United States Senate
WASHINGTON, DC 20510

October 22, 2014

The Honorable Jacob Lew
Secretary of Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Thomas E. Perez
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Alice Maroni
Acting Director
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Secretary Lew, Secretary Perez, Acting Director Maroni, and Director Cordray:

The financial security of America's current and future retirees is of paramount importance to those of us who are entrusted with protecting their savings. We are writing today to express our concerns about the impact of new so-called "de-risking" strategies on the rights of workers and retirees in defined benefit pension plans. Some 44 million workers and retirees are covered by these plans, and many of them could be dramatically affected by these practices.

Employers undertake de-risking transactions to mitigate future pension funding risks. Yet, our understanding is that there are different ways of achieving these goals. For instance, there are some de-risking practices that are "win-wins" for employers and their employees and retirees. One strategy called "liability driven investments" enables an employer to change a plan's investment mix to insulate the company from market fluctuations while preserving the pension plan well into the future.

However, our concern is with new forms of de-risking activities that allow employers to off-load their pension risks and liabilities, either onto an outside insurance company or onto individuals by offering lump-sum buy-outs to retirees who are already receiving monthly benefits for life. Both of these strategies may reduce costs or risks for employers, but they also pose risks to individuals, many of whom are already living on fixed incomes and cannot reenter the job market to earn additional income.

For instance, in an insurance company transfer, participants lose vital participant protections under the Internal Revenue Code and Employee Retirement Income Security Act (ERISA), including the insurance coverage of the Pension Benefit Guaranty Corporation (PBGC), key disclosures, and protection from creditors. In a lump-sum buy-out, participants lose all of ERISA's protections and must take on all the risks of investing the money to make it last over their lifetime. In addition, lump-sums have no spousal protections and retirees looking to invest a lump-sum could be victims of poor financial advice.

As pension plans increasingly engage in de-risking, we are concerned by the lack of clear and specific rules to protect participants and retirees in these transactions. For example, it is not clear the extent to which plan sponsors are required to provide advance notice to workers, retirees, and the government when a plan seeks to de-risk. There also is confusion around fiduciary and settlor functions, and because employers often serve in both functions, there are inherent conflicts of interest.

Accordingly, we ask the Departments of Treasury and Labor, the PBGC and the Consumer Financial Protection Bureau (CFPB) to consider guidance establishing procedures and clarifying fiduciary duties for the de-risking of pension plans, recognizing the rights of employers to terminate parts of their plans but in a way that does not increase the risks or reduce the benefits promised to workers and retirees. Such guidance should include, among other things:

- Requiring advance notice to participants and the government, and clear disclosure of the risks to participants, the loss of spousal and PBGC protections, the limitations of state guarantee associations, and other issues;

- Examining new standards that employers must follow in choosing an annuity provider to ensure that the annuity replicates as many ERISA protections as possible; and

- Requiring specific disclosures and other protections when retirees are offered lump sum distributions, warning them of the substantial risks of outliving their assets, the loss of spousal protections, and the tax consequences of taking a lump sum distribution.

We also believe that it is imperative that the Departments of Treasury and Labor, the PBGC and CFPB consider clarifying all of the circumstances and conditions under which de-risking strategies are permissible in the absence of a formal plan termination.

The risk to plan participants and the speed with which more and more companies are seeking to proceed with de-risking, without clear and specific guidance from the relevant regulatory agencies, raises the level of urgency for the Departments of Treasury and Labor, the PBGC and CFPB to consider moving forward expeditiously with rules to protect plan participants. America's seniors cannot afford further delay.

Thank you for your attention to this matter. If you have any questions related to this request, please contact our staff.

Sincerely,

Ron Wyden
Chairman
Committee on Finance

Tom Harkin
Chairman
Committee on Health, Education, Labor & Pensions