The
ERISA
Industry
Committee

July 29, 2008

The Honorable Nancy Pelosi
Speaker of the House
The Honorable John A. Boehner
Minority Leader
United States House of Representatives
Washington, DC 20515

Dear Speaker Pelosi:
Dear Minority Leader Boehner:

I am writing on behalf of The ERISA Industry Committee ("ERIC") to express ERIC's strong concern regarding the House Committee on Agriculture's bill amending the Commodity Exchange Act, which, notwithstanding corrections made in committee, still threatens the ability of pension funds to legitimately invest in commodities, derivatives, and other financial instruments. If enacted, H.R. 6604 threatens the ability of pension funds to take reasonable and prudent measures that reduce their investment risk and volatility, and would jeopardize the retirement security of millions of American workers.

ERIC is a nonprofit association committed to the advancement of the employee retirement, health, incentive, and welfare benefit plans of America's largest employers. ERIC's members provide comprehensive retirement, health care coverage, incentive, and other economic security benefits directly to some 25 million active and retired workers and their families. ERIC has a strong interest in proposals affecting its members' ability to deliver those benefits, their costs and effectiveness, and the role of those benefits in the American economy.

Pension funds engage in a wide variety of over-the-counter derivatives transactions - such as currency swaps, credit default swaps, and index swaps - in order to reduce investment risk to the funds. If pension funds are unable to effectively and efficiently utilize legitimate hedging and other similar methods to reduce pension fund investment risk, pension funds will be subject to the same increased funding volatility that has caused an increasing number of defined benefit plan sponsors to terminate or freeze their plans.

Pension funds are already heavily regulated by the Department of Labor, the Treasury Department, and the Internal Revenue Service. They are subject to strict fiduciary standards under the Employee Retirement Income Security Act ("ERISA"), which Federal courts, including the U.S. Supreme Court, have recognized as being among the highest standards known to the law.

Rather than requiring or prohibiting specific classes of investments, ERISA requires pension fiduciaries to invest assets with the care, skill, prudence, and diligence that an expert investor would use, and to diversify assets so as to avoid the risk of large losses.

Large pension funds employ a sophisticated in-house investment staff and retain expert investment advisers to develop and execute sound long-term investment strategies.

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The Department of Labor, which enforces ERISA's fiduciary provisions, has recognized that derivatives "may be a useful tool for managing a variety of risks and for broadening investment alternatives in a plan's portfolio." (Letter dated March 21, 1997, from Olena Berg, Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor, to Eugene Ludwig, Controller of the Currency.)

H.R. 6604, to the extent it restricts pension fund access to legitimate transactions in the commodities market, deprives them of investment opportunities that are available to other sophisticated investors. Pension funds are long-term investors: they accumulate assets over many decades in order to provide a secure source of retirement income for American workers and their families. Their objective is to establish a diversified portfolio of investments and to hedge against financial risks such as inflation, foreign currency fluctuations, and credit defaults. They do not engage in the kinds of speculative and manipulative activity that is the focus of the Committee's concern. Instead, they use derivatives and other financial instruments as an important hedge against investment risk and volatility.

A recent report by the Government Accounting Office shows that a large number of pension plan sponsors have frozen their defined benefit pension plans in the last five years. (Defined Benefit Pensions: Plan Freezes Affect Millions of Participants and May Pose Retirement Income Challenges (GAO-08-817)). Sixty-nine percent of the plan sponsors cited the volatility of plan funding requirements as a principal reason they had frozen their pension plans; and the volatility of pension fund investment returns directly contributes to funding volatility.

Moreover, the Interagency Task Force of the Commodities Future Trading Commission's recent report casts significant doubt that pension funds have contributed to the increase in price of oil that would justify the impact on pension funding volatility and the threat to existing defined benefit pension plans. Indeed, according to the Task Force, pension funds in fact "have not necessarily contributed to the recent price increases in crude oil." (*Interagency Task Force on Commodity Markets - Interim Report on Crude Oil*; July 2008; p.22.)

By depriving pension funds of the ability to hedge risk and reduce volatility using strategies based on derivatives and other financial instruments, the bill would accelerate the decline of the defined benefit pension system. The result would harm the very American families the Committee's bill seeks to protect.

Thank you your consideration. We would be pleased to discuss this matter with you or your staff.

Very truly yours,

Mark J. Ugoretz
President

cc:
Hon Colin Peterson
Chairman
Committee on Agriculture

Hon.Bob Goodlatte
Ranking Member
Committee on Agriculture