S. HRG. 110–727

NOMINATION OF CHARLES E.F. MILLARD

HEARING

BEFORE THE

SUBCOMMITTEE ON RETIREMENT AND AGING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

NOMINATION OF CHARLES E.F. MILLARD, OF NEW YORK, TO BE DIRECTOR OF THE PENSION BENEFIT GUARANTY CORPORATION

SEPTEMBER 6, 2007

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C O N T E N T S

STATEMENTS

THURSDAY, SEPTEMBER 6, 2007

ADDITIONAL MATERIAL

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NOMINATION OF CHARLES E.F. MILLARD

THURSDAY, SEPTEMBER 6, 2007

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

The subcommittee met, pursuant to notice, at 10:05 a.m., in room SD–628, Dirksen Senate Office Building, Hon. Barbara Mikulski, chairman of the subcommittee, presiding.

Present: Senator Mikulski, Kennedy, Isakson, and Enzi.

Also Present: Senator Murkowski.

OPENING STATEMENT OF SENATOR MIKULSKI

Senator MIKULSKI. The Subcommittee on Retirement and Aging will come together. Today we meet in a confirmation hearing to fill the post of the Executive of the Pension Guarantee Corporation, and to hold a confirmation hearing for Mr. Charles Millard.

Ordinarily, I'd wait for Senator Burr, my very able and Ranking Member, but there are votes that will begin at 11 a.m., so in the interest of time, I am going to proceed with the concurrence of the Ranking Member of the full committee.

What we're going to do is, I'll make a statement, I will turn to Senator Enzi, and then Senator Isakson, if it is okay with you, then I'll go right to Mr. Millard. We're going to go under the 5-minute rule so we can all get our questions in. We will not return after the 11 o'clock votes. Any other questions that we have, I will suggest to my colleagues that we submit them in writing. Does that sound like a good way to go? Because we want to hear from you and have a chance for give and take.

This is a very important hearing because it's the first time a nominee for PBGC Director has been up for confirmation of the Senate. This is one of the reforms made by the Pension Protection Act that we all passed last year, and it was part of the promise to American workers to do a better job insuring their pensions. And I am proud today that we are making good on that promise.

PBGC has a very big job and insures pensions of 44 million workers and pays benefits to 700,000 retirees, making sure that the retirement benefits that they were promised, or at least a retirement benefit will be given, not always what they thought we were going to get. We are here today to evaluate Mr. Millard's ability to fulfill these responsibilities.

PBGC has had some difficult years; it's assumed responsibility for the largest failed pensions in American history, both steel and airlines. It's dealing with challenges of opportunities related to management, an $18 billion deficit. And one, how are we going to meet the needs—the current needs—the $18 billion deficit, some of the issues the GAO responded in terms of management.

When I look at the criteria for confirmation, I always ask, No. 1, does the nominee have integrity to lead the agency? Has competence in the field for which the agency has jurisdiction? And a commitment to the mission of the agency? And we'll be talking about that with you, Mr. Millard.

Retirement security is one of the most important issues we face today, and last year my colleagues and I fought hard to really have a legislative framework that would deal with protecting America's pensions. Strengthening the PBGC was a big part of keeping this commitment to workers and retirees. And I must say, we worked on a bipartisan basis and we did a darn good job in moving that bill.

Well, as you know, PBGC has three goals: encourage more companies to do defined benefits, provide pensions to retirees when companies they work for go out of business—this has been a big buck issue here—and keep premiums as low as possible.

We are going to listen to all that, and also there will be some other issues of particular interest to me. In the interest again of time, I am going to ask unanimous consent that my full statement goes into the record.

Senator Enzi, do you wish to make a statement?

OPENING STATEMENT OF SENATOR ENZI

Senator ENZI. Thank you, Madame Chairman.

Slightly more than a year ago, the President signed into law the Pension Protection Act which made the most sweeping changes in our Nation's retirement savings laws since the enactment of ERISA and the establishment of the Pension Benefit Guarantee Corporation (PBGC) in 1974.

The driving force for getting the law through Congress was the pending funding shortfall of the PBGC, the spike in the number of companies that were falling behind on funding their pension obligations and the potential exposure of the Pension Insurance Program. Even though there are provisions in the Pension Protection Act that have yet to go into effect, there is little doubt that the law has made a vast and fundamental improvement in the soundness of employees' pensions throughout the Nation.

Today, we review the nomination for the Director of the PBGC, a newly-confirmable position, pursuant to the Pension Protection Act. Now, part of that came about because we had some difficulty—as the committee working on the Pension bill—in getting the information we needed to do the bill. That has nothing to do, of course, with the current nominee, but it does have to do with the fact that we must now confirm the position.

We took the important steps to elevate the position because the Director is the steward for the PBGC's very substantial trust fund assets. The Director must possess the management skills and financial background to look into the future and position the Corporation on the right course to insure that the billions of dollars of workers' retirement savings are there in case they need them.

I do foresee events on the horizon that will determine whether companies continue to offer defined benefit plans to their employees. For example, the Financial Accounting Standards Board will be releasing, later this year, proposals to update and revise the accounting standards for pension plans and retirement health care. These proposals could have broad ramifications on how companies must account for pension plans on their financial statements. Also, the PBGC Director must take care to implement practices, policies and procedures that do not discourage companies from offering defined benefit plans to their employees.

With respect to its corporate structure, the PBGC is unique within the Federal Government. It is a wholly-owned Federal corporation with three Cabinet Secretaries comprising the Board of Directors. This presents its own set of benefits and challenges. When Senator Sarbanes and I drafted the Sarbanes-Oxley Act, we recognized that strong corporate governance was essential to the operation of any public corporation. I believe the same is necessary of our Federal Government corporations, as well.

With respect to the PBGC, keeping the board fully informed and engaged is essential to the operation of the Corporation and the role of an independent audit committee must be held by the Inspector General of the Corporation.

When I met with you in July, you expressed your desire to bring many of the private sector corporate governance practices to the PBGC. Since your short tenure as Interim Director at the Corporation, there is evidence that you're making corporate governance a top priority, and I appreciate that.

I believe that you have the management and financial background to be Director. I look forward to your testimony today to hear your perspective on the implementation of the Pension Protection Act and to hear your vision for the financial safety and soundness of the Corporation so that millions of workers covered by this insurance program can look forward to their "golden years" of retirement, and I thank you for being willing to take the job.

Senator MIKULSKI. Senator Kennedy.

OPENING STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. Thank you, Chairman and thank you for chairing these hearings. Thank you, Senator Enzi and our colleagues for the strong cooperative work and atmosphere that we have developed here in terms of protecting pensions.

I understand, Mr. Millard, that your wife is not here because she is having your ninth child.

Mr. MILLARD. She is not having yet, but she is due any moment.

The CHAIRMAN. Well, then you are both enjoying the potential or possibility of having that done. And, as the ninth child myself, I have special good wishes.

[Laughter.]

Mr. MILLARD. We're thinking about Teddy.

[Laughter.]

The CHAIRMAN. You've got my vote now so what else do you want?

[Laughter.]

I understand you attended college up our way and know some of our relatives.

Let me thank you for being willing to take this position. This is enormously important I think as all of us understand, there are sort of three pegs to growing old in this country. One is Social Security, two is the savings and three is the pensions and we know what has been happening, the savings have gone down and is the real issue in question in terms of, for so many workers about whether those pensions are going to be there and you have enormous responsibility in terms of workers in this country.

They believe and have trust and have confidence and have participated and paid through this, so it's an extraordinary responsibility and I agree that it is incredibly complex, and we are going to be interested in your responses.

I'm going to have my whole statement included in the record. We're meeting in the Armed Services Committee with General Jones, and all of us are on different challenges this morning.

But, I am going to ask you questions about your interest in preventing pension failures before they happen. I think this is something that we had talked about, we had in our bill actually that went to Conference to pass the Senate and there was a provision that was actually dropped during the course of the Conference but I am interested in how you are going to try and anticipate these needs and what kind of interventions that you are going to have.

There's enormous interest in the time that it takes in the processing of these pension claims. We know that in the interim time there are payouts, but there's a long period of waiting time and we would like to know what you're going to do to be able to deal with some of those issues.

Third, I'm interested in who you're consulting in the Agency's investment policies. You know we've seen more toward the bonds than in other areas this is going to be—this is complex, and I don't pretend to have the knowledge to make precise recommendations. But I think it will be useful for us to understand who you're talking to, who you're listening to, who you're consulting with, and what advice you're getting so that we know what we can expect and we can at least make some judgments in terms of your own kind of leadership.

Finally, I'd be interested—we have a limitation on the payment for people working in the PBGC. Congress has authorized other financial agencies, the SEC Federal Reserve Board to pay above these standards, the GS schedule. If this is a real problem in getting really key people to try and work in very responsible positions. I, for one, am very open to try and make sure you are going to get the very best people to try to be able to deal with this, if you are having those kinds of difficulties.

You may comment on some of those items during your formal statement. I'll have questions on those priority items, maybe a few others but those are areas where we are particularly interested in, and I know you are going to comment about how your own financial background relates in terms of the responsibilities as the head of the Agency. And now, what you think has been helpful to you in terms of your own financial background, what do you really expect to learn, where you think, perhaps, your weaknesses are, where you are going to try and get additional kind of help and assistance to make sure that we're going to get the kinds of protections for workers' pensions that they deserve. I thank you.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR KENNEDY

Today we are considering the nomination of Charles Millard to be Director of the Pension Benefit Guaranty Corporation. Let me start by thanking Senator Mikulski for agreeing to help Chair this important hearing. She had a vital role in the passage of the Pension Protection Act last year, and has shown impressive leadership as Chair of our Retirement and Aging Subcommittee.

I'd also like to thank Senator Enzi for his continuing leadership and partnership on these issues, and to recognize Senator Burr as the new Ranking Member of the subcommittee.

The Pension Benefit Guaranty Corporation has a main role in our retirement safety net. Forty-four million American workers and their families rely on it to insure their hard-earned pensions. This agency was established so that never again would employees who gave a lifetime of service to a company be left with nothing when their company pension plan failed. The agency's director is not only the chief steward of Americans' retirement, but also the leading advocate for defined benefit pensions.

This is a time of great change in our retirement system. Only 50 percent of American workers have any type of retirement plan through their job. 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. As we know from the many pension failures in recent years, even these workers aren't secure.

In this climate of uncertainty, the PBGC is more important than ever. When pensions fail, workers and retirees are left unsure about their future. The agency is responsible for ensuring that retirees and workers know what has happened to their pensions and receive their payments in a timely manner. I look forward to hearing from Mr. Millard about how he intends to work to increase the agency's advocacy on workers' behalf.

The Pension Protection Act enacted last year created new rules to improve pension funding, thus lowering the risk to workers and the agency. It will be some years before the full effect of this legislation is known; in the meantime, the agency continues to face serious financial challenges. It has a projected deficit of $18.9 billion—a decrease from recent years, yet a stark difference from 2001 when it had a surplus. Retirees' benefits are in no immediate danger, but there is obviously cause for concern.

It's vital that the agency make its investments, in ways that are consistent with providing the maximum benefit to retirees. In recent years, the agency has changed its policies, shifting more toward investments in bonds. I understand that Mr. Millard is in the process of reviewing these decisions. I believe he should conduct his review with an eye toward best protecting the retirees under the agency's care.

Finally, the best strategy to protect workers' pensions is to act early to prevent pension failures. That's why I have long supported enabling the agency to negotiate with struggling companies—before their pensions fail—to keep pensions afloat. A provision establishing such an alternative funding arrangement program was included in the Pension Protection Act passed by the Senate, but unfortunately it was dropped in conference.

I strongly believe that it is in the best interests of workers, retirees, and the PBGC to explore this and every other available means to protect and preserve workers' pensions and prevent future losses.

As Interim Director, Mr. Millard has no doubt already become aware of the challenges faced by the agency. As director he has the demanding job of safeguarding Americans' security in their retirement. It takes someone with knowledge, experience, and determination to lead the agency at this critical time, and I look forward to hearing Mr. Millard's views on all of these issues.

Senator MIKULSKI. Mr. Millard we're now going to turn to you.

And I would just say to my two colleagues, Senators Isakson and Murkowski, we are going to go by the 5-minute rule because of the votes at 11 o'clock. Any additional questions, submit in writing and any comments for an opening statement, you could incorporate into your question.

Mr. Millard, would you please go ahead and proceed and then we will get to the questions.

STATEMENT OF CHARLES E.F. MILLARD, NOMINEE TO BE DIRECTOR OF THE PENSION BENEFIT GUARANTY CORPORATION

Mr. MILLARD. Thank you, Madame Chairwoman.

I will try to gloss over a few things in the written statement because I understand that time is short.

Thank you for giving me the opportunity to appear before you today, Madame Chairwoman, Chairman Kennedy, and Ranking Member Enzi. I am honored and humbled that President Bush has nominated me to serve as the Director of the Pension Benefit Guarantee Corporation, and I appreciate your consideration of my nomination.

Public service is a privilege which I hold dear and I am sincerely grateful for this opportunity to serve.

For as long as I can remember my parents taught my siblings and me that loving our neighbor meant taking action. My first experience of that action was marching for civil rights with my parents 40 years ago in Newark, NJ. And the desire to serve has stayed with me since that time. And I certainly hope that my children experience a similar example from my wife and me.

I have also had the chance to serve as a VISTA Volunteer in Crown Heights, Brooklyn as a community organizer, and as a Board member of the New York Urban League. In 1985, I worked in Chile for the Vicariate of Solidarity, a church-based human rights organization in Santiago. I have served as a New York City Councilman and was then appointed by Mayor Rudolph Giuliani to be the President of the New York City Economic Development Agency and the Chairman of the New York City Industrial Development Agency (IDA). I worked as a Legislative Assistant in the early 1980s for Congresswoman Millicent Fenwick of New Jersey.

My work in New York as head of EDC is worth noting because, like PBGC, EDC—the Economic Development Corporation—was created as a corporation to manage governmental programs that are principally business-like in nature, produce self-sustaining revenue, involve numerous negotiated transactions, and require greater budget and other flexibility than a traditional government agency.

In addition to public service, my career in private life also helps me bring relevant knowledge and experience to PBGC. I have been a practicing Wall Street attorney representing large financial institutions, and I have been a Managing Director involved in investment banking, public finance and investment management with such firms such as Lehman Brothers and Prudential Securities.

Most recently, I have been a partner in a more entrepreneurial real estate enterprise, dealing with large individual and institutional and pension investors regarding their investment allocations to real estate.

This diverse background has given me experience in managing hundreds of people in a public environment and directing a large organization to higher achievement. I have also come to understand how individual corporations reach financial decisions, and how many large institutions and pension funds make investment decisions.

PBGC and the defined benefit system face considerable challenges in coming years. At the end of fiscal year 2006, PBGC's deficit stood at $18.9 billion. The corporation controls assets worth $61 billion and faces liabilities of $80 billion on a present value basis. Also, PBGC estimates that total under funding in ongoing plans stood at $500 billion at the end of fiscal year 2006.

The Pension Protection Act, passed last year, made some significant improvements in the system that will enhance the soundness of the defined benefit system for millions of American workers and the corporation is currently implementing the PPA, including the development of a comprehensive set of regulations and other guidance as mandated by Congress.

Madame Chairwoman, I would like to emphasize my personal commitment to PBGC's mission and purpose. It is PBGC's job to promote and maintain healthy plans, to negotiate in bankruptcy and other proceedings, to protect workers and their benefits and, of course, when a plan must terminate, it is PBGC's job to pay those benefits.

This requires constant vigilance of various corporate transactions, securities filings, and bankruptcy court proceedings. It requires steadfast negotiations by PBGC on behalf of workers, and their families, to help avoid plan terminations or minimize their impact. And it requires responsible and effective investment and stewardship of the assets that are used to pay benefits to the insured beneficiaries of trusteed plans.

The Corporation carries a tremendous responsibility because the "insured beneficiaries of trusteed plans" I just mentioned are actually real, individual human beings—people who have worked their whole lives to receive the retirement benefits that they have been promised and have earned, people who support families, and who wait for the check from PBGC so they can sit at the kitchen table and pay their bills, people who are counting on PBGC to carry out its mission as given to it by you.

If confirmed in this position, I would welcome the opportunity to work with members of the Senate and House, as well as your staffs, to make sure that we do the best job we can for these workers.

I would be happy to answer any questions you may have. Thank you.

[The prepared statement of Mr. Millard follows:]

PREPARED STATEMENT OF CHARLES E.F. MILLARD

Chairman Kennedy, Ranking Member Enzi, and members of the committee, thank you for giving me the opportunity to appear before you today. I am honored and humbled that President Bush has nominated me to serve as the Director of the Pension Benefit Guaranty Corporation, and I appreciate your consideration of my nomination. Public service is a privilege which I hold dear and I am sincerely grateful for this opportunity to serve.

Before my formal statement, and with your indulgence, I would like to introduce members of my family who are here with us today. My son Egan, daughter Christine and son Conor.

For as long as I can remember, my parents taught my siblings and me that loving our neighbor meant taking action. My first experience of that action was marching for civil rights with my parents 40 years ago in Newark, New Jersey. And the desire to serve has stayed with me since that time. I certainly hope that my children experience a similar example from my wife and me.

I have had the chance to serve as a VISTA Volunteer in Crown Heights, Brooklyn, and as a Board member of the New York Urban League. In 1985, I worked in Chile for the Vicariate of Solidarity, a Santiago-based human rights organization. I have served as a New York City Councilman and was then appointed by Mayor Rudolph Giuliani to be the President of the New York City Economic Development Corporation (EDC) and Chairman of the New York City Industrial Development Agency. I also worked as a Legislative Assistant in the early 1980s for Congresswoman Millicent Fenwick of New Jersey.

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In addition to public service, my career in private life also helps me bring relevant knowledge and experience to PBGC. I have been a practicing Wall Street attorney representing large financial institutions, and I have been a Managing Director involved in investment banking, public finance and investment management with firms such as Lehman Brothers and Prudential Securities. Most recently, I have been a partner in a more entrepreneurial real estate enterprise, dealing with large individual and institutional investors regarding their investment allocations to real estate.

This diverse background in public and private life has given me experience in managing hundreds of people in a public environment and directing a large organization to higher achievement. I have also come to understand how individual corporations reach financial decisions and how many large institutions and pension funds make investment decisions.

PBGC's insurance program currently protects the pensions of over 40 million Americans. The corporation receives no funds from general tax revenues. Rather, it is financed by insurance premiums paid by plan sponsors as well as by assets from terminated plans, recoveries from companies that sponsored those plans, and investment income from these assets.

When an underfunded plan terminates, PBGC becomes trustee, taking over the assets and paying benefits. The corporation is now trustee of approximately 3,700 terminated plans. In fiscal year 2006, the corporation paid more than $4 billion to over 612,000 retirees and beneficiaries in trusteed plans. There are about another 550,000 people who will receive payments in the future upon retirement. These are workers who depend on the PBGC, and I fully appreciate the necessity for prudent decisions and management of this agency. Workers who receive benefits from the PBGC have already been let down by their pension plan; they should not be let down again by the pension guarantor.

PBGC and the defined benefit pension system face considerable challenges in coming years. At the end of fiscal year 2006, PBGC's deficit stood at $18.9 billion. The Corporation controls assets worth approximately $61 billion and faces liabilities of approximately $80 billion (on a present value basis). Also, PBGC estimates that total underfunding in on-going plans stood at $500 billion at the end of fiscal year 2006.

The Pension Protection Act, passed last year by Congress and signed by President Bush, has made some significant improvements in the system that will enhance the soundness of the defined benefit system for millions of American workers. The corporation is currently implementing the PPA, including the development of a comprehensive set of regulations and other guidance as mandated by Congress.

Mr. Chairman, I would like to emphasize my personal commitment to PBGC's mission and purpose. It is PBGC's job to promote and maintain healthy plans, to negotiate in bankruptcy and other proceedings to protect workers and their benefits and, of course, when a plan must terminate, it is PBGC's job to pay those benefits. This requires constant vigilance of various corporate transactions, securities filings, and bankruptcy court proceedings. It requires steadfast negotiations by PBGC on behalf of workers and their families to help avoid plan terminations or minimize their impact. And it requires responsible and effective investment and stewardship of the assets that are used to pay benefits to the insured beneficiaries of trusteed plans.

The Corporation carries a tremendous responsibility because the "insured beneficiaries of trusteed plans" I just mentioned are actually real, individual human beings—people who have worked their whole lives to receive the retirement payments that they have been promised and have earned, people who support families, and who wait for the check from PBGC so they can sit at the kitchen table and pay their bills, people who are counting on PBGC to carry out its mission as given to it by you.

If confirmed in this position, I would welcome the opportunity to work with members of the Senate and the House, as well as your staffs, to make sure that we do the best job we can for these workers.

I would be happy to answer any questions you may have.

Thank you.

Senator MIKULSKI. Thank you very much, Mr. Millard. I thank you for being so crisp in presenting the testimony.

I would like to go to experience and qualifications for a moment. First of all, I read your resume—your extensive resume—in preparation of the hearing and you also noted in your own testimony a VISTA Volunteer, you shared that your worked for the Jesuit Corps, even toward Baltimore's Little Italy with Nick D'Alesandro, speaker Pelosi's nephew which should have been enough to have you reinvest there. Your own work in Chile, I am also very familiar with the solidarity program that the Cardinal ran during that time, during the dark days of Pinochet, your civic engagements, your philanthropy.

When I read this background I thought, "You know this guy belongs at HUD or running National Service," but I don't see—I mean excellent background and your ongoing civic engagement in philanthropy as well as public service. I thought, "This guy would be a natural for HUD or national service," but nothing jumped out about the pensions. And as you said, we are finding as the era of defined benefits might be coming to an end, of the looming bankruptcies of some of our iconic corporations—we need somebody who really understands pensions.

And could you share with us—there's no doubt that you were involved in very important—your Wall Street experience. But commitment and dedication is one thing, but skills also are another. So could you share with us, with that, where your experience would be? And also in your writings, you had that interesting oped column or something in the Post. Some of those articles were quite interesting but I only saw one about pensions and that's when you were a little prickly about the New York pensions negotiations.

So could you elaborate on your experience? As I said, I think you are committed to the mission of the Agency, and your integrity I have no doubt of, but let's go to that experience and competence level. Could you elaborate, please?

Mr. MILLARD. The underlying purpose, obviously, is to meet the needs of workers and retirees. And if I could share a little anecdote, when I ran the Economic Development Corporation my kids used to ask me, "What do you do for a living, Dad?" I would say, "Well, I try to make sure that more people have jobs," and I would try to explain to them why that was so important. And I see the mission of the PBGC as very, very similar to the mission of the agency that I ran in New York City.

And our focus, the specific focus, the measurement that I would brag about when I ran that agency was jobs. Was being able to make sure that more people in New York City could support their families. And in many ways, that is the same mission that the PBGC has, which is to make sure that retirees receive the benefits that they worked their whole lives for, that they bargained for, and were promised. And that mission is carried out in lots of ways that has nothing to do with pensions, although I will get to pensions in a moment.

It has to do with making sure that our IT is secure, it has to do with making sure we continue to get the checks paid on time, making sure that our contracting works right so that we get the right kind of people in place, the right kind of systems in place, to make sure that the hundreds of thousands of people that we are paying the checks to, get those checks on time, every time. And we have a very, very strong record of doing that. We do need some improvements in some of our IT and that's something that I have been pushing very hard already.

When it comes to pensions themselves, I would say Madame Chairwoman that, clearly, I have never run a pension plan. But I don't think that—the PBGC doesn't run a pension plan. The PBGC makes sure to negotiate properly in court. I've been an attorney and I have worked in bankruptcy cases myself as an attorney. It makes, it negotiates, sometimes, before court. I have negotiated with large corporations as head of the Economic Development Corporation in New York. On a repeat basis, much of what we did was to negotiate with New York City's largest employers to make sure that they maintained jobs in New York and brought new jobs to New York.

I also have to, in this position, have effective stewardship of our assets. As you pointed out, we had approximately a $20 billion deficit at the end of the last fiscal year. That's a huge challenge. And the job of the person in this seat is to make sure we do the most that we can with those assets.

My investment background—not running a pension plan—but my background in investment allocation and advising investors about how to invest and understanding the different roles that different assets can play in an allocation, in looking at whether 30 percent equities and 70 percent fixed income, whether that's really the right allocation for us, I have the background to do that very powerfully. And that is one of the most important roles at PBGC, what do we do about the deficit? That's not the same question as, "Have I ever run a pension plan?" I would say that the PBGC is unique in government in the way that, as Senator Enzi pointed out, it's a corporation. Also, that it is a little bit like a pension plan, it is a little bit like an insurance company, it is a little bit like the Economic Development Corporation that I ran once before. It is a little bit like a law firm, constantly negotiating in bankruptcy court, and many of those areas I think I have extensive experience.

Senator MIKULSKI. Well, thank you for that robust answer.

You raised a very important issue related to deficits and if there is the opportunity for the second round or should we address questions from my colleagues, I'll come back to that.

The looming deficit is really a very big juggernaut that this committee is concerned about, both our responsibility to those who expect their pensions or some type of safety net from PBGC, as well as our responsibility to the taxpayer, because we're concerned again of some tremendously unfunded Federal mandate. So I'd like to come back to and discuss that more, but I'd like to turn now to Senator Enzi.

Senator ENZI. Thank you, Madame Chairwoman.

And Mr. Millard, I am real pleased that you are here today. I know that there are a lot of things happening in your life, I know that your wife and you are expecting a baby at any moment, and we certainly wish you a safe, successful delivery.

Senator MIKULSKI. You had a better memo than I had, so you are really up on it.

Senator ENZI. Speedy delivery.

Senator MIKULSKI. Is that where your wife is this minute?

Mr. MILLARD. She is not delivering. She is due at any time and since we live in New York she did not come down.

Senator MIKULSKI. Well, God Bless.

I'm sorry sir. Go ahead, we'll add a few more minutes.

God Bless.

Senator ENZI. It's exciting.

When you and I met before, we discussed the corporate governance reforms of the private sector and what needs to be done to strengthen publicly-traded companies.

Now, in our meeting you told me that you'd be strengthening the corporate governance standards of the PBGC so that the Corporation's Board of Directors is more fully informed and you assured me that Congress would be more fully informed, too, and more engaged in the corporations activities and operations. What steps have you taken to strengthen the PBGC's corporate governance standards since you've been the Interim Director, and what additional reforms do you have planned?

Mr. MILLARD. Thank you, Senator. The GAO report pointed out a few things. One, if you were starting the PBGC today, you might not necessarily create a corporation with three Cabinet Secretaries as the entire Board. That's an interesting and important point but went outside my control.

What's in my control—or at least an area that I can have more effect on—is by-laws and guidelines. There were a lot of things that have happened in the PBGC in the last couple of years, where the Board became much more engaged, the Board reps were getting information more regularly, and one of the things the GAO pointed out was, "Well that's all fine, but none of that's in a by-law, none of that's in a guideline, none of that's really laid out like a real corporate Board would have those real corporate procedures." And so, we are now in the midst of a comprehensive draft of new by-laws and guidelines.

So one example, every Friday we send to the Board reps a summary of the significant activities of the week. A case was dismissed in bankruptcy court, we decided to grant a waiver to a company to, perhaps, keep its pension plan alive while trying to exit from bankruptcy with its bankruptcy plan intact. Those kinds of things. So the Board is informed pretty much of everything that's going on.

That was a great thing, but it wasn't written as a guideline from the Board that that should happen all the time. So we are redoing the by-laws, we're probably going to allow the Board reps to be even more engaged, and we are putting into written form many of the things that have already begun happening. One of those will be much more regular meetings or calls with the Board Reps and me, interfacing directly, rather than just sending the occasional e-mail.

Senator ENZI. I appreciate you having gotten the message about more involvement by the Board representatives and the work on the guidelines and standards.

Now, as I mentioned in my opening statement there are events coming down the road that will have a significant affect on whether companies continue to offer defined benefit plans, and the prime example of course is the current initiative by the Financial Accounting Standards Board, FASB, to update the accounting standards for pensions and retirement health care. What other events do you see that will have a significant affect on whether companies will continue to have defined benefit plans?

Mr. MILLARD. Well, obviously the strength of the economy is going to be a very, very important issue no matter what other questions arise. As you know there are some new FASB actions that may be taken as what's called Phase 2 that may put additional pressure on Corporate CFOs to mark things, to mark it on their balance sheets and show even more of what's going on with their pensions.

I think what the PPA did that's very, very useful here is—and when you combine FASB—it puts corporate CFOs in a position of having to tell everybody where they really stand. So workers have more information, that's very good. Investors have more information, that's very good.

Interestingly, the threat to that is that corporate CFOs who are now being marked to market and subject to the vicissitudes of the ups and downs in their pension plan, may decide that they want to immunize themselves against that. Sometimes that can mean freezing their plans—obviously they are in negotiations with their workers so often when they freeze they will offer some other 401K or cash plan—or they may immunize them, taking out some form of annuities, which can give a lot of security to workers if the pension plan is fully funded.

Senator ENZI. Thank you.

I've almost used my time. I have some other questions that are a bit more technical. I'd prefer those as written answers, so I yield the balance of my time.

Senator MIKULSKI. Thank you, Senator Enzi.

Senator Isakson.

OPENING STATEMENT OF SENATOR ISAKSON

Senator ISAKSON. Thank you, Madame Chairman.

And welcome and congratulations on number nine. That's terrific. It was my feeling that in the past—the most recent past of PBGC—there was somewhat of an attitude that PBGC's job was to take over pensions. I personally think in terms of PBGC, FDIC, FSLIC—those were intended to be last resorts, and in fact, people could help avoid pensions being defaulted upon.

So I would like to hear how you approach your responsibility at PBGC with regards to pensions of, say, bankrupt companies that are in trouble that you may be forced with considering at some point down the line. How are you going to approach dealing with those companies?

Mr. MILLARD. One of the most important jobs of the PBGC is to promote and maintain defined benefit plans. Obviously there is a marketplace of retirement offerings that businesses give to workers: some offer 401Ks, some offer cash plans—defined benefit plans are a very, very important part of that marketplace, and it is difficult for me to cause one company to go to one option versus the other.

But, to make sure that young workers understand the value of defined benefit plans is one of the important roles of the position of Director of PBGC, and to make clear to companies that just because you go into bankruptcy doesn't mean we are going to let you off the hook on your pension plan. Sometimes they want to dump a pension plan. If they can afford to maintain that plan we are going to fight having them dump the plan. If it looks like they are willing to try to maintain their pension plan and that's happening in a case that we're dealing with right now, where I've made some decisions just recently with our staff to say,

> "All right, we'll agree to grant a form of waiver because we want this company to have a chance to exit bankruptcy with the plan intact, so that those workers still have their defined benefit plan available."

Doing that not only helps maintain that company's plan, and retirement security for those workers, but it says to all the other people who are thinking, "Hey, maybe I'll go into bankruptcy court and figure out a way to dump this plan," but it's not going to be so easy because unless you can prove that you really can't afford it, PBGC is not going to be your ally in helping you off-load that plan.

Senator ISAKSON. Well, I really appreciate that answer.

Madame Chairwoman one of the reasons I ask that question—you and Senator Enzi remember when we did the airline provision, Delta was in bankruptcy, but willing to honor their pension, but had to have some flexibility both in terms on interest rate, and in terms of amortization. And, in its wisdom, the committee did that, thanks to you, Senator Kennedy, Senator Enzi and others.

I just want to make the point that instead of PBGC having taken that plan over, Delta has honored the plan and this year put in a quarter of a billion dollars into the plan, voluntarily, now that they are back and profitable.

So that attitude is critically important, I think, for you to have and I appreciate it.

My only other question is, $500 billion is the estimated unfunded liability at the end of 2006. What is the total liability—as a percentage of the total liability, how much is that $500 billion? Is it 10 percent, 5 percent?

Mr. MILLARD. I'd have to get you that number. The probables that we see where there's a deficit, in what we see coming down the pipe of a company that might go bankrupt, to us is a net present value of something like $10 billion at the end of 2006 but I would rather get you that number exactly.

Mr. MILLARD. And understand that total under funding in the system, it's a very, very large system so it is not a number like 50 percent or 60 percent.

Senator ISAKSON. That's why I asked the question, because $500 billion is a big number, but in the scheme of things it may not be as big——

Mr. MILLARD. Right.

Senator ISAKSON [continuing]. As it's perceived to be standing alone.

Mr. MILLARD. Good point, and I will get you the exact number.

Senator ISAKSON. Thank you.

Thank you, Madame Chairwoman.

Senator MIKULSKI. Senator Murkowski.

STATEMENT OF SENATOR MURKOWSKI

Senator MURKOWSKI. Thank you, Madame Chairman.

And thank you, Mr. Millard, for being here this morning. I, too, wish you and your wife well with your newest.

Mr. MILLARD. Thank you.

Senator MURKOWSKI. I appreciate your willingness to serve in this capacity. You and I had an opportunity to speak before about an issue that is very close to me in terms of my constituents in a multiple-employer pension plan that was established by the timber industry in Alaska in the late 1960s. I hate to take this from the global perspective to a very parochial perspective but, I think it is important to not only talk about this smaller Alaska plan because I have to assume that there are other plans out there that are in a similar situation. So, I will take you to the specifics on this particular plan.

As you know, this plan is operating in a region of the State where the Federal Government controls the timber supply. The Government drastically reduced that timber supply and that, in conjunction with the decline in the financial markets, we saw a drop in the interest rate, forcing the employer plan sponsors to make deficit reduction contributions to the plan to put this on a financial footing that was somewhat even at that time.

But with the timber shortage in the region, it really is impossible—or certainly next to impossible—for the few surviving employers to afford the mandated deficit reductions. We've got somewhere between 600 and 1,000 jobs that are at risk and about 2,500 current retirees that will be affected if this plan is not saved. As you mentioned in your opening statement, these are real people that are trying to pay their bills, they are counting on what they had put into this plan.

Bearing in mind that the Federal Government, in this case it is the U.S. Forest Service, controls all of the timber supply that is needed to allow the employers to participate in this plan, does this plan deserve any special consideration, has it been treated adequately and fairly based on your analysis to this point?

Mr. MILLARD. I think there's been so much around this plan it would be hard to get into all the details here and because its a matter of——

Senator MURKOWSKI. And I don't expect you to get into those details.

Mr. MILLARD [continuing]. Litigation obviously is hard to do, as well.

One of the very good things that's happened is when you asked us to look at this, your office and you, have brought parties together to move things forward a little bit more without insisting that anybody do anything. Your own promotion of, "Hey isn't there a settlement here?" has proven very valuable.

The PBGC's policy, generally, is:

> "Look, if you really can't pay for this plan, then we will take it over, but you must show us that you really can't pay, because of course everyone in this room would rather have the employers pay the pension plan than the PBGC."

We regularly insist, as we talked about before, for example, in bankruptcy court, I want to know that someone can't afford it before we say, "OK." As is the case, sometimes, in litigation, some people got information to us quickly to show us that they could or couldn't pay, other people were slower, I think there was probably some delay on the PBGC side at one point in the past, as well.

But in the last couple of months things have moved better, we are in some good settlement conversations, people have provided us information that they hadn't before. So, I think we are in a more positive stance with them than we were before your actions. Beyond that, I can't really tell you whether we'll get a settlement or how litigation will work out, but we've been very attentive to it and I think are in an improved situation now, compared to a couple of months ago.

Senator MURKOWSKI. Tell me how the PBGC determines what the interest rate will be when they are determining the unfunded liabilities for these ongoing defined pension benefit plans? And where I'm going with the question is, there seems to be an impression—if you will—that if the PBGC is using an interest rate that is less than what is appropriate, I guess, for the unfunded liability that, in effect, you're forcing healthy employers to pay more for their share. Explain to me how you get to that interest rate number?

Mr. MILLARD. The interest rate PBGC uses is part of a regulation that was adopted at PBGC a number of years ago and has been in place for quite some time. And it is a double blind survey of insurance companies conducted by the American Council of Life Insurers, basically asking, "What would you charge if we had to take these liabilities and go and purchase an annuity?", in order to, in essence, immunize or put them to bed. Once you know the charge, you can then figure out the interest rate. So they don't know what their competitors are saying, and knowing what it would cost to put annuities in place is the way that we calculate the interest rate, and is founded on the assumption that it should be no less or more expensive to terminate a plan by putting it to PBGC than it is to purchase annuities. And that interest rate has been held up in court frequently.

Not surprisingly, the people who challenge it are often people who are in bankruptcy court with us, who would like to make our claim smaller or someone who's afraid that they might be in litigation with us who would like our claim to be smaller. But the reason that we do it that way is the assumption that it shouldn't be any cheaper to dump it on PBGC than it is to buy annuities from an insurance company.

Senator MURKOWSKI. Madame Chair, I'm out of time, but I do have some additional questions that—because they are so specific to the Alaska issue—we'll submit in writing.

Mr. MILLARD. And the interest rate calculation, I'd be happy to spend more time on. I mean it's highly complex but that's the basic overview.

Senator MURKOWSKI. I think it helps us in understanding——

Mr. MILLARD. Sure.

Senator MURKOWSKI [continuing]. What it is that we have to deal with.

Thank you.

Senator MIKULSKI. Senator Murkowski, of course, submit any of your questions in writing. But as you indicated, these are very technical things. We went through this during the actual writing of the bill, and Senator Enzi's expertise in business and accounting was immeasurably helpful to all of us. I mean, we really went through it but came up with a good bipartisan agreement.

And I might add, Mr. Millard, this is such a welcome tone and we appreciate the tone of this hearing—of course our colleagues are always civil—but I get a sense from you, that you really want to work with Congress to make sure that there is this safety net, that we don't encourage dumping of pensions, and we are a safety net. And, I want you to know that I appreciate this tone.

Mr. MILLARD. Thank you.

Senator MIKULSKI. And because at times we felt we were in an—even working on the Legislation—an adversarial relationship with the top team at PBGC, and we feel we're all on the same side.

Mr. MILLARD. I wouldn't want to take this comparison too far but I've been a legislator myself. City Council is a far cry from the room we are in.

Senator MIKULSKI. Well, I was on the Baltimore City Council too; they called us the "Pothole Parliament."

[Laughter.]

But, you understand.

Let me go to my question, though, because the deficit is an important issue, and other colleagues have raised it. Which is, how do we deal with the deficit? And your thoughts on that. And at the same time not look forward to some dump on the taxpayer.

When we began our hearings on the bill itself, there was concern, as Senator Isakson said, airlines were coming in, steel had come in. We were concerned like an—almost like an S&L crisis. Then the other issue Senator Murkowski and others have raised is, we can't be penalizing the good pensions, or the viable pensions, for the weak. So, we don't want the survival of the weakest in that sense by penalizing the strongest. Could you share with us your thoughts, and the direction now in which you would like to take the Agency, and any recommendations, I would presume, that you would come back and talk to the Congress about?

Mr. MILLARD. One of the first things that I did when I came into PBGC, to the role as Interim Director was to put out a RFP, pay for an investment consultant who has invested with dozens and dozens of pension plans in the past, and other similar institutional investors who has not worked with PBGC in the past, in order to review our investment policy from top to bottom. Our investment policy currently is conservative in the extreme. It is designed to match assets and liabilities, and that poses two problems.

One, as a mathematical and investment matter, because of the way that we calculate our liabilities it is very difficult to find assets that can really be matched with those liabilities. Second, no matter how well we do that, we have only $60 billion in assets that can't possibly match $80 billion in liabilities. And I use the analogy of—you're familiar with the parable of the talents in the gospel——

Senator MIKULSKI. Oh yes.

Mr. MILLARD. The master goes off and he leaves everybody with one talent, and one guy says, "Well, here I've got you 10," the next guy says, "Here, I've got you 5," and the last guy says, "I know you're a tough man, so I buried it, here I've got you 1." Well, our current investment policy is, "At least I kept the one." And I think that without pre-judging the results of what will be a very extensive review, one of the things that I want to make sure of is that we are being good stewards and recognizing that the dynamism of the American economy could help increase those assets, within reason. I'm not talking about taking tremendous risk, but, for example, the PPA requires that the PPGC——

Senator MIKULSKI. If I could jump in here, when you are talking about investment are you talking about the fact that right now all of the PBGC funds that are coming in are in T-Bills?

Mr. MILLARD. Well, they aren't all but yes, I am saying—70 percent of our current allocation is to fixed-income and almost all of that is to treasuries.

Senator MIKULSKI. Could you refresh my memory? Is that an administrative decision, or is that a statutory mandate that all go into——

Mr. MILLARD. That's a policy.

Senator MIKULSKI [continuing]. Is it a policy, or is it a statutory one?

Mr. MILLARD. It's a policy adopted by the Board. It is reviewed by the Board every couple of years, and the PPA requires that we compare our investment performance to a hypothetical portfolio of 60-percent equities and 40-percent fixed income.

And the comparison to that over the past 4 years is a stark contrast. There's more risk in a 60/40 portfolio, and how much risk we should be taking on behalf of retirees is a very important question, so I don't know if 60/40 is the right answer—I don't know what the right answer is yet. But I know that we need to look very carefully at where we are, because our current plan essentially locks in the deficit. It says, "At least I've matched my assets to the liabilities that I know of, but I am not increasing the assets."

Senator MIKULSKI. Well, I'd like to make the request, as you look at this. And, you're going about it in a businesslike way, but before that asset allocation was changed, that you would share with us—and perhaps we would have a hearing—because it would be a big shift.

That also takes me to your Board. As you know, GAO has raised concerns over the fact that you have only a 3-member board, "you" meaning PBGC, and that there are three Cabinet Secretaries, all three who are enormously busy. And being in touch with them has been at the will of the Chair without the by-laws. We welcome that idea of having actual procedures and by-laws for the Board. But, do you envision, taking the GAO report, and perhaps coming back to Congress with some legislative initiatives on this? I'm not taking a position on whether it should be expanded or not, but essentially you don't have an operational Board as you're accustomed to in your own work in the private sector.

Mr. MILLARD. Obviously, the Administration will ultimately have a position on whether some action should be taken, but I would welcome the chance to go into that subject in more detail. I think that it is a very, very important matter for the Corporation and I'll give you the following example.

Any three-member board—no matter whether they're Cabinet Secretaries or not—may have a hard time saying, "Well, who's the Audit Committee? Who is the Investment Committee? Who is the Contracting Committee?" So, we have an IG who reports directly to the Board, and in a three-member Board format, that seems quite appropriate. So, he functions somewhat like an Audit Committee, and in the by-laws we're now drafting we've called for that.

But, no matter what the Board is, there needs to be robust communication, there needs to be clear lines of responsibility, there needs to be accountability and guidelines that everybody knows what they are supposed to be doing, and that's what we're trying to put in place right now. As to changes, I'd welcome the conversation, but I don't think that I can yet say, "Here's what it ought to do."

Senator MIKULSKI. Right. But I think what you want to do is more of a fresh start here, in other words keeping the statutory mandate of the Agency, but looking at management reforms using the GAO report as kind of a starting point for even discussion and evaluation. Am I on the right track here?

Mr. MILLARD. I welcome the conversation. Obviously the Administration would ultimately take a position that we do or don't want change. But I think as of the moment I could say that it's a conversation that a lot of people are open to having.

Senator MIKULSKI. You've got one Administration saying, "we'll manage it," but then you're going ahead with changes in investment policy.

Mr. MILLARD. Correct.

Senator MIKULSKI. And who would okay that?

Mr. MILLARD. Well, the Board approves a new investment policy, if there is one, and the Board is highly involved—or the Board reps are—in the step-by-step they—I went and checked with them first and said, "Here's what I plan to do to get an outside consultant, who's never worked for us before." "Good." "Here's who it is." "Good." "Here's the building blocks of how we want to go about analyzing what we currently do and what are the foundational aspects of knowing what we should do." "Good." And so, sometime in the spring, we probably will have some new investment policy.

That's not a statutory question. Changing the Board is a statutory question which obviously, your opinion is more important than mine.

Senator MIKULSKI. Right. Thank you for that answer but, as I turn now to Senator Enzi, I really am requesting as Chair of the committee that, before any Board decision is even taken, that you share the results of your extensive evaluation when changing investment policy with us, so that we could also have a conversation about it. Do I have your commitment on that?

Mr. MILLARD. Yes, I will absolutely be happy to discuss any aspect of investment policy with this committee any time you'd like, in detail.

Senator MIKULSKI. Thank you. No, I'm pretty firm about this and I want to be very clear with my colleagues—a change in the investment policy of the funds of the Pension Guarantee is a very significant public policy step. We acknowledge that the statutory authority relies on the three-member Board that meets unevenly, has had no clear by-laws or procedures, under any Administration—and this is a pretty big deal, if in fact, you'll do it in the final year of this Administration. And I want Congress actively involved in the conversation.

Mr. MILLARD. That's fine with me. I would welcome your involvement.

Senator MIKULSKI. Thank you.

Senator Enzi.

Senator ENZI. Madame Chairman, the rest of my questions I'll submit, especially since we are nearing the 11 o'clock hour for the vote.

Senator MIKULSKI. OK, Senator Isakson.

Senator ISAKSON. Senator Murkowski.

Senator MURKOWSKI. I'll defer to you.

Senator MIKULSKI. Thank you, colleagues.

Before we wrap up, we didn't give you the opportunity to introduce any family members that you might have.

Mr. MILLARD. Well, thank you.

Senator MIKULSKI. We acknowledge that your wife is in New York and again, we wish her all the best in God's speed and God's protection at this fragile hour here. Did you want to introduce any of your family?

Mr. MILLARD. Actually, my oldest is only 16, and it's the first week of school, and they're all in New York and my wife wasn't going to bring the other seven down, so they're at home, but thank you.

Senator MIKULSKI. You're more than welcome.

And then my last point just goes to something else that again goes to what I think is the philosophy and values that you bring to the Agency and it will require management reform and stewardship.

I just want to tell you an anecdote about Bethlehem Steel. I share that same passion about jobs that you do, and it's one of the reasons I went as a social worker to the Baltimore City Council, and came to the Congress. Bethlehem Steel went into bankruptcy; it broke our hearts. It just broke our hearts, and there were people who had worked all of their lives for their pensions in hot, dirty, and often even dangerous circumstances. You'd be familiar with it and I work with Rick Santorum, we all worked on it.

OK, so it went to Pension Guarantee. So, when people started to get their benefits, PBGC made a math mistake—a math mistake. So, to add insult to injury, workers who were forced to accept pensions below what they thought they had earned were then told that PBGC—through PBGC's fault, not at the Corporation and the way they filed the papers, and so on—had made an overpayment to them as individuals, and that they had to then pay it back.

Well, I went to bat for them because I felt the PBGC had made the mistake; that's the way it was. It was very early in the payout, so it wasn't big money. But to the families it was big money, because it was in the individual family checkbook.

Well, they had to pay it back. And it was very serious hardships on families in my hometown. But in dealing with pension, the Pension Guaranty fund at the time, was really one royal pain. I can tell you as a Senator trying to be an advocate, we really ran into the worst of the bureaucratic attitudes and rigidity.

So, all I'm saying to you, because we cannot un-ring that bell, but I would hope, given I think, that you do want to bring corporate experience, but I do believe you also bring to your life and your work, values—that you're a value-driven administrator. That this not happen again. Not only the math mistakes, but the attitude in dealing with the people that we have. I'd sure love to get those people a different pay, but we are where we are. But looking ahead to where we are, I would hope that we would never have to face that again.

Mr. MILLARD. I appreciate your point very much and I couldn't be more proud to have the chance to work in an organization that is trying its best to help people, in a human—not only financial—but human way, who really need the help. They've been betrayed by somebody already, their pension promises are not being fulfilled, many of the people don't get what they were expecting and they're very, very real human beings. And if I could give you an insight into me, that's what makes me tick—the ability to make a difference in peoples' lives, and to take whatever skills I have and hopefully run this agency even better than it's been run before is a very, very motivating factor to me.

I've already taken some actions in that regard, to ask for some numbers about, by how much do we tend to overpay people and how can we make sure that we're more exact, by how much do we, if we—when we underpay people—and how can we be more exact. And also, how do we communicate this to people? Because part of your point is not only, okay even if you grant—of course, sometimes there will be math mistakes, the question is, "Well, then how do you deal with whatever those math mistakes may be?" And often—by the way—they're not necessarily mistakes, we make an estimated payment, and it takes a long time for actuaries to find out the exact payment.

But in any event, I've actually changed some of the wording in the letters that we send to people to try to make it a little bit more humanly clear what's going on, than some bureaucratic letter that they can't understand. Because they're real people whose paycheck just changed, and I fully understand that.

Senator MIKULSKI. I appreciate that answer.

Since there are no further questions and those that we will submit will be in writing and at 11 o'clock, the vote will begin shortly. This committee stands in adjournment. Thank you.

[Additional material follows.]

ADDITIONAL MATERIAL

RESPONSE TO QUESTIONS OF SENATOR KENNEDY BY CHARLES E.F. MILLARD

Question 1. The PBGC appears to have continuing difficulty recruiting enough highly qualified candidates to serve as attorneys and financial analysts. Congress has authorized other financial agencies that compete with much higher salaries in the private sector—like the SEC and Federal Reserve Board—to pay above the standard GS schedule. Having served as Interim Director for several months, do you believe that PBGC would benefit from being able to offer similar salaries to attract financial professionals? If so, what barriers exist that would prevent you from raising these salaries if you are confirmed?

Answer 1. In my 4 months as Interim Director, I already have encountered the difficulty of recruiting a senior financial officer in a market where other Federal agencies can offer substantially higher pay. This includes not just the agencies that are above the GS schedule, but also the majority of agencies, whose executives are members of the Senior Executive Service ("SES"). Because the executives of government corporations are not eligible to be in the SES, but are Senior Level ("SL") employees, our executives have fallen behind the SES agencies, which received an increase in the pay cap that was not extended to SLs. I understand the Office of Personnel Management is working with Congress to remedy this discrepancy; remedial action would aid PBGC in executive recruitment and retention. In addition, I am aware that PBGC has lost professional staff to other agencies that pay above the GS Schedule. GAO is currently conducting a review of the Corporation's compensation system and the challenges PBGC faces in recruiting and retaining talented professionals. I look forward to reviewing GAO's recommendations when its report is complete.

Question 2. In 2005, a new Office of Chief Counsel was created at PBGC; before that time, the General Counsel's Office handled all legal matters. The GAO has reported that there is confusion over each office's authority and that this has led to conflicting legal opinions. Furthermore, the PBGC's Inspector General found that in a multimillion dollar business transaction, the PBGC put itself—and retirees under its care—at risk because the General Counsel did not have an opportunity to review the deal. Have you reviewed this situation? Do you believe there should be a single chief legal officer directly reporting to the Director? What steps have you taken to ensure that the PBGC is not placed in such a position of risk again?

Answer 2. I have reviewed the GAO report on PBGC's legal services structure, and I have worked with that structure since my appointment as Interim Director. The Corporation has instituted processes and procedures for its legal offices that facilitate greater communication and cooperation and are designed to address the risks you mention. I will continue to monitor the situation closely and will consider restructuring the organization if I feel I am not getting appropriate legal advice in an effective and efficient manner.

Question 3. In your testimony, you addressed concerns that PBGC's assets may be too heavily invested in Treasury securities and bonds, noting that you had begun a review of these investment policies. What experts are you consulting in reviewing the corporation's investments, and what is the timeline for the review's completion? Have you reached any conclusions thus far? Will you commit to providing the committee with regular updates about this review process and also to consulting with the committee before PBGC takes any action based upon these recommendations or conclusions?

Answer 3. PBGC has recently contracted with Rocaton Investment Advisors, LLC to review the corporation's assets and liabilities and the best investment practices and asset allocations of other like institutions. There are no constraints placed on that review other than those currently imposed by current law related to the investment of PBGC's revolving fund. Because the review has just begun, there are no results to report at this time, so no conclusions have been reached. These results will be shared with the Corporation's Advisory Committee and its Board. As promised, I will share these results and enter into discussions with Congress as this deliberative process goes forward. By statute, ultimate responsibility for setting PBGC investment policy rests in its Board. Based on the current policy set by the Board, this final review and any resulting changes in policy could be determined by next spring.

Question 4. A significant portion of your experience in financial management has focused on investments involving real estate. Do you believe real estate should be a part of the PBGC's investment of the assets in its trust fund? If so, do you anticipate any potential conflicts of interest with former employers or clients? How would your experience translate to managing nearly $60 billion in stocks and bonds that must be safeguarded so they can pay workers' pensions?

Answer 4. PBGC currently has about $100 million in real estate assets. These are properties that the corporation has taken in as the result of becoming trustee of terminated pension plans. While I may have personal opinions about the appropriateness of real estate, I will be guided by investment advisors with a broader perspective. As part of PBGC's investment program review, real estate will be evaluated as a possible active asset class. Ultimately, any decision about using real estate as an active asset class will be made by the PBGC Board. If my former company were to approach PBGC about any financial dealings, I am required to and would recuse myself from any such discussions or transactions. We have processes in place to prevent any inappropriate interactions.

The investment policy adopted by the Board sets the broad framework for the handling of PBGC's portfolio. Those assets are managed by third party contractors who are hired to achieve certain investment results based on that policy. My various experiences in the financial world have well-prepared me to oversee the review of our policies, the setting of investment benchmarks for each segment of the PBGC portfolio and the hiring of appropriate asset managers for the corporation.

Question 5. The Senate-passed Pension Security and Transparency Act included a provision directing the PBGC to negotiate alternative payment plans with struggling companies before their pensions fail. Unfortunately, this provision was stripped in conference between the House and Senate. Do you agree that it is in the PBGC's interest to prevent pension failures before they happen? Do you believe that PBGC should have as many tools as possible at its disposal to stop pensions from failing and being dumped on the agency?

Answer 5. PBGC strongly encourages plan sponsors that face financial hardship to explore every alternative to plan termination. Among other things, plan sponsors facing temporary financial hardship can request a waiver of their annual funding obligations from the Internal Revenue Service (IRS), and PBGC is actively engaged with IRS and plan sponsors in that process. Other plan sponsors obtain breathing room by obtaining IRS approval to stretch out the amortization period for funding benefits, and PBGC also plays a role in that process.

Most underfunded plans terminate because the employer has gone out of business, liquidated, or sold its assets in an insolvency situation. In those situations, there is generally no alternative to plan termination. In other instances, lenders or other investors who are funding a bankruptcy work-out will not participate in the reorganization unless the pension plan is terminated. As you are likely aware, the Deficit Reduction Act of 2005 (DRA) imposed a new, post-reorganization premium of $1,250 per participant for 3 years on a plan sponsor that terminates its pension plan in bankruptcy and later emerges from bankruptcy. This change, which was made permanent under the Pension Protection Act of 2006 (PPA), may deter some terminations.

I would welcome the chance to work with the committee on possible additional authorities for PBGC in this regard.

Question 6. In the last 25 years there has been a steady decline in the portion of private-sector workers with defined benefit pensions. This has shifted more retirement risk to individuals, instead of promoting secure pensions for all workers. A core part of the PBGC's mission is to "encourage the continuation and maintenance" of private defined benefit pension plans. In last week's hearing, you testified that you are committed to promoting defined benefit pensions. What specific activities do you plan to pursue, if confirmed? Will you commit to taking specific actions to increase the number of such plans in the U.S.?

Answer 6. Defined benefit (DB) plans play an important role in the pension system, both as a source of retirement income for workers and their beneficiaries, as well as a workforce recruitment tool for businesses. These plans typically pay benefits as an annuity for life, and thus, they reduce the risk that a worker will outlive his retirement income.

For a number of reasons, DB plans have been covering a declining share of the work force over the past 25 years. Still, more than 20 million wage and salaried workers in private industry are covered today by defined benefit plans. These plans remain a key source of retirement income for 44 million workers and retirees. Congress took important steps in PPA—such as encouraging cash balance and other hybrid plans—that can help to strengthen DB plans.

In administering the termination insurance program, PBGC monitors corporate transactions and bankruptcy proceedings that may threaten funding or continuation of ongoing plans. PBGC negotiates financial protections to keep these plans ongoing for workers and retirees and to limit losses to those individuals and PBGC, if termination does occur. This activity also sends the important message that employers have a duty to fund their plans.

For example, when Daimler Chrysler was nearing agreement on the sale of its Chrysler operations, PBGC initiated discussions with Daimler and Cerberus that led to their agreement to provide significant financial commitments to strengthen Chrysler pensions. Similarly, when Tower Automotive entered bankruptcy, PBGC made known its analysis that the company could afford to maintain its pension plan. Unlike many other pension plan sponsors, Tower Automotive met all financial obligations to its pension plan during the course of the bankruptcy and exited bankruptcy with the new Tower Automotive maintaining the pension plan. I commend these companies on their willingness to work with PBGC to protect the retirement security of their workers and retirees. When PBGC publicizes its efforts on these cases, it reminds all plan sponsors that PBGC is committed to making sure that sponsors maintain their plans whenever possible.

A strong pension insurance program is also important in making DB plans more attractive. Premium increases contained in both the DRA and PPA will help strengthen PBGC, and I intend to work further to strengthen the program. In addition, I will publicize DB plans so that workers and employers are more aware of their many advantages. However, PBGC's role in encouraging private pension plans should take place as part of discussions about how to promote retirement income security. Each company must determine if the costs and benefits of voluntarily providing a defined benefit plan are appropriate for, and best suited to, the firm achieving its business model goals. For many companies, a DB plan is an important compensation tool that allows them to attract and retain workers with needed skills. For workers, DB plans provide a predictable and secure retirement income.

Finally, a PBGC working group recently found that there were approximately 1,000 new DB plans with about 7,500 new participants created in 2005. I have been briefed on this study, and I have asked for further study of the factors that led the companies involved to begin new DB plans. This information should prove useful in identifying the policies worth promoting in order to encourage the creation of more DB plans.

Question 7. Millions of workers and retirees rely on the PBGC to safeguard their retirement. If their employer goes bankrupt or their pension plan fails, they are left unsure about their future. It is the responsibility of the PBGC to let them know what is happening with their pension and to begin paying them their benefits. Your past experience has been primarily financial, not working with pension plans, but the agency's top priority is in fact protecting and serving retirees. What steps have you taken since taking over as Interim Director to meet with retirees and hear their concerns?

Answer 7. PBGC must never forget that its principal stakeholders are the pension beneficiaries it serves. Many of these individuals have been let down by an employer and often receive less in benefits than they expected. Understanding these facts and these individuals' needs is crucial for a successful leader of this corporation.

For this reason, I went to the first meeting that PBGC held with participants in a terminated plan since I became Interim Director. In August, I attended meetings with the Delta Airlines pilots in Atlanta concerning the termination of their pension plan earlier this fiscal year. I not only had the opportunity to address the group, but I was also available to meet with individual pilots about their specific concerns.

Also in August, PBGC received notice that in the most recent survey using the American Customer Satisfaction Index (ACSI), the corporation scored an 88 from benefit recipients, up 3 points from last year's score of 85, which was one of highest scores in the Federal Government for 2006. The ACSI is the nationally recognized indicator of customer satisfaction for both private- and public-sector organizations. Retirees give us high marks for timely delivery of benefits each month and an efficient payment process. Credit for our success should be shared broadly across PBGC, among staff in many departments who contribute to getting accurate benefit checks out on time. I am committed to continuing the corporation's longstanding reputation for exceptional customer service.

I am committed to PBGC's mission and purpose. The corporation carries a tremendous responsibility to protect workers and their benefits in ongoing plans and to pay those benefits when a plan must terminate. Workers who receive benefits from PBGC have already been let down by their pension plan; they will not be let down again by the corporation. As stated in my testimony before the committee, PBGC's insured beneficiaries are "real, individual human beings—people who have worked their whole lives to receive the retirement payments that they have been promised and have earned . . . people who are counting on PBGC to carry out its mission as given to it by [Congress]."

Question 8. In the past, PBGC has been criticized for taking too long to process pay claims to plan participants. Recently, this timeframe has been reduced, but it can still take years to make final determinations. Numerous retirees have also encountered mathematical errors stemming from these determinations. What is the average length of time for processing and paying pension claims after the PBGC takes over a company's pension plan? What do you plan to do to shorten the amount of time needed to issue final determinations, improve the accuracy of PBGC's calculations, treat retirees more sensitively, and more generally improve service to participants?

Answer 8. Calculating benefits for participants in terminated plans is one of the more important things that PBGC does and one on which we spend significant resources. One of the first things I did at PBGC was to look into the accuracy and communication of these amounts and we have changed the wording to ease understanding of what is a very complicated process. As you note, the corporation has reduced the timeframe for producing final benefit determinations from a high of 7–10 years in the 1990s to our current average of under 3 years (even with our higher than normal workloads). Provisions in PPA will allow us to continue to reduce the average time over the next few years as it changes the method of averaging our recoveries for smaller plans. As we realign processes under PPA, we expect to increase accuracy as well—most of our mathematical errors are caused by participant data challenges that we have in taking over trusteed pension plans. It is often a challenging task to assemble and organize the records of a pension plan of a company that is in financial distress to collect the amount of participant data required for our legislated calculations. We are working on processes and methodologies to better collect this data. These efforts focused on accuracy and timeliness of final determinations should have a measurable positive impact on service to participants.

Question 9. Last year PBGC's annual report noted a significant drop in customer satisfaction among workers who contacted the PBGC by phone. How can you explain the recent drop in customer satisfaction in the service and responses they received when calling the PBGC? What steps do you plan to take to address this?

Answer 9. While the 2006 Annual Report did note a drop in customer satisfaction for participants who contacted PBGC by phone, I am happy to report that our most recent ASCI score for this group of customers has increased to 78, an improvement of three points from the previous year.

As noted in my response to question 7 above, the people who most depend on PBGC—retirees who receive a monthly benefit check—give the corporation high marks. As measured on the ACSI, PBGC scored an 88 from benefit recipients, up 3 points from last year's score of 85, which was one of highest scores in the Federal Government for 2006.

Meanwhile, the corporation continues it efforts to improve communications with its customer base. We recently produced an interactive DVD, which provides answers to the most frequently asked questions of people who receive PBGC benefit payments. It is now included as part of the information packet sent to all participants in newly-trusteed plans. PBGC holds participants meetings for recently-trusteed plans, and as referenced in the response to Question 7 above, I attended the Delta Airlines pilots meeting in Atlanta last month. Our newsletters reach all 1.3 million individuals in PBGC-trusteed plans with information about such services as MyPBA (My Pension Benefit Account), which allows customers to transact business with us securely and on line.

Excellent customer service is a PBGC core value. In the most recent edition of our participant newsletters, I have given my personal customer service pledge to our beneficiaries. If confirmed, I will keep a vigilant eye on the corporation's performance on metrics such as the ACSI and will insist that we meet the high standards the public deserves.

RESPONSE TO QUESTIONS OF SENATOR CLINTON BY CHARLES E.F. MILLARD

Question 1. What do you regard as the proper role of the PBGC in negotiating with companies and helping them to consider less drastic alternatives to abandoning their defined benefit pension plans?

Answer 1. Under ERISA, part of PBGC's mission is to "encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants." Therefore, within its limited powers, the corporation works closely with plan sponsors to find ways of keeping their DB plans ongoing. For example, under the Early Warning Program, we seek protections for plans as part of business transactions that might otherwise significantly increase the risk of termination. This has included persuading potential purchasers to assume pension plans. PBGC also encourages sponsors to explore all possible funding avenues that would facilitate continuation of their pension plans.

Where a sponsor claims it can no longer afford to fund its plan, PBGC requires the sponsor to prove that the statutory criteria for plan termination are met, whether the sponsor is in or outside of bankruptcy. The statutory criteria generally require that the sponsor will not be able to successfully reorganize or continue in business unless the plan is terminated.

Question 2. What is your view on the proper use and scope of the restoration funding authority? Are you familiar with the December 10, 2002 letter from General Counsel James J. Keightly to then-Executive Director Steven A. Kandarian on the topic and do you have any views on the opinions in the letter?

Answer 2. ERISA contains exacting criteria for plan termination, and restoration of a terminated plan (a completely separate process) is a highly unusual step that PBGC has undertaken only once. The statutory minimum funding rules in the Internal Revenue Code determine the assumptions used to measure plan liabilities and the length of time over which an employer must fund its pension liabilities.

Since ERISA's enactment in 1974, Congress has made several major reforms to protect pension plan participants and the pension insurance program. Restoration funding, created by IRS regulation and implemented under a parallel PBGC regulation, is available only to plans that have been terminated and are later restored by PBGC. The purpose of the restoration funding rules is to deal with the unique circumstances of a restored plan, which has not been funded during the period it was terminated. It does not provide a mechanism for PBGC to grant funding relief by lengthening a plan's amortization period through termination and restoration. Rather, funding rules are established by Congress in ERISA and by IRS in its implementing regulations. The December 10, 2002 letter (PBGC Opinion Letter 2002-1, http://www.pbgc.gov/oplet/02-1.pdf) recognizes this allocation of authority and provides an accurate summary of the law. I would be happy to work with the committee to explore this issue in greater detail.

Question 3. Do you believe the PBGC needs additional regulatory authority in order to play a more active role in negotiating with companies regarding their defined benefit pension plans?

Answer 3. Regulatory and enforcement authority over ongoing plans is primarily the responsibility of the Employee Benefits Security Administration (EBSA/DOL) and the Employee Plans office (IRS/Treasury). PBGC does have certain regulatory and enforcement authority, including the ability to initiate plan termination to protect the pension insurance system. In addition, the corporation has authority to seek protections in certain "downsizing" cases, and to perfect and enforce liens for missed minimum funding contributions. The latter two provisions are of limited effect, and termination is a blunt instrument that may have adverse consequences for plan participants.

Certain items within the Administration's February 2005 pension reform proposal that were not enacted in PPA would have strengthened PBGC's ability to exercise its existing regulatory tools, such as permitting the corporation to perfect its liens for missed contributions after a plan sponsor has filed for bankruptcy, and providing PBGC's Board with authority to set the variable rate premium ("VRP"). I look forward to working with all the appropriate congressional committees and the PBGC Board on these issues.

Question 4. Are there any other ways in which you believe the PBGC can play a more active role to ensure that companies approaching bankruptcy or in bankruptcy retain worker benefits?

Answer 4. PBGC's experience has been that well-funded pension plans commonly survive a bankruptcy reorganization of the plan sponsor, so a well-funded plan is the best means of ensuring that workers' benefits are protected and continued when a company approaches or enters bankruptcy.

In cases where a plan sponsor fails to fund its plan adequately before getting into financial difficulty, several additional tools would help the corporation reduce the risk of loss for plan participants and the pension insurance program. As noted in my response to Question 3 above, certain bankruptcy-related proposals made by the Administration in 2005 were not enacted as part of PPA. These provisions would permit PBGC to perfect liens for missed contributions during bankruptcy. Another area of concern—companies failing to make required minimum contributions during bankruptcy—could be addressed by expressly mandating that required minimum pension contributions be paid as administrative expenses during bankruptcy.

Question 5. Another major issue affecting the health of defined benefit plans in this country involves a provision in our tax code that allows companies to revoke employees' accrued pension benefits when ownership changes. So, for example, when a company sells a subsidiary, the company can choose to treat each of the subsidiary's employees as if they had resigned. The company can then deny those employees their full pensions from their defined benefit plan. One pension expert has referred to this loophole as "scandalous." Are you familiar with this issue? Do you have a view on whether companies should be able to strip pension benefits in this situation? Do you have a view on whether legislation would be appropriate to address this issue?

Answer 5. Under our voluntary pension system, employers have the right to terminate, freeze, or prospectively amend their DB plans. In general, Titles I and II of ERISA, which are administered by EBSA (DOL) and IRS (Treasury), respectively, prohibit reductions of benefits that a participant already has earned—referred to as accrued benefits—but allow an employer to amend a plan to cease accruals with respect to future years of service. If an employer amends its plan to eliminate an early retirement benefit or retirement-type subsidy, employees can still receive the portion of the early retirement benefit or subsidy attributable to benefits accrued before the amendment was adopted, as long as they subsequently meet the age and service requirements for the early retirement benefit or subsidy. Unfortunately, if ownership of the company changes, employees may lose the opportunity to meet those requirements.

Companies should be held accountable to make good on the pension promises they have made to their workers and retirees, and PBGC will do all it can to protect the interests of workers and retirees, to ensure compliance with the statutory and regulatory requirements, and to discourage irresponsible behavior. At the same time, we must not create any new disincentives for companies to maintain their pension plans.

QUESTIONS OF SENATOR MURKOWSKI TO CHARLES E.F. MILLARD

Question 1. Has PBGC ever worked with another pension plan where the larger employer participants left the plan and left the smaller companies with the responsibility for paying into the pension plan?

Question 2. Please explain how the PBGC determines what interest rate will be used for plans that are unable to afford the deficit reduction contribution and thus are forced to terminate.

Question 3. How much does the PBGC actually earn on the investments that it manages? My understanding is that the agency generally earns more than 8 percent.

Question 4. Is it correct that the PBGC typically uses interest rates that are far less than 8 percent to establish the unfunded liability for defined benefit plans that must terminate? For a multiple-employer plan, doesn't this effectively force healthy employers to pay more than their share (their current and past employees' share) of the liability for a multiple-employer plan?

[Editor's Note: Responses to the questions above were not available at the time of print.]

[Whereupon, at 11:00 a.m. the hearing was adjourned.]

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