Hearing Before the ERISA Advisory Council

Managing Disability Risks in an Environment of Individual Responsibility

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I am Cary Burnell, and I am a Technician in the Collective Bargaining, Research and Benefits Department of the United Steelworkers International Union (USW).

On behalf of the USW and International President Leo Gerard, I thank the Council for the invitation to appear today to address the increased risk of income insecurity caused by the erosion of defined benefit pension plan coverage.

Our Union represents approximately 850,000 members in the United States and Canada who work in virtually every sector of the economy. Among the Union's traditional core jurisdiction is the primary metals industry, including the steel and aluminum industries, as well as the paper, rubber, energy, and mining industries.

Retirement Plan Trends

Defined benefit pension plans have long been an important piece of the social safety net for millions of American workers. Approximately 41 million participants are covered under private-sector defined benefit plans.[1] However, the number of active workers in the private sector covered by defined benefit plans has declined from 39% in 1980 to just 15% in 2011.[2]

Further, more and more employers are seeking to freeze accruals for current and/or new employees under their long-standing defined benefit pension plans and establish only modest 401(k) style replacement plans.

There are many reasons to be troubled by the decline in defined benefit pension coverage. One of these is the subject of the Council's examination today, because with fewer workers covered by defined benefit plans, the number of workers exposed to income insecurity due to a career ending illness or injury has risen dramatically.

One of the many advantages of traditional defined benefit pension plans is the inclusion of an early retirement benefit in the event an employee becomes disabled and unable to continue to work for his/her employer. This remains especially relevant in many occupations and industries, where despite the advances in automation, the work is still often difficult, dirty and dangerous. Two-thirds of private sector manufacturing workers covered by defined benefit plans have access to disability pension benefits of this type.[3]

In contrast, only 31% of private sector workers are covered by long-term disability plans.[4] If workers covered by defined contribution plans have the same coverage rates under long-term disability plans as all private sector workers, and there is no reason to believe otherwise, the vast majority of workers covered by defined contribution replacement plans have no protection against long-term disabilities. This has real costs for workers, their families and society.

USW Experience in the Steel Industry

Over the last 70 years, our Union has fought to establish a comprehensive, integrated income security program for workers in the primary metals industry.

For example, the labor agreements between the Union and companies in the aluminum, steel, can, tire and rubber industries have long provided an immediate unreduced early retirement benefit to workers with 10 or 15 more years of service who are permanently disabled and unable to continue working. In the primary metal industries, this benefit included a $400 per month supplement until the individual became eligible for Social Security, but was not otherwise subject to reduction. Further, workers covered by these plans retain active insurance coverage and continue to accrue pension service during absences due to disability for up to two years, and longer in some circumstances. Upon the qualifying for a disability pension, their pension service halts and they become eligible for retiree health care benefits.

However, this income security program has been difficult to maintain in the face of growing competition from imports and non-unions firms, rising raw materials costs and the inability of domestic firms to set market prices. For example, between 1998 and 2003, the steel industry experienced a crisis brought on by a wave of imports which flooded the market and drove steel prices down to 20-year lows. The result was 44 bankruptcies, 18 liquidations and the loss of 55,000 jobs. The PBGC initiated involuntary terminations of the defined benefit pension plans of 16 steel companies, involving over 250,000 participants.

The steel industry underwent a massive consolidation and restructuring. Successor employers were often reluctant to agree to successor defined benefit pension plans. Instead, the companies agreed to participate in the USW's multi-employer defined benefit plan, the Steelworkers Pension Trust (SPT). The SPT covers 56,000 active employees across the union -- the majority of which are now in the steel industry. The SPT has an immediate, unreduced disability benefit for workers with 5 more years of service who are permanently disabled and qualify for a Social Security Disability benefit. Thus, the Union was able to retain disability income protection for its members in the steel industry. Often workers are not so fortunate.

USW Bargaining Experience

Defined benefit pension plans are under enormous pressure and scrutiny today. More and more employers are seeking to replace long-standing defined benefit pension plans with only modest 401(k)-style plans.[5] Our Union seeks to oppose such efforts, but we are not always successful.

For example, several major companies in the tire and paper industries have closed their defined benefit pension plans to new hires, including Goodyear, BF Goodrich, Cooper Tire, Domtar, Boise, and SCA. In each, our Union was successful in negotiating replacement long-term disability coverage.

However, employers seeking to close defined benefit plans or freeze accruals are usually reluctant to agree to participate in multi-employer plans or to adopt long-term disability insurance coverage. People often incorrectly assume that employees who are vested in a frozen defined benefit plan can automatically obtain disability benefits if they subsequently become disabled. But sometimes, in bargaining with employers which are hostile or in serious financial distress, retention of long-term disability protection is simply not an achievable goal.

In addition, even where it is possible to negotiate long-term disability insurance coverage, these programs typically provide lower benefits than available from a disability pension from a defined benefit plan, since they contain benefit offsets for Social Security and other benefits.

The inability of defined contribution plans to offer a disability benefit and the low level of coverage in long-term disability plans exposes more and more workers to income insecurity due to a career ending illness or injury. This will only grow in severity over time and as Medicare, Medicaid and state workers' compensation programs come under additional financial pressure.

Steps the DOL Can Undertake to Assist Workers and Employers

The most important thing that can be done to reduce the risk of economic insecurity for American workers is to take steps to preserve and expand coverage of the traditional defined benefit pension system.

There are other steps that the DOL could take. We would encourage the inclusion of measures of the benefit combination of long-term disability coverage and primary retirement plan type in the BLS's National Compensation Survey and annual survey of employee benefits. This would allow researchers and policymakers to better evaluate the problem and hopefully craft solutions.

While educational programs and outreach efforts are worthy of consideration, they are unlikely to change employer behavior or long term disability coverage.

As you know, the contributions limits under Section 415 of ERISA prohibits an employer from making a contribution to a defined contribution plan during a period during which the employee has no earnings, such as disability, layoff and leaves of absence. While a defined contribution plan may provide a work-around, through the use of "shadow accounts," these mechanisms are only available if the employee actually returns to work -- which many disabled employees are unable to do. This hurts workers with long-term disabilities. Removing this restriction would be helpful. However, this alone is will not provide significant relief to disabled workers. The contributions are too little and their income loss is too great.

Similarly, efforts to allow disabled workers to save for their retirement are likely to have little impact. Most disabled workers have heavy and immediate financial and medical needs. They simply have too little income to save – especially younger workers.

The absence of disability income protection is a growing threat to the retirement security of American workers. We commend you for your attention to this important issue.

Thank you again for the opportunity to appear before you today.

[1] *Pension Insurance Data Book 2010*, Pension Benefit Guaranty Corporation, undated, Table S-30 and M-8, accessed June 11, 2012, http://www.pbgc.gov/Documents/pension-insurance-data-tables-2010.pdf.

[2] *Private Sector Workers Participating in an Employment-Based Plan, by Plan Type, 1979-2008*, Employee Benefits Research Institute, Figure 1, accessed June 11, 2012, http://www.ebri.org/publications/benfaq/index.cfm?fa=retfaqt14fig1

[3] *Employee Benefits in the United States*, Bureau of Labor Statistics, U.S. Department of Labor, March 2010, Table 32.

[4] *Employee Benefits in the United States*, Bureau of Labor Statistics, U.S. Department of Labor, March 2011, Table 17, July 26, 2011.

[5] According to data from Towers Watson the number of Fortune 1000 companies sponsoring one or more frozen defined benefit plans increased from 45 to 237 between 2004 and 2011. *Pension Freezes Among the Fortune 1000 in 2011*, Towers Watson, The Insider, Volume 21, Number 11, November 2011, page 3.