

Congress of the United States
House of Representatives
Washington, DC 20515

October 18, 2012

The Honorable Phyllis Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, D.C. 20210

Dear Madam Secretary,

We have received your August 9, 2012 letter responding to our April 25, 2012, correspondence regarding pension funds' investments in commodity index funds and the implications for those investments under the Employee Retirement Income Security Act of 1974. We write to you today to thank you for that response and ask for additional follow-up on the accessibility of key pieces of pension investment data.

On page 2 of the your August 9 letter, you responded to our question about whether "any of the ten largest private pension plans have 1% or more of their assets invested in or benchmarked to commodity index funds." The Department was able to confirm such investments for one plan but could not say whether other pension plans have similar investments because many of the largest pension plans are invested via master trust. As a result, the Department indicated that the degree to which pension plans are invested in commodity index funds is not readily accessible to the Department:

There may well be other investments in these types of funds held by . . . other plans through a trust or other similar vehicles. Many of the largest pension plans invest some, or even the vast majority of their assets through a master trust, a common/collective trust, or similar investment vehicles. Information on how much of the investments the pension plans hold through these trusts or similar vehicles are invested in or benchmarked to commodity index funds is generally not readily available. While each of these trusts files its own Form 5500, in the same manner as many pension plans, information about investments in commodities only appears on an attachment to the Form 5500's Schedule H. That attachment is not subject to data capture, because it is not currently submitted or processed in a form that facilitates such capture. For each trust, one would need to search through many pages of information, often by hand. Some trusts invest in other trusts, creating another layer of filings that would need to be reviewed.

Other important information about pension plan investments appears obscured by this “data capture” problem. On page 3 of the August 9 letter, you state that “it is difficult for us to describe the nature and size of defined benefit pension plan investments because many of the assets are invested through trusts or similar vehicles,” the details of which are similarly not subject to data capture. If the Department does not have ready access to much information about defined benefit pension plan investments, we worry that the Department and others cannot determine that all relevant rules and regulations are being followed by defined benefit pension plans.

We do not believe that the present situation is suitable for pension plan participants or investors generally. As we laid out in our April 25, 2012 letter, commodity index funds are a potentially dangerous investment for pension plan participants and beneficiaries: they have poor investment performance, increase volatility in commodities markets, and increase the prices of commodities. If the Department of Labor does not have ready access to information about pension plan investments in these funds, it is unclear how the Department would know whether it must take additional regulatory action to protect workers and retirees from these risky investments. Based on the comments in the Department’s letter of August 9, it should be possible to make this information, currently compiled in attachments to Form 5500’s Schedule H, available to data capture via the administrative steps of altering the Schedule H form or requiring that the information be produced in an industry-standard data capture format.

To better understand why this critical information is not currently subject to data capture, we request that you respond to the following questions:

- 1) Has the Department of Labor previously considered requiring that the contents of the attachment to Form 5500’s Schedule H (and all other schedules and documents) be subject to data capture? If so, please explain why the Department opted not to require that this information be subject to data capture.
- 2) Please explain any obstacles to making the information in the attachment to Form 5500’s Schedule H subject to data capture. Is the Department of Labor currently prohibited from making this subject to data capture? If so, what regulation, statute, or administrative order prohibits such data capture?
- 3) Is the Department of Labor currently unable to capture the data in the attachment to Form 5500’s Schedule H due to the terms of a contract it has with a third-party vendor? If so, how long has that contract been in effect and when will it be up for renewal? Additionally, is the Department of Labor planning on ensuring that the attachment to Form 5500’s Schedule H will be subject to data capture in the new contract? If not, why not?

As we are primarily interested in the holdings of the ten largest defined benefit pension plans, please provide us with copies of the Form 5500 Schedule H’s for those pension plans or provide the needed information to find each plan on the Department’s website with schedule H.

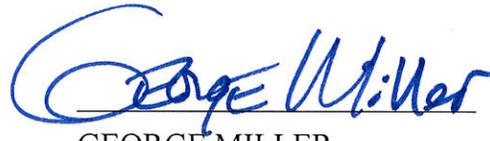
The Honorable Phyllis Borzi
October 18, 2012
Page 3 of 3

Thank you for your assistance and cooperation in this matter. If you have any questions, please contact Justin Slaughter on the Natural Resources Committee's staff at (202) 225-6065 and Michele Varnhagen on the staff of the Committee on Education and the Workforce at (202) 225-3725.

Sincerely,



EDWARD J. MARKEY
Ranking Member
Committee on Natural Resources



GEORGE MILLER
Ranking Member
Committee on Education and the Workforce