Legislatively, I am assuming?

Mr. PRATER. We believe that the legislative fix that allows the PBGC to pay a member's benefit is if he or she were 65 when they retired. Under the pension plans, their normal retirement age was set at 60. Obviously, due to the law, that requires it. This fix we do not believe would be overly expensive.

We also believe that the PBGC assumed a fair amount of money from each one of these pilot plans. They did not come in penniless. They were well funded but under the situation following 9/11 weren't funded well enough.

Mr. HARE. I would be happy to help you out with that, because I think it is extremely, extremely unfair to the pilots. You know,

they perform a wonderful job; and anything I can do to help you on that I would be happy to.

Ms. Mazo, you provided some real strong recommendations for fixes we can use to the Pension Protection Act to help the employers. Are there any provisions to the bill that are good for multi-pension-employer plans? And, with that, should we—any reforms that you think we ought to be looking at to make?

Ms. MAZO. We have a list which is all specifically just about the multiemployer rules, and what I was talking about would streamline—I don't think they would change any of the outcomes but would streamline the implementation of some of the more complicated rules. And that is really what we want to do, is so that people know—people running plans know what they have to do and they aren't kind of going around in circles trying to work their way out of some dilemmas that are just the way the architecture of some of the rules work, some of the testing works.

Mr. HARE. Thank you very much.

I yield back, Mr. Chairman.

Chairman ANDREWS. Thank you.

The gentlelady from New York Ms. Clarke is recognized 5 minutes.

Ms. CLARKE. Thank you very much, Mr. Chairman; and I am so heartened to see that we are getting back on the case here. To the panelists, thank you for your time and your contributions.

Labor unions have historically worked to ensure that American workers are treated with fairness, dignity and respect; and if the bounty of economic prosperity is extended to working families, union membership not only helps raise workers pay but also aids in narrowing the income gap that women and people of color experience in the workplace.

However, under the Pension Protection Act, parties to a collective bargaining agreement are barred from increasing benefits to multiemployer plans if the plan is deemed endangered or seriously endangered. You know, for the sake of the next generation, this hearing is so important; and it is imperative that we get this right.

My question is to you, Ms. Mazo. I want to get your opinion. Do you think that this provision about the term of endangered or seriously endangered, that it shifts the balance at the negotiating table towards management, thereby creating an uneven playing field?

Ms. MAZO. To tell you the truth, Ms. Clarke, we have heard employer organizations saying, this is so unfair. It just shifts it all to the unions to control. And union leaders saying, this is so unfair. It shifts it all to management. They can just sit on their hands, and they get the balance of power.

So I think if each side feels that the other is winning it must be fair, because it is somewhere in the middle. I don't mean to be flip about this. It is a—the provisions were a hard-fought—within our coalition, it was a hard-negotiated, agreed-to set of controls for plans that are in trouble and that can't afford to meet the benefits that they have already promised. And the question was, how do we put in additional discipline to avoid the potential of just defaulting and not being able to pay anybody at all? And there was a lot of back and forth. Do we put the pressure on the benefits? Do we put

the pressure on contributions? And I think we tried to end up somewhere in the middle.

Nobody likes what has to be done when the plans are endangered or in critical status. But we like that much better than just letting the plan run out of money and the benefits just fall through the hole.

The guarantee of PBGC is much lower for multiemployer plans. So even the option of kind of going to PBGC, which is problematic for single-employer union members, is of very little value to those in multiemployer plans and so——

Ms. CLARKE. So is this just a matter of interpretation of the terminology and its application or are we at an impasse here?

Ms. MAZO. Well, I think that what we have is—it was agreed to by almost all of the unions and supported by almost all of the unions that have multiemployer plans as well as the employer associations, individual companies, individual unions and plans, what we have here is, in the case of plans that are in serious funding trouble, something has to give.

And either all the money gets used up to pay the benefits that have already been promised without any control over that and then there is nothing left to pay the next generation coming in because you have spent it all on the rich benefits—and, frankly, that is what happened with 1957 with Studebaker, which led to ERISA, to PBGC, et cetera, or we what tried to do is create a regime of shared sacrifice.

It is easy for me to say, since I am the adviser and not the victim, oh, everybody has to share the sacrifice. It is very painful for any working person whose benefits are being cut to have to absorb that sacrifice. It is very painful for any employer who is being told the cost of employing this worker has just gone up by another $8 or $10 an hour because you have to put that much more money into the pension plan.

The problem is that the money has to come from somewhere, and so what the bill tried to do—and we supported it—was to take a little from all sides. And I think what we have is it is going to be a painful adjustment, but it has to come, as I said, from somewhere. If we could only have figured out a way to spin straw into gold, we could have had a solution that wouldn't hurt, but we couldn't come up with that.

Ms. CLARKE. Let me just ask one more question. We are in the Yellow Zone here.

As I previously—and this question is actually for Mr. Macey. As I mentioned, the PPA is intended to stabilize pension funds. Is there any evidence that the PPA has stabilized pension funds? And, specifically, are plan sponsors continuing to freeze or terminate their plans under the PPA?

Mr. MACEY. Well, there is a number of conditions that caused the decline of pension plans in recent years, including economic conditions and competitiveness and FASB rules in addition to the funding rules.

I don't think we have enough evidence yet because the funding rules really haven't taken effect and won't until next year and then they are phased in as to the ultimate impact on the decline or not of DB payments. My own personal opinion is that we will probably

result in better funded plans but fewer of them ultimately when we look back in 5 or 10 years.

Chairman ANDREWS. Thank you very much.

I did want to just conclude with two quick questions and then if my friend from Minnesota wants to ask anything. He may as well, obviously.

To Mr. Tripodi, if you could just very briefly walk through your example again with the $30 to $48 increase for beneficiaries so we can understand that. Mr. Kline and I were talking about this during the vote, that it is self-evident that we don't want redundant and unnecessary disclosure, but we want to be sure that disclosures that need to be made to people are in fact made. Could you just briefly describe that fact situation for us again?

Mr. TRIPODI. Sure. And we are absolutely in agreement with that concept, that we want to make sure the information gets to the participants but we want it to be done in a way that is more efficient and a little bit more fee sensitive. The example is a 10 participant plan, and I guess, to put this in context a little bit, ASPPA's members deal quite a bit with smaller businesses and plans.

Chairman ANDREWS. Yes, so a small dental practice?

Mr. TRIPODI. Yes, a small dental practice or small mom and pop shop of some type; and so the benefit, the costs associated here—and we did a pretty extensive poll of our members trying to get some idea of fee information, how we were formulating charges for this, and we used the benefit statements partly because it was effective already this year. So we already are getting some concrete evidence of some additional time and costs involved with that; and so, in distilling all of that information, the costs reflects the actual—it is not just creating the content, but every time there is a notice that needs to be push out to participants, there is a cost in the delivery of that as well.

And many of the costs reflect—the costs, of course, are being spread out over many plans by plan providers and then are paid by those plans individually; and you typically pass through to the plan participants, given that these are primarily defined contribution plans.

Chairman ANDREWS. What is it that now has to be disclosed?

Mr. TRIPODI. Well, what took effect this year was the quarterly benefit statement requirement, which means four times a year the participant needs to get information about their account, the vesting in their account and a number of other pieces of disclosure. Because of the way a lot of the statements are created and the multiple service providers that are involved with a lot of the small business plans, this annual vesting statement that I mentioned in that example is sort of an—it is an add-on that creates an umbrella piece of information that supplements the four quarterly benefits statement. So, in many of these cases, these plans have to provide five statements a year to satisfy that requirement.

Chairman ANDREWS. Could you tell us typically what the increase in professional fees would be to the person running that dental practice, now that he or she has to do that? Does that mean that their actuary or their accountant has to do more hours that they put in over the course of the year; and, if so, about how much more would it cost them?

Mr. TRIPODI. You know, in the example used, to use as an example with that with 10 participants and the way we approximated the cost, the approximation was for a plan like that that it would be approximately, you know, $300 additional time spent by the service provider that would have to be spread out over the plan's participants. Because typically, with the other fees involved, a lot of the small businesses, in order to be able to afford maintenance of the plan, pass a lot of the cost through.

Chairman ANDREWS. On a 10-person plan, what is the typical asset value of the plan? Is it something like a million two or something like that?

Mr. TRIPODI. You know, 1 to $5 million range is a pretty typical level.

Chairman ANDREWS. If it is a million 2, let's say it spins out income of $50,000 a year. So every $500 is 1 percent of the plan's income, right?

Mr. TRIPODI. Right.

Chairman ANDREWS. So you could be talking about close to 1 percent of the plan's income being spent——

Mr. TRIPODI. Very typically in plans of this size.

Chairman ANDREWS. Because when you say $300, frankly, in the world that doesn't sound like much in the world of pensions, but for a 10-person plan I am sure it would.

Finally, Ms. Mazo—and I would ask you to supplement this for the record, because it is far more complicated than I could absorb right now. But I would like you to give us a real-world example for a plan as to whether this anomaly in calculation about accounting for the amortization going in and not going out, what this would actually mean if we were trustees of a plan, just so we can follow.

I think I follow you, that you would have two different sets of conclusions 1 year after the other. But if you could supplement the record with a written example, I think that would be quite helpful.

Ms. MAZO. I would be very happy to.

[The information follows:]

Illustration of the Critical-Status Revolving Door

Several of the tests to determine whether a multiemployer plan is in Critical Status include as a factor a projection that the plan will have a funding deficiency within a short time—either 4 or 5 years, depending on the test. For the entry test, the law specifies that the plan must ignore an extension of the plan's amortization periods, if it has one. On the other hand, to emerge from Critical Status a plan must be projected not to have a funding deficiency within 10 years. For the exit test an amortization extension is taken into account.[1]

The following example is based on projections for a real plan.

The projection shows that this plan would go into the Red Zone in 2012. That is because, as of the start of that plan year it has a funding deficiency projected for 2015 (within 4 plan years), not counting an amortization extension. However, PPA makes amortization extensions more readily available, so it is likely that this plan will obtain one. The projection shows that the extension would eliminate the prospect of a future funding deficiency. Applying the exit test, the plan could emerge from Critical Status the following year, as, with the extension taken into account, it would not be projected to have a deficiency for at least 10 years.

But then the actuary must apply the entry tests again, ignoring the extension, and on that basis the deficiency would again be projected to occur in 4 years. When the exit test is applied at the end of the year, taking the extension into account,

[1] An amortization extension reduces the plan's annual funding requirement by lengthening the period for amassing the money needed to cover the benefit obligations, just as extending a mortgage would reduce the monthly payments due.

the plan is not in Critical Status. Each year the entry test shows that the plan is critical, and each year the exit test shows that it is not. This is why we call it a revolving door. For this plan, the entry-exit cycle is projected to happen each year until 2021. At that point no deficiency is projected either way.

Here's what the deficiencies or credit balances look like:

(DEFICIENCY) OR CREDIT BALANCE [2]

[In millions of dollars]

	Without extension	With extension
2015	($0.2)	$22.0
2016	(4.3)	19.4
2017	(7.1)	18.3
2018	(7.4)	18.1
2019	(5.1)	18.9
2020	(0.7)	21.5
2021	4.3	24.9
2022	10.8	29.4

Chairman ANDREWS. Mr. Kline, did you want to ask any follow-up questions?

Mr. KLINE. Just very briefly. The discussion between Mr. Hare and Ms. Clarke prompted a couple.

Captain, we have been talking about the 60, 65 age. As I understand it, the FAA is looking to change that retirement age from 60 to 65? And I always thought it was a good idea, but not all of your members did. If that took place, that would prospectively that would eliminate this problem you are talking about, right?

Mr. PRATER. Somewhere far down the road it might take care of the problem. Our issue here is that this affects pilots who do not have that much time remaining, regardless of an age change, whether that would happen tomorrow or 5 years down the road. We are talking about the runway that is behind the pilot gate.

Mr. KLINE. I understand. That is what I am saying. Prospectively looking out, that problem would go away because it is the mandatory retirement of 60 that is the issue that is forcing this problem, right? If you get to retire—if you have a fully funded plan and you get to retire at 60, it is a good deal.

Mr. PRATER. Unfortunately, the problem has gone away because our defined benefit plans have gone away. So the age isn't going to change that.

Mr. KLINE. Okay, thank you.

And then, Ms. Mazo, just a couple of comments, picking up on what Ms. Clarke said, I think.

When the multiemployer plan piece is put together, that coalition that included employers and actuaries and unions and all players was pretty delicately balanced. I remember very well we went weeks of heated discussions about where the yellow lines should stop and the red line should start and all those types of things.

For better or for worse, as you have said, this was a balance where there was some shared sacrifice. At one point or another, each player was very unhappy with where they were; and they pushed and shoved and pushed and shoved until they came to a

[2] A credit balance means that contributions are more than what is needed to meet the minimum funding standard.

point where we could move this legislation forward with the goal—which I do believe we have achieved, but we are now assessing this—was to keep those multiemployer plans—some of which were woefully underfunded, we know—of a major multiemployer that was funded about 65 percent——

Teamsters was the principal union there. They were in deep, deep trouble. And this really tremendous effort of outside organizations working with the staff here and members allowed this thing to come together in a way that we could move forward and protect those plans.

So, again, I want to thank you and all the members of that coalition for the work that they did in making this bill as good as it was.

With that, Mr. Chairman, I yield back.

Chairman ANDREWS. Thank you.

I would reiterate, as I said at the outset, we welcome comments about other ideas for similar issues we raised today. We welcome comments on the issues that were raised today, different views on the consequences of them; and I again want to thank the witnesses for their extraordinarily well-prepared and articulate testimony. Thank you.

As stated at the beginning of the hearing and as previously ordered, members will have 14 days to submit additional materials for the hearing record.

We again thank the panel and members for their participation, and the subcommittee stands adjourned.

[The prepared statement of the Printing Industries of America, Inc. (PIA) follows:]

Prepared Statement of the Printing Industries of America, Inc. (PIA)

The Printing Industries of America, Inc. (PIA) is pleased to present this statement for the record before the House Subcommittee on Health, Employment, Labor and Pensions, and thanks Chairman Andrews for holding a hearing to examine the important topic of retirement security and pensions. PIA is the world's largest graphic communications trade association representing an industry with more than 1.2 million American employees. PIA's nearly 12,000 member companies are dedicated to the goal of providing workers' retirement security while reducing the prospect of a future multi-billion dollar taxpayer bailout.

PIA would like to add to the dialogue on strengthening pension protections by commenting on a specific aspect of PL 109-280, the Pension Protection Act of 2006 (PPA): "extra" contributions to Taft-Hartley plans to reduce employer withdrawal liability, particularly when such contributions are in addition to required contributions due to the plan's endangered or critical status.

The PPA was a welcomed law by union and nonunion employers alike for the reforms to the 401(k) plans as well as the ability given to Taft-Hartley plan trustees to help get these plans back on solid financial ground. However, PIA suggests a minor technical correction to the Taft-Hartley provisions in the PPA to clear up confusion among plan trustees, unions, and employers. PIA believes such an amendment to the PPA will serve as an incentive to employers to make extra contributions, and thus reduce the employer's withdrawal liability at a faster rate than the current law.

First by way of background: PIA understands that the Pension Benefit Guarantee Corporation (PBGC) last year told a Taft-Hartley plan administrator that if an employer currently makes any "extra" contribution to a plan to help address underfunding, that the extra contribution will not be earmarked to that employer's particular withdrawal liability. Essentially, the extra monies would go toward improving the overall underfunding of the plan. This is a disincentive for employers to make such a contribution since any extra monies contributed would affect only a fraction of their relative withdrawal liability.

Second: After the Taft-Hartley provisions of the PPA take effect in 2008, employers will be forced to contribute an extra 5 or 10 percent of contributions to the fund if it is underfunded at the endangered or critical status. Plan trustees are directed to provide to employers and unions a "default" contribution schedule that addresses the pension funding and contribution issue; the schedule would be agreed to by the parties. While this allows flexibility for the plan trustees, PIA's concern is that the bargaining parties are not provided incentive to help address the withdrawal liability issue. Given PBGC's comment last year, we suggest an amendment that earmarks all "extra" employer contributions not tied to a benefit formula be earmarked to reduce that employer's withdrawal liability. This will provide an incentive to employers to make these extra contributions, and thus reduce the employer's withdrawal liability at a faster rate than the current law.

In conclusion, PIA, on behalf of its nearly 12,000 member companies employing 1.2 million American employees, commends the Subcommittee for examining the topic of retirement security. PIA looks forward to working with Congress to further initiatives that provide practical solutions to resolving underfunding for Taft-Hartley plans.

Thank you for the opportunity to comment on this important topic.

[The prepared statement of the Securities Industry and Financial Markets Association (SIFMA) follows:]

Prepared Statement of the Securities Industry and Financial Markets Association (SIFMA)

Chairman Andrews, Ranking Member Kline and other members of the Subcommittee: Thank you for the opportunity to provide a statement for the record relating to the recently convened hearing, "Retirement Security: Strengthening Pension Protections." The work of you and your colleagues has been very important in enhancing opportunities for plan sponsors and plan participants to save and invest in employer-sponsored retirement plans.

The Securities Industry and Financial Markets Association ("SIFMA ") would like to focus our comments on the recently enacted Pension Protection Act of 2006 ("PPA "). The PPA includes a number of new prohibited transaction exemptions relating to transactions conducted by financial services firms on behalf of retirement plans. The Employee Retirement Income Security Act (ERISA) would otherwise prohibit many transactions which are in the best interest of retirement plans and their participants. The lack of access to new technology denies ERISA pension plans investment opportunities, stifles competition among service providers, and results in duplicative regulatory structures that raise administrative costs. In response, the PPA included a number of provisions that will afford plans, participants and beneficiaries with the same market efficiencies and cost savings available to assets that are not governed by ERISA, while ensuring that adequate safeguards are in place that are protective of plans. Three of the provisions are in need of improvements to minimize confusion and ensure that they are available to pension plans and their participants. In addition, we recommend that any legislation to modify PPA further clarify the new requirements for fidelity bonds which is further explained below.

ECNs and electronic trading venues (Section 611(c))

Broker-dealers and electronic communication networks ("ECNs ") or automated trading systems, compete to execute securities trade orders at the best price and at the lowest cost. Broker-dealers and banks jointly own several of these electronic trading platforms with each having a small ownership interest in the particular entity. Electronic trading was created long after ERISA was enacted, before the technology was available to execute securities transactions electronically in an efficient and cost-effective way.

The PPA provision permits a fiduciary to execute transactions on electronic communication networks and other trading venues, regardless of whether such fiduciary or its affiliates have an ownership interest in such facility. As written, the provision is not clear that it provides relief for inadvertent cross trades that may be matched by the system or that the relief covers exchanges. In addition, the provision requires advance notice even for the use of trading venues like the New York Stock Exchange and even where the fiduciary has no ownership in the entity. An advance notice requirement for public exchanges would be too onerous and should be carved out. Finally, because the notice and consent provisions are implicated under the PPA provision when a party in interest owns an interest in the trading venue, rather than when a fiduciary owns such an interest, the provision should be made clear-

er by changing the term party in interest to fiduciary in subsections (d) and (e) and should also be made clearer by requiring notice and consent only where a fiduciary (or its affiliate) has more than a de minimis ownership interest in the venue. We believe that the provision will only be helpful if it is clear that the exemption provides relief under section 406(b) for the fiduciary who chooses to trade on the system, for any receipt of compensation or value for the fiduciary or affiliate who owns some percentage of the ECN or account of such trading, and for any inadvertent cross trade or party in interest trade that occurs on the venue; in other words, relief for all of the potential prohibited transactions that could occur in connection with the use of a trading system.

Block trading (Section 611(a))

PPA also provided relief for a broker-dealer to conduct a block trade for separately managed accounts. The provision was intended to provide a statutory exemption to allow ERISA plan assets in separately managed accounts to be included in a block trade when the interest of each plan involved in the block trade, together with the interests of any other plans maintained by the same employer or employee organization in the transaction, does not exceed 10 percent of the aggregate size of the block trade. This proposal is based on existing exemptions that are helpful to banks and insurance companies. The number of plan investing in separately managed accounts has grown substantially in the last two decades and it is important to make available block trading opportunities to these accounts.

The term used in Section 611(a) is a fiduciary described in section 3(21) (A) of ERISA. This definition over broadly includes all fiduciaries, making it meaningless. The definition of fiduciary does not reflect the definition used in either the House or Senate-passed pension bills, which we believe are closer to the type of transactions that would be beneficial for plans.

Foreign Exchange (Section 611(e))

Prior to the enactment of the PPA, ERISA prohibited a service provider to an IRA or plan from conducting a foreign currency exchange on behalf of the IRA owner or plan who has authorized a transaction in a separate security. The transaction is barred because the service provider, as a party in interest to the IRA, cannot send the requested transaction to the in-house foreign currency exchange desk. As a result, the service provider must conduct the currency exchange with a separate entity.

The provision included in the PPA requires that the rates given in a foreign exchange transaction be no more or less than three percent from the interbank bid and asked rates for transactions of comparable size and maturity. As written, the provision could require the rate given to be precisely three percent from those published rates, even though the dealer may want to give the plan or IRA a better rate. In addition, because the size of the trades on the interbank market may not correspond to the smaller trades that an IRA may need to effect, the provision should make clear its application to transactions of all sizes.

Fidelity Bonding (ERISA only)

Section 412(a) of ERISA requires a plan fiduciary or an entity that is holding plan assets to have a fidelity bond. Currently, the maximum amount of the bond is $500,000. PPA amended Section 412(a) of ERISA to increase the bond amount to $1,000,000 for plans that hold employer securities. The purpose of the provision was to require doubling of the bond for individuals who handle plan assets which are in a portfolio or fund that is primarily invested in employer securities. The amendment is written far more broadly and potentially would impact entities that are merely investing in an index or other portfolio that holds employer securities.

[Whereupon, at 3:32 p.m., the subcommittee was adjourned.]