# Congress of the United States
Washington, DC 20515

November 30, 2005

The Honorable David M. Walker
Comptroller General of the United States
Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Walker:

In May 2005, the Securities and Exchange Commission (SEC) released a report, "Examinations of Select Pension Consultants", that revealed significant conflict-of-interest and non-disclosure issues within the pension plan consultant industry. Specifically, the SEC found, among other conclusions, that:

> "[P]ension consultants may steer clients to hire certain money managers and other vendors based on the pension consultant's (or affiliate's) other business relationships and receipt of fees from these firms, rather than because the money manager is best-suited to the client's needs. Such a conflict can compromise the fiduciary duty that investment advisers owe their clients."

The findings included in the Commission's report are particularly disturbing for pension plan beneficiaries, whose benefit payments are dependent upon their plan management's diligent performance of its fiduciary duties, and for the Federal government, which is faced with an enormous deficit at the Pension Benefit Guaranty Corporation (PBGC) as a result of a series of massive corporate bankruptcies that have resulted in PBGC assumption of severely underfunded pension plans terminated when the corporations entered bankruptcy

Specific concerns have been raised about the management of United Airlines' pension plans, which are undergoing termination by the PBGC, resulting in deep cuts in benefits to current and retired United employees. For example, the Aircraft Mechanics Fraternal Association (AMFA), which represents employees at United, has written to Labor Secretary Elaine Chao and PBGC Executive Director Bradley Belt raising questions about potential conflicts-of-interest among consultants and money managers, excessive management fees, and conflicted investment transactions at United's pension plans. AMFA and others have been urging the PBGC to audit United's pension plans. These issues were raised in recent press articles (see "How Wall Street Wrecked United's Pension," New York Times, July 31, 2005, at Section 3, Page 1, and "The Imperfect Storm," New York Times, August 3, 2005, at Section A, Page 18.)

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We are concerned about reports that pension consultant conflicts-of-interest may have caused or contributed to the problems at United's plan, which produced the staggering liabilities that have now forced the PBGC to assume control of the plan. Moreover, the SEC report suggests that conflicts-of-interest and failure to disclose relationships that compromise pension consultants' objectivity may be a widespread industry practice. For example, according to the SEC report "More than half of the pension consultants or affiliates reviewed (13) provided products and services to both pension plan advisory clients *and* money managers and mutual funds on an ongoing basis. For some of these consulting firms, the compensation received from money managers comprised a significant part of their annual revenue." (see SEC Staff Report Concerning Examinations of Select Pension Consultants, May 16, 2003, at Page 4.) Accordingly, some of the 3,500 terminated pension plans that are now the responsibility of the PBGC may have been adversely affected - prior to PBGC assumption of the plans' liabilities - by the types of conflicts and hidden financial arrangements uncovered by the SEC.

We understand that the PBGC has to date declined to undertake a forensic audit of United's plan to ascertain whether there were, in fact, conflicts of interest, hidden financial arrangements and unlawful activities. Additionally, we are not aware of any plans by the PBGC to systematically assess whether pension consultant conflicts-of-interest or undisclosed financial relationships existed at any of the terminated plans now under its control.

Given the PBGC's unprecedented $23 billion deficit, the expectation that additional terminated plans will increase the PBGC deficit further, the enormous economic harm inflicted upon working men and women when their pension earnings are eliminated or dramatically reduced when plans are terminated and transferred to the PBGC, and the SEC's findings in May 2005 that pension consultants across the pension consulting industry may be neglecting their fiduciary duties to the detriment of their pension plan clients, we request that the Government Accountability Office (GAO) investigate activities relating to government regulation and enforcement of pension fraud resulting from conflicts of interest and similar activities. Specifically, we request that GAO examine the following issues:

1. What financial information and records does the PBGC receive from pension plans when the plans terminate and transfer responsibility for beneficiary payments to the PBGC? Does the PBGC routinely and systematically audit this financial information to determine whether malfeasance by the plan sponsor, administrator, consultant or other vendor to the plan occurred, such as conflicts-of-interest, hidden financial arrangements or unlawful activities? Does PBGC require terminated plans to provide it with specific information, or is the provision of plan information left to the discretion of the terminated plan? Is the information PBGC requires terminated plans to provide sufficient to enable PBGC to uncover any potential conflicts, hidden financial arrangements or wrongdoing?

2. If PBGC conducts routine audits, in how many of the plans under its control has it uncovered the activities described above, what actions did it take and what results were achieved (e.g., disgorgement of funds stolen from pension fund)? How many auditors or investigators does the PBGC employ to conduct such audits? If the PBGC employs contractors to conduct auditors, how many auditors are engaged and how are they utilized?

3. If the PBGC does not conduct routine audits, or engage contractors with relevant expertise to conduct such audits, why not? Would the systematic review of financial information from terminated plans under PBGC control be advisable, in light of the SEC's May 2005 report on pervasive conflicts-of-interest within the pension consulting industry?

4. How does the PBGC coordinate its activities with the Securities and Exchange Commission (SEC) and the Labor Department (DOL), which also have a role in the regulation and enforcement of pension policy? Does the PBGC utilize the investigative and pension expertise of SEC and DOL staff? If yes, how? If not, why not? Does the PBGC have a formal process for referring complaints or concerns to DOL and the SEC? If not, would such a process be advisable?

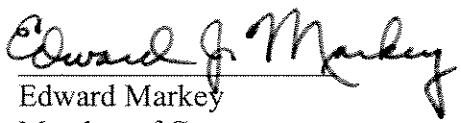
5. Does the PBGC now, or has it previously, employed any pension consultant determined by the SEC in its May 2005 report to have conflicts-of-interest or maintain hidden financial arrangements that were not disclosed to the pension consultants' clients? If yes, what functions are or were these consultants hired by the PBGC to perform (e.g., advise on how to invest pension funds transferred from terminated plans)?

6. On June 1, 2005, the SEC and DOL released a questionnaire to assist pension plan fiduciaries detect conflicts-of-interest that may undermine the objectivity of the advice they receive from their pension consultants. Pension consultants subsequently have responded to the SEC and DOL questionnaire and have distributed these responses to their clients. Does GAO consider the responses furnished by pension consultants as fulfilling SEC and DOL objectives, namely "to encourage the disclosure and review of more and better information about potential conflicts-of-interest and to help plan fiduciaries exercise informed decisions on behalf of plan investors"(SEC response to Rep. Markey and Rep. Miller, September 1, 2005)? If not, what recommendations does GAO have to assist the SEC and DOL achieve this goal? Have the DOL and SEC been effective in preventing and eliminating conflicts-of-interest from the pension fund industry?

7. Should Congress consider remedial legislation to address the issues raised by pension consultant conflicts-of-interest or disclosures in order to protect pension beneficiaries and minimize the potential for future pension plan failures?

The ongoing crisis in the pension fund marketplace requires a thorough, independent review to identify problems with government regulation and enforcement and recommend improvements. We look forward to your response. If you have questions, please have a member of your staff contact Mark Bayer or Jeff Duncan in Rep. Markey's office at 202-225-2836 or Michele Varnhagen or Jody Calemine in Rep. Miller's office at 202-226-1881.

Sincerely,



Edward Markey
Member of Congress

George Miller
Senior Democratic Member
Education and the Workforce Committee