

Congress of the United States
Washington, DC 20515

August 12, 2005

Secretary Elaine Chao
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Chairman Christopher Cox
Securities Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Secretary Chao and Chairman Cox:

In light of the concerns raised by a recent Securities Exchange Commission report regarding conflicts of interest among pension plan consultants and allegations that similar conflicts of interest may have played a role in the recently terminated pension plans at United Airlines, we are writing to request both information and action by your agencies on these matters.

First, we are requesting information. The SEC's May 2005 report, "Examinations of Select Pension Consultants," revealed significant conflict-of-interest and non-disclosure issues within the pension plan consultant community. For instance, it found that more than half of the pension consultants studied had other business relationships that could pose a conflict of interest. Of the consultants studied with relationships with plans' money or investment managers, 16 percent provided no disclosure of the potential conflicts of interest, and the remaining 84 percent provided only limited disclosure. Additionally, the report found:

- "Concerns exist that pension consultants may steer clients to hire certain money managers and other vendors based on the pension consultant's (or affiliate's) other business relationships and receipt of fees from these firms, rather than because the money manager is best-suited to the clients' needs. Such a conflict can compromise the fiduciary duty that investment advisers owe their clients";
- "Questions have been raised regarding the independence of the advice that pension consultants provide in light of the fact that many pension consulting firms provide services both to pension plans who are their advisory clients *and* to money managers" (emphasis in original); and,
- "Concerns also exist that these arrangements may provide an incentive for a pension consultant to recommend an active trading strategy, because the pension consultant or its affiliated broker may receive more money in commission payments."

We are writing to request any and all documents which the SEC and/or DOL have that provided support for the findings of this May 2005 report and DOL's own investigation of pension plan consultants and conflicts of interest, indicating which pension consultants have potential or

actual conflicts of interest, what those conflicts are, how or whether those conflicts are being disclosed, and agency actions taken against such consultants.

Additionally, we request that the agencies provide specific information on:

- Whether any of the firms, consultants, or investment managers that had potential or actual conflicts of interest were investigated by DOL, and if so, how many?
- Whether any of the firms, consultants, or managers were found by DOL to have engaged in any prohibited transactions, and if so how many? And by whom?
- What, if any, action the DOL took to enforce the law, such as whether any of the firms, consultants, or managers have been penalized, ordered to cease and desist, banned as fiduciaries, or otherwise sanctioned (detailed for each specific final case)?
- What, if any, action the DOL or the SEC have taken to notify the clients of the firms, consultants, or managers of the conflicts of interest uncovered in the SEC study?

Second, we are requesting action. Concerns have been raised about the management of the United pension plans, which are undergoing termination by the Pension Benefit Guaranty Corporation (PBGC), resulting in deep cuts in benefits to current and retired United employees. For instance, the Aircraft Mechanics Fraternal Association (AMFA) has written Secretary Chao and Pension Benefit Guaranty Corporation (PBGC) Executive Director Bradley Belt raising concerns about potential conflicts of interest among consultants and money managers, excessive management fees, and conflicted investment transactions. These issues were also raised by the *New York Times* in an article ("How Wall Street Wrecked United's Pension," 7/31/05) and an editorial ("The Imperfect Storm," 8/3/05).

Accordingly, we are writing to urge the Department of Labor to initiate a thorough examination, including a full-scale audit, of the financial circumstances surrounding the failure of United Airlines to meet its pension obligations to its employees and retirees. We also urge the Department to conduct such audits of pension plans at other companies currently threatening massive pension plan terminations, including Northwest Airlines.

While the audit may not provide the participants in terminated pension plans with the full pension benefits to which they are entitled, such scrutiny could uncover deep-rooted structural problems in the management of pension plans generally, such as conflicts-of-interest between pension consultants and investment managers, which are in need of resolution to prevent further pension plan failures.

As part of the examination of the United and Northwest pension plans, we encourage you to probe issues highlighted in the SEC's May 2005 report on pension consultants and provide answers to the following questions:

- Did the United and/or Northwest pension plans employ pension consultants? Were any of the consultants found with actual or potential conflicts of interest in the May 2005 SEC report employed by United and/or Northwest pension plans?
- If they did, were any of these pension consultants also providing services to, or receiving services from, money managers that could create an actual or perceived conflict-of-interest?

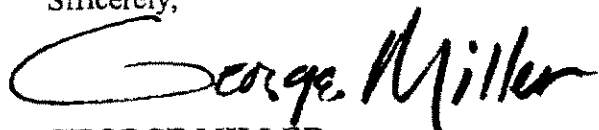
For example, did pension consultants steer business to money managers with whom they had business relationships that resulted in receipt of fees from these money managers?

- If pension plan consultants received fees from money managers responsible for investing pension plan assets, what portion of the consultants' annual revenues did these fees represent?
- If the pension consultants had business relationships with money managers, were these relationships disclosed to the plans in clear, specific language that described the precise nature of the relationship, indicating the potential for conflicts-of-interest?
- Do any of the plans' transactions raise red flags – i.e., is there evidence of repeated trading in and out of the same securities, which could indicate an effort to churn accounts in order to generate commissions, rather than maximize returns for the pension plans?

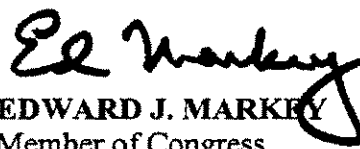
We appreciate your attention to this important matter. As you know, the defined benefit retirement system is in jeopardy, as some large corporations are terminating their pension plans and the PBGC is straining under the weight of billions of dollars in pension liabilities. Hundreds of thousands of American workers and retirees who faithfully performed their job responsibilities throughout their careers now are faced with the decimation of their retirement nest eggs. This situation is unacceptable, and urgent action is needed.

We look forward to your response.

Sincerely,



GEORGE MILLER
Senior Democratic Member
Education and the Workforce Committee



EDWARD J. MARKEY
Member of Congress