THE ERISA INDUSTRY COMMITTEE (ERIC)
DEPARTMENT OF LABOR INITIATIVES
DECEMBER 1, 2008

MEETING PARTICIPANTS FROM ERIC: MARK UGORETZ, PRESIDENT, AND KATHRYN RICARD, VP FOR RETIREMENT POLICY

1. In 2006 The ERISA Industry Committee (ERIC) published a "New Benefit Platform for Life Security" (NBP). The NBP presents a coherent new concept that would continue to engage employers in delivering retirement, health security, and ultimately life insurance and long term care benefits but in a more efficient and effective manner. ERIC members believe that currently, and in the future, retirement and health security are intertwined. (See attached which includes executive summaries.)

   The NBP relies on "Benefit Administrators" (compare with "exchanges" or "connectors") for the administration of benefits and provides for access by individuals, self-employed persons, as well as both small and large enterprises. Retirement security benefits (cf. NBP p. 13) are provided for by:

   a. Defined benefit plan ("Guaranteed Benefit Plan.")
   b. Defined contribution plan ("Retirement Savings Plan")
   c. A tax-advantaged "short term security/savings account"

2. ERISA preemption must be preserved and expanded for both retirement and health arrangements.

3. Increasing litigation, particularly litigation based on new theories and rules that threaten to make employers and their plans liable in the future for past lawful conduct, is causing many plan sponsors to re-think the advisability of maintaining retirement plans.

4. Retiree health: provide a model notice that employers in all jurisdictions can use to inform participants of the employer's right to terminate or amend retiree health plans.

5. Investment advice
   a. Retain *Sun America*
   b. Avoid creating litigation liabilities for plan sponsors

6. Fee Disclosure:
   a. Appropriate effective date for fee disclosure regulations for both plan sponsors and providers.
   b. Avoid regulatory "churning"
      i. Need certainty, stability, and adequate time to effect changes.
      ii. Churning results in uncertainty, excessive costs to regulated community
   c. Excessive disclosure is harmful to providers, plan sponsors, and confusing to participants
   d. Plan sponsors should not be responsible for disclosing information not readily available to them.

7. QDIA
   a. Allow default investments into QDIAs with 404(c) protection if funds and managers are reasonably selected and monitored.

8. 401(k) Annuity
   a. DoL and Treasury should work with employers and other stakeholders to develop appropriate standards for 401(k) annuity distributions (not just purchase rules as currently addressed).
      i. Plan standards for providing both deferred and immediate annuities.
      ii. Annuities as an investment option for payout at retirement.

9. Work with plan sponsors and others to develop appropriate standards under *MetLife v. Glenn* and *LaRue v. DeWolff & Associates*, e.g.:

a. Administrative review of errors
b. Documentation
c. Statute of limitations
d. Corrections process

THE ERISA INDUSTRY COMMITTEE
PENSION BENEFIT GUARANTY CORPORATION INITIATIVES
DECEMBER 1, 2008

1. Plan Funding and PBGC
   a. Plan funding, especially under the PPA-2006, has become excessively volatile and a disincentive to continue, much less create, defined benefit plans.

   b. The role of the PBGC has drifted in recent years more toward protecting the agency as opposed to advancing its primary statutory directive:
      "The purposes . . . to be carried out by the corporation are (1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants."

   c. In order to continue to maintain their plans in the current recession, plan sponsors need fast relief from the cliff and trigger provisions of PPA-2006 that require immediate and overstated cash contributions that otherwise would be mitigated by smoothing and broader funding corridors.

   d. In the short term, reliance on 2007 contribution requirements would resolve many of the overstated funding requirements without harm to participants. With few exceptions, the funding requirements of the vast majority of plan sponsors will be resolved as improvements in the economy take hold in 2009.
      i. See attached recommendations from The ERISA Industry Committee regarding short-term funding relief for defined benefit plans.

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2. Investment Strategy
   a. PBGC should recognize the long-term nature of its liabilities and focus less on short-term market movements and liability changes.

3. Legislative priorities
   a. PBGC should support pension law and regulatory changes that enhance incentives for employers to continue to sponsor and to create traditional and hybrid defined benefit plans, including allowing employers to prefund liabilities and smooth unexpected asset losses over longer periods of time.

ERIC

The Financial Crisis & Defined Benefit Pension Plan Funding

Relief Proposal

Background

The current financial and credit crisis requires immediate temporary relief from the funding rules for pension plans. Like other financial entities and institutions, pension plans and their sponsors have been seriously impacted by these events. A dramatic and unpredictable decline in equity markets has left many plans that were very nearly fully funded--or even overfunded--at the beginning of the year facing funding shortfalls. At a time when companies need cash to keep their businesses afloat, they are also required to make unexpectedly large contributions to their plans in order to meet excessive and volatile funding requirements.

Without relief or a quick market recovery, many plan sponsors will have to divert extraordinary amounts of cash (if they can borrow it) away from business operations and into their defined benefit pension plans in the near term. Plan sponsors, under current law, will be forced to make additional, unanticipated contributions in excess of $90 billion dollars, according to a recent study by the Center for Retirement Research at Boston College. This is anticipated at the same time that the economic cycle leaves many plan sponsors with lower revenues, lower profits and less cash from which to fund their pension plans. As a result, many companies will have to decide whether to freeze or terminate their pension plans or reduce retirement benefit accruals to survive during the economic downturn. These large funding obligations will certainly divert assets away from job creation, job retention and necessary business investment, thus slowing the economic recovery.

The Pension Protection Act of 2006 (PPA) was enacted, in part, to ensure that plan sponsors properly fund their plans. The recent unprecedented and dramatic decline of the stock market has resulted in punitive consequences for even the most responsible and prudent plan sponsors, which was not the intent of PPA drafters.

Relief is necessary now to ensure that workers and pension plan sponsors alike are protected from the collapse of the credit markets and sharp decline in the equity markets. Specific examples of significant and unexpected funding requirements for individual companies are described in Attachment A.

Proposal:

Our recommendations include temporary changes to the PPA to permit plan sponsors some “breathing room” to strengthen their cash and credit positions. Our proposal does not include a “funding holiday” but instead emphasizes the need of plan sponsors to make pension contributions based on rational market conditions and not distorted by the recent historic “tsunami” market downturn and continuing market volatility. We strongly recommend that Congress immediately:

Permit Smoothing of Unexpected Losses – Prior to the PPA, pension plans could spread unexpected gains and losses over 48 months (commonly referred to as smoothing). The PPA changed this period to 24 months. However, the IRS interpretation of the PPA makes this accounting method so unattractive that companies are effectively deprived of the benefit of asset smoothing. Given the current market situation, the loss of asset-smoothing is creating unexpectedly large funding obligations. Consistent with Congressional intent, the law needs to be clarified that 24-month asset smoothing is permitted.

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

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

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

Alternative Proposal:
If Congress is unable to provide the abovementioned relief, an alternative proposal for temporary relief for defined benefit plan funding for the 2009 and 2010 Plan Years is as follows:

1. Cap the 2009 Plan Year Minimum Contribution requirement (prior to the application of any carryover or prefunding balances) at 105% of the 2008 Plan Year Minimum Contribution requirement (prior to the application of any carryover or prefunding balance). In addition, provide similar relief for 2010, but limit the 2010 contribution to 105% of the capped 2009 amount. The funding requirement for 2009 would therefore be determined based on the normal, ongoing PPA rules, but the required amount of funding would not significantly exceed the required funding for 2008.

2. Allow the Benefit Restriction rules (Section 436) for the 2009 and 2010 Plan Years to be based on the plan's funded status for the 2008 Plan Year. This proposal would retain the benefit limitation rules of PPA, but would delay the impact that the serious drop in the equity markets would have on the benefits of employees in 2009 and 2010. The at-risk status for the 2009 and 2010 Plan Years would also be based on the at-risk status for the 2008 Plan Year.

Examples of Impact of Economic Crisis on
Large Employers' Defined Benefit Plans Funding Levels – 2008

- Plan A was funded at 121% of target liabilities as of 1/1/08. As of 6/30/08 funding dropped to 113% and as of 9/30/08, funding dropped to 102%. Current funding is estimated in the mid-to-low 80s.

- Plan B was funded at 125% of target liabilities as of 1/1/08. As of 6/30/08 funding dropped to 94% and as of 9/30/08, funding dropped to 80%. Current funding is estimated in the mid-to-low 70s.

- Plan C was funded at 93% of target liabilities as of 1/1/08. As of 3/31/08, funding dropped to 85%. As of 6/30/08, funding dropped to 83% and as of 9/30/08, funding dropped to 79%. Current funding is estimated in the mid-to-low 60s.

- Plan D was funded at 101% of target liabilities as of 1/1/08. As of 10/31/08, funding dropped to 80%. Current funding is expected to drop below the 80% threshold.