“Pension Fairness Act” Requires Executives and Average Employees To Operate Under the Same Pension Rules

It's OK for the sailor; it ought to be OK for the captain
-- President George W. Bush describing his position on pension fairness.

Dear Colleague:

Americans are outraged by growing reports of loopholes that permit companies to protect millions of dollars in pension benefits for a few top executives - out of the reach of creditors and immune from stock market volatility - while the retirement savings of thousands of loyal employees are negotiated away or undercut.

Such practices by airlines that Congress continues to bail out are affecting the retirement security of millions of our constituents. Delta Air Lines set aside $4.5 million in a pension trust for CEO Leo Mullin, even as the company's stock tanked, the company lost over a billion dollars, and thousands of employees were laid off. United Airlines gave its CEO, Glenn Tilton, a $4.5 million pension just before the company went into bankruptcy, and US Airways gave its CEO, Stephen Wolf, a $15 million golden nest egg last year, six months before the company filed for bankruptcy.

We are introducing legislation to address significant pension inequities and ensure that the men and women who work hard to make companies successful are not shortchanged in their retirement programs while executives protect, and even enhance, their own pension benefits even while the company may be under-performing in the market.

The *Wall Street Journal* reported in an April 24th article (“Executives Get Pension Security While Plans for Workers Falter”) that in addition to Delta Air Lines and attempts by American Airlines to grant golden nest eggs to executives, **a growing number of companies such as Motorola, Owens-Illinois, TXU, Altria Group (formally Philip Morris), and Abbott Laboratories use pension loopholes to give special treatment to their top executives**.

The *Journal* described companies lavishing decades-worth of pension benefits to its executives upon retirement for only a few years on the job - naming specifically Delta Air Lines’ CEO Leo Mullin, Mike Armstrong at AT&T, Larry Wenback at UNISYS, and Feff Barakow at Tenet Healthcare.

Meanwhile, as severe limits are placed on how much rank-and-file employees (who had no role in management) may earn in pension benefits, they are often kept in the dark about complex pension schemes set up exclusively for executives at their companies. Further, older workers may have their hard-earned nest eggs decimated when their employer converts their traditional pension plan to cash balance plans. Legal loopholes allow such conversions without allowing the worker a choice to stay in the traditional pension plan and receive all the benefits promised.

Excessive pensions for executives undermine retirement benefits for average employees. According to the *WSJ*, Motorola decided last year not to make any contributions to its pension plan for 70,000 employees and retirees - a plan that is underfunded by $1.4 billion - but contributed **<u>$38 million in pension perks to its top executives</u>**. Nationally, pensions for rank-and-file workers are under funded by over $300 billion, but companies continue to lavish executives with sweetheart pension deals.

Our legislation would help level the playing field for rank-and-file employees and company executives when it comes to pensions. The "Pension Fairness Act" would:

- **Stop Pension Inequities**. Requires executive pensions to be subject to the same pension rules that apply to rank-and-file workers. It would close loopholes that allow special executive pension plans (such as deferred compensation plans, trusts and split dollar plans) to escape taxation, to receive special protection against creditors, and to end-run pension laws that require wide employee participation (of both high and low wage workers) at the company. It would also apply to executives the same u**niform and fair vesting and contribution limits that apply to rank and file employees.**

- **Protect Older Workers Pensions When A Company Converts to a Cash Balance Plan.** Companies that change from traditional pension plans to cash balance plans must protect older workers by allowing them to chose to stay in the old plan, or sign up for the new plan. Without these protections, the retirement nest egg that older workers are anticipating will be slashed by as much as 50%.

- **Stop Secret Pension Schemes**. Executive compensation packages including pensions would have to be approved by the board of directors, and companies would have to notify shareholders and employees of any new executive pensions - in plain language - of any additional benefits awarded to executives - 100 days before its adoption.

- **Require Companies to Tell the Truth About Pensions in Labor Negotiations**. Employers negotiating with its employees over wages and benefits are required to disclose directly to employees any changes (or proposed changes) in top executives pensions, health, or life insurance, and other substantial job perks, with a penalty for failure to disclose.

- **Require Workers to Be Treated Fairly When a Company is in Bankruptcy.** Gives employees greater protections when their company goes under, and denies executives preferential protection against creditors. Companies like American and Delta Air Lines have sought to take pension obligations which exceeded ordinary permitted payments, and not only promise their payment to executives, but eliminate any risk to the executive by funding them in a trust which is exempt from bankruptcy risk. This bill would provide that the transfer placing such funds off limits to bankruptcy could be treated as an unlawful preference and voided by the trustee if it was made within one year before a bankruptcy filing. As such, the funds could be reclaimed for the benefit of the employees and other creditors.

- **Provide for Equity in Retirement Savings: Helps Low-Income Families Save for the Future.** Makes permanent the Savers tax credit, a measure that helps low-income families save for the future.

- **Limit Golden Parachutes at Failed Companies.** In several recent cases, executives of large corporations resigned and received massive severance packages and retirement benefits even though the shareholders of the corporations were left holding virtually worthless stock. The bill would impose an excise tax on executive golden parachutes when they leave behind companies with plummeting shareholder value or facing bankruptcy proceedings.

- **Stop Rewarding Executives for Manipulating Pension Funds.** Today, many executives receive bonuses for converting to less costly retirement plans or projecting unrealistic rates of return and under funding them. Instead, corporations should only be able to grant CEO bonuses for real improvement of business operations - not fictitious financial manipulation. The bill would prevent firms from deducting more than $1 million in executive performance-based compensation if it is obtained through manipulation of the company's pension funds.

- **Subject Executive Stock Options to Same Restrictions as Company Stock in Pension Plans.** Generally, corporations do not place restrictions on the ability of executives to sell stock that they receive from the exercise of stock options. However, many corporations place restrictions on the ability of rank-and-file employees to sell corporate stock held in their 401(k) plans. This bill imposes tax penalties on executives who sell stock they acquire from stock options if the sale would violate restrictions on the sale of corporate stock that rank-and-file employees face in their 401(k) plans.

If you'd like to be a co-sponsor of this legislation, please contact Joycelyn Johnson at x53725.

Sincerely,

/s/

Charles B. Rangel
Ranking Member
Committee on Ways and Means

/s/

George Miller
Senior Democratic Member
Committee on Education and the Workforce

/s/

John Conyers, Jr.
Ranking Member
Committee on the Judiciary

/s/

Robert T. Matsui
Member, Committee on
Ways and Means

/s/

Ben Cardin
Member, Committee on
Ways and Means

/s/

Earl Pomeroy
Member, Committee on
Ways and Means