Lawmakers Seek Inquiry on Pensions

By MARY WILLIAMS WALSH
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Two members of the House of Representatives asked the research arm of Congress yesterday to investigate whether the federal agencies that enforce pension law have failed to police a crucial part of the pension business: the consultants and money managers who help decide how money is invested.

The request by Representatives George Miller, a California Democrat, and Edward J. Markey, Democrat of Massachusetts, underscores a flaw in the pension law.

The law divides the authority for pension plans among three federal agencies, which look at such issues as whether companies are putting enough money into pension funds and whether they are keeping employees informed about the plans. But the money managers are regulated by a fourth agency, the Securities and Exchange Commission, which has no authority over pension law.

This regulatory problem is as old as the pension law, 31 years. But it has become apparent only recently, as a series of record-size corporate pension failures has put new burdens on the federal agency that insures pensions. Even now, with Congress trying to close loopholes in the pension law, the focus has been on how to make sure companies put enough money into their pension funds, not how the money is invested after that.

In a letter to David M. Walker, the head of the Government Accountability Office, Congress's investigative arm, the congressmen pointed to the collapse this year of the employee pension plans at United Airlines.

They noted that a union that represents some United employees, the Aircraft Mechanics Fraternal Association, had specifically asked federal regulators to look into whether United's pension consultant had been acting solely in the interests of the plan participants, as the law requires, or had been steering blocks of pension money to certain money managers for business reasons.

The union put its request last summer to the Pension Benefit Guaranty Corporation, which guarantees company pensions, and to the labor secretary, Elaine L. Chao, who is chairwoman of the guaranty corporation.

"We understand that the P.B.G.C. 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," the representatives wrote.

They said this was particularly disturbing because United's pension failure came at about the same time as the S.E.C. issued a critical report on the pension consulting business.

The report, based on an 18-month review, found that more than half the pension consultants in the S.E.C.'s sample were being paid by money management firms, even as they claimed to be screening and selecting money managers objectively on behalf of their pension fund clients.

The S.E.C. referred about a dozen of the consultants to its enforcement division for further action, but it did not name them.

The two representatives said the S.E.C. report raised questions about whether conflicts of interest among United's consultants and its money managers had contributed to the failure of its pension fund. That failure caused record losses of about $10 billion, which will be borne by the Pension Benefit Guaranty Corporation and the employees of United.

Not only had the guaranty corporation not made a review of United's consultants and money managers, they wrote, but "we are not aware of any plans by the P.B.G.C. to systematically assess whether pension consultant conflicts of interest or undisclosed financial relationships existed at any of the terminated plans now under its control."

The representatives said they had been asking the S.E.C. whether any of the pension consultants referred to the commission's enforcement division were used by United's pension fund, but so far they had not received an answer. They also asked the Government Accountability Office to determine whether the pension agency had used any of those consultants.

A spokesman for the accountability office confirmed that it had received the request for an investigation and would work with the lawmakers on defining the scope and timing of an investigation.

The pension guaranty corporation has taken over nearly 4,000 defunct pension plans in the last three years, digging itself into a $23 billion hole. The guarantor is not at risk of running out of money anytime soon, but Congress has been working on legislation that would improve its finances as well as close the loopholes in the rules that govern how much money companies set aside for their pension plans. But progress has been slow.

The pension law requires the officials of company pension plans to make sure the money is invested with "care, skill, prudence and diligence." In practice, many plan sponsors work with outside consultants, who help them devise an asset-allocation strategy and pick outside money managers to carry it out.

This division of labor appears to be causing confusion about which regulatory agency should monitor the investment of pension money.

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