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NOMINATION OF JOSHUA GOTBAUM

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON

NOMINATION OF JOSHUA GOTBAUM, OF THE DISTRICT OF COLUMBIA, TO BE DIRECTOR OF THE PENSION BENEFIT GUARANTY CORPORATION

JANUARY 20, 2010

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C O N T E N T S

STATEMENTS

WEDNESDAY, JANUARY 20, 2010

	Page
Harkin, Hon. Tom, Chairman, Committee on Health, Education, Labor, and Pensions, opening statement	1
Enzi, Hon. Michael B., a U.S. Senator from the State of Wyoming, opening statement	2
Gotbaum, Joshua, Operating Partner, Blue Wolf Capital, Washington, DC	4
Prepared statement	6
Mikulski, Hon. Barbara A., a U.S. Senator from the State of Maryland	10
Brown, Hon. Sherrod, a U.S. Senator from the State of Ohio	12
Hagan, Hon. Kay R., a U.S. Senator from the State of North Carolina	14
Casey, Hon. Robert P., Jr., a U.S. Senator from the State of Pennsylvania	16
Franken, Hon. Al, a U.S. Senator from the State of Minnesota	18

ADDITIONAL MATERIAL

Statements, articles, publications, letters, etc.:	
Response to Questions by Joshua Gotbaum to:	
Senator Harkin	23
Senator Enzi	24
Senator Mikulski	29
Senator Brown	30
Senator Isakson	31

VerDate Nov 24 2008 11:48 Nov 04, 2010 Jkt 035165 PO 00000 Frm 00003 Fmt 0486 Sfmt 0486 S:\DOCS\54650.TXT DENISE

NOMINATION OF JOSHUA GOTBAUM TO BE DIRECTOR OF THE PENSION BENEFIT GUARANTY CORPORATION

WEDNESDAY, JANUARY 20, 2010

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:30 a.m. in Room SD–430, Dirksen Senate Office Building, Hon. Tom Harkin, Chairman of the committee, presiding.

Present: Senators Harkin, Mikulski, Brown, Casey, Hagan, Merkley, Franken, and Enzi.

OPENING STATEMENT OF SENATOR HARKIN

The CHAIRMAN. This morning, we're considering the nomination of Joshua Gotbaum to be director of the Pension Benefit Guaranty Corporation.

Now, most American families are facing serious challenges in retirement, and I look forward to discussing these issues in depth with our nominee today, and also with my colleagues.

Senator Enzi has been a tremendous leader in the Senate on pensions. I look forward to working with him on these issues.

I want to thank Senator Mikulski, the chair of our Retirement and Aging Subcommittee, for her leadership, particularly with respect to PBGC.

Also Senator Burr on this committee has also been heavily involved.

The retirement security of millions of Americans is in jeopardy. Fewer than half of American workers have any type of retirement plan at work. In the last 25 years, the percent of workers with a secure defined benefit pension has been cut in half so that today only one in five workers is earning a traditional pension.

Despite these changes, defined benefit pension plans continue to play a vital role in providing retirement security to millions of workers. The PBGC's role in protecting that retirement security is more important than ever.

The 44 million American workers and their families rely on this agency to ensure their hard-earned pensions. This insurance safety net is theirs so that workers who have worked for a lifetime aren't left with nothing if their company pension plans fail.

Leading this agency is a challenging and important responsibility. The director needs to ensure that the retiree down the street gets their $400 pension check each month while at the same time

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managing the PBGC's $68-billion fund. Moreover, he must be our Nation's leading advocate—under law—for defined benefit pensions, so he must find a way to promote and foster the existence of these secure pension plans.

Central to this mission is paying retiree pensions. Again, these benefits are absolutely vital to retirees. Each month, PBGC pays over $370 million in retirement benefits to more than 750,000 retirees and their families, and this responsibility is growing.

Last year PBGC took over almost 150 plans that covered more than 200,000 workers and retirees, and this number will only increase in the future.

What's more, to make sure that there are assets available to pay benefits for retirees, the PBGC director must prudently manage the agency's investments. PBGC has projected deficits in the tens of billions of dollars. Although retirees' benefits are in no immediate danger, a sound investment policy is absolutely critical to safeguarding their pensions in the long run.

In recent years, the agency has repeatedly changed its investment policy, shifting from investing in bonds to investing in domestic equities, then returning to bonds, then it's shifting back again to equities, as well as a lot of alternative investments. Unfortunately, questionable conduct in the process of selecting investment managers has thrown PBGC's credibility and integrity into question.

I hope Mr. Gotbaum can tell us how he plans to restore trust in the agency and how he will work with the PBGC board of directors to establish a prudent and transparent investment policy.

I hope that, Mr. Gotbaum, you can share with us your vision for strengthening the defined benefit system. I look forward to hearing how you plan to bring your expertise that you have to bear to develop ways for the PBGC to work with companies and workers to preserve their benefits and, if possible, avoid pension failures.

It will take someone with knowledge, experience, and determination to lead the PBGC at this critical time. While I don't know you, Mr. Gotbaum, personally, I have read your background, and you have strong organizational talents, you have a proven track record in government, and a great deal of financial expertise. I believe your expertise could be a great asset to PBGC during this difficult time, and I look forward to learning more about your views today and moving your nomination.

Senator Enzi.

OPENING STATEMENT OF SENATOR ENZI

Senator ENZI. Thank you, Mr. Chairman.

The director of the Pension Benefit Guaranty Corporation is one of the Nation's top retirement security officials. Few realize that the PBGC is responsible for the backing of pensions for 44 million employees and retirees who participate in 29,000 private-sector pension plans throughout the country.

Since the creation of the PBGC in 1974 as part of the Employee Retirement Income Security Act, ERISA, the PBGC has been the insurance backstop to ensure that thousands of retirees and their families receive pension payments even though their pension plans are no longer viable. However, the PBGC in recent years has been

plagued by billions of dollars worth of deficits. Back in 2006, more than 90 Senators supported the Pension Protection Act to ensure that companies keep the retirement promises that they make to their employees. That act did help to reduce the PBGC's deficit by more than half. Subsequently, the downturn in the market, as well as the PBGC's actions to take over 129 underfunded pension plans last year, has caused the deficit to shoot above $22 billion. The PBGC is a government corporation, but it is not backed by the full faith and credit of the Federal Government.

Since 2003, the Government Accountability Office (GAO) has placed the PBGC on its "high-risk" watch list, and PBGC's placement on this list was one of the reasons we passed the Pension Protection Act. Other government-sponsored enterprises, mainly Fannie Mae and Freddie Mac, also were on the GAO's "high-risk" list for many years. Unfortunately for Fannie and Freddie, the warning signs were not heeded, and today the taxpayer is responsible for them. We cannot afford to have the taxpayers on the hook and bail out the PBGC.

Back in 2006, with the passage of the Pension Protection Act, we stated that a taxpayer bailout of the PBGC is not an option. I think the same holds true today. Any nominee for the PBGC director position must be willing to tackle this deficit to ensure that the PBGC has the moneys to cover the pension payments to the thousands of retirees and their families today, as well as many years into the future.

Today, we are here to review the qualifications of Mr. Joshua Gotbaum, the President's nominee to fill the critical PBGC director position. Mr. Gotbaum has, three times before, been confirmed by the Senate for positions within the Departments of Treasury and Defense, as well as the Office of Management and Budget. While at the Office of Management and Budget, he spent a considerable amount of time working with many Federal agencies' chief financial officers and inspectors general. In recent years, he has become a "turnaround" specialist. He helps troubled companies, and at times invests in similarly situated companies, to restructure themselves to get back in the financial black.

In light of the challenges facing the PBGC, both in finding a solution to pull the PBGC out of the red and in managing the large number of pension plans taken over in the past year, Mr. Gotbaum's expertise could be quite beneficial as the director of PBGC. I look forward to hearing from him about his ideas for the agency, as well as his plans for turning the PBGC back into the black.

Mr. Gotbaum, thank you for your willingness to take on this big challenge.

Mr. Chairman, thank you for holding this hearing today.

The CHAIRMAN. Thank you, Senator Enzi.

Again, welcome, Mr. Gotbaum. We have your written testimony. It will be made a part of the record in its entirety. I'd ask you to please proceed as you so desire.

I'd appreciate it if you'd introduce your family members who are here. I met them, personally, myself—if you'd introduce them, I'd sure appreciate that.

STATEMENT OF JOSHUA GOTBAUM, OPERATING PARTNER, BLUE WOLF CAPITAL, WASHINGTON, DC

Mr. GOTBAUM. That would be great, Senator. Mr. Chairman, Senator Enzi, thank you very much.

I'm joined this morning by my wife, Joyce, and my children, Emma, Jordan, and Adam, and eventually by my mother, who is on her way, but is sufficiently infirm so that getting here is slow.

The CHAIRMAN. Oh, I'm sorry to hear that. We await her arrival. We'll let you know when she comes in.

Mr. GOTBAUM. Right, thanks.

Since my written statement is in the record, with the committee's permission, I'd like to summarize the points that I think are important in considering me.

First of all, I want to say thank you for considering this nomination, and considering it expeditiously.

We all know that PBGC is going through very hard times. Its finances are out of balance; its service, despite improvements, continues to disappoint some; its benefit levels frustrate others; and the behavior of the previous director has called into question, as Chairman noted, many of the agency's actions, even some that, if done properly, might have been the right thing to do. Also as you noted, Chairman Harkin, despite these hard times, the PBGC is needed more than ever, so I'd like to talk about my background and how I think it might help.

I come to the PBGC, obviously, with a very broad range of experiences. In my career, I've worked with businesses, financial institutions, unions, nonprofits, and government. I am not, and I have never been, an expert in a particular industry, and I don't come before you claiming that expertise.

What I am is a problem-solver and a manager. I work to bring people together, to face difficult issues head-on, and to find solutions that everyone can live with. That is why, when I met with your staff, I talked about "I'm a workout guy." That doesn't mean that I don't have views about what the right thing to do is, but that, at the end of the day, what's important is, we find something that actually advances.

I've worked throughout the Federal Government, I've worked in the White House, I've worked briefly in the Senate, on the Senate Budget Committee, and worked in a number of Cabinet agencies. I've worked on an economic policy, an energy policy, an environmental policy; but, I think, equally important since you're considering me for a management position, I've also worked on procurement, I've worked on regulation, and I've worked to maintain the government's financial integrity. I've worked across agency lines and with the Congress on problems as diverse as disaster relief, housing, civil rights, and terrorism, just to name some of the areas I have been involved in.

Can we hold for a second?

Senator MIKULSKI. Well, I broke my ankle a couple of months ago. I know what it's like to have one of those devices and go a little bit slower. That's OK.

[Pause.]

Mr. GOTBAUM. Thank you. With the committee's permission, I would like to also introduce my mother, Sarah Gotbaum.

The CHAIRMAN. We just literally started, and we had our opening statements, so you didn't miss anything there.

[Laughter.]

Your son has just started his testimony.

Mr. GOTBAUM. I've started my testimony, and I'm a third of the way through, and you didn't miss anything, either.

[Laughter.]

Inside the government, I've worked on a very broad range of issues, and also how to manage and get things done, and I think that matters.

Outside the government, I've been a financial adviser to businesses, governments, and unions. I've helped them work through major transitions.

I've been on both sides of the bargaining table. I've helped both unions and management work through hard times in industries like steel—yes, I've been to Sparrows Point—airlines, and other industries.

After September 11, I became the first CEO of the September 11 Fund. By working with dozens of nonprofits, I'm proud to say we helped more than 100,000 to recover and to rebuild their lives. I think equally important for this committee and for the questions of public accountability, we did so in ways that set a higher standard for accountability of charity action than anyone had ever seen.

Since then, as Senator Enzi noted, I've worked with businesses in distress. As trustee for Hawaiian Airlines, I led a team of 3,500 people. It was not easy, and there was plenty of controversy. But, Hawaiian came out of bankruptcy a better and stronger airline. Our creditors got 100 cents on the dollar. Our stockholders got gains instead of losses. Our labor contracts had raises instead of pay cuts. The pension plan, I'm very pleased to say, is intact.

If confirmed, I would work—I guess I should step back and say, there is always a question, when someone says, "I am a workout person. I want to negotiate a consensual approach because I think that's the only way to advance." Well, then the question is, "Well, but are there no principles by which you operate?" I want to be very clear for this committee, there are. If confirmed, I would work to implement the PBGC's mission, guided by some, what I consider to be, bedrock principles:

One is that retirement security is essential and that defined benefit plans, which for many people are the best way of achieving it, have to be preserved.

Second, that the PBGC cannot choose between meeting the standards of industry or investment and meeting the highest standards of government. It's got to do both.

Third, that the PBGC needs to provide its services with a sense of compassion.

Fourth, that we must address the critical issues facing the PBGC, such as funding relief, investment policy and the deficit, directly and realistically.

And last, but certainly not least, that working with the Congress and other stakeholders is essential to doing so. There is no task that the PBGC has that it can do alone. None.

I'd also like, given recent history, to re-emphasize one point. I've worked in business, nonprofits, and government. There are lots of

similarities in them, but public service is different. The standards of public procedure are different, and the standards of public ethics are higher. I've committed to, and met, those standards in three different administrations, and I'm making that same commitment now. I want there to be no question about that.

If confirmed, I would, of course, focus on the agency's management and organizational challenges, trying to provide a steady hand and independent judgment to resolve them, and, through creative management, to encourage and enable very professional PBGC staff—and it is a very professional staff—to do even more to provide the assurance of retirement security that is their job and their mission.

The Congress has entrusted the PBGC—as both you, Mr. Chairman, and Senator Enzi talked about with very important responsibilities, protecting the pensions of 44 million people and asking the PBGC to be an advocate for retirement security on behalf of all of us. But, let us recognize that there is no universally accepted plan for how to advance this mission or for confronting these issues. There is no consensus.

If you confirm me, I will view it as my job to work for developing those consensus. Reaching those consensuses is going to require agreement—engagement, creativity, and compromise on the part of the Congress, on the part of the administration, and other stakeholders. It's going to require both principles and practicality. But, I'm a workout guy, and if you confirm me, I would be honored to help.

I'll leave the rest of my statement to the record, and I just want to thank the committee for both holding this hearing and for moving on my nomination as expeditiously as you have. I look forward to hearing more about your views and to answering any questions you have.

[The prepared statement of Mr. Gotbaum follows:]

PREPARED STATEMENT OF JOSHUA GOTBAUM

Mr. Chairman, Senator Enzi, members of the committee, thank you for considering my nomination.

I am joined this morning by my wife, Joyce; our children, Emma, Adam, and Jordan; and my mother, Sarah Gotbaum. All of us have or will benefit from defined benefit pension plans.

We all know the PBGC is going through hard times—just when it is needed more than ever. Its finances are out of balance. Despite improvements, its service continues to disappoint some; its benefit levels frustrate others. The behavior of the previous Director has called into question many of the agency's actions, even some that done properly might be the right thing to do.

The leadership of this important agency matters now perhaps as much as any time since its founding.

Let me start by explaining how my background and experience could help the PBGC meet its critical challenges.

I would bring to the PBGC a broad range of experiences. My career has involved businesses, financial institutions, unions, non-profits, and government. Rather than being an expert in a particular industry, my skills are those of a manager and problem solver: I work to bring people together, to face difficult issues head-on and find consensus solutions to complex problems—solutions that respect all the stakeholders and that everyone can live with.

I have worked throughout the Federal Government, in the White House as well as the Senate and five cabinet agencies. As a senior official at the Defense Department, I participated in and helped improve procurement decisions. At the Treasury Department, I helped coordinate the boards overseeing Social Security and Medicare trust funds. In 4 years at the Office of Management and Budget, I helped guide and

coordinate the inspectors general and CFOs across the government; I also was repeatedly called upon to craft solutions to complex problems that crossed agency lines, problems ranging from disaster relief to civil rights to counterterrorism. I worked on economic policy and regulatory matters in two administrations and, early in my career, in the White House; for Senator Gary Hart in the Senate Budget Committee; and in the Departments of Energy and Transportation as well.

I went into the private sector in the 1980s. For more than a decade, I helped businesses, governments, and unions solve problems. I helped companies acquire other companies or be acquired themselves, raise funds or restructure the funds they'd already raised, and work through the complex, thorny issues of bankruptcy or out-of-court reorganization.

After September 11, I became the first CEO of The September 11th Fund. I built the team that was entrusted with more than $500 million to help the many victims of that tragedy. I'm proud to say that we helped more than 100,000 to recover: people, small businesses, and nonprofits who had lost their families, their jobs, their workplaces, or their homes. We did so in ways that set new standards for public accountability.

Since then I've worked with businesses in distress. I was appointed Trustee for Hawaiian Airlines, replacing the CEO removed by the bankruptcy court. Despite the challenges, we exited bankruptcy successfully: the company was profitable, with an enhanced reputation, expanded service, new labor agreements, and 100 percent repayment of creditors—all without terminating the company's underfunded pension plan.

I have also led and managed in business, in non-profits, and in government. I've set strategy, hired and fired, committed capital and reputation, and engaged with board members, budget officers, overseers, critics, customers and clients. I know that every one of these responsibilities is handled differently in the public service. The ethical standards are higher. Having served in government—in three Senate-confirmed positions—I understand that I cannot ask for your confirmation without committing myself to meet those standards of accountability and ethical public service. I made that commitment in three previous administrations and I do so now.

If confirmed to lead the PBGC, I would work with stakeholders and staff to develop a workable consensus with respect to the agency's policies and programs. Several principles would guide me:

- That retirement security is essential and that defined benefit plans—which for many are a better way to achieve it—must be preserved;
- That the PBGC cannot choose between meeting the professional standards of industry and highest standards of government. It must do both;
- That the PBGC should provide its services with a sense of compassion;
- That we must address the critical issues facing the PBGC—such as funding relief, investment policy, and the deficit—directly and realistically; and
- That working with Congress and other stakeholders is essential.

If confirmed, I would of course address the agency's management and organizational challenges. My view of the role would be to provide a steady hand and independent judgment to help negotiate and solve complex problems and, through creative management, to encourage and enable the very professional PBGC staff to do so. We would work with the diverse constituencies to determine what each wants, what compromises they're willing to accept, and then develop approaches they can support.

Congress has entrusted this agency with important responsibilities—protecting the pensions of more than 40 million people—and asked it also to serve as an advocate in deliberations on retirement security for all of us. However, there is no universally accepted blueprint for advancing the PBGC's mission, or for confronting the many issues the PBGC faces. Reaching agreement on these issues will require the engagement and acceptance of the Congress, the Administration, and many others with interests in retirement security. It will require both principles and practicality, creativity and compromise.

If confirmed, I would be honored to join with the PBGC, the Congress, and all those for whom retirement security is so important, to help the PBGC overcome its challenges and implement the goals we share.

Thank you for the opportunity to appear before you today. I look forward to hearing more about your views and answering your questions.

The CHAIRMAN. Thank you very much, Mr. Gotbaum, for a very concise, well-versed presentation.

We'll open our 5-minute rounds of questioning now.

As I said to you privately before we started our hearing, that one of the missions—and you mentioned it also in your testimony—is that the mission, as stated in law, is how the PBGC is to promote the development and enhancement of defined benefit plans. I would like to know a little bit more about how you see that role.

I think there has been a tremendous erosion, over the last 25 years—probably more—of defined benefit plans. We've seen them being eroded. More and more people, in different forms of retirement savings, are now finding out that it wasn't all that they thought it was going to be. We talk about those that had their money in WorldCom or in Enron and all those other things, and then all of a sudden the retirements are gone. Those weren't defined benefit plans—so, what do we do? What can the PBGC do to really promote defined benefit plans, get the public more aware of them, and get businesses on board, and perhaps turn this thing around a little bit?

Mr. GOTBAUM. Well, Senator, this is obviously a very essential question, and a part of the agency's mission. Since I am new, I'm going to give you some thoughts, and I hope that will not preclude me from coming back with additional ideas, if and when you confirm me.

I think part of the issue involving defined benefits plans is education, in that people need to understand why they are helpful, why they matter. That is, when you're talking about something as complicated in pensions, its own challenge. I can't tell you exactly what the best ways are to advance that understanding. Clearly, it involves clarity in communication and working with plan sponsors and others, as well. One is clearly education and communication.

Another, to be blunt, is that we have to find a way to re-assure plan sponsors that they're not going to be penalized for having a defined benefit plan. I feel that defined benefit plans are, for many people—I can't say whether it's most or not—but, for many people, far better than the alternatives. As this committee knows very well, because you're now involved in the issues of funding relief and other issues, etc., that plan sponsors often feel that they are getting no credit for having done the right thing. One of the tasks that I think the PBGC has—and it's a task that will clearly involve engagement with the Congress and others—is to make sure that the employers who offer defined benefit plans are comfortable that they can continue to do so without risking their larger enterprise. Because, while we all agree that the interests of retirees are very, very important, if we ask corporations, businesses, to choose between their retirees and the survival of the business, we will convince them that maybe this is a choice they shouldn't choose to make.

I think a second task is to figure out what's the best way to protect security, to make sure that people can sponsor defined benefit plans in a way that is consistent with the other things that they have to do.

I think if we could do those two things, then I think we would make a real advance.

The CHAIRMAN. Very good. Thank you very much, Mr. Gotbaum.

Senator Enzi.

Senator ENZI. Thank you.

A lot of people probably don't realize that this committee passes more legislation than virtually any other committee. We've already passed national health service and tobacco regulation, and we're on the way to passing food safety legislation and, hopefully, workforce training legislation, in a very short period of time here. That's more than most committees will do in a 2-year span. One of the reasons that we do that is, we have a good working relationship between the majority and the minority, both Senators and staff. This is a question that I always ask of people, and that is, if confirmed, would you pledge to cooperate in this type of a working relationship with all Senators on the committee, Democrat or Republican, by promptly responding to any written or phone inquiries, sharing information as soon as it becomes available, and directing your staff to do the same?

Mr. GOTBAUM. Yes.

Senator ENZI. Thank you. That's the kind of answer that I really like to hear, too.

[Laughter.]

Mr. GOTBAUM. May I elaborate for a second, Senator?

I wanted there to be no qualifications on that answer.

Senator ENZI. Yes.

Mr. GOTBAUM. The issues that the PBGC faces, as you all know very well, are very complicated. They involve a series of interests. Anyone who's been involved with pension knows these are interests which are all-important; there's no trivia and no trivial position. They cannot get solved by a particular program or principle being applied blindly; they all require engagement, compromise, consensus. That's part of the reason why I'm interested in the position. That's part of the reason why I can say to you, with no qualifications, that since the Congress is—both parties, and both houses—essential to resolving any of the issues we're going to talk about, that, yes, of course I will engage.

Senator ENZI. I appreciate that.

We had some difficulties when we were doing the Pension Protection Act before and even noted some comments from the Administration, particularly the Department of Labor, that there were things that they didn't know about. Open communications will help to prepare us all for whatever decisions have to be made.

Incidentally, on the Pension Protection Act, that came through committee, and when it went to the floor, we had 1 hour of debate, two amendments, and the final vote. And on that piece of legislation, over 1,000 pages—that's kind of unique around here. But, with your cooperation, we'll be able to do, hopefully, the things that need to be done.

Now, back in the mid-1990s, when you were at the Treasury Department, you authored at least one, and possibly more papers on Fannie Mae and Freddie Mac. At that time, the possibility that these two entities would end up in Federal receivership appeared remote, but some argued that they still posed a systemic risk to our system. Today, as we all know, the American taxpayers own both those entities. As the PBGC is on the GAO's "high-risk" list, it's clear that its deficit can't be ignored. What are your plans to reduce that PBGC deficit?

Mr. GOTBAUM. Senator, this is obviously a large and important question. My short answer is, we're going to have to work on it, and we're going to have to work on it together.

One of the facts is that very little of what affects the PBGC deficit is actually under the control of the PBGC. The PBGC does control investment policy, but it doesn't control investment results. It can choose to terminate a pension plan, in extreme circumstances. I'm sure it does so reluctantly, since it ought to be a last resort. Sponsors can also voluntarily terminate. The PBGC has, within itself, a limited ability to affect its deficit.

The Congress controls premiums, controls benefit levels, and reserved for itself the decisions on those. That's entirely appropriate, but it means that there can be no resolution of anything like the deficit without the Congress being involved.

I'd also say that private companies, plan sponsors, and the IRS affect the deficit, because they control funding limitations, funding waivers, etc. I think the way I would propose to engage on the deficit is to engage with the institutions—all the institutions that can affect it, and see what compromises we can achieve and when we can achieve them.

Senator ENZI. I think your educational approach is real good. Just a quick follow up question. Do you agree that the PBGC is not backed by the full faith and credit of the Federal Government?

Mr. GOTBAUM. Senator, I haven't actually looked at the question legally, but if you say it, I'm sure that it's true.

Senator ENZI. OK, thank you. My time's expired.

Thank you.

STATEMENT OF SENATOR MIKULSKI

Senator MIKULSKI. Thank you, Mr. Chairman.

Mr. Gotbaum, we want to welcome you to the hearing, and we also want to welcome your family.

You come with a considerable background in public and private service. We really need a competent, honest, trustworthy CEO of the Pension Benefit Guaranty Corporation.

Your predecessor lied to us, lied to me, screwed me and my constituents around with answers and letters. We're pretty jazzed, in both Maryland and in the Congress, about our relationship with the Pension Benefit Guaranty Corporation.

Your predecessor promised that there would be communication, just as you promised Senator Enzi. I believe you're a gentleman. I believe you're an honorable man. We're going to take you at your word. We need someone who brings integrity, who really needs to talk with us about the investment strategy. We need someone with competence, in terms of both his performance and competence of the people who work for them; and we need real communication.

In the area of integrity, I've told you how we were lied to. With your predecessor, we got this mealy-mouthed thing about how, "I was in the Peace Corps and I'm a good guy." I'm not going to look back; I'm going to look at now, and look ahead.

I'm very concerned, joining with my colleagues, that 44 million workers are at stake. You've got $70 billion to invest in their behalf. There is now a $20-billion deficit. We've got a really big job.

Which then takes me to the concept of the investment strategy. Your predecessor wanted to go into a more high-risk, high-return way. My question to you is twofold:

No. 1, you have a board made up of the Secretaries of Treasury, Labor, and Commerce. How do you intend to revitalize this board, who, at best, was lackluster in their oversight and due diligence.

And, No. 2, could you share with us your views on the investment strategy to deal with meeting our responsibility so that we don't end up with an unfunded Federal liability?

Mr. GOTBAUM. Let me first start with the issue of integrity. I don't know the previous director; I've never met him. Unfortunately, it sounds like he said the right things, and therefore, it raises the question, If I say the right things, am I that guy? I'm not. I've lived half my life in the public service, I understand the standards of ethics, and I carry those same ethics in everything I do. I've been evaluated by GAO, by inspectors general, by the bankruptcy court, by the attorney general of the State of New York, and most of them would say, "Yes, he's very straight." And I am, in the old-fashioned sense of the term.

Senator MIKULSKI. Good.

Mr. GOTBAUM. As to the board, I haven't been inside either the administration or the agency; that would not be right. The impression I get, from what conversations I have had, is that it isn't just the Congress that the agency has not been talking to and with, historically. I view my role—and maybe it's because I am a workout guy, or maybe it's because I have worked across agency lines for so much of my public life—but, I think part of the way you get better government is to not let bureaucratic walls stop you from engaging with people who have something to contribute.

The way I would ensure that the agency governance works is to make sure that there is active involvement on the part of the agencies that are involved, plus the others.

Senator MIKULSKI. Well, I appreciate that. But, let me just say this. We've had three board members. I don't know what kind of attention they've paid. I don't know what they've done. They didn't seem to be very aggressive in their oversight role. We'll look forward to hearing from you about what their participation should be and whether the nature of the board should be changed.

Could you move on to the investment strategy focus?

Mr. GOTBAUM. Sure. Sure.

I have a lot views on the investment strategy, so let me try to summarize them.

One is, obviously the investment strategy is ultimately a board decision, and it's one that ought to be made in the sunlight and, therefore, with consultation with Congress. I think if you confirm me, it's going to be my job to help drive a decision that is sensible and defensible and consistent with these views. My first requirement is, we need to get an agreement, and we need to get an agreement in a way that is public and is understandable and is defensible.

Different people have different views as to what the investment policy ought to be. There are some people who focus on the fact that the PBGC is like an insurance company and say, "You ought to think about the investment practices of an insurance company."

There are other people who focus on the fact that the PBGC is insuring pension funds and say, "Maybe you should either be like a pension fund or actually hedging against the performance of pension funds." There are others——

Senator MIKULSKI. Well, what is your view?

Mr. GOTBAUM. If I may?

Senator MIKULSKI. Because my time is up.

Mr. GOTBAUM. Oh. Sorry.

My view is, they are all right, and therefore, we are not going to, by some cookie-cutter menu, going to answer this question.

I will say, I think there needs to be a mix of investments. I do not think the Pension Benefit Guaranty Corporation can be turned into a government-run hedge fund.

I also think that neither can it be turned into the U.S. Treasury and only invest in treasuries.

I don't think you can do either of those, and I don't think you should.

What I do think you need to do is, from the options in the middle, figure out which ones make sense. Come and consult, and do them.

One more thing—and I apologize for taking so long to answer this, but it is an important question—the other challenge, vis-á-vis investment policy, is not the policy, it's implementing it in a way that's consistent with public ethics, public procurement. That's also what I would hope to do.

Senator MIKULSKI. Well, first of all, thank you for the answer. What you're saying is, you want to get in there and look at it.

I think this committee, and certainly our subcommittee, wants to work on a bipartisan basis to hear your views and the direction that we're going in, because it is about prudence, but it's also about return. The PBGC is running a deficit. We are concerned about it. There are many other issues we could discuss, like Bethlehem Steel, where we were told the pension fund was OK, then it wasn't. The fund was turned over to the PBGC. Then people got their pension. Then they're told the government made a mistake in their calculations, and then people had to give their money back.

I want to talk with you about Bethlehem Steel. But we'll have to do that on another day. I know my colleagues are waiting.

My main concerns are whether the PBGC's board functions, whether you can function with Congress and live up to your responsibilities, and what is the PBGC's investment strategy, so that we're all in concurrence with it.

Thank you very much, and I look forward to working with you.

Mr. GOTBAUM. Thank you, Senator.

The CHAIRMAN. Thank you, Senator Mikulski.

Senator Brown.

STATEMENT OF SENATOR BROWN

Senator BROWN. Thank you, Mr. Chairman.

Mr. Gotbaum, welcome. And, to your family, welcome.

All of us on this committee have—especially those of us from States that have large numbers of people with defined pension benefit plans—recognized the importance of the PBGC. I so appreciate Chairman Harkin's comments about the importance of defined pen-

sion benefits. It's a commitment made to millions and millions of people that have been undercut. It's troubling to so many of us. I can't count the number of times that I have been, not just to a steelworkers' hall, but a veterans' hall at my church in Lorain, at grocery stores where people, union and nonunion alike, thought they were retiring on $2,800 a month; they had negotiated, or not negotiated, in nonunion-workers' cases, given up wages for the future—given up wages for the present for these so-called "legacy costs" that some of my colleagues belittle, which is incomprehensible to me. These people—as Senator Mikulski points out—thought they were going to get $2,800 a month, then they were getting $1,500 a month, or less, from PBGC, and then they find out they owe money to the government, or to PBGC, because they were overpaid.

There's an arrogance about that. I empathize. I know that these demands are huge on PBGC, but there was an arrogance, in the prior administration of PBGC, that—and you don't strike me as an arrogant man—but that simply can't hold.

Now, my question is, these retirees, not just, as I said, faced these significant reductions; they found themselves owing overpayments; you mentioned providing services with a sense of compassion—how do you do that in these cases?

Mr. GOTBAUM. Senator, not having been there, I can't tell you exactly what changes would make sense, if any. So, I'm going to have to talk in general terms.

When I've gone into an institution—when I went into Hawaiian Airlines, other institutions, when I went to the September 11 Fund—I've always found two things. One is, there are lots of good people doing their job. And two is, there are always ways to do things differently, that you have to consider.

What I would hope is—and the issue that you talk about, which is, What do you do when you are simultaneously trying to get an answer quickly, and then, after the fact, discover that that answer wasn't right?

Senator BROWN. Because you didn't have all the facts, oftentimes.

Mr. GOTBAUM. Yes, right.

Senator BROWN. I empathize with that position and understand why it happens. The question is, How do you do that in a way that makes it a little bit easier on those families?

Mr. GOTBAUM. Well, as I say, I haven't been there yet, but what I would like to see is, Are there ways to work out correction of the error over time? Are there errors which you can, without impugning the financial integrity of the PBGC, accept that it was your error? Those are the areas that I would look at.

This is obviously a thorny and difficult problem, because it gets to—as everything else involving the PBGC, people whose lives are dependent, on both sides. You have the immediate person involved, and you have the integrity of the institution, long-term, on both sides.

What I'd do is, I'd want to make sure that people engage. I'd want to make sure that people do so with a sense of compassion; that they actually meet the people that they're working with.

Senator BROWN. We expect that from you.

Mr. GOTBAUM. Yes.

Senator BROWN. OK. Second question is, as I addressed to you privately, quickly, before the testimony started, the Delphi situation, which is one of the most intractable and difficult and hurtful, if you will, situations, and maybe one of the most complex in PBGC's history, you've indicated you have a potential conflict of interest and won't participate in decisions involving the Delphi plans. If you can't—this is a serious concern to those of us that have large numbers of Delphi employees or former employees, and many of us do—participate in Delphi matters, how can you tell us and ensure that Delphi plans are managed appropriately, and with accurate and timely and compassionate communication with those retirees, which your predecessors haven't really done very well?

Mr. GOTBAUM. As we've discussed, as discussed in my ethics agreement, in order, frankly, to preserve the absolute integrity of the agency, I have to recuse myself from decisions involving Delphi. I'm happy to explain why.

Senator BROWN. Well, but I guess the question is, Why should we confirm you if you're taking yourself out of something so important?

Mr. GOTBAUM. Because there is much more to the actions of the PBGC, even involving the Delphi retirees, than just the decisions to terminate the plan or not terminate the plan. When I talked about making sure that the agency deals with people in a way that is compassionate, because this is, in some respects, a service business, one thing I can do as PBGC director is make sure that, for Delphi retirees or anyone else, that the agency is doing what it can, that it's being responsive, that it's recognizing the fact that people come to the PBGC at a time of tragedy—and we don't sugar-coat this; it is tragedy—and that we have to be as responsive to them as, frankly, I hope my grantees of the September 11 Fund were to the victims of September 11, that we have that kind of compassion. That, as PBGC director, I can do.

Senator BROWN. OK. Thank you.

The CHAIRMAN. Senator Hagan.

STATEMENT OF SENATOR HAGAN

Senator HAGAN. Thank you, Mr. Chairman.

Out of all the positions that are available, for nomination, I think yours, right here, is probably one of the toughest jobs. I applaud you for accepting this nomination.

Since inception, it appears that the PBGC has been in a deficit mode for quite a number of years, with the exception of, I think, 4 or 5 years, and I understand it's probably at about a $22 billion projected deficit right now. People who work their whole life are counting on their pensions, as we all know. You said it's a tragedy whenever something like this happens.

When we're talking about investment strategy, I think that's going to be crucial to look at this deficit, as well as the ongoing maintenance and payments to the retirees.

As part of your investment strategy—and I know there's an advisory committee—can you tell me how you're going to get input, how you're going to help make these decisions? Because I do think it is absolutely critical.

Obviously, what sort of components would you report back to us?

Mr. GOTBAUM. Thank you, Senator.

This is obviously, as I mentioned before, something that is larger than the PBGC itself. Maybe by background, but maybe just because it's the only way it can actually get done, we're not going to resolve the deficit issue, we're not going to resolve the investment issues, etc., unless and until we all work together.

My view of my role, if you confirm me as PBGC director, is, in fact, to engage with the advisory committee, the board, the Congress, the relevant constituencies, and my, I hope, future colleagues at the PBGC and to raise up and force some of the choices we have. The investment policy is clearly important, and no one should deride that, but it is—I believe most people would say that the best investment policy in the world will not solve all the challenges that the PBGC faces. Although the investment policy is within the agency, the other issues—how should premiums be determined, how should benefits be determined, what should the process be for funding relief, etc.—those are all outside the agency. My M.O., if you will, would be to try to work those out, and work those out collectively. I don't think there's an alternative.

Senator HAGAN. Are you going to provide advice on what you think those alternatives and recommendations will be?

Mr. GOTBAUM. Yes, ma'am.

Senator HAGAN. OK.

Mr. GOTBAUM. But, informing that advice.

Senator HAGAN. Do you have those right now? I mean, do you have some thoughts on how to maintain the solvency, going forward?

Mr. GOTBAUM. Some. Some, Senator.

Senator HAGAN. Can you share those with us?

Mr. GOTBAUM. Oh, absolutely.

Senator HAGAN. OK.

Mr. GOTBAUM. Senator Mikulski asked the question of, What should the right investment policy be? I think part of the issue is, in general, what would an ideal investment policy be for the many objectives that you have placed on the PBGC? Part of the issue is, What investment policies and practices is the PBGC competent to execute? Part of the reason why I said that I don't think the PBGC should be a hedge fund is not because the world can't live with hedge funds—that's not it—but because I don't think a government agency can do so, or should try.

Senator HAGAN. I agree with you.

Mr. GOTBAUM. OK. But, the fact is, we do have to. I think that there has to be some mix of fixed-income investments and equities.

Senator HAGAN. Right.

Mr. GOTBAUM. I do not think—although there are plenty of people who, very honestly and for perfectly good reasons, say, "You should be entirely in treasuries,"—my personal view would be that that is too conservative, and that would make the deficit problem worse. I would search for a mix. I would search for a mix that the PBGC—as a government agency, operating to the standards of a government agency—can handle and manage. That's, by the way, the reason why I think that, even after we get into the investment strategy—from my perspective—at least as hard, is going to be

making sure that we implement whatever investment strategy is agreed upon in a way that gives everybody confidence in the agency rather than undermining it.

Senator HAGAN. How are you going to increase the transparency of these investment decisions and the advisory committee's recommendations?

Mr. GOTBAUM. Senator, I can't tell you now, because I actually don't know what the practices are. Let me talk about what I've done in other circumstances, because that may be useful.

When we started the September 11 Fund—the September 11 Fund was a charity jointly founded by United Way and the New York Community Trust. It was, after the Red Cross, the largest single September 11th-related charity. More than 2 million people contributed, almost a million businesses, small businesses and large, and a lot of foundations. And we said, "That's an awful lot."

There was much confusion. People weren't sure who was getting help, people weren't sure who needed it, etc. What we said was, "We've got to do this in a way that fits new standards for transparency." So, we did something that most other organizations have never done, which is, every single one of our grants was disclosed the day it was made. In other words, we said, "Today, the September 11 Fund is giving $50 million to Safe Horizons to meet the immediate financial needs of the victims and their family. Today, we provided X amount to help people recover their jobs," etc. So, one thing we did was that.

Second, I had, not just my board, I had the United Way's board and the New York Community Trust board, and we reported to them continually and consistently.

I can't tell you what the exact means would be, but the fact is, this is all going to require a lot of consultation. This is not something that anybody can do in the dark. I would think that would be true even without the recent history, but, given recent history, we aren't going there.

Senator HAGAN. Well, obviously we have a lot more questions, too, but I believe my time is up.

Thank you.

Mr. GOTBAUM. OK.

The CHAIRMAN. Senator Casey.

STATEMENT OF SENATOR CASEY

Senator CASEY. Thank you, Mr. Chairman.

I want to thank the nominee for his willingness to serve the public again. We're grateful, Mr. Gotbaum.

We're wrestling, I think, with a challenge that we see across the country. This isn't just a challenge faced by the Pension Benefit Guaranty Corporation, it's—for example, my home State of Pennsylvania, we have two, I should say, public pension funds, one for teachers and other educators, as well as State employees, both plans facing, in combination, a multibillion-dollar deficit, the resolution for which—or, the solution to that funding gap isn't on the table yet. No one has a solution, as far as I can tell, but they have to come up with one. This is something both States and the Federal Government is facing.

I guess I have two basic questions. I know you addressed questions about the deficit and others, but the two basic questions I have are: Do you have a sense as to how we can better recognize, ahead of time, plans that have particular problems, so that we can recognize them early enough and have some kind of early warning system in place, and thereby maybe prevent a failure? And the second question relates to, kind of, short-term funding relief.

Could you address the "early-warning" or "recognizing-early" question?

Mr. GOTBAUM. The interesting challenges, hardest challenges, for the PBGC is that they're called on to do their hardest work when plans fail, and they don't know when plans are going to fail. They often don't control when plans are going to fail. My understanding is that the agency has actually just recently changed its reporting requirements on pension plans, in an attempt to get some early warning. Sounds to me like they're trying to do exactly what you suggest, which is—I can't say that I know the details of it, and I definitely can't tell you that I know that it's enough.

Part of what I hope to do in the agency is think about, work with, and then engage with the Congress to make sure that there is a match.

One of the agencies I look at is the FDIC, which has a job which, in part, looks very much like what the PBGC does. When your bank fails, the FDIC steps in and says, "We're going to make sure that you're whole. Don't worry." In order to do their job, they have the tools to keep track, they have the tools to make sure that this obligation doesn't come up and surprise them.

I don't know whether the PBGC has enough of those tools, but that would be how I would think about it.

Senator CASEY. Part of the question would be, both statutory authority plus resources.

Mr. GOTBAUM. Yes, it could be either one. What I've always found is, as I said earlier, when you go into an institution, you find two things. No. 1 is, you find good people trying to do their jobs. And No. 2 is, you find that there are alternate ways of doing things, that haven't been tried, and so you've got to try them. Some of them involve changing procedures, some of them involve changing resources, some of them involve changing people, some of them involve changing just accountability. I don't want to be presumptuous enough to say I know what the mix is, but those are the sorts of things that I would try to do.

On the short-term-funding question, which is a really important question, and one which, I suspect, if you confirm me, will bring me back up here relatively quickly—this is something on which there is not a cookie-cutter solution. Every case is different. Part of the reason why people who want short-term relief are coming to the Congress is because the current administrative procedure for providing funding relief is a long way from perfect and flexible.

As it happens, I've actually applied for funding relief. When I came to Hawaiian Airlines, since this is an important issue, can I spend 1 minute on it? When I came to Hawaiian Airlines, I—when you start into bankruptcy, the company was losing money, we weren't sure how much cash we would have, and etc. One of the first decisions I made, in order to preserve cash, was to go to the

bankruptcy court and ask the court for permission not to make my September 15 pension contribution. And it was a terrible decision. The pilots' union, whose pension plan it was, were outraged, entirely legitimately, because pensions for pilots are their life and their security. It was a terrible decision to make.

Ultimately, the judge decided that, since we were not sure what Hawaiian's finances were and we wanted to make sure we had enough cash to protect the whole company, the judge said, "OK, you can defer the pension plan, for the moment. You can defer the pension contributions, for the moment." We're still paying benefits, etc. That was a miserable, difficult decision. Every single one of these funding decisions is.

That's the reason why it matters. I know we'll be back to discuss it. That's also the reason why I would hope, once I understand more about the process, that we might be able to discuss whether there are improvements in the administrative process, the process within the executive branch, to make that more responsive so that people aren't forced to come to Capitol Hill and clog up your committee.

Senator CASEY. Thanks very much. Thanks for your family's commitment, as well. We know that families have to be committed to public service, too.

Thank you.

The CHAIRMAN. Senator Franken.

STATEMENT OF SENATOR FRANKEN

Senator FRANKEN. Thank you, Mr. Chairman.

I apologize for just getting here a few minutes ago. I was in another hearing, a Judiciary hearing, about follow up to the December 25 bombing attempt.

This is an extremely important issue to me, and is to everybody in the country. I represent Minnesota, and on the Iron Range we have a lot of miners who find themselves working for a long period of time, accumulating a pension, and, I guess it's called "strategic corporate bankruptcy;" this is what they perceive it as—where suddenly the entity that owns the mine will go bankrupt, and they'll default on the pension, and then, a few weeks later the mine reopens under another corporate entity, and they start working again, but have completely lost their pension. It goes to the PBGC. The PBGC gives them 40 cents on the dollar, and they're starting from scratch.

This, I think, goes to the way pensions are treated in bankruptcy. What I was wondering is, How can we balance this? How can we prevent this from happening? How can we treat pension programs a little higher up on the order of who gets paid off in a bankruptcy?

Mr. GOTBAUM. I'm really glad that you asked that question, because I think of it as a really important question, as a person who's——

Senator FRANKEN. Me, too.

Mr. GOTBAUM [continuing] Been on both sides of the issue and been throughout bankruptcy.

There's not a formulaic answer. As you know—and I think, actually, the Constitution provides—bankruptcy priorities are the prov-

ince of the Congress. Let me suggest what I think I can do within the current law, and then raise the question about when the current law gets modified.

I will tell you that, as a person who's been on the other side of the table from the PBGC, they represent retiree interests, the agency's interest, in bankruptcy very competently. They use the tools they have. Most people in business would not admit it, but they respect and are a little nervous because the staff of the PBGC is so good that they can't pull things over on them, in most cases.

I would view my job, if you confirm me to be the director of the PBGC, to make sure that that continues, that it's enhanced, that all of the current authority that they have—because it'll have two effects. One is, it will reduce the deficit. And two is, it will make people think three times before they pull shenanigans like the ones that you described.

If and when the Congress is willing to consider a revision to the bankruptcy priorities and the tools that the agency has in bankruptcy, if you confirm me, I would love to come back and discuss where, in bankruptcy priority, retirees and the PBGC ought to be. That's a discussion which I would love to have.

Senator FRANKEN. From a little bit of your testimony a while ago, it seems there isn't a one-size-fits-all. In this instance, I'm wondering how you make the distinction between a sort of strategic bankruptcy where this is done and the losers are the workers—as a result of shenanigans, which is, I guess, the bureaucratic word.

Mr. GOTBAUM. Actually, I suspect that the people in the PBGC would never use the word "shenanigans."

Senator FRANKEN. OK.

Mr. GOTBAUM. And once, if you confirm me, once I become director, I probably won't be allowed to, either. As a private citizen——

Senator FRANKEN. OK.

Mr. GOTBAUM. Yeah.

Senator FRANKEN. Well, glad you got to use it here.

[Laughter.]

How do you make that distinction? How do we do that when we revisit this? Can you help guide us through that?

Mr. GOTBAUM. Let me defer the technical part to if and when the committee is prepared to consider these issues.

Having been in bankruptcy, having been across the table from the PBGC, I will tell you that what I'm sure the professionals there try to do is look through the forum to try to do the right thing within the constraints of the bankruptcy code.

Normally, for example, Senator, if someone who owns a company puts that company into bankruptcy and harms the retirees or other creditors, etc, normally their equity is wiped away. There are exceptions. There are procedural exceptions, but normally that happens.

Unless and until the committee and, presumably, Judiciary are ready to consider the legal changes, I think the best we can do now is aggressively use the tools that the bankruptcy code already gives the PBGC. I will tell you, Senator, I believe they use those tools pretty aggressively right now. And I would view my job, as PBGC director, just to make sure that they are encouraged to do so.

Senator FRANKEN. Well, I'd love to follow up with you on that.

Mr. Chairman, I'm sorry——

The CHAIRMAN. Thank you very much.

Senator FRANKEN [continuing]. I ran over my time.

The CHAIRMAN. Thank you very much, Senator Franken.

I would just follow up on your question by saying that I won't ask Mr. Gotbaum this question, but just between us, that maybe we ought to be thinking about that the PBGC should not be an unsecured creditor, but should be a secured creditor, which moves them way up the ladder. Right now they're an unsecured creditor. That's why you get 40 cents on the dollar. If everybody else that provides credit or financing to a company knows from the beginning, from the get-go, that PBGC is a secured creditor, they factor that in. I think you'll get more honest financing if that were the case. That's something that only Congress can do, and I'd love to work with you on that.

Senator Enzi.

Senator ENZI. Thank you, Mr. Chairman. I just have a couple of what I hope are quick questions here.

As part of your background material that you submitted to the committee, you state that you must recuse yourself from any matters regarding the Delphi Auto Parts Manufacturer and its pension plans.

As you know, last year the PBGC took over several of Delphi's pension plans for salaried employees. This covers about 20,000 workers and retirees and added $2.2 billion to the PBGC's deficit. How will you be an effective head of the PBGC while you have to recuse yourself from one of the largest deficits taken over by the PBGC and from the management of tens of thousands of pensions?

Mr. GOTBAUM. A very important question. As I mentioned, Senator, because I was peripherally involved with some of the people who ended up owning Delphi, the Office of Government Ethics, the PBGC, and, no shucking, I, too, thought I should recuse myself from participation in any decisions involving Delphi. If we hadn't had the same recent history with the recent director, we might have had a different argument or a different discussion. Given history, we just thought it was better that there be no gray whatsoever on that.

However, what the PBGC director can do—in my view, should do, vis-á-vis Delphi or anyone else—is make sure that the agency aggressively serves, to the best of its resources and its people's ability, the beneficiaries who are, tragically, in the PBGC's care.

No one wants to be in the situation of receiving a PBGC pension. It's a tragedy when it happens. What we can do is recognize that it is a tragedy, and deal with it as sensitively, as promptly, as compassionately, if you will, as possible.

Senator ENZI. OK. I'll probably have a follow up question in writing on that one.

In your statement, you also state that, "We must address the critical issues facing the PBGC, such as funding relief, investment policy, and the deficit, directly and realistically." Could you explain what you mean by "realistically" with respect to the PBGC's deficit?

Mr. GOTBAUM. Yes, sir, I'm happy to do so. I make my life working in complicated situations in which lots of people have different

views of what they want, and trying to fashion solutions that they can live with. Because whether it's funding relief, where you have the question of maintaining the integrity of a firm versus maintaining the security of a pension plan, or whether it's the deficit, where you have tradeoffs between fiscal issues, investment issues, benefit issues, etc, in every single case you've got people who would say, "If only they'd do X, that would solve the problem."

The reason I include the word "realistically" is maybe because I'm a workout guy or maybe because I focus on places that are distressed. There's never a solution that satisfies anybody 100 percent. And so, I always view part of my job as being realistic and saying, "I know you want this, but we can't do that without something else happening. Therefore, how about this?" And that's what I mean by "realism."

There are—especially with pensions, which come due over literally generations—there are some folks who would say, "Well, it's not an immediate problem," you know, "You can worry about it manana." That's why I put in the word "directly," because kicking the can down the road does not mean that the can goes away.

Senator ENZI. Good answer. Sounds a little like my 80-percent rule.

[Laughter.]

Thank you, Mr. Chairman.

The CHAIRMAN. Thanks, Senator Enzi.

I just have one follow up question, but I will submit it in writing, because of the time, and that had to do with multi-employer plans and——

Mr. GOTBAUM. Yes, sir.

The CHAIRMAN [continuing] The fact that they haven't been updated in, I don't know how long, over a decade, and your thoughts on that. But, I'll submit that in writing.

[The information referred to may be found in Additional Material.]

The CHAIRMAN. Do you have anything else that you wanted to say for the record, Mr. Gotbaum, before I bring this to a close?

Mr. GOTBAUM. I just want to say that this hearing has reinforced two things that I already thought I knew. One is that these are issues that are really difficult and complicated, but matter. And two is, I'd really like to try and join you as we help solve them.

The CHAIRMAN. Well, thank you very much. I thank you for your distinguished career, both in the private and the public sector. Thank you for being willing to take this on.

Hopefully, we can move this nomination somewhat expeditiously. However, the hearing record will remain open for 10 days for subsequent written questions by other Senators who, for one reason or another, could not be here.

We thank your family for being here. I can tell from their expressions that Emma and Adam and Jordan had a scintillating——

[Laughter.]

Look at it this way, you're out of school. OK?

[Laughter.]

To your family, thank you. And to your kids—I know these sound like very esoteric and very involved questions, but really what it boils down to, it's just what happens to people in real life, and their

pensions and how they're going to live. That's what it all boils down to. These are real-life flesh-and-blood human beings that are going to retire, or are retiring, and they need support and help, and that's why we passed this law, back in 1974, before we were ever here.

Jacob Javits, Senator Javits, was the author of this. At the time it was passed, he said that this was—he thought—the most significant thing that Congress had done since the passage of Social Security. Quite frankly, I think he might have been pretty close to being right, at that time. I could go on but, nonetheless, that's a very important issue.

I thank your family for being here, and your mother for coming. I appreciate it very, very much.

If there's nothing else to come before the committee, the committee will stand adjourned, subject to the call of the Chair.

[Additional material follows.]

ADDITIONAL MATERIAL

RESPONSE TO QUESTIONS OF SENATORS HARKIN, ENZI, MIKULSKI, BROWN, AND ISAKSON

QUESTIONS OF SENATOR HARKIN

Multiemployer Plans

Question 1. Multiemployer plans provide vital benefits to workers in many industries; they also help tens of thousands of small businesses to provide a retirement for their owners and workers. But unfortunately, some of these pension plans have fallen on tough times and are facing unique challenges. Do you have any experience with the problems facing multiemployer plans in certain distressed industries, and how would you go about identifying solutions? Do you believe PBGC has sufficient authority to help multiemployer pension plans restructure and avoid insolvency, or does the agency need further tools?

Answer 1. Please see answer 2.

Question 2. The current PBGC multiemployer guarantee is $12,870 per year for a worker with a 30-year career (compared with $54,000 for a similar worker in a single-employer plan). This guarantee was last increased more than 10 years ago, and it is not indexed for inflation. Do you believe that Congress should increase (and index) PBGC's guarantee limit for multiemployer plans? Should there be a corresponding increase in premiums?

Answer 2. Multiemployer plans cover some 10,000,000 people and pose a number of complex problems. I understand that the PBGC's authorities with respect to these plans are quite different than with respect to single employer plans. However, as I noted at the committee's hearing, my previous experience with multiemployer plans is limited. As a result, I am not yet in a position to give an informed opinion regarding potential changes.

If confirmed, I would review these plans and programs affecting them through a process of consultation and analysis, working with and through the PBGC staff and others in the Administration and consulting widely with Congress and the affected parties. I would then be prepared to work with the Administration and Congress to suggest and implement improvements.

Pension Funding Relief

Question 3. The stricter funding requirements of the Pension Protection Act of 2006 became effective just prior to the global economic meltdown and the huge drop in the stock market. Congress provided some temporary relief last year and the Treasury also provided relief through regulations, but many employers and unions believe that they need additional time to pay off the equity losses they sustained during the economic downturn. Do you believe that additional funding relief is appropriate? How can Congress target the relief so that it will go only to those plans that really need it?

Answer 3. As I said at the committee's hearing, this is an issue that is both difficult and important. Each decision to allow a deferral of pension funding raises the risk that a plan might remain underfunded and then terminate. At the same time, allowing no flexibility might actually lead to business failures and could also lead other companies to conclude that they cannot afford to undertake defined benefit pension obligations.

Since each company's circumstances and alternatives are different, it may be difficult to target any legislative blanket approach. If confirmed, I would examine whether these conflicts could be better resolved on a case-by-case basis, taking into account the individual circumstances. This approach could involve establishing a more responsive administrative process and the ability to negotiate individual arrangements that reflect the varying circumstances in which different companies find themselves.

GAO & IG Oversight

Question 4. GAO has identified a number of problems in PBGC's governance and reporting structures; for example, its board of directors (comprised of the Secretaries of Labor, Treasury, and Commerce) is too small, has no mechanism for gathering information from the PBGC, and does not retain institutional knowledge after a change of presidential administration. A recent GAO report on the General Counsel and Chief Counsel offices indicated that there are organizational problems and inconsistent legal advice within PBGC. PBGC has also been the subject of several re-

cent IG reports that have focused on the need for more oversight of PBGC's contracting processes, more oversight of PBGC's investment policy, and on serious weaknesses in PBGC's IT systems. What changes will you make to ensure that recommendations by GAO and the IG are implemented? Will you review PBGC's organizational structure to determine whether a single legal officer should report to the Director?

Answer 4. If confirmed, I will review each of GAO's recommendations, and likely meet with GAO officials to discuss them in further detail. As an outside evaluator, GAO often has a useful perspective on improving management and process. Prior to actually being inside the agency, meeting the people, and examining the processes myself, I cannot determine whether I would agree with and seek to implement GAO's recommendations.

The PBGC Inspector General is in a different position than GAO because it is within the agency and generally has access to more detailed information. Furthermore, IGs often focus more on issues of compliance with law or regulation than general questions of management or organization. As a result, if confirmed, I would plan to move quickly to determine how to implement the IG's recommendations.

Preventing Pension Failures

Question 5. When the Senate undertook pension reform a few years ago, it passed legislation that would have allowed PBGC to negotiate alternative payment plans for struggling companies. Do you think this is the sort of concept that the PBGC can and should implement? What additional tools does PBGC need to try to stop pensions from failing? Do you have any other ideas that would help companies keep their plans instead of turning them over to PBGC?

Answer 5. This issue is a part of the challenges that are faced in funding relief generally: ideally there should be discretionary authority to negotiate funding relief that is accompanied by the ability to protect the interests of pension beneficiaries. This would require both the legal authority to negotiate on a case-by-case basis and the organization resources, training, and judgment to do so.

While there are methods that might discourage voluntary terminations, these would inevitably involve compromises among various interests and therefore should be undertaken only after deliberation by the Congress and the Administration. One could, for example, change the rights in Chapter 11 of the PBGC and/or plan trustees. Alternatively, one could allow risk-adjustment of premiums, to encourage more conservative behavior by companies and avoid rewarding more speculative practices.

As I noted in the hearing, I believe that defined benefit plans are, for most people, a superior way to protect retirement. If confirmed, I would appreciate the opportunity to join these deliberations and search for ways to preserve these plans.

PIMS Pension Insurance Modeling System

Question 6. PIMS is a stochastic simulation model that PBGC developed to make annual financial statement projections to provide a better understanding of the range of financial risks faced by PBGC. It is used by Congress, the Administration, the Congressional Budget Office, the Joint Committee on Taxation, the Treasury, and the Office of Management and Budget to make estimates of the budgetary impact of legislative proposals. Pension industry representatives considered PIMS a "black box" because PBGC has not made the modeling system available to outside reviewers. Last fall, PBGC representatives said they planned to share the model with pension industry actuaries by the end of the year. That has not happened yet. When does PBGC intend to make PIMS available for outside review?

Answer 6. As I am not inside the agency, I cannot speak for the PBGC. If confirmed, my goal will be to begin an outside review of PIMS within 90 days.

QUESTIONS OF SENATOR ENZI

Transparency

Question 1. President Obama has stated his support for government transparency during his time in the U.S. Senate and campaigned on a promise to make the Federal Government more transparent. What is your personal philosophy on transparency of government officials and disclosure of information to the public and people's representatives in Congress? If confirmed, what plans do you have to enhance transparency and disclosure to better ensure accountability at Pension Benefit Guaranty Corporation (PBGC)?

Answer 1. Both in government and in business, I believe strongly that the best way to improve performance is keep people accountable for their actions. In each place I have worked, I have found different ways to do so. When I was running Ha-

waiian Airlines, we started reporting our performance to the U.S. Department of Transportation. At the September 11th Fund, we listed every grant on our Web site. At the Department of Defense, we surveyed the communities in which we worked. If confirmed, I will work to implement comparable mechanisms to increase transparency and hold the agency accountable for its actions.

Full Faith & Credit

Question 2. During your confirmation hearing you indicated that you were unclear as to whether the PBGC is backed by the full faith and credit of the United States government. Would you please clarify your response? Is the PBGC backed by the full faith and credit of the Federal Government?

Answer 2. ERISA specifies that obligations of the PBGC are not obligations of the U.S. Government.

Investment Policy

Question 3. In recent years, the PBGC investment policy has come under considerable criticism. Initially, the investment policy was viewed as too conservative and the PBGC missed opportunities in the securities market. Then the PBGC switched to a more diversified portfolio strategy however that strategy was about to begin when the economic downturn happened. Professional asset managers tell both corporations and individuals that they should adopt investment strategies for investing retirement assets from a long term perspective. The asset managers typically advise a diversified portfolio for long term investing. As the PBGC Board will have to address the PBGC investment strategy, if confirmed, what investment approach will you recommend the PBGC pursue?

Answer 3. As I said at the committee's hearing, I believe my own views on investment policy should be subordinate to:

- The need to develop an investment program that can be supported by the differing views represented on the PBGC Board and the Congress and others with interests in the PBGC;
- The need to have an investment program that can be implemented accountably, legally, and in a manner consistent both with private sector best practices and public procurement, reporting and other processes.

With those priorities established, I believe that a diversified portfolio can be implemented. There are many models for determining the ideal portfolio. I would start with two presumptions:

- That the PBGC should not be a government hedge fund, that the agency possesses neither the skills nor the tolerance for risk that characterizes such investment funds;
- That neither should the PBGC invest only in Treasury instruments, and that to do so would both result in a greater deficit and would keep the PBGC from understanding the investment issues that the plan sponsors face.

I think it is also important to note that the task of implementing any policy is at least as important as the policy itself. If confirmed, once a policy is established, I would work to ensure that the PBGC's investment decisions and oversight are in accord with both private sector best practices and the special accountability and processes of government.

PIMS

Question 4. Over the past few years, the PBGC has been criticized for making the Pension Insurance Modeling System (also known as PIMS) a virtual blackbox and denying requests to make the actuarial equations and/or variables for review. This model is relied upon by the PBGC, CBO, OMB, Congress and policymakers to determine the financial health of the pension system and of the PBGC. However, the calculations coming from the PIMS model have been erratic especially as Congress was drafting the Pensions Protection Act of 2006 and the Worker, Retiree, and Employer Recovery Act of 2008. Last year, senior PBGC officials announced that they would make the PIMS model available to the actuarial community however this exchange of information does not appear to have occurred. Do you pledge to make PIMS transparent and available to the actuarial communities? I would like a status report within 90 days of your confirmation about the status of your commitment.

Answer 4. If confirmed, my goal will be to begin an outside review of PIMS within 90 days.

Factors Affecting Offering of Defined Benefit Plans

Question 5. The number of companies offering defined benefit retirement plans has been steadily decreasing for years. This can be attributed to both the recent decline in the economy and changes made by the Financial Accounting Standards Board (FASB) have made to update the accounting standards for pensions and retirement health care. Do you foresee any other events in the coming years that will have a significant effect on whether companies will continue to offer defined benefit plans?

Answer 5. The factors that committee members raised at my confirmation hearing and in its follow-up questions, e.g. changes in the economy and in the circumstances of sponsors, seem to be the most important. If confirmed, I would look forward to working with the committee and others to deal with these important issues.

Question 6. In 1985, there were 112,208 single employer pension plans in existence according to the PBGC's 2008 Data Book. For 2008, the PBGC reports that there were only 27,887 plans left. What should be done to change the single employer pension system to make it a less burdensome regulatory scheme and a less volatile system for the pricing of plan assets so that companies will be encouraged to offer pension plans for their employees?

Answer 6. As I mentioned at the committee's hearing, I am not yet in a position to have detailed views on these very important questions, but think that several approaches should be considered:

- Plan sponsors should not feel that they are endangering their firm's existence by offering a defined benefit plan. Dealing with these concerns might relate to both finance and accounting.
- We should make sure that potential plan participants understand the advantages of a defined benefit plan. This is an area where education and communication might be very helpful.
- Academics and others might be able to develop methods to overcome portability challenges.

As we discussed at the committee hearing, these are issues that will necessarily require congressional involvement. If confirmed, I would look forward to working with the committee on them.

PBGC Deficit

Question 7. Back in the mid-1990's while you were at the Treasury Department, you authored at least one and possibly more papers on Fannie Mae and Freddie Mac. At the time, the possibility that these two entities would end up in Federal receivership appeared remote but some argued that they still posed a systemic risk to our system. Today, as we all know, the America taxpayers own both entities. As the PBGC is on the GAO's "High Risk" watch list, it is clear that its deficit cannot be ignored. What are your plans to reduce the PBGC deficit?

Answer 7. As I noted at the committee's hearing, most of the factors that affect the PBGC's deficit are not within the PBGC's control:

- Congress controls premium decisions, funding, and benefit levels.
- The PBGC's board controls investment policy, though obviously not investment results.
- Plans sponsors often control, or at least affect, the decision to terminate.

For these reasons, any efforts to resolve the PBGC's deficit will necessarily involve the Congress, the Administration, and those with interests in retirement security. If confirmed, I would welcome the opportunity to engage with these parties and determine whether, working together, we can make progress.

Multi-Employer Plans

Question 8. For 2009, 90 multi-employer pension plans filed statements with the Department of Labor that the plans were in critical status while an additional 36 filed statements that the plans were in endangered status. Also, 280 multi-employer pension plans declared that they were taking relief pursuant to the Worker, Retiree, and Employer Recovery Act of 2008 to delay designation as an endangered or critical funded plan. The PBGC only guarantees up to $12,870 in annual payments to a member of a multi-employer plan in contrast to $54,000 for members of a single-employer plan. Do you think the current system adequately oversees and insures multi-employer plans?

Answer 8. Please see answer 10.

Question 9. Administration officials have expressed the need to explore the expansion of multi-employer or similarly pooled plans. Please explain whether you think it would be appropriate to expand the use of multi-employer or pooled plans under current conditions. Would these new pooled plans under consideration be insured by PBGC, and if so would they be insured as multi-employer plans and subject to the same premiums? As an overall government policy, should we push for expansion of multi-employer plans over encouraging the expansion of single-employer defined benefit plans?

Answer 9. Please see answer 10.

Question 10. Dozens of multi-employer plans have fallen below the 60 percent threshold for funding purposes and have virtually no chance of recovery because of declining companies and/or industries. Would you favor the termination of such plans and have them taken over by the PBGC, some type of government intervention, and/or allowing them to remain significantly underfunded for extended periods of time to allow for a potential recovery? Do you think changes should be made to withdrawal liability for employers withdrawing from multi-employer plans, and if so, what changes would you propose?

Answer 10. Multi-employer plans offer benefits in terms of portability that are already helpful in many industries. Changing the PBGC's relationship with them would have significant implications for the PBGC, for its finances, and perhaps for its ability to provide benefits. For these reasons, this is an area that will require study, not just by the Administration, but also by the Congress and the retirement community. If confirmed, I would welcome the opportunity to work with this committee and others to see what, if any, changes in the PBGC's authorities and involvement would be feasible and productive.

Union-Sponsored Plans

Question 11. Recent reports suggest almost half of the nation's 20 largest unions have pension plans that Federal law classifies as "endangered" or in "critical" condition due to being underfunded, based on Federal actuarial reports. In your opinion, what is the duty of these unions to fund their pension plans? Do the unions have a fiduciary duty to ensure that union members' dues go to fully fund union members' retirement plans?

Answer 11. Plan sponsors—whether they are employers, unions, or joint trustees—should meet their obligations. As the debate over funding relief shows, some sponsors are caught in between their obligations to their retirees and their obligations to other stakeholders. Through an appropriate administrative and/or regulatory process, these important but conflicting goals might be reconciled in a way that preserves the security of retirees and the integrity of sponsors.

Consulting Work

Question 12. Please describe the nature of your work as a consultant and/or your firm's work on the Delphi bankruptcy for Silver Point and Elliott Management. Did you or your firm have any role in negotiating with General Motors, the United Auto Workers and/or the Federal Government regarding the bankruptcy and/or the hourly or salaried employees' pension plans?

Answer 12. Neither I nor Blue Wolf Capital had any role regarding any negotiations with the PBGC or any other party concerning the hourly or salaried employees' pension plans. I did advise Silver Point and Elliott Management in their negotiations with General Motors regarding a joint effort to bring Delphi out of bankruptcy, and then assisted in implementing their agreements.

Question 13. Within the past 10 years, have you performed any work for organized labor unions that did not involve the investment of union pension plan assets?

Answer 13. No.

Question 14. As part of your background materials that you submitted to the committee, you state that you must recuse yourself from any matters regarding Delphi auto parts manufacturer and its pension plans. As you know, last year the PBGC took over several Delphi's pension plans for salaried employees. This covers about 20,000 workers and retirees and added $2.2 billion to PBGC's deficit. How will you be an effective head of the PBGC while you must recuse yourself from one of the largest deficits taken over by PBGC and from the management of tens of thousands of pensions?

Answer 14. These are important questions—questions that will be central challenges to the PBGC and its Director—but my recusal would not apply to either one.

If confirmed, my recusal would not limit my involvement either with responding to the PBGC's deficit or its delivery of pension benefits.

As I mentioned at the committee's hearing, I believe it is important to restore the PBGC's reputation for integrity and that doing so means I should recuse myself in cases where there is an appearance of conflict. For that reason, the PBGC ethics officers, the Office of Government Ethics, and I all agreed that I should not participate in any decision making involving Delphi for a period of 2 years should I be confirmed. According to the PBGC staff, this recusal is unlikely to affect either my actions if confirmed or PBGC actions, because the policy-level decisions concerning Delphi (e.g., whether to terminate the plans) were already made last year.

What I believe I can and should do is to take steps to ensure that PBGC beneficiaries—whether from Delphi or anywhere else—are treated with the professionalism and compassion that we would want for ourselves if we were the victims of such a tragedy. From this point forward, the compassionate and timely delivery of those benefits to thousands of Delphi retirees will be the PBGC issues of most importance, and I believe my recusal will have no effect on that at all. Neither, if I am confirmed, will my recusal have any effect on challenges that the PBGC, and this committee and the Congress, face as a result of the PBGC's deficit.

Inspector General Role & Issues

Question 15. How do you plan to interact with the PBGC Office of Inspector General (OIG)?

Answer 15. Please see answer 16.

Question 16. PBGC has a significant number of OIG audit recommendations where corrective action has yet to be implemented. How do you believe an agency can best work with its Inspector General to ensure effective and efficient program operations?

Answer 16. I have worked with Inspectors General for many years and in many agencies. My longstanding practice with IGs is to respect their oversight function and also attempt to take advantage of their independent views of management and performance. In the oversight role, an IG's team must be able to satisfy itself and others that they have had full access to people and information, and full access to report to the public.

IGs also can play a role advising on management and organizational issues within an agency. In my previous Federal service, I've always found IG recommendations to be worth careful consideration. An Inspector General's role in advising on such issues is more complicated because IGs may feel that their obligation to the broader public precludes their giving private advice, and issues of management and organization are often matters of judgment about which even knowledgeable and well-intentioned people can disagree.

Question 17. How will you address allegations of serious executive misconduct and will you commit to requiring that all such allegations of misconduct on the part of senior level PBGC offices be referred to the OIG? When, if ever, would you choose to investigate or review such allegations of serious misconduct internally within PBGC, without referral or consultation with the Inspector General?

Answer 17. I have always been committed to the highest standards of public integrity. The OIG plays a critical role in maintaining those standards, and if confirmed I would expect to involve the Inspector General in all cases of serious misconduct. However, maintaining the integrity, performance, and quality of operations of an agency should not be solely the responsibility of the IG—it is also a central and essential task of management. The IG is an important source of independent and professional review, particularly in cases of potential misconduct, but should not be a substitute for active oversight by management.

Question 18. Recent proposed legislation changes the Inspector General's reporting relationship to the Board, making the Inspector General subordinate to the PBGC Director. What importance, if any, do you place on the Inspector General's current ability to communicate directly with the PBGC Board? If Congress makes changes to the reporting structure that result in the Inspector General reporting directly to you, what steps would you take to help protect the Inspector General's independence and ability to meet the mission set forth in the Inspector General Act as amended in 2008?

Answer 18. I have worked with IGs for many years and in many agencies. I fully respect their independence. My view is that the integrity of Inspectors General can and must be maintained no matter what the official reporting relationship happens

to be. In particular, if the IG has concerns about the Director, I would expect the IG to take those concerns to the Board.

General Goals & Objectives for PBGC

Question 19. Given your extensive background in both the public and private sectors, how will you use this unique mix of experience to enhance PBGC's culture? To enhance transparency at PBGC? To enhance accountability?

Answer 19. As we discussed at the committee's hearing, I believe that the PBGC must carry out its challenging responsibilities both accountably and compassionately. How one does so necessarily varies from organization to organization. Nevertheless, I believe the following points apply:

• Based on my own experience and the perceptions of others, the PBGC is a very professional organization engaged in a difficult set of tasks. With such a team, transparency and accountability reinforces what is already a strong desire to serve.

• My understanding is that, thanks to the Government Performance and Results Act, the PBGC already benchmarks its performance in several areas, and reports on its performance annually. Based on my experience both in business and government, efforts to benchmark are important because they provide concrete goals for performance. I do not yet know enough about the benchmarks the PBGC has used in the past, but am certain that appropriate benchmarks are essential. If confirmed, one of my earliest tasks will be to review, understand, and, if appropriate, revise those benchmarks.

• The reporting of performance is equally important. For an already professional organization, doing so offers an incentive for improvement and an acknowledgement of success.

• Soliciting feedback is also important, especially where an organization does not receive daily feedback from its constituencies. When I was running The September 11th Fund, we required our grantees to participate in a survey to enable victims to assess what efforts were or were not effective. My understanding is that the PBGC already undertakes some such surveys. If confirmed I would continue, and perhaps expand, that effort.

Question 20. How do you propose to help PBGC balance the seemingly competing interests of the needs and rights of present and future retirees, the desire for corporate employers to continue sponsoring defined benefit plans, and the protection of PBGC's trust fund's ability to meet its future benefit liabilities?

Answer 20. As we discussed at the committee's hearing, the challenges with which the PBGC deals are both complicated and conflicting. I do not think these challenges can be resolved either by fiat or formula, but must be worked out, in some cases on a generic basis, in others case-by-case, but usually through consultation and compromise. If confirmed, I would welcome the opportunity to work with the committee and all other stakeholders on these matters.

Use of Information Technology

Question 21. Please provide some insight into your overall approach to information technology, including its importance in assisting PBGC in meeting its mission and future strategic aspirations.

Answer 21. The revolution in IT has enabled organizations both in government and business better to serve their constituencies, to keep track of their resources, to educate the public and sometimes also get home to spend time with their families. I suspect all these will be true for the PBGC.

QUESTIONS OF SENATOR MIKULSKI

Contracting Policy

Question 1. PBGC's contracting policy was a major topic at your hearing—especially contracting for investment advice and asset management. As you correctly indicated, first and foremost we have to restore integrity and establish communication between all parties, especially Congress. But I also have another concern about PBGC's contracting activities. I have heard from constituents that the previous Director refused to contract with smaller financial firms and sought to work exclusively with large Wall Street firms. Of course these are the same companies that had completely inadequate risk controls and virtually no insight into the long-term problems facing the economy and as a result put the world's financial system in extreme danger. Additionally, even if these firms had proved competent, failing to consider minority and women owned financial companies deprives the PBGC of the diversity of views that is the hallmark of a robust investment strategy, and also runs

contrary to Congress' stated intention to provide opportunities for these companies to do business with their Federal Government. There are competent investment professionals throughout the country and in my state of Maryland who followed sound principles and weathered the difficult economic conditions of the last 2 years far better than the big banks on Wall Street that PBGC has historically turned to for advice. The 44 million Americans whose pensions are covered by the PBGC represent a diverse cross-section of America—PBGC's investment contracts should reflect that diversity. If confirmed as Director, would you make it a priority to procure a variety of asset management and advisement services, including from firms owned by minorities and women?

Answer 1. As we discussed at the committee's hearing, the first priority must of course be to assure the integrity of the agency's investment and other activities and to provide confidence to pensioners, the Congress, and others that these critical responsibilities are done competently, compassionately, and in a way that is beyond reproach. Once that has been accomplished, other important goals can be considered.

I share Congress's concern that business participation in Federal activities, including PBGC's programs, should not become a private club. For these reasons, the Congress has encouraged agencies where possible to open up opportunities to smaller businesses and to businesses founded by women and minorities that, for too long, have not been allowed to be "members of the club." In the case of the PBGC's investment programs, the appropriate range of investment managers must be determined with attention to the agency's ability to competently and reliably oversee these managers. If the agency can reliably manage a greater number of contracts and diversity of responsibilities, while still assuring the Congress and others that it also meets the highest standards of public integrity, then it should do so.

Bethlehem Steel

Question 2. As I mentioned at your hearing, the plight of the men and women who worked for Bethlehem Steel in Sparrows Point is a tragedy I carry with me every day. I never forget them, and will never stop fighting for them. You have experience handling bankruptcies and corporate re-organizations and mentioned that this experience extends to the steel industry. Can you outline in detail what role if any you played in Bethlehem Steel's bankruptcy and its decision to terminate its pension plan? Were you an advisor to the United Steel Workers, to the managers and owners of the company, or to its creditors? Did you receive compensation from anyone for work involving Bethlehem Steel prior to the termination of its pension plan in 2003? If yes, then from whom?

Answer 2. In the 1980s, I was a financial advisor to the USWA in several distress situations, but not at Sparrows Point, and long before Bethlehem Steel filed for bankruptcy and terminated its pension plan. I did no work for anyone involved in that tragedy.

Relationship With Unionized PBGC Workers

Question 3. Many PBGC employees are my constituents, and they have told me that there are significant problems in the PBGC workplace. Most concerning to me are the allegations that PBGC management is not following the rules and conditions negotiated in collective bargaining agreements with unionized employees. PBGC's job is too important to be undermined by a hostile workplace. What would you do to promote a high-performing organization where employees can be confident that their rights will be respected and their contributions will be appropriately valued?

Answer 3. If confirmed, I would work to ensure that PBGC employees are recognized and respected for their efforts and the results they achieve, as I have done in other organizations. The primary obligation of a manager is to ensure that the organization performs. Service organizations like the PBGC depend critically on the diligence, competence, and compassion of their employees to do so.

QUESTIONS OF SENATOR BROWN

GAO Reports

Question. In August 2009, the GAO recommended that the PBGC develop a better strategy for processing complex plans in order to reduce delays, minimize overpayments, improve communication with participants, and make the appeals process more accessible. I continue to receive calls from retired steelworkers struggling to understand how the reductions in their pensions were calculated. I am concerned that with the complexity of the Delphi plans, we will see the problems that the GAO

identified repeated. Please explain how you will address the GAO's recommendations as director of the PBGC.

Answer. As we discussed at the committee's hearing, we should all recognize that those who depend on the PBGC for their pensions have been victims of tragedy. One of my goals, if confirmed, will be to ensure that the agency carries out its complex responsibility competently and compassionately.

As you know, pensions are as complicated as they are important. For that reason, achieving accuracy, clarity, and speed simultaneously is an extraordinary challenge. Because I am not currently inside the agency, I can offer only general observations as to how I think the PBGC could do so. Generally, one tries to determine whether better performance requires additional or different resources or people, whether processes can be reformed, and whether communication can be increased or improved. In addition, I've often found that simply being transparent about results can help improve results.

I've worked in many organizations, and I have found two things to be true in every one:

In each organization, there are dedicated hardworking people trying to achieve their mission; and

In each, there are alternate ways to do things better.

If confirmed, I look forward to working with the clearly very talented and dedicated PBGC staff to achieve this.

QUESTIONS OF SENATOR ISAKSON

Funding Relief

Question 1. Numerous employers have contacted me asking for pension funding relief. As you know, the provisions of the Pension Protection Act became effective in 2008, the same year that the stock market deflated. They argue the confluence of massive paper losses on asset values, unusually low interest rates, and the new rules have resulted in a spike in required contributions that is not sustainable for plan sponsors. Others have been critical of proposals to grant plan sponsors more time to pay back their 2008–2009 losses, saying that it will place the PBGC's single-employer insurance system at risk. With which side do you agree? Why?

Answer 1. As I noted at the committee hearing, I do not yet have a view. Both concerns are clearly legitimate. If confirmed, I am committed to working with the committee and the Congress to find a solution that works.

Permitting Termination/Freezes

Question 2. Some companies with fully funded plans have told me that they would prefer to terminate their plans, but find it difficult under current PBGC policy. Should companies with fully funded plans be allowed to terminate at-will?

Answer 2. As one who thinks that defined benefit programs serve many individuals best, it is of course distressing to think that companies could at any moment decide they will no longer offer those benefits, even to individuals who may have worked for years in reliance upon them. I do not have fixed views on this matter, but it may be valuable to explore whether adequacy of funding should be the only standard by which such an action would be judged.

Question 3. In recent years, many plan sponsors have ″frozen″ their defined benefit pension plans. Some have opted for hard-freezes whereby there are no new entrants into the plan and there are no accruals for any participants. Others have opted for a "soft-freeze" whereby there are no new entrants but the current workers can still accrue benefits under the plan. In both cases, the plan sponsor continues to make contributions to keep the plan in compliance with ERISA and the Internal Revenue Code. What is your position on plan freezes? Should companies be allowed to freeze their plans at-will?

Answer 3. Here, too, there are important interests on both sides. If confirmed, I would work to develop compromise solutions that would address the legitimate concerns of both workers and plan sponsors.

Question 4. What is your position on "benefit restrictions" when a plan is underfunded? Some regard benefit restrictions, including prohibitions on benefit increases, lump sum distributions, or continued accruals, as a way to "stop the bleeding" in a severely underfunded plan. Do you support or oppose the use of benefit restrictions for underfunded plans?

Answer 4. This is a difficult question, because it involves tradeoffs that affect innocent people—current retirees and current employees depending on a plan for their retirement. Neither group was responsible for the actions that resulted in under-

funding. It seems unfair to penalize retirees for actions, blameworthy or not, taken after they retired. At the same time, holding current or imminent retirees harmless in a circumstance under which prospective retirees, some also with long service, might face dramatic reductions in benefits also seems unfair. In such circumstances, there might be approaches, e.g., limitations on lump sum distributions, that could be a fair compromise. Clearly, any such approaches should be debated carefully and extensively. If confirmed, I would engage with the committee and other stakeholders to seek appropriate and fair solutions.

Investment Policy

Question 5. Recently the PBGC's investment strategy has come under attack. Notwithstanding abuses of personal relationships, the debate has come down to investments in equities versus bonds. Given your experience with investment management, do you believe the PBGC should focus on liability driven investments?

Answer 5. As I noted at the committee's hearing, I do not think the PBGC should rely solely either on equities or fixed income investments. I think more thought and analysis will be necessary before coming to a conclusion about how the agency's liabilities should affect its investment decisions. One could argue, for example, that the PBGC's contingent obligations are correlated with both substantial economic and asset value declines; if so, one might conclude that fixed income investments would be an inadequate hedge to offset such losses. However, an alternative investment strategy might require of the PBGC investment management experience and skills it simply does not have.

Establishing Differential Premiums for Greater Risk Plans

Question 6. Should defined benefit pension plans be required to be funded only with risk-free or very-low-risk investments? Do you consider plans that invest in equities to be putting your agency at risk for greater liability? Some have suggested that if a sponsor invests in equities, it should have to pay an additional premium to cover the greater risk to which it has exposed the PBGC. Do you agree?

Answer 6. I do not think that either the Congress or the Administration should impose a specific investment policy on all defined benefit plans. But that does not mean that the government should ignore portfolio risk either.

Private insurers—and other government agencies with interests affected by portfolio risk, such as the FDIC—have long paid attention to risk both in setting premiums and in other ways.

My understanding is that this has been an ongoing conversation between the PBGC and the Congress (which has retained to itself the power to set PBGC premiums). If confirmed, I would welcome a chance to join the conversation, and help determine whether there are better ways to take risk into account. Doing so could have important advantages: it could provide an appropriate incentive for plan sponsors to be more careful when they take risk into account, and it might as a result avoid some terminations that otherwise would occur.

Multiemployer Plans

Question 7. What is your assessment of the health of multiemployer pension plans? What is the PBGC doing to educate participants about the underfunding of multiemployer pensions? What steps, if any, will you take in communicating with pension trustees and others with fiduciary obligations when multiemployer plans fall into endangered status?

Answer 7. Please see answer 8.

Question 8. A coalition of groups with an interest in multiemployer plans have recommended that benefits for "orphans" in those plans should be covered by the PBGC. This is referred to as "partitioning". An orphan is a vested plan participant whose employer is no longer contributing to the plan either because they are no longer in business. What is your position on this idea?

Answer 8. Multiemployer plans provide retirement security to millions. My understanding is that their health is appropriately a major focus of the PBGC. As this committee knows, significant changes in the PBGC's coverage have important financial implications. For that reason, any change in coverage must be carefully analyzed and its implications considered, both by the agency and the Congress. If confirmed I would oversee this effort at PBGC and work with the Congress to determine what approaches make sense and are feasible.

Union-Negotiated Pensions

Question 9. A recent study from the Hudson Institute concluded: "Union-negotiated pension schemes consistently maintain dangerously low ratios of assets to liabilities. This is especially obvious when they are compared to pensions provided by private companies to non-union workers. Although nearly 90 percent of non-union funds had at least 80 percent of the funds they need, only 60 percent of union plans were at or above that mark. Although unions may promise their members terrific benefits, they do not deliver." Indeed, the industries with the most terminations (airlines, steel, automobile manufacturing) are also some of the most heavily unionized. Do you agree with the conclusion of the Hudson study that "collective bargaining for pensions tends to result in promises larger than are affordable?"

Answer 9. I have not seen this study and so cannot comment on its methodology or accuracy. It is true that some, though certainly not all, of the more distressed sections of the private economy are organized. However, retirement security is far from being only a union concern: in my experience managers, whether there is a union or not, are concerned with it, too. When a retirement plan is underfunded, it hurts everyone.

My views on this are quite traditional: If a company makes a commitment to its employees, whether they are represented by a union or not and whether the commitment relates to retirement or not, that commitment should be kept.

Transparency

Question 10. Some have shared concerns with me about a general lack of transparency at the PBGC, particularly with respect to the way the agency projects or models its deficit and losses. If confirmed, will you commit to increased transparency in the way that the agency projects its deficit and losses? Will you commit to making the funding statuses of plans, including multiemployer plans, available and searchable on your Web site?

Answer 10. If confirmed, I would certainly work to keep a high standard of transparency and accountability. I have been committed to these principles throughout my career.

My understanding is that Congress has limited collection by the PBGC of some information on plans and limited dissemination to the public of some of the information the agency does have. I would, if confirmed, look forward to working with the committee to change this and enable the PBGC effectively to inform both Congress and the public at large.

PBGC Deficit/Bailout

Question 11. In your opinion, will a taxpayer bailout of PBGC be necessary at any time in the next decade?

Answer 11. No.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]

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