

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS



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LEGISLATIVE ALERT

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September 17, 2013

The Honorable Carl Levin, Chairman
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, D.C. 20510

The Honorable James M. Inhofe, Ranking Member
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Levin and Ranking Member Inhofe:

The AFL-CIO asks for your support to strike section 842 of the National Defense Authorization Act (NDAA) for FY 2014 (S. 1197) when the bill comes before the Senate Armed Services Committee. This section, based on a GAO report earlier this year (GAO-13-158: *Pension Costs on DOD Contracts*), directs the Department of Defense (DoD) to oversee the “reasonableness” of pension plans sponsored by DoD contractors and to issue guidance on the “acceptable” measure of pension costs, i.e. the discount rate, and the “value” of such pension benefits. These directives are neither necessary -- they create redundancy in an already highly regulated area -- nor the remedy for the problem they purport to address. They also potentially undermine the retirement security of the American workers engaged in defense production and services.

The Federal Acquisition Regulation (FAR) requires DoD contracting officials to review contractors’ employee compensation for the reasonableness of the work performed. DoD reviews wages and salaries and “fringe benefits,” which include paid leave, health insurance, and pension benefits; under the FAR, compensation is “reasonable” if the aggregate of these elements sums to a reasonable total. As the Defense Contract Audit Agency (DCAA), one of two agencies with oversight over DoD contracts explains in its Audit Manual, it is appropriate to consider “the aggregate” of compensation because companies may use “offsets” when developing a compensation plan (*See DCAM 6-413.7*); that is, employers may choose to offer, or may collectively bargain, greater fringe benefits in exchange for less compensation. Pensions, in particular, are not gifts from employers, but wages that employees have chosen to defer in exchange for that income in retirement.

Without basis – the GAO report includes no evidence that defined benefit pension plan costs are unreasonable or that their elimination would result in savings – and contrary to the above-described established regulations and procedure based on practical common sense analysis, section 842 of the bill singles out one element of compensation, pensions, for additional scrutiny and oversight.

The “measure” of pension costs already is thoroughly addressed by current law. The Cost Accounting Standards Board (CAS Board) an independent statutorily-created board within the Office of Management and Budget’s Office of Federal Procurement Policy, has “the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and interpretations . . . to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation to costs to [federal] contracts” (41 U.S.C. section 1502). Since the mid 1970’s, rules set by the CAS Board have instructed contractors how to measure their pension costs for purposes of federal contract accounting. These rules fill in any gaps in federal pension law due to issues peculiar to federal contractors, such as how to assign pension costs to contract accounting periods and allocate these costs among a contractor’s various contracts.

The GAO report’s projection that the “harmonization” of the 2006 Pension Protection Act’s (PPA) funding rules with the CAS Board rules will likely increase the magnitude and volatility of contractor pension costs, will in no way be improved by more “guidance” on the discount rate DoD contractors use in their pension cost calculation or on the “value” of the pension. Rather, the appropriate remedy is that Congress revisit PPA’s funding requirements for all single employer pension plans sponsored by private employers. While well-intentioned, PPA reflects a fundamental misunderstanding about pension plans; unlike deposit-taking institutions, they need not meet all benefit obligations at one time. PPA, however, requires faster funding and actuarial assumptions and interest rates that reflect a shorter time horizon than previous law - all of which lead to more volatility in funding obligations.

Particularly in this time of economic insecurity, protecting the retirement security of American workers should be a bipartisan goal. Pensions remain the soundest vehicles for building and safeguarding retirement income security. Policymakers should be supporting the DoD contractors, who provide employee pensions, not sending the message the federal government questions the reimbursement of these contract costs by legislating unnecessary bureaucratic oversight. We urge you to reject section 842 of the bill.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Samuel', written in a cursive style.

William Samuel, Director
Government Affairs Department

c: Senate Armed Services Committee

