PENSION RIGHTS CENTER
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March 5, 2010

The Honorable Max Baucus, Chair
The Honorable Charles Grassley, Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Chairman Baucus and Ranking Member Grassley:

As the Senate addresses pension funding relief as part of the tax bill, we urge you to maintain the "cash-flow matching rule," which will ensure that companies cannot use corporate cash to pay for excessive executive compensation, stock buy-backs and extraordinary dividends, while they are relieved from the statutory funding requirements for the plan covering rank-and-file workers

We take issue with the business community's view that the conditions of the proposed relief for single employer pension plans are too restrictive. On the contrary, they are *minimal* requirements in exchange for giving employers a break from making required contributions into pension funds. Funding relief – essentially an unsecured loan to companies from participants and the trust – should not be free. If the funding relief ultimately leads to underfunded plans, workers will pay the price. For that reason, the question of who gets relief and under what conditions they get it must be carefully considered. We urge you to strengthen, not dilute, the bill's compromise provisions to ensure that only those companies that need relief get it. We also hope that you will consider adding employee protections to the pension section of the bill as a condition of employers receiving funding relief.

Throughout the pension funding debate, the Pension Rights Center has sought far greater protections than those included in the current bill. We believe that funding relief should be reserved only for companies with ongoing defined benefit plans. Companies that have stood by workers by providing a guaranteed, lifetime benefits deserve the support of Congress. Companies with frozen plans – i.e., whose workers are no longer accruing benefits – should not be afforded automatic relief; rather, they should rely on funding waiver provisions already available under current law.

In addition, we have sought to prohibit companies that elect funding relief from contributing to non-qualified deferred compensation arrangements, and we have advocated for participant protections such as the repeal of the mandated freeze of employee benefits when a plan is less than 60 percent funded.

The pension funding provisions in the tax bill are already far weaker than our starting position since they extend automatic funding relief to frozen plans and do not limit funding for non-qualified deferred compensation. The bill does not contain protections for employees who are

the ones at risk if companies default on their obligations and the benefits exceed the guarantees of the Pension Benefit Guaranty Corporation.

The only limitation on plan sponsors in the current bill is the inherently reasonable "cash-flow matching" requirement. This requirement affects only those employers that choose to use corporate cash to pay excessive compensation to employees or to make excessive payments to shareholders in the form of extraordinary dividends or stock buybacks. Both of the thresholds defining excessive compensation and such shareholder payments are measured and reasonable. Moreover, the matching contribution requirement is capped and no employer would be in a worse position on an aggregate basis than if they had not elected funding relief.

These provisions are, in our view, minimal requirements. Companies have argued throughout the process that they need pension funding relief because the cash that would be contributed into the pension fund could instead be used to preserve jobs and help ease cash-flow concerns in a difficult economic environment. Congress should not relax pension funding to permit companies to provide excessive compensation to executives or to make extraordinary payments to shareholders.

It is important to note that companies can choose whether or not to take funding relief. If a plan sponsor does not wish to accept the very modest matching requirements – which only affect employers who have sufficient cash on hand to contribute adequately to the plan – it can do so by continuing to fund its plan in accordance with current law or by not paying excessive compensation, extraordinary dividends, or buying back excessive amounts of stock from its shareholders. These provisions should be in effect throughout the relief period.

In our view, the cash-flow matching rules are bare-bones protections. In addition, companies that elect funding relief should be prohibited from funding non-qualified deferred compensation arrangements. Workers should not be the only ones paying the price of relief and, thus, the mandated freeze of employee benefits when a plan is less than 60 percent funded should be repealed for the duration of relief.

There is no question that defined benefit plans should be encouraged and preserved. We applaud the Senate for working on a bi-partisan compromise to address this issue, and we urge you to strengthen, not weaken, employee protections in the bill.

Sincerely,

Karen Friedman
Executive Vice President and Policy Director

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Senior Policy Advisor