OPENING STATEMENT

Rep. George Miller

I want to thank Chairman Boehner for his interest in developing legislation to strengthen pension funding and defined benefit plans, and for recognizing that solving the cash balance pension controversy is a key part of the long-term pension security agenda. This hearing is long overdue.

In too many ways, today's economy is hard on American families. Blue-collar and white-collar employees alike are being fired, outsourced, and downsized. Their real wages are declining. And on top of all that, their health care and retirement benefits are being reduced.

People who work hard every day, year after year, have dreams about their retirement. They plan for it. But then, with little warning, their employers tear up those retirement plans. That is the context in which this hearing today takes place.

For hard working middle class families, our nation's pension system is in crisis.

We all know that an increasing number of employers are bailing out of the defined benefit system. That is their decision. Companies used to believe it was the best way to attract and retain a qualified workforce.

And while I personally believe that companies and workers alike benefit from a traditional benefit system, Congress cannot require that companies provide one. But Congress can and must require that companies abide by the law. The question for Congress now is: What exactly is the law going to be when it comes to the new world of changing pension plans?

After the Enron debacle and the stock market downturn of 2000, 401(k) plans are no longer the golden child either. With median account balances of approximately $13,000, it is highly unlikely that 401(k) plans will provide adequate retirement benefits to the majority of workers covered by them.

There are many in Congress and the pension community who argue that hybrid pension plans, like cash balance plans, can be the future of the retirement system. Well, Congress needs to have that debate.

That debate must be fact-based and honest and we should begin by acknowledging that there is a lot we know and a lot we do not know about cash balance pension plans.

We know that during the 1990's, hundreds of large companies amended their traditional defined benefit pension plans and adopted cash balance pension plans instead. We know that over 8 million workers and retirees were affected. And we know that many workers lost pension benefits that they had every reason to expect to receive.

The General Accounting Office found that without transition protections, older workers -

workers over age 45 - can lose up to 50 percent of their expected pension benefits.

What we do not know, however, is whether all of these plans and these conversions complied with the laws protecting workers' pensions generally and with laws protecting them from age discrimination.

ERISA, our governing federal pension law, does not recognize cash balance pension plans since these plans did not exist when the law was enacted in 1974. During the time that cash balance pension plans were being created, no one ever came to Congress and asked us to amend ERISA to include these plans. Congress was mostly unaware of how they worked.

The consultants who created cash balance plans sought the approval of the Treasury Department, and the IRS in particular. The IRS approved most of the plans - although only as far as their adherence to the existing tax code.

The IRS did not examine the plans to see whether they were fair to older workers or whether they violated provisions of law against age discrimination in employee benefits. There was disagreement within the IRS on the legality of these plans.

And then along came IBM. In 1999, IBM announced that it intended to convert its traditional pension plan to a cash balance pension plan. IBM only gave its workers a handful of weeks to prepare for the change. It only protected workers who were within five years from retirement or who had 25 years of service.

IBM put a pension calculator on the company website, but pulled it when workers starting figuring out that they would lose benefits under the new plan. The computer savvy workers at IBM quickly used the Internet to mobilize a grassroots army to express their concerns to Congress and the media.

The controversy raised by IBM and a handful of other companies led the Clinton Administration in 1999 to impose a moratorium on IRS letters of approval of conversions. Some companies continued to venture into the turbulent cash balance waters without a nod from the IRS.

In a callous move that posed great danger to the retirement security of millions of employees, the Bush Administration in 2001 tried to overcome the controversy surrounding cash balance conversions by issuing draft regulations to lift the moratorium and permit conversions.

But Congress, on a bipartisan basis, voted to stop the regulations and require Treasury to propose legislation that would protect older workers. The Administration finally relented to congressional and public opposition and withdrew its proposed regulations. And so here we are.

There are a number of cases pending in the courts, and the employees have won some and the employers have won some.

When Treasury formally withdrew its rejected regulations in June, it announced that it would work with Congress instead to achieve legislation based on a framework that President Bush put forth in his fiscal 2005 budget proposal.

But the President's proposal is still far off the mark when it comes to protecting older workers' pensions. And that is the challenge before us -- how do we assure fair protection for older workers in pension plan conversions?

Most of these workers are too old to start all over again. They may have given 20 or 30 years of their working lives to their companies and they are stuck. They can't earn enough under the cash balance plan and they don't have time to go another company and start again, particularly in an economy that is producing too few jobs, and even fewer that pay well or offer good benefits. These are the workers that Congress needs to protect.

We are not talking about small, low profit-margin companies when we discuss this issue. We are talking about the very profitable titans of the Fortune 1000 - like AT&T, American Express, Citigroup, Compaq, CSX, Georgia-Pacific, Prudential and hundreds more.

Congress needs to decide whether there is a future for cash balance plans.

From my point of view, the answer is yes, but only if we can find a fair balance between the interests of employers in having flexibility to design their benefit packages and the interests of workers, and particularly older workers, in being able to count on the benefits they worked a lifetime to earn.

Representative Bernie Sanders and I, along with 134 other members, including Republicans, introduced legislation to require that workers age 40 or older or with 10 or more years of service be provided a choice between the old and new plans.

Treasury Secretary Snow readily admits that this is very similar to what he did when he was chief executive at CSX. CSX gave its workers a choice between plans. However, as Treasury Secretary he proposed lesser protection for the rest of America's workers.

We need to debate these issues. There is a great deal at stake, especially in these uncertain economic times. I look forward to the testimony of today's witnesses and working with the Majority toward finding a bipartisan solution.