Committee On Finance
Max Baucus, Ranking Member

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STATEMENT OF U.S. SENATOR MAX BAUCUS
INTRODUCTION OF THE PENSION SECURITY AND TRANSPARENCY ACT

Mr. President, I rise to address the pending pension bill.

First, I want to thank Chairman Grassley, Senator Kennedy, and Chairman Enzi for their willingness to work together to merge the Finance and HELP Committees' pension bills into this important piece of legislation. We had some significant differences in our bills, but we were able to work those out. The process was driven by our shared goal of retirement security for American workers.

Millions of American workers have worked hard over their lifetimes. They have played by the rules. Done everything right. This bill is about making sure their retirement benefits are there when they need them.

As we start the debate on this critical bill, let's remember why we are here. We are here to protect worker's pension benefits. This need was highlighted recently by cover stories in TIME magazine and the New York Times Sunday magazine. Their titles - "The Broken Promise" and "The End of Pensions" - really say it all.

Defined Benefit Plan Funding

The Pension Benefit Guaranty Corporation – PBGC - was established to protect worker's pensions. But there are limits on PBGC's guarantees. Many participants have been promised benefits in excess of those guaranteed by PBGC. When a company fails, and the pension plan terminates with unfunded benefit promises, these workers and retirees pay severely for pension underfunding with part of their own hard-earned retirement benefits. For example, PBGC has estimated that almost 7,000 United workers will lose 50% or more of the benefits they had earned under their pension plans. Another 28,000, will lose between 25% and 50% of their benefits. With this kind of experience, we all have to admit that promises are not being kept. We have to protect workers benefits with stronger funding rules. This bill will do just that.

The most basic building block of pension funding is the interest rate used to determine the present value of benefits to be paid from the plan in the future. This bill provides a permanent replacement for the 30-year Treasury rate used for this purpose under current law. Congress passed a temporary substitute last year. This bill would extend the current temporary interest rate – a corporate bond rate - for an additional year, and then begin phasing in a permanent solution – a modified "yield curve" of interest rates. Using a yield curve to determine the value of future benefit payments is more accurate than using a single interest rate because the yield curve recognizes that you get a different interest rate on a 5-year loan than on a 15-year loan. This bill simplifies the yield curve by breaking it into three segments - retaining the improved accuracy of a yield curve measurement while making it easier to apply the rates.

There are other key changes to the funding rules:

- Unfunded benefit liabilities would have to be paid off over a seven-year period. Ideally, every plan would be 100% funded every year, but with fluctuating asset values and interest rates, that is not practical.

- Large companies could base cost calculations on their own mortality experience. Workers in some industries don't live as long as the general population. That affects the cost of providing lifetime pensions and should be reflected in an accurate measurement of funding obligations.

- The increased utilization of early retirement subsidies that occurs when troubled companies start downsizing is reflected in a special "at-risk" liability calculation. This will ensure that companies begin funding for subsidized benefits before it is too late.

This at-risk calculation is not a penalty imposed on companies when they are down and out. It is a reflection of increased costs. Someone has to pay those costs. The question is who. Should other companies pay through increases in PBGC premiums? Should workers pay through lost retirement benefits? Or should we, as I believe, require the company that made the promise fund the promise?

Failure to recognize the real cost of benefits is one reason for the system's funding problems. Another is that current law actually would have penalized many employers if they had contributed more to their pension plans.

Employer after employer has told us that we need to allow companies to contribute and deduct more in good times, to build a cushion for bad times. This bill does just that. It allows companies to deduct contributions that would fund the plan up to 180% of the cost of benefits already earned, and allows employers to maintain a pre-funding account with these extra contributions, sort of a rainy day fund, to help them meet contribution requirements when cash is a little tighter.

Limitations on Benefits

Our goal here is retirement security –assuring workers that benefits they have been promised will be paid. There are two sides to keeping pension promises – funding what is promised, and not promising more than the company can afford to pay.

This bill limits increases in a plan's benefit formula if the plan is less than 80% funded. If a plan is less than 60% funded, then no more benefits can be earned until the funding improves. Employers would have to fund up collectively bargained plans to keep these limitations from kicking in.

To make sure poorly funded plans do not become even more underfunded, this bill limits the portion of a benefit that can be paid in a lump sum if a plan is less than 60% funded. Lump sum payment of pension benefits can drain plan assets, and hurt other workers. No benefits would be forfeited – the difference would just be paid as an annuity.

Disclosure and Transparency

Retirement benefits are the largest asset many workers have, and they deserve timely, complete, information on the state of their investment. Under this bill, most workers and retirees will receive detailed funding information within 90 days after the end of the year.

Hybrid Plans

There was a time when pension plans paid monthly benefits at normal retirement age, usually based on years of service and some average of compensation. The benefits were heavily weighted to workers that spent their entire career with one company. In today's competitive world, that is not likely to be the future. Today many companies have moved to cash balance plans, or other hybrid arrangements, that are structured more like 401(k) plans. Benefits are earned more evenly over a worker's career, and are more portable - easier to move from one job to another than the traditional pension benefit. There has been uncertainty surrounding these plans, and litigation is ongoing. If defined benefit plans are to be a viable, attractive option in the future, we must bring some certainty to the rules governing these arrangements.

This bill lays down the rules for moving forward with these plans. It recognizes the legitimacy of the basic design. It also provides protections for older workers when a traditional plan that rewards a lifetime of hard work is converted to one of these hybrid arrangements that is designed for a more mobile workforce. I think we have done a good job of protecting participants without putting too onerous a burden on employers.

Let me emphasize that this is a prospective provision. We do not step into the legal quagmire that exists with regard to the past. I want to make it clear that this bill offers neither side an inference as to interpretation of the existing rules.

Diversification and Information

Some of the provisions in this bill that provide participant protections were in a bill we introduced in the 107th Congress -- a bill designed to help us avoid another ENRON retirement plan debacle.

We all remember ENRON. Thousands of workers lost their jobs. Because their 401(k) accounts were heavily invested in company stock, these workers lost most of their retirement savings as well. In February, 2002, 60 Minutes did a segment called "Who killed Montana

Power" about my own state's experience with employers behaving badly, and the havoc wreaked on employees and their savings. The story reported one worker who had lost $350,000 in his 401(k) plan because of the crash of employer stock. And he was certainly not alone.

That is not to say that company stock is a bad investment. Sometimes it is a wonderful investment. So this bill does not prohibit investment in employer stock. It simply puts the choice where it should be – in the hands of participants who are building up their retirement savings.

To help make that decision, we give workers tools to make good decisions, and really understand the consequences of their actions. We require more frequent benefit statements. And we provide a safe harbor to make it easier for employers to make independent investment advice available to plan participants if they want to.

Portability and Administrative Simplification

This bill has a number of other provisions that will make it easier for a worker to move retirement plans from employer to employer, or from an employer plan to an IRA. There are also provisions that make it easier to administer retirement programs.

All of us here are fortunate to have the benefits of the Federal retirement system. We will have good pensions and retiree health benefits. Imagine, however, if the government all of a sudden said "Sorry. We can't afford that retirement benefit we promised. We're going to cut it back. You'll just have to learn to live on less."

That is what many of America's older workers and retirees are facing. Our steel workers, our airline workers, and many others have had the rug pulled out from under them. It is no one's fault. America's companies are competing in a cutthroat world. They have problems too.

What we are trying to do today is ask everyone to be more responsible, and strike the right balance. We need a system where companies put enough money aside to pay for what they promise. And we need a system where workers who carry out their part of the bargain do not have to worry that a pension was more dream than substance.

This is a tough challenge. This bill is not perfect. It is a compromise. I believe it is a good compromise and it should become law. The retirement security of millions of workers deserves our attention. I urge my Colleagues to support keeping promises, to support protecting workers' retirement benefits. I urge my Colleagues to support this bill.

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