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EMPLOYER PERSPECTIVES ON MULTIEMPLOYER PENSION PLANS

HEARING

BEFORE THE

JOINT SELECT COMMITTEE ON SOLVENCY OF MULTIEMPLOYER PENSION PLANS UNITED STATES CONGRESS

ONE HUNDRED FIFTEENTH CONGRESS

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EMPLOYER PERSPECTIVES ON MULTIEMPLOYER PENSION PLANS

WEDNESDAY, JUNE 13, 2018

U.S. CONGRESS,
JOINT SELECT COMMITTEE ON SOLVENCY OF
MULTIEMPLOYER PENSION PLANS,
Washington, DC.

The hearing was convened, pursuant to notice, at 2:18 p.m., in room SD–215, Dirksen Senate Office Building, Hon. Sherrod Brown (co-chairman of the committee) presiding.

Present: Senator Hatch, Representative Foxx, Senator Alexander, Representative Roe, Senator Portman, Representative Buchanan, Senator Crapo, Representative Schweikert, Representative Neal, Senator Manchin, Representative Scott, Senator Heitkamp, Representative Norcross, Senator Smith, and Representative Dingell.

Also present: Republican staff: Chris Allen, Senior Advisor for Benefits and Exempt Organizations for Co-Chairman Hatch. Democratic staff: Gideon Bragin, Senior Policy Advisor for Co-Chairman Brown.

OPENING STATEMENT OF HON. SHERROD BROWN, A U.S. SENATOR FROM OHIO, CO-CHAIRMAN, JOINT SELECT COMMITTEE ON SOLVENCY OF MULTIEMPLOYER PENSION PLANS

Co-Chairman BROWN. The Committee on Solvency of Multiemployer Pension Plans will come to order.

Senator Hatch will be here in a moment. He asked that I begin. And I hope he is here by the time he can introduce the panel. And then if not, I will introduce them and we will begin then, and Senator Hatch will make his opening statement.

Thank you all for joining us today again, as always. This is the third hearing of the Joint Select Committee on Multiemployer Pension Reform. We know our job on this committee: to find a bipartisan solution to the crisis threatening 1.3 million Americans and thousands of small businesses across this country.

This job is essential. We know what happens—and I know this panel today will help us paint a picture of what happens if we do not do our jobs here. And this committee was put together to be as bipartisan as possible.

In the end, as I think you panelists know, we need five Republicans and five Democrats to come to the table and support whatever this committee recommends. It is what Chairman Hatch and I have set out to do. I thank him for his work, and I thank all the members of this committee. I have spoken with all of you. I appreciate the seriousness with which each of you is approaching this task.

Chairman Hatch and I decided from the outset to use this initial period to educate ourselves and our colleagues about this complex issue and the broad impact on people whom we serve.

We have made real progress. This will be our third actual hearing. We have three more hearings scheduled. We have assembled a committee staff made up of top people from the PBGC, the Department of Labor, and from offices here and staff here. Staff is working to provide us with the critical technical information that members of this committee require in deepening and broadening their expertise on this subject.

Congressman Buchanan and I just spoke about more interaction, formally and informally, among the group of us as principals. We are all open to that. In general, we are convening a dozen staff briefings, half of which have already taken place. We have received hundreds of comments online at *pensions.senate.gov.*

One of our witnesses today came to our attention when he wrote in to the committee. Thank you for that.

As I said, we will hold two more hearings in Washington, one more in the field, where the workers and business people and retirees will have the chance to weigh in. By the end of July, it will be time to take what we have learned through this process and get serious about the actual negotiations of an end product—it is what it will take to address this.

We all have to put talking points and biases and political parties aside. We have to take what we are learning to craft a bipartisan solution. Senator Hatch and I are absolutely committed to that, because—as we will hear today—not passing a solution to this crisis is simply not an option for our retirees, for our businesses, for the PBGC, for our companies, for our economy, for our country. It is not an option for the millions of Americans who are part of these multiemployer pensions. It is not an option for the millions more who will be affected if the system falls apart. It is not an option for the hundreds, actually thousands of employers and their employees whose entire business is at stake.

We have heard a lot over the past year about the very real threat to retirees who have paid into these pensions over a lifetime of work. Many have talked to many of us on this committee. I would say all 16 of us have talked to retirees and heard their stories.

It is because of their activism—and I absolutely credit them—their refusal to give up was the reason this committee was created in the first place. And I applaud them for that.

But the threat to current workers and to small businesses and our economy as a whole is equally real. If the multiemployer pension system collapses, it will not just be retirees who feel the pain. Current workers will be stuck paying into pensions they might never receive. Small businesses will be left drowning in pension liability that they cannot afford. And that will have ripple effects through our economy.

Small businesses that have been in the family for generations—I hear from dozens of those in my State alone—could face bankruptcy. Workers will lose jobs as businesses are forced to close shop. These businesses are already feeling the effects of this crisis.

Uncertainty surrounding their future threatens their access to credit, their ability to invest in their own businesses, and their decisions about whether to expand and create jobs. That is why this issue cuts across party lines, across ideological lines, through every region of the country.

One of the reasons we have heard more from workers than from businesses is that retirees are more free to speak their minds. But we need to think about the plight of these small-business owners. And this is crucial: if they speak publicly about fearing their business could go bankrupt, it would alarm their customers, it would scare their employees, and it might chase away their creditors. So I want to thank the witnesses here today for speaking for the thousands of small-business people who think they cannot.

You represent businesses that by and large have done everything right. These businesses joined multiemployer pension plans to do right by their employees. They thought they were guaranteeing their workers a secure retirement, making their business an attractive place to work. They followed the rules set by Congress. They kept doing the work to make their businesses thrive; they kept contributing to the pension plan. Now these employers are being punished for succeeding where their competitors failed and for living up to their obligations when so many have walked away.

Meanwhile, it was Congress that passed upside-down tax incentives and required insufficient premium levels. Congress allowed inadequate tools and financing for the PBGC. It was that government regulation that allowed this crisis to fester; it is our responsibility to clean up the mess Congress helped make. And that means more than the simple act—the simple, but inadequate act—of increasing PBGC premiums and marginally improving the minuscule PBGC guarantee. I do not oppose that, but that proposal is far too insufficient.

Businesses and the groups that represent them all agree that saving the PBGC alone does not help anyone. Retirees will still see dramatic cuts to their pension, workers will still pay into a retirement they may never see, and businesses will face increased PBGC premiums while a crippling liability still hangs over those businesses' heads.

I am confident we will find a bipartisan solution that will solve this current crisis and improve and strengthen the system so it never happens again. I am willing to consider—as I know Senator Hatch has told me—any idea that meets these goals.

[The prepared statement of Co-Chairman Brown appears in the appendix.]

Co-Chairman BROWN. I will introduce the panel. Senator Hatch should be here in a moment, and we will begin the testimony.

Our first witness is Chris Langan, vice president of finance at UPS. Mr. Langan began his 37-year career with UPS as a part-time employee loading package cars at night. He spent the last 15 years working as the finance representative for UPS's union labor negotiations. He currently serves as a trustee in the Western Conference of Teamsters Pension Trust. He also serves as co-chair on the jointly trusteed UPS/IBT full-time employee pension and the UPS Teamsters national 401(k) savings plan with combined assets of over $20 billion.

Welcome, Mr. Langan. Thank you for joining us.

Our next witness is Aliya Wong. Ms. Wong is the executive director of retirement policy at the U.S. Chamber of Commerce. In this position, she is responsible for developing, promoting, and publicizing the Chamber's policy on employer-provided security plans, nonqualified deferred compensation, and Social Security.

Welcome, Ms. Wong. Thank you for joining us.

Our third witness is Mary Moorkamp. Ms. Moorkamp is the chief legal and external affairs officer and corporate secretary for Schnuck Markets, Inc.

Thank you for joining us, Ms. Moorkamp.

And our final witness is Mr. Burke Blackman, president, Egger Steel Company in Sioux Falls, SD. Founded in 1946, Egger Steel is a third-generation, family-owned steel fabricator that serves the upper Midwest. Mr. Blackman joined Egger Steel Company in 2002 as vice president of operations. He has served as vice president of finance before becoming president. He has several years of finance experience in the securities trading, mutual fund, and venture capital industries.

Welcome, Mr. Blackman.

Pending the chairman's arrival—okay, he is 1 minute away, and I will wait until he makes his opening statements.

And then, Mr. Langan, you can proceed. But hang on a second.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH, CO-CHAIRMAN, JOINT SELECT COMMITTEE ON SOLVENCY OF MULTIEMPLOYER PENSION PLANS

Co-Chairman HATCH. Sorry I was a little late here.

I would just say, good afternoon and welcome to today's hearing.

Today we continue our informational hearings on the multiemployer pension system. We have brought in business representatives to provide their perspectives on issues with the defined benefit system in order to better understand the realities employers face participating in the multiemployer system.

We will delve into some fundamental questions, including why employers entered into collective bargaining contracts to participate in these plans to begin with, how participation affects a business's ability to operate as a going concern, and how the financial condition of these plans affects their ability to access credit, invest in new facilities and equipment, expand operations, and hire new employees.

Before I proceed, I want to provide a brief update on the activities of the Joint Select Committee. The committee is operating on several tracks. We have the outward-facing process of the hearings, which have been useful to better understand the issues confronting the committee. Committee staff have also held a number of briefings on a wide variety of technical issues in the multiemployer area, including topics that will be touched upon today, such as the impact of withdrawal liability and the operation of the bankruptcy laws in the multiemployer space.

The committee is also working on a range of possible policy options for review. And we continue to develop and evaluate these options, working with the PBGC, our in-house experts, and other agency officials to put some flesh on the bones of these ideas.

I remain open as to what the committee may consider later this year. And my co-chair, Senator Brown—and I am grateful he started this off on time—has similarly expressed openness. I also know that there are members of this committee who are actively working on proposals which they may put forward after fully analyzing their ideas.

But with all of that said, there remains a lot of work to do. And I think I should be clear that I do not see our choices as being limited to a referendum on some sort of loan program. I bring this up because some prior comments have indicated to me that some of my friends have become convinced that we are stuck with a loan-or-nothing choice. I have a few thoughts about that.

First, some of us have genuine concerns and questions about the nature of the proposed loan programs, which have yet to be fully analyzed. And a major question remains: what is the limiting principle on risk to the American taxpayer?

Multiemployer plans are private arrangements between employers and unions covering wage compensation and fringe benefits. Yes, they are shaped to some degree by the tax and pension laws, but so are defined contribution plans and other pension arrangements, as well as a whole host of other financial arrangements in the private sector.

It is clear that the employer and union participants entered into these contracts with an understanding of the terms and conditions that should have allowed them to manage these obligations in a way that would ensure their financial viability. And although Federal actions over the last 50 years have helped shape where these plans stand today, the arrangements are, at their core, privately bargained-for contracts negotiated without the Federal Government's input. And candidly, the vast majority of Federal taxpayers have no financial interest in these plans.

So let us be diligent and methodical as we approach these issues and negotiate solutions. I want to be sure that we are mindful of all of the consequences of our approach, intended or not, so that we can prevent future failures, mismanagement of taxpayer dollars, and the economic dangers of moral hazard.

We need to learn from our mistakes and do better here.

Now, none of what I am saying is to dismiss the real concerns of participants, including active workers and retirees who face real hardship as these plans decline and even fail. As a former skilled union member—and I did learn a skilled trade and practiced it as a full journeyman—I understand these perspectives, and I recognize that the difficult, but necessary choices we have to make as this committee will affect real people with real families. But I also know that real people who are currently employed and paying taxes are also affected by the decisions these businesses have to make.

And the difficulty businesses encounter because of the current condition of these pension plans is sometimes bizarre, if not ludicrous. As just one example, it is alarming, as we will hear today, to learn that the estimates of withdrawal liability frequently exceed the book value of the sponsoring companies. And that some companies will testify there is a real fight to get out from underneath the burdens of pension liability for employees who were never even employed, let alone received a pay packet.

It is truly a complicated issue, one that requires us to move thoughtfully instead of jumping to conclusions to score political points. That is why I look forward to exploring these issues in-depth today and beyond and am pleased by our witnesses today, who will share with us their views on these matters.

With that, let us get going with the testimony. I am glad that Senator Brown has done such a good job and introduced all of our witnesses here today.

So we will just begin with our witnesses.

[The prepared statement of Co-Chairman Hatch appears in the appendix.]

Co-Chairman BROWN. Mr. Langan, would you, please? Thank you.

Thank you, Orrin.

STATEMENT OF CHRISTOPHER LANGAN, VICE PRESIDENT OF FINANCE, UPS, ATLANTA, GA

Mr. LANGAN. Good afternoon. My name is Chris Langan. I have been with UPS for 37 years, and I am currently a vice president of finance. I would like to thank the committee for the opportunity to speak with you today.

Over the past 15 years, I have been deeply involved in the multiemployer community as a trustee and advocate for legislative change. As you have heard in previous testimony, multiemployer pension plans are critically important to over 10 million American participants and thousands of contributing employers.

The challenges facing multiemployer plans are not new. Since the tech bubble in 2002, the system has been strained, and the 2008 recession compounded their demographic problems.

The bipartisan Pension Protection Act of 2006, or PPA, included the creation of the green, yellow, and red zones and, for the most part, worked to stabilize the system and cure funding issues.

Unfortunately, no one predicted the market declines of 2008.

We are here today to find solutions for troubled plans that work for all the parties involved. The issue can be broken down into a few buckets: negative cash flow, the PBGC's role, withdrawal liability pressures, and, lastly, the contagion effect.

These plans simply have a math problem. Negative cash flow in critical and declining plans cannot be fixed by investment returns or increased employer contributions alone. As the PBGC executive director, Mr. Thomas Reeder, testified before this committee, these plans need a cash infusion now to remain viable.

Some have argued that employers can just increase their contributions to provide the necessary funding. The problem with this idea is that critical and declining plans do not have an employer base that can handle their higher contributions. Raising contributions to the point of unaffordability will cause already-struggling employers to go bankrupt and reduce the employer base further.

Since the enactment of the PPA in 2006, most employers have seen their contribution requirements more than double.

That leads me to my second point. The PBGC has estimated its unfunded liabilities at over $65 billion. Many feel that the PBGC's impending insolvency can be addressed with a significant increase in premiums. As Mr. Reeder testified, the agency needs $16 billion over the next 10 years just to survive.

While increasing premiums to the PBGC sounds logical, it can have unintended consequences. The premiums are an administrative expense that is assessed to the plans on a per-participant basis. The catch-22 is that plans pay premiums on all participants, whether they have an active employer or not. Most of the amount of the increases needed puts further strain on the plans and, ultimately, the few remaining employers.

We believe a solution exists where financial assistance can be provided to the plans under a structure where it will be paid back in full. Under this structure, plans will not need to turn to the PBGC for assistance. Premiums will not need to be increased over 800 percent, as estimated by the CBO, to keep the PBGC solvent. And retiree benefits will not need to be slashed 50 to 70 percent.

The other dynamic we cannot ignore is the potential withdrawal liability that companies face in these plans. In many cases, it is more than the value of the company. The small-business owner participating in the MEP system cannot sell their business or leave it to their children. The potential liability is impacting companies' ability to borrow money and grow their business. Banks and investors are not stepping in because, in many cases, the contingent liability is greater than the value of the company.

This leads me to my last point today: the contagion effect between healthy and unhealthy plans is real. When plans become insolvent, they will impact the financial health of a well-funded plan. Like many employers, UPS participates in multiple plans across the country with many of the same employers.

I would like to pause and ask you to take a look out over the room. Now imagine half of the room is empty. The half of the room that is gone also participates in many different plans. The impacted plans have just lost a significant portion of their contribution stream.

The contagion effect has occurred right in front of your eyes. The failure of these troubled plans will continue to put pressure on the remaining contributing employers, the participants, and the PBGC. Some may be skeptical of this scenario, but the one fact you cannot argue is that once a company is gone, they are no longer making contributions to any plan and have left their liabilities behind. Is this a risk worth taking?

In closing, we think there are viable solutions that can save these troubled plans. Generally, we believe long-term, low-interest-rate loans are a viable solution and would stop the plans from selling assets to pay benefits, giving them an opportunity to regain their financial strength and repay the loan in full over time.

We believe there are ways to provide assurances that the loans can be repaid so the taxpayers are protected as well.

Letting the system fail will increase individuals' reliance on other government programs. The committee has an opportunity to responsibly solve a serious problem in a bipartisan fashion.

Thank you again for the time to testify today. We look forward to working with you in the future.

Co-Chairman HATCH. Well, thank you for your testimony.

[The prepared statement of Mr. Langan appears in the appendix.]

Co-Chairman HATCH. Ms. Wong, we will turn to you.

STATEMENT OF ALIYA WONG, EXECUTIVE DIRECTOR OF RETIREMENT POLICY, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC

Ms. WONG. Good afternoon. I would like to thank the co-chairs and all members of the committee for the opportunity to testify in front of you today on the employer perspective in multiemployer plans. I am Aliya Wong, executive director for retirement policy for the U.S. Chamber of Commerce. Chamber membership includes numerous contributing employers to multiemployer plans. And as such, the Chamber has been engaged in various legislative efforts to reform the system.

Despite the best intentions of this legislation, the multiemployer pension crisis remains. At the end of 2017, the Chamber issued a report that provides an overview of the current crisis. Today, the Chamber issued a subsequent report, "The Multiemployer Pension Crisis: Businesses and Jobs at Risk," and we ask to have this report entered into the record.

[The report appears in the appendix beginning on p. 94.]

Ms. WONG. This report underscores the risks to contributing employers, and those are the risks I wish to discuss today. To be clear, the risks to businesses include employers not only in declining plans, but also in healthy plans. And the job risks impact not only union employees, but also nonunion employees. Moreover, this is not a future crisis; it is a current crisis. Employees and workers are being impacted today, and it will only get worse the longer we wait.

Contributing employers are currently suffering under a number of burdens: withdrawal liability estimates that exceed the value of their businesses, exorbitant partial termination withdrawal liability assessments, and high contribution rates. These burdens are resulting in less optimal lending rates and even the denial of credit, the inability to expand business operations, problems with employee retention, and, in some cases, the closure of the business.

The multiemployer crisis is today, and today it is detrimentally impacting employers' abilities to efficiently run a business.

Once we start to see additional plan insolvencies in the future, these problems will multiply. Here, I would like to stress the uncertainty of the situation. While there have been plan insolvencies, there has been nothing on the scale of what will happen if Central States and the Mine Workers' fund goes insolvent. And we definitely have not experienced an insolvency of the PBGC.

This uncertainty is paramount. Contributing employers can try to make plans. But in reality, there are various scenarios that are out of their control and could have a devastating effect on their business.

In testimony before this committee, the PBGC suggested that an insolvent plan may never terminate and employers can instead continue to make ongoing contributions to the plan. While continuing to pay contributions in an insolvent plan may save an employer from short-term economic disaster, it is doubtful that an employer can endure such high pension contributions over the long term.

Instead, these high contributions in perpetuity could lead to the closure of the business, filing for bankruptcy, or both.

On the other hand, if an employer decides to withdraw from a plan, it might find itself part of a mass withdrawal if all the other employers also decide to withdraw. Liabilities determined under a mass withdrawal are higher than in a standard withdrawal, and there is not a 20-year cap. Therefore, this unexpected and expanded liability could cause a business to end up in bankruptcy.

Further uncertainty surrounds the minimum funding rules in an insolvent plan. Plans in critical status that adopt a rehabilitation plan are exempt from the minimum funding rules and corresponding excise tax. However, it is unclear how or if these rules would apply if there is a major plan insolvency or insolvency of the PBGC. It is possible that the IRS and the PBGC could take an aggressive approach and reinstate the minimum funding rules and the excise taxes.

Because the rules are unclear, employers that continue to contribute in accordance with their rehabilitation plan post-insolvency could be required to make up a funding deficiency and pay excise taxes, potentially putting the employer out of business.

Finally, I would like to discuss the contagion effect. As mentioned, because employers contribute to more than one multiemployer plan, there is a valid concern that the failure of one plan, particularly a large plan, could cause other plans to go insolvent. Further, a plan insolvency could cause an employer to go bankrupt and, therefore, not able to make contributions to other plans, causing those plans to go insolvent as well.

In addition, the bankruptcy of one large employer could also trigger a string of plan insolvencies. These scenarios are very likely in critical and declining plans in particular, where in a number of them over 80 percent of the contributions are made by only one or two employers.

I would be remiss if I did not mention that there is a growing concern from healthy plans. While the focus has understandably been on critical and declining plans, it is also necessary to keep healthy plans healthy. As such, we need a comprehensive solution that addresses the entire multiemployer plan system.

These are difficult issues, and the answers are not easy. However, if we do not find an immediate and comprehensive solution, there will be a devastating impact on businesses, jobs, and the entire multiemployer plan system.

Thank you for the opportunity to testify, and I look forward to your questions.

Co-Chairman HATCH. Well, thank you so much.

[The prepared statement of Ms. Wong appears in the appendix.]

Co-Chairman HATCH. Senator Brown and I have to go vote, but, Ms. Moorkamp, we will take your testimony.

And then when she is finished, we will——

Co-Chairman BROWN. And all seven of us from the Senate will be gone for probably 20 to 30 minutes. So we have your written testimony, Ms. Moorkamp and Mr. Blackman, and we will return.

Co-Chairman HATCH. So we are taking notes, and we will go straight——

Co-Chairman BROWN. Congressman Neal, I believe, is going to preside from our side.

Co-Chairman HATCH. I will go straight across the board. And you are presiding over here, and Ms. Foxx will help you too.

Representative NEAL. Thank you, Mr. Chairman.

Co-Chairman HATCH. Okay.

Representative NEAL [presiding]. So we will proceed with the testimony as offered.

Ms. Moorkamp?

STATEMENT OF MARY MOORKAMP, CHIEF LEGAL AND EXTERNAL AFFAIRS OFFICER, SCHNUCK MARKETS, INC., SAINT LOUIS, MO

Ms. MOORKAMP. Co-Chairman Hatch, before you leave, Co-Chairman Brown, and members of the Joint Select Committee, I am Mary Moorkamp. I am the chief legal and external affairs officer for Schnuck Markets based in Saint Louis, MO. Thank you for the opportunity to testify before you today.

My message today is simple: this committee must succeed in its mission to solve the multiemployer funding crisis. The consequences of failure are real and significant, not only to retirees, but to employers, employees, and our local communities.

To quote from the movie *Apollo 13:* “Failure is not an option.”

Schnucks is a third-generation, family-owned retail grocery chain. We were founded in Anna Donovan Schnuck’s kitchen in 1939 as a way to feed her family and neighbors during the Depression. Nearly 80 years later, we have more than 13,000 teammates and 100 stores across five midwestern States. We are proud of our local heritage, and our mission of nourishing people’s lives goes beyond selling groceries.

We focus on promoting health and wellness, supporting human services such as workforce development, and reducing hunger by partnering with food pantries to provide almost $12 million in food annually to help feed those who might otherwise go without.

I want to turn to the multiemployer funding crisis and how it could jeopardize employers. While my comments focus on Central States, the PBGC says about 130 funds are projected to go insolvent within 20 years.

Schnucks entered Central States in 1958. This was more than 15 years before Congress enacted ERISA or the withdrawal liability rules. So it is not that we made a bad deal; rather, the rules were changed on us after the fact.

Our contribution rate when we entered Central States was $3 per week. Since then, our contribution rate has increased 114-fold. Our contribution rate today is $342 per week, which is nearly $18,000 per participant per year.

According to Central States, 59 percent of the retirees in the plan are orphans, meaning their contributing employer no longer pays into the fund. Fifty-four percent of our contribution dollars, or $185 a week, goes to pay benefits of participants who never worked for Schnucks. When an employer leaves the fund, the unfunded liabilities of its participants shift to the remaining employers. This drives up our contribution rates and means that the responsible employers who followed the rules are the ones left holding the bag.

The unfunded liabilities also create a staggering withdrawal liability. Of our 13,000 teammates, about 200 participate in Central States. According to Central States, our withdrawal liability for these 200 participants exceeds $281 million. This averages to $1.4 million per Teamster participant.

While we expect to pay less, it makes no sense for a company that has made every required payment for 60 years and seen its contribution rate increase 114-fold to have a withdrawal liability that even approaches this amount.

One question I hear is, why does Congress have to deal with this now as opposed to 2025? Well, I will show you why.

First, we are reluctant to grow our business. For each new store we open, we have to hire a driver who must go into Central States. And by our calculations, each new driver that we add increases our withdrawal liability by $200,000.

Second, we face recruiting problems. Prospective drivers know what is happening in Central States, and they want no part of it.

Third, there are business decisions that make complete economic sense that are not being made because of withdrawal liability rules.

And fourth, lenders, rating agencies, and auditors are becoming increasingly concerned about the impact of a Central States insolvency. This impacts our credit rating and our cost of capital.

These are issues we face today, not 2025.

What I have described is the Schnuck's story, but I suspect that you are hearing similar stories from your local employers. There are about 5,400 employers that contribute to plans that are heading towards insolvency. The future for many of these employers is very uncertain if the plans go insolvent.

So what tools should the committee consider?

The multiemployer rules date back nearly 40 years, and they have not kept pace with economic changes. The rules need to be reformed. But first and foremost, this committee must focus on measures to stabilize the patient before it can cure the patient.

These 130 plans face a math problem, and no realistic, sustainable level of increased contributions, investment returns, or benefit reductions will solve the problem. The unfortunate reality is the math does not work without a long-term, low-interest-rate Federal loan accompanied by sacrifices by all stakeholders to reduce the cost. And the loan program must be implemented quickly and structured in a way to ensure its repayment.

Developing a solution will not be easy. And if structured fairly, all the stakeholders are going to dislike parts of it. But again, failure is not an option.

Thank you again for the opportunity to appear before you today. And I will be happy to answer your questions.

Representative NEAL. Thank you very much.

[The prepared statement of Ms. Moorkamp appears in the appendix.]

Representative NEAL. Mr. Blackman?

STATEMENT OF BURKE BLACKMAN, PRESIDENT, EGGER STEEL COMPANY, SIOUX FALLS, SD

Mr. BLACKMAN. Good afternoon, members of the Joint Select Committee on Solvency of Multiemployer Pension Plans. Thank you for the opportunity to speak with you today about a topic that has significantly impacted my business.

I am the president of Egger Steel Company, a third-generation, family-owned business located in Sioux Falls, SD. We currently have 51 employees, 34 of whom are hourly shop workers. On their behalf, we contribute to the Boilermaker-Blacksmith National Pension Trust. We have been contributing to this pension since 1971.

We first became aware that the Boilermaker-Blacksmith pension had an unfunded liability when we were notified that our company's 2002 withdrawal liability was over $900,000. Prior to that notification, we had never heard the term "withdrawal liability." Our most recent valuation indicates a withdrawal liability of approximately $2.1 million, or over $60,000 per active eligible employee.

What impact does this have on my company? The short-term impact is that it increases my shop labor costs. In order to attract and retain employees, I have to offer competitive take-home wages. Younger employees are cynical about the value of their pension benefits, so they will leave my company for a nonunion competitor if their paychecks are not equivalent to what they could receive somewhere else.

The problem is that, while my nonunion competitors are offering between 3-percent and 6-percent 401(k) contributions, the equivalent rate for my company's total pension contribution is 14 percent. My shop labor costs are therefore 8-percent to 11-percent higher than my nonunion competitors because of the underfunded pension.

The long-term impact of this crisis is related to my company's withdrawal liability. While my competitors are purchasing expensive new technology to improve their productivity, I am limited to fixing or replacing broken equipment, because at any time my withdrawal liability could skyrocket like it did in 2008. The pension could impose steep increases in contribution rates. Or if too many employers withdraw from the pension, it could fold and assess withdrawal liabilities on whichever participating employers are left to absorb its losses.

While it is true that, if a withdrawal liability were to be assessed, I could pay the liability at the same annual rate that I have been making contributions, in reality I would incur the additional cost of contributing to a new 401(k) account for those employees who would no longer be earning a pension benefit and would otherwise leave my company for a competitor that does offer retirement benefits. Instead of my labor costs being 8-percent to 11-percent higher than my competitors, they would now be 13-percent to 16-percent higher.

The multiemployer pension crisis is serious, and it is getting worse every day because the pension plans are still making new defined benefit commitments without collecting enough contributions to cover their true costs.

Before we do anything else, we must recalculate the true extent of the problem using realistic actuarial assumptions. I am not suggesting that all multiemployer pension plans should immediately recast their projections. Doing so risks a cascading failure in which weaker companies will fold under the pressure of higher contributions or higher withdrawal liabilities and will dump their obligations onto a shrinking number of survivors.

This committee, however, should independently determine the realistic funding status of these plans to ensure that any solutions offered do more than just kick the can down the road for a future Congress to address.

My second recommendation is to transition orphaned beneficiaries to the Pension Benefit Guaranty Corporation. The last man standing provision of multiemployer pension legislation was a mistake, and correcting it would eliminate the risk of cascading failure.

The PBGC would require additional funding to support these orphans, which could come from higher premiums or from transferring proportional assets from the orphans' former pension funds to the PBGC.

In either case, the PBGC should consider the funding status of the affected pension plans and vary the premiums or funds collected to avoid harming significantly underfunded plans.

My third and final recommendation is to stop making new defined benefit commitments. In my company's example, instead of paying 14 percent of wages to the pension, I would propose to redirect 5 percent to a defined contribution plan for all new hours worked and continue contributing the remaining 9 percent to the pension until its unfunded liabilities are paid off.

The pension may require Federal loans to satisfy its short-term cash flow needs, but if it stops making new commitments while continuing to collect contributions, it will eventually be able to pay back its loans.

If it would take the pension 50 years under this scenario to pay off its liability, then perhaps we need to consider current retiree benefit cuts or direct taxpayer assistance. But before we do either of those things, we need to admit that the era of defined benefit retirement plans is over.

On a closing note, I would like to mention that I have listened to all the previous committee hearings and am aware of three proposals made thus far: loans, bankruptcy law changes, and hybrid pension plans. I believe that each of these proposals has some merit. But as a small-business owner, I have concerns about all of them that I would be happy to share.

And I welcome your questions.

Representative NEAL. Thank you very much.

[The prepared statement of Mr. Blackman appears in the appendix.]

Representative NEAL. I think the panel offered an encapsulating view of what the challenge is that we all face.

And Ms. Foxx I know has an obligation on the floor, so I am going to recognize her first.

Representative FOXX. Thank you very much, Congressman Neal.

I thank each of you and the employers you represent for being here today to share your perspectives and your stories with the members of this select committee. I especially want to thank the representatives of UPS, Schnuck Markets, and Egger Steel. It takes a lot of courage to put your company's story out there in a setting like this. But it is important and necessary in order for all of us on this committee to get the full picture. So thank you.

I want you to know we are listening, that I understand the issues you are facing, and I understand the importance of finding a fair, fiscally responsible, and forward-looking solution to these problems.

Ms. Wong, I have a question for you. Which of your member companies have made the difficult decision to withdraw from a multiemployer pension plan in the last decade? Are there common factors that went into company decisions to leave the plans?

Ms. WONG. Thank you. So there have been a number of members that have decided to withdraw. I, for their purposes, will not give their names.

But the main decision has been that they have looked at the liabilities they are facing now versus the liabilities they might face later and whether they could afford to pay those liabilities now. A number of employers have looked at that and have determined that they cannot make that decision now and so they are staying in the plans, which adds to the crisis and makes it even something more that we need to worry about.

Representative FOXX. So when determining contribution amounts to a multiemployer plan, do your member companies aim to fully fund the plans in which their employees participate? Or do they instead aim to meet the minimum contribution amount required by their respective collective bargaining agreements? And do you believe employer contribution amounts are sufficient to provide plan stability?

Ms. WONG. So our members aim to meet the requirements of the collective bargaining agreement. That is what they negotiated, and that is what they expected to pay.

In terms of the amounts, they look to plan professionals to figure out exactly how that works. That is what we look to at the Chamber as well.

So all of our employers aim to fulfill their commitments. All of them aim to be able to provide benefits.

I think it was mentioned, the rules of the game have changed. There have been outside factors that have weighed in as well that have made that more and more—or made it harder for them to do.

Representative FOXX. Thank you.

Mr. Blackman, very quick question. Boards of trustees for multiemployer plans are made up of union and employer representatives. As a small employer in a large plan, do you find the interests of your employees are well-represented by the trustees?

Mr. BLACKMAN. Let me answer this without implicating anybody unnecessarily.

We are a small employer. And I would answer the question this way. Since our company's founding, we, to my knowledge, have never been invited to express an opinion to the board of trustees of the Boilermaker pension.

The communications that we receive from the pension are the legally required communications. We do not vote on the trustees. We have never been asked to vote on the trustees. To my knowledge, the employer trustee representatives must elect themselves, because we do not elect them.

Representative FOXX. Thank you. I yield back, Mr. Chairman.

Representative NEAL. Thank you very much, Ms. Foxx.

Just a couple of thoughts. I have been here for a long time. I think that we need to be reminded, because I do have a loan program out there that has been well-met. It is bipartisan in the House; we have Republicans and Democrats who have signed the legislation in the House.

And with a long memory, I would point out that I got here not to create the S&L problem, but to be part of the solution. And there was an awful lot of money borrowed to get many of those S&Ls out of a problem that they had.

In this instance here, there is a different distinction, though. And the distinction here is that there has been really no bad decision-making. These have been events that have gone around the pension plans that have created part of the problem today.

And I do not have to remind everybody about what happened here in 2008 when we had a series of controversial votes. There was a plan that was endorsed by at that time candidate Obama, candidate McCain, when they were invited to the Oval Office to discuss a Wall Street solution in which much of the money was borrowed.

And I think calling attention to those precedents is really important. We are not suggesting that, as one of the witnesses has said, that that is the only solution. What we are saying is that that needs to be at least part of the conversation as we go forward.

Now, everything has changed over these years. And the financial crash dealt many of these plans a huge financial blow. And now with pension plans in every State in the country in jeopardy, millions of retired workers are facing a financial nightmare. Cuts to their hard-earned retirement savings are occurring through no fault of their own.

The reality also is that most employers that contribute to multiemployer plans, including representative companies that are here today, have tried to do the right thing. I think that that needs to be emphasized as well.

Deregulation in the 1980s and the early 1990s as well as large-scale economic downturns in 2001 and 2008 led to waves of industry-wide employer insolvencies. And the remaining employers in these plans are now the last man standing in their respective multiemployer plans.

To address this crisis, Senator Brown and I did introduce legislation last year that we hoped would kick off the conversation. It included a loan program. The money for these loans and the cost of running the program would come from the sale of Treasury-issued bonds to financial institutions. And I have already established a precedent with those who would purchase the bonds.

The Treasury Department would then, as I noted, sell those bonds in an open market to large investors. And those financial firms would then lend money to the plans for the sale of the bonds to financially troubled pension plans.

I think that this is a program that offers a common-sense solution. The private sector—they have acknowledged this as well, and they have been generally supportive, if not specifically, to the concept that we have offered.

Mr. Langan, UPS has advocated in favor of a loan program to address the multiemployer pension plan.

Ms. Wong, the U.S. Chamber of Commerce has released a series of principles and has addressed the multiemployer crisis within these principles. And the U.S. Chamber has also endorsed a loan program.

Could I hear from the two of you as to your notions about loan programs?

Mr. LANGAN. Yes; thank you. We feel that a loan program is necessary at this point. We have been discussing a loan concept over the last 2 years in trying to resolve this issue, because the plans need cash flow. We have to stop the cash flow that is coming out the back door compared to the contributions that are coming in the front door.

And unfortunately, 2008 brought their asset base down on all these mature plans that are in declining status to where they cannot earn their way out of it. And in a mature plan, your asset base really becomes a contributing employer because of the yield coming off those assets. You get a much different yield on $30 billion than you do on $15 billion.

So the cash flow is the problem in the plans, and a low-interest loan would solve that problem. And we have to ensure it is paid back.

Representative NEAL. Thank you.

Ms. Wong?

Ms. WONG. I agree with everything that was said. From the Chamber's perspective, again, there have been increased employer contributions. We have seen active employees—their benefit accruals have been cut back, decreased, and now, you know, retirees are seeing benefit cuts. So there really is no more money in the system.

And if we want these plans to survive, and if we want the employers and the jobs they create to survive, we think a loan is the best way to do that.

I will say we see it as one part of the solution. We are looking for a comprehensive solution that does help the entire system.

Representative NEAL. And without objection, I would like the Multiemployer Pension Reform Principles of 2018 to be included in the record.

[The document appears in the appendix on p. 56.]

Representative NEAL. Ms. Moorkamp, you have also provided excellent testimony, as the other panelists have offered. In your testimony, you have supported the loan program. Would you care to expand upon that?

Ms. MOORKAMP. I look at this also as a phased approach. And I support what Mr. Langan and Ms. Wong have said.

Immediately, the issue before us is, we have to treat the critical and declining plans. We have to stabilize the patient before we can cure the disease.

There are no contribution increases, benefit cuts, or investment returns that will make these plans solvent. We do believe Federal support is needed and that the best way to do that is with a long-term, low-interest-rate Federal loan with the appropriate measures put in place to ensure repayment.

And then, we would look to overhaul the entire system to take into account the current economy, the mobility of the workforce today, and changing demographics.

Representative NEAL. Thank you.

My time is expired.

I recognize the gentleman from Tennessee, Dr. Roe.

Representative ROE. Ms. Moorkamp, your testimony can be placed under the "let no good deed go unpunished" rule.

The solution—and I have listened to these now for years—is not complicated. It is increased PBGC contributions, decreased plan benefits to people who are already out there getting it. That has been passed 3½ years ago. Stop new members, as Mr. Blackman said, do not add any more people to create the problem and make it worse. And then a loan or a bailout or whatever you would want to call it. I think those are the options that we have.

And the fifth option would be to do nothing. So those are our options. And we can argue about how to do it.

And I guess my question is, since the PBGC has only had one loan ever paid back, how do the taxpayers—I will put the taxpayer hat on—how do they get their money back? How does a failing plan—I am still trying to get my arms around how, when you loan a plan money that is grossly underfunded, it can pay back a loan that is made, as Mr. Neal has pointed out. How can that happen?

Mr. LANGAN. I will answer that, Mr. Roe. Part of our proposal—and I am not here to sell either proposal or anything in that regard—but one of the aspects of our proposal does unfortunately include benefit modifications. And we feel that it is important to take a look at the entire plan, stabilize the cash flow. And in an effort to ensure that those monies are paid back, there has to be some source of new income coming into the plan.

One way to do that is through benefit modifications so that those reductions in the cash flow that is going out the back door can be reinvested back into the plan. The liabilities that are in the plan today will be lowered. And if you do it over time and draw it down over time, the assets have an opportunity to deal——

Representative ROE. Is there a number out there? Because you have a lot of people out there who are depending on this for livelihood. Is there a number? We talked 20 percent, 10 percent, 50 percent. I mean, there is a number out there that will leave you enough money to do exactly what you just said. What is that number?

Mr. LANGAN. What we have modeled, working with all the large plans, Central States in particular and several other plans, is we feel that benefit modifications up to 20 percent, not a flat 20 percent.

There are a lot of ways that you could skin this cat from a standpoint of how you recognize or give the loans, whether you give them monthly, as a lump sum, every year, or every 5 years.

The more money the plan has as an opportunity to make asset returns helps the situation. But you can design the loan to reduce the amount of cuts that are necessary in order to repay it.

Representative ROE. And we have not done away with the economic cycles. So there will be another recession. I mean, the economy is doing great right now, but look, I have been through a bunch of them; we will have another recession somewhere along the line. Is that factored in?

Mr. LANGAN. That is a very good point. And one aspect of our proposal that is different from some other proposals is, we propose loaning the money over time, a monthly loan, to avoid risks in the market, the downturns in the market.

If you give a plan several billion dollars up front and they lose it in the market, through no fault of their own, just a decline, that is going to create a problem, and we will be right back here.

So if you give it over time, they can weather the ups and downs of the market itself, while the modifications are still there trying to grow the assets back.

Representative ROE. Do we have that? Have you laid that out in a proposal where it can be seen, modeled?

Mr. LANGAN. Yes, we have, sir.

Representative ROE. Okay. And I guess the other thing that I did not add to it was, Mr. Norcross and I have a plan going forward.

Mr. Blackman, we have a 401(k) in our office, in our shop, but this GROW Act that we have is certainly another option that could be number five: just stop putting new people in and then begin doing exactly what you talked about—continue to pay the legacy liabilities, but enter new people into this new plan, which gives you the blend of both defined contribution and defined benefit.

Mr. BLACKMAN. Yes. And I do not pretend to be an expert on that proposal, but from what I understand, the new pension part of that actually looks a lot like the pension that we signed up for in 1971, the pre-ERISA plan. Now, of course, we are all here because that plan—the rules were changed.

So I guess as a small-business owner, I would say, if you gave me the option to opt in to that, I would respectfully decline. It is my understanding that today's Congress cannot tie the hands of a future Congress, and we have a history of Congress changing those rules exactly like that in the past. So that is why my preference is for a pure defined contribution component, no pension promise whatsoever.

Representative ROE. Well, that is the plan I live with. It is what I have myself.

I yield back.

Representative NEAL. Thank you.

The gentleman from Virginia, Mr. Scott, is recognized.

Representative SCOTT. Thank you. Thank you, Mr. Chairman.

Ms. Wong, we have heard a lot about the taxpayers' interest in this. Can you tell me what interest the taxpayer has, especially if we do nothing, what the taxpayer may be on the hook for?

Ms. WONG. Yes. Our concern is that there is a huge liability out there now. But if we do not do anything, that liability will grow. And although the taxpayer is not technically on the hook for the PBGC, I think we can all agree that we do not think Congress will stand by and do nothing if the PBGC goes bankrupt.

And it is really a question—it is not a question of if, but when. And so if we can address this issue now, looking at it from a taxpayer perspective, it seems more responsible than waiting until the problem is even greater.

Representative SCOTT. Are you suggesting there is a moral obligation to make sure the PBGC pays what it has guaranteed, even if it runs out of money—that we have a moral obligation to replace the money?

Ms. WONG. I think Congress will have a political preference to make sure the PBGC pays those benefits.

Representative SCOTT. And we would be on the hook for other things like, people are not getting pensions, they are not paying taxes?

Ms. WONG. And I do not have those numbers in front of me, but I can get them. There have been studies done talking about the loss of pension benefits and the impact that will have on the economy. And those losses will be made up somewhere, and we think they will be made up on the public services.

Representative SCOTT. You mean like safety net—food stamps, Medicaid?

Ms. WONG. Exactly.

Representative SCOTT. And so if we do not do anything, we have the taxpayers really on the hook for, right now, unknown billions of dollars.

Ms. WONG. Yes.

Representative SCOTT. Do you know how many companies may be in a situation where their withdrawal liability exceeds the net value of the company?

Ms. WONG. I do not have a specific number, but we hear from quite a few employers daily.

Representative SCOTT. Ms. Moorkamp, you indicated some problems, and Mr. Blackman talked about problems running a business with this liability hanging over your head. Is that liability, is the potential liability, listed on your financial report?

Mr. BLACKMAN. I can answer that.

Representative SCOTT. Okay; thank you.

Mr. BLACKMAN. So on our audit reports—we are formally audited every year—the withdrawal liability is listed as a contingent liability. It is on the notes to our financial statement. It is not on our balance sheet.

Representative SCOTT. Do potential creditors, lenders, look at that and become reluctant to lend you any money because of that?

Mr. BLACKMAN. Well, I am happy to say that we have had the same lender for 72 years. That lender has told us that we have earned the right to have a contingent liability. Not all of their customers are treated with that degree of trust.

So I would say, though, that, from a practical standpoint, it does limit our borrowing ability, because even our bank, which trusts us, would require a personal guarantee for any large, long-term loan that we would ask for. They already have a personal guarantee on our line of credit. So from an operational and a business-planning standpoint, if I am not prepared to personally pay back that loan, then I will not take it out.

And what is concerning about this withdrawal liability is that it seems to be an uncontrollable figure. So to my mind, the risk associated with taking out another long-term loan is prohibitive.

Representative SCOTT. I thank you.

Ms. MOORKAMP. Representative Scott, can I——

Representative SCOTT. Yes.

Ms. MOORKAMP [continuing]. Fill in as well? Our lenders have told us that, when assessing our credit quality, our lenders as well as our rating agencies are adjusting our credit statistics to take into account our unfunded pension liabilities, which leads to higher interest rates and higher costs of capital.

And anecdotally, we do understand that there are rating agencies that use a withdrawal liability number, and then they either increase the liabilities or reduce the EBITDA by a percentage of the withdrawal liability. And either way, it leads to a higher credit risk and a higher cost of capital.

Representative SCOTT. Thank you. And let me follow up. I think you indicated, Ms. Moorkamp, that your plan was negotiated under the collective bargaining agreement. Is that adjusted to reflect what is needed to keep the fund, the pension fund, solvent?

Ms. MOORKAMP. So we have a negotiated contribution rate, but we have plans that are under rehabilitation plans. And there are funding increases that we have seen as a result of that, some as high as 225 percent over what they had been prior.

Representative NEAL. Thank you, Mr. Scott.

The gentleman from Florida, Mr. Buchanan, is recognized.

Representative BUCHANAN. Thank you, Mr. Neal. I appreciate the opportunity.

I want to thank all of our witnesses. We have great companies, smaller companies, UPS.

I was involved with the U.S. Chamber for 8 years on the board, so I appreciate you being here today. And I was in business for 30 years prior to coming to Congress and had a lot of employees and everything else.

But also, I grew up in Detroit. My dad worked in the factory for 30-some years, paid into a stock program. At the end of 35 years, he ended up with zero. And one of the concerns I have is just the precedent we are going to be setting here for everybody else.

The second thing is the idea of loans. And there might be a combination. I am a possibility thinker. I am sensitive to businesses. But we are moving a liability, not all of it, but a lot of it from companies and stakeholders to the taxpayers or other people. And we are going to put it on the balance sheet of the country. And we do a lot of that already, Democrats and Republicans, so it is unfortunate.

But I guess when I think about being in Detroit, growing up in Detroit, I use this example. The fourth-largest city went bankrupt. All the stakeholders had to make adjustments and take haircuts.

And I guess I would want to know—and I want to put this in the right light—you are going to benefit quite a bit by us doing this. If you have equity in companies, if you have shareholders, you are benefiting because you are removing that liability.

Let me just ask you this. Everybody needs, in my sense, to come to the table—it is a restructuring, a reorganization—other than just the American government. What is the business community willing to do in terms of their share or because they feel their sense of responsibility? Because it is going to make a big difference.

I know that if you had to—if we did not do anything, the smaller companies, if you got loans, you put maybe everything you built at risk going forward. But I think everybody, my sense, has to step up and be a part of the solution going forward.

So let me ask you, in terms of the business community, what are you willing to do or what have you given thought to short of the government just stepping up and fixing the whole thing?

Mr. Langan?

Mr. LANGAN. That is an excellent question. And looking at the whole perspective of the problem, we looked at all different ways in order to solve this. One of them was increasing employer contributions. Could we raise the contribution enough in order for the employer to fix the problem in these plans that are in trouble?

If we go back to the enactment of the Pension Protection Act, most if not all of the plans that are out there have seen the employers double their contribution rate over less than 10 years. And a lot of that is due to the rehabilitation and the funding improvement plans that are out there. So we do feel that that has already occurred.

Some of these plans are asking for 6-, 8- and 9-percent increases in their contributions. And the employers that are remaining in there are obligated to pay those, because it is part of the collective bargaining process.

Representative BUCHANAN. And let me just say, because I am going to run out of time, that when I started my first company in Detroit, we had a profit-sharing plan for everybody. Then we went to a 401(k). A lot of people went to the pension plan.

But with pension plans, like city governments and State governments and everything, there is risk. And we had talked about this before, about what happened in 2008. The market dropped 38 percent, the S&P. So there is risk when you get into these plans that companies and unions and others make those decisions—and you have a fiduciary, but nobody could expect that.

But in the first decade—just to think about that—of the new century, for 10 years it was zero return. And if you have a 50-percent equity portfolio, you know, you pull out of risk.

Ms. Wong, just in terms of—what is the business community willing to do instead of looking to the government for everything?

Ms. WONG. Well, I would just like to reiterate what Mr. Langan said. The business community has already increased contribution rates, they have increased their PBGC premium rates, they have been assessed withdrawal liability, either partial or complete for those who could pay it.

So even at this point—and if you read our principles, we are not saying that this should just be a loan program. We are saying everybody needs to put skin in the game. And it is not that the business community is waiting for Congress or for someone else to resolve it. They are looking for partners to help them resolve it.

Representative BUCHANAN. But you understand, equity owners and shareholders of all these companies big and small benefit if we write a big loan in terms of that.

Ms. Moorkamp, do you want to just respond? Your thoughts? You have two smaller companies, but what is the business community willing to do to make this deal?

Ms. MOORKAMP. Well, I echo again what Mr. Langan and Ms. Wong have said as to the burden that the employers have been carrying. But I want to get across I am not here today to ascribe blame. No one here is to blame. Not the contributing employers——

Representative BUCHANAN. I am not looking to discuss blame. I just want to—I just want to——

Mr. MOORKAMP. It appears that way. And we think seriously that everybody—no one here is to blame, and everybody is going to have to share in the sacrifice of what needs to be done, first and foremost to save these critical and declining plans that are facing insolvency.

Representative BUCHANAN. Mr. Blackman, anything, quickly?

Mr. BLACKMAN. Yes. All I would say is that, you know, from my perspective, we have a yellow zone plan. Personally, I am not asking for a bailout of any kind. I want an exit door; I want to stop making new promises.

Representative BUCHANAN. Thank you.

Mr. BLACKMAN. And I need Congress to help me with that.

Representative BUCHANAN. Thank you. I yield back.

Co-Chairman BROWN. Thank you, Congressman Buchanan.

Senator Manchin?

Senator MANCHIN. Thank you, Mr. Chairman.

First, let me thank all of you. And I want to thank our chairman and the ranking member for holding this hearing.

And we have to start coming up with some solutions. But as you know, I am really focused on solutions for the multiemployer pensions crisis, so I was glad to see that Senator McConnell gave us a few extra weeks of time to work this August. [Laughter.]

We should be staying here on Mondays and Fridays too, but, I mean, that is a bridge too far.

I encourage my colleagues on this committee to use this time to come to the table and seek bipartisan solutions.

I would also note that I am very happy to see our brothers and sisters here, the United Mine Workers from my turf, if you will—people I grew up with. And I appreciate the hard work they are doing. I hope they continue to come back. Because I can tell you, when you put a face and a human being with a problem that we have, then we can find a solution.

You have heard me say before, and I will keep saying it: the UMWA 1974 Pension Fund is the first that will fail if Congress does not act. And if or when the UMWA fund would fall, and if we do not find a solution, the others will start to tumble. This plan is expected to become insolvent by 2022, possibly even sooner if we see a market downturn or additional coal company bankruptcies. We should note that is unlikely.

And while the pensions provided by this plan are small—to give you an example of what we are talking about with UMWA pensions, an average of just $595 a month; $595 a month is what we are talking about for the UMWA. They are critical for retired miners and families who rely on them, mostly a lot of widows. If this plan goes under, these families and the communities they live in will be devastated.

So I hope that today's discussion will demonstrate for everyone exactly what will happen to American businesses and communities, to our poverty services and to our national economy, if these plans fail. But I also hope that all you witnesses will offer us more ways to address the crisis. And we are not putting any blame.

But let me make sure you understand. The working person in America, the United Mine Worker and anybody who has ever done any hard work, is not to blame at all. They did not set their rates of contribution. They did not set the plan. They were not there when basically the bankruptcy laws were written. It was all done usually here in Congress. We set basically the slope, if you will, of what would happen, and this is what we are dealing with.

They were not responsible for the 2008 financial crisis. They were not responsible for relaxed oversight of the large banks. None of this was their fault, but they are all taking the hit right now, every one of them.

So I will start with Mr. Langan. What is Plan B, sir? What do we do if we walk away from this? What happens?

Mr. LANGAN. Well, as was mentioned earlier in Ms. Moorkamp's testimony, walking away and failure is not an option to this crisis that we face. We have to figure out a way to stop the cash flow that is going out the back door and stabilize these plans and give them an opportunity to return back to health.

Because, if we do not do that and we just allow the system to fail, then what is going to happen to the remaining employers is unknown at this point. If a plan is not, for example, in compliance with the rehabilitation plan, are they now facing funding deficiencies? Are they now going to face a mass exodus out the back door from the employers and the risk of mass withdrawal?

If you have a mass withdrawal situation come, contributions stop, accruals stop, and now employers are assessed withdrawal liability, which now is put on their books.

If you put a liability on your books that is greater than the value of your company, you are never going to be able to get out of this. So letting the system just fail and hoping the PBGC can give a little bit of a benefit is not the answer. We have to get cash to these plans and figure out a way to pay it back so the taxpayer is protected.

Senator MANCHIN. Ms. Wong, if I may ask you, with the reduction of our corporate tax from 35 to 21 percent, that 14-percent savings, does it put a hardship on our corporations and businesses now since they have this extra relief if they do contribute more? I know you all just talked about contributions. But would that put an undue hardship——

Ms. WONG. Does the tax cut create an undue hardship?

Senator MANCHIN. I am saying if I asked you to give a little bit more back.

Ms. WONG. Oh, I am sorry—on the tax cut. Well, obviously, the tax cut helps the businesses, providing——

Senator MANCHIN. Sure. You never expected to get 21, did you? You would have taken 25 in a heartbeat.

Ms. WONG. I will not lean into that one. [Laughter.]

Senator MANCHIN. What we are saying is that none of us wants to put undue hardships and create new unemployment. But is there enough room in there to help the PBGC? I know there is going to be an awful lot—anything I am asking for, there has to be a floor. You cannot ask a person, a widow getting $595, to take a 20-percent cut or a 10-percent. And we have to have skin in the game, but there has to be, I think, some compassion and some, you know, understanding of the economics we are dealing with here.

Ms. WONG. I appreciate that. And again I would reiterate, employers already have skin in the game and have been putting skin in the game. We understand workers and retirees have all been putting skin in the game.

So it is not an easy solution, but we are asking that, again, we all come to the table and resolve this together.

Senator MANCHIN. My time is up. And I will save it for the second round.

Co-Chairman BROWN. Thank you, Senator Manchin.

Congressman Schweikert?

Representative SCHWEIKERT. Thank you, Mr. Chairman.

Isn't it fun reaching over and calling you chairman?

Co-Chairman BROWN. Yes, sure. I might get used to this. [Laughter.]

Representative SCHWEIKERT. All right.

Mr. Blackman, a couple of moments ago, you actually mentioned the desire to leave.

Mr. BLACKMAN. Well, I should specify I would like to make new contributions in a defined contribution plan, and no more new contributions to the defined benefit. I am perfectly willing to pay my existing obligations to the defined benefit.

Representative SCHWEIKERT. Okay. So there you led me to—so what is the existing obligation? For many of us, when we have actually been looking at the math, we think—actually we will call it the severance mechanism is not actually properly calculated for the true liability.

Mr. BLACKMAN. I would agree with you.

Representative SCHWEIKERT. Okay. In that case, you are my new best friend. You just made it easy.

Ms. Wong, if I came to you and said, okay, in my understanding, the Chamber prefers sort of a loan mechanism.

Ms. WONG. Yes. We see that as an important part of a resolution.

Representative SCHWEIKERT. Okay. So as we heard another member of the panel a little while ago saying, you know, protecting taxpayers, those things, do you think all the businesses would be prepared to also sign a promissory note so they also carried some liability for that loan?

Ms. WONG. I think the businesses feel like they already have a promissory note.

Representative SCHWEIKERT. But if we were going to do a loan document to make it very clear that they carry the actual liability——

Ms. WONG. Yes; I will take that back to my membership. I don't——

Representative SCHWEIKERT. How about a mechanism where, if they file bankruptcy, this is a top-tier obligation, you know, coequal to other bonds. Because this is, you know, their pension liability, and now it is a loan obligation to the U.S. Government, if it were done mechanically as some of the proposals here. Can we make it a top-tier bankruptcy——

Mr. LANGAN. Could I speak to that? I think——

Representative SCHWEIKERT. I wanted the Chamber to respond, partially because, at one level, if you are asking to socialize the risk, okay, but if you are saying you want to socialize the risk at the same time because it is going to protect taxpayers, let us protect taxpayers.

Ms. WONG. No, I appreciate the concern. I am not sure if that is allowed under bankruptcy law, but——

Representative SCHWEIKERT. But we can always rewrite the law. That is what we are here talking about.

Ms. WONG. I agree with that. And I am happy to take that back to our membership and discuss that with them.

Representative SCHWEIKERT. Okay. But don't you think that, in some ways, if we are going to talk about everyone having skin in the game and we are doing it fairly and we are all taking obligations, because I know there seems to be an attempt here to sort of—you know, we are all dancing with a hot potato and pushing and trying to socialize the risk, but not take it ourselves.

Ms. WONG. Employers are taking the risk. I mean, they are the ones paying into the plans today, and they are the ones with the risk of going bankrupt if there is not a solution.

Representative SCHWEIKERT. Well, but if you actually think about what we were just talking about before with Mr. Blackman, okay, so if I leave, I am probably not paying my full actuarial value for my stranded lives, and that is both a concern and then my obligation if a participant were to go bankrupt. Even though we had created this loan mechanism, we need to make sure that those obligations—so you can actually see, just from a credit management——

And, Mr. Blackman, before, I had interrupted you.

Mr. BLACKMAN. I am sorry. It sounded like you were talking about changing the bankruptcy hierarchy of creditors.

Representative SCHWEIKERT. Well, it is an honest discussion. If we are all having—one of the reasons we see such high levels of underfundedness is concentrations within those industries. We saw cascades of reorganizations and bankruptcies and, within those, a movement away from these obligations because they were discharged through bankruptcy.

Mr. BLACKMAN. Right.

Representative SCHWEIKERT. How do we move that up so, as a society, we make pension obligations a top tier?

Mr. BLACKMAN. I understand. You have to keep in mind that the way the bankruptcy hierarchy is structured today, that is what allows my bank to essentially not hold me accountable for that withdrawal liability today and still grant me credit today.

If we reverse that and pensions come ahead of banks, we are done. I mean, we are out of business.

Representative SCHWEIKERT. But there we are back where the socialization of the obligation for your business is back on everyone else. And look, I am not thrilled with this, but all of us are trying to have intellectually honest conversations of how many levers do we actually have.

And the more I read, the more I realize a lot of my levers do not produce a lot of resources. So, as we are going to actually continue the conversation of some type of financing instrument, who is going to help us guarantee that, other than the rest of the taxpayers?

Ms. MOORKAMP. Representative Schweikert, can I just inject very quickly, please?

Representative SCHWEIKERT. Very quickly.

Ms. MOORKAMP. Changing the bankruptcy laws is not going to solve the problem of the 130 plans that are facing insolvency.

Representative SCHWEIKERT. We did not say it would, but——

Ms. MOORKAMP. I know, but——

Representative SCHWEIKERT. Actually, no, no, stop. But once again, if you are asking to shift it onto the rest of the taxpayers, shouldn't the rest of the taxpayers also have you take on some of that obligation?

With that, I am sorry; I am beyond time. I yield back, Mr. Chairman.

Co-Chairman BROWN. Certainly.

Finish your answer, Ms. Moorkamp. We treat witnesses well in this committee, so go ahead.

Ms. MOORKAMP. So I was just going to say, I would be very careful, to your point, of changing the bankruptcy laws because that could make it much more difficult for us, other employers to get credit.

Representative SCHWEIKERT. Well, if the chairman would let me reclaim time then. But also so would signing a promissory note, because you would be carrying that on your books.

Co-Chairman BROWN. Ms. Moorkamp, please finish.

Representative SCHWEIKERT. She just did.

Co-Chairman BROWN. Okay. Okay. I could not tell.

Representative SCHWEIKERT. Thank you, Mr. Chairman.

Co-Chairman BROWN. Okay; sure.

Senator Heitkamp?

Senator HEITKAMP. Thank you, Mr. Chairman.

I think every person testified as a given that benefit cuts would have to be part of this.

I just want to put on the table that we have in fact advanced a plan. And I think both the Chamber and UPS have suggested that a long-term loan program could actually be part of this solution.

I think it is really, really important that we set a ground rule that we are really committed to fixing this problem for our small businesses and workers and retirees. I do not accept right out of the chute that we will have to lead with a benefit cut to solve this problem.

And so, you know, we are going to continue to look for solutions, but I think it is really important that we recognize the need for shared sacrifice, but that we try to lay down a marker.

I would like to mainly address the question of withdrawal liability. We have heard compelling testimony, I think, today about the cost of doing nothing, especially for Main Street businesses.

In the Central States Pension Fund, pretty much the only businesses that are left are in fact small businesses, but 90 percent of contributing employers have less than 50 employees.

I will tell you a story of one of those employers based in Fargo, which recently celebrated its 100th anniversary, has been important to people in my State for 100 years. For 100 years, the business has played by the rules, contributed to the economic prosperity of our community and our State, and provided that employment opportunity. And for over 60 years, it has made contributions to the Central States Pension Fund.

Yet for 2017, the owners tell me that their withdrawal liability number is about $7.4 million. That is up from $5 million in 2015, and that is to cover 21 people. It is overwhelming and it is frightening, and it is terrifying small businesses all across my State that are still part of this program.

So can you walk me through—and I will throw this out to anyone who wants to answer—can you walk me through how this withdrawal liability might affect access to credit and capital, employer hiring decisions, and business investment for any firm? And what are the risks to employers participating in critical and declining plans such as Central States if accounting rules require contingent withdrawal liability to be required on the balance sheet?

So right away, we go back to access to capital. You put that on your balance sheet, and I do not know who is going to give you money. And that goes back to the question I think Mr. Schweikert is getting at, which is, this is very complicated and it affects not only solving this problem, but bankruptcy, access to capital, and small-business development.

So, Mr. Langan?

Mr. LANGAN. Yes, thank you. From a withdrawal liability standpoint, there is one thing we have to keep in mind. Withdrawal liability occurs when you are going to withdraw in the simplest form. Your obligation to the plans is what you collectively bargain, so that your per se liability that goes through your——

Senator HEITKAMP. Mr. Blackman wants to get out, so let us just—he wants to withdraw, but he cannot afford to.

Mr. LANGAN. I understand that. And we have withdrawn from a couple of plans ourselves, and we did pay the amount of the withdrawal liability that was required under the calculation. It is a financial decision for the company.

But to your point, it is disclosed in the footnotes of the company today, so it is out there. And then once you ultimately do withdraw, you do have to book that on your balance sheet.

Senator HEITKAMP. But how do I, as a Senator from North Dakota, tell this small business that has 21 employees that it is reasonable to assume their withdrawal liability is over $7 million?

Mr. LANGAN. Unfortunately, the way the law is written today, that is how it is calculated. I can give you an example of a plan we were in. We had two employees, and the liability was $5 million. So it is a function of how the math works and the way the law is today. It is spelled out very clearly how the withdrawal liability calculations are determined, unfortunately.

Senator HEITKAMP. I want to make this point. So responsible employers who have provided this defined benefit plan and who have not taken advantage of the bankruptcy exit now are holding the bag. I think that is a fair characterization of what is going on.

So, you know, when you say, do not change the bankruptcy laws, I agree that that will create a huge amount of disruption in changing the queue on who gets paid first. But it also means that everybody who is the last man standing, or the last person at the end of that ladder, ends up with all the liability. And that fundamentally—just as it is not fair to these workers who played by the rules and did everything right that they are getting cut, it is not fair to these employers and these small businesses to be stuck here in this position.

And I understand that we have to balance this and we have to realize or think about what the government's role should be. And so, I wanted to just make the point that the employees are incredibly sympathetic, but so are my small businesses who are challenged with this problem. And we have to come up with a solution that solves this for everyone.

Mr. LANGAN. If I could add just one quick thing, I will not take long. I think one way to look at this is, the employers that have remained in the plans, we have actually acted as the PBGC in these plans because we absorb the liability.

Co-Chairman BROWN. Senator Portman?

Senator PORTMAN. Thank you, Mr. Chairman.

I am going to first talk about something general, which is that there has been discussion here when I was here earlier, and I understand even in my absence—I went to vote—about who is for what and are you for loan programs or not. And I just hope we do not take things on and off the table. I think we need to keep everything on the table at this point. We have a huge problem ahead of us.

And I know there has been discussion about having a hearing here where we talk about solutions. I am for that, but I want to be sure we have the data to be able to do it. So I would hope that if we have a hearing about solutions, that we have the data and information that we need, particularly an analysis from PBGC and from CBO on the options.

So a lot of us have requested that for the last several months, and we still do not have the numbers that we need to be able to, I think, make important, informed decisions.

Ms. Wong, I want to ask about some of the rules here and one particular one that troubles me, which is the convoluted rule that could actually result in hundreds, maybe even thousands of employers, particularly small employers, going bankrupt if this is not addressed. And that is what you talked about a little in your testimony: the uncertainty regarding minimum funding considerations.

We talked in the last hearing about this. And we talked about the fact that employers in healthy plans have to meet their minimum required contributions every year based on new promises they have made to new employees, promises they make to current workers, and in addition any accrued deficiencies they have in the plan's funding standard account.

But once that plan goes into critical status, that changes, doesn't it? And I think it is something to focus on in terms of the law and maybe an inadvertent, but a potentially negative consequence, because then the trustees are required to come up with this rehabilitation plan which can include exempting them from needing to contribute the required contributions, at least under normal accounting standards. And additionally, employers have the excise tax liability enforcing payment of these minimum required contributions waived as well.

So once you go into that status, it changes. And for employers in Central States, my understanding is that employers are currently paying less than half of what their minimum required contributions are, as an example, and at least what they would be doing under normal accounting standards. And once that plan becomes insolvent, it might no longer technically be in critical status, right?

Ms. WONG. Right. That is the uncertainty, exactly: how the rules work together.

Senator PORTMAN. So what happens there? I mean, it is unclear to me, looking at the legal part of this, the extra statutory language, what happens with the excise tax then.

We asked the Joint Tax Committee about this in anticipation of this hearing. We have heard that Treasury has never issued guidance on this issue; the statute is ambiguous.

And you know, I think it is an enormous uncertainty and a potential for a catastrophe for a lot of businesses.

So you noted that a multiemployer plan must satisfy certain code provisions, the rehabilitation plan. And you said that if a multiemployer plan fails to make scheduled progress under the rehabilitation plan for 3 consecutive plan years or fails to meet the requirements applicable to plans in critical status in the rehabilitation period, the excise tax for such a plan is treated as having a funding deficiency.

Let us translate this a little bit just for our purposes today. It looks to me like once an insolvent plan cannot show improvement or meet rehabilitation plan requirements—when Central States becomes insolvent, doesn't that mean that employers would have to meet their minimum-contribution requirements and possibly pay excise taxes?

Ms. WONG. And that is what the law says. So let me take that.

Senator PORTMAN. How does that make sense?

Ms. WONG. The purpose of the rehabilitation plan is to allow and to give plans time and employers time to make those plans whole again and make them solvent.

The concern is that—again, we were involved with PPA and making that happen—we did not foresee what would happen in the time before that. And so the thought was not given, what would happen if there was an insolvency at the PBGC? What would happen if there was a major plan insolvency that would impact those rehabilitation plans or the entire system, like we are facing now? And so I think it was an oversight in terms of how those rules work together.

In the report we issued today, that is what we point out, that legally there is the ability for the IRS and the PBGC to come in and reimpose those minimum funding standards and the excise tax. If it will happen, we do not know, because——

Senator PORTMAN. Aren't you really saying that you are hoping that the IRS does not enforce the law, that they do not read the letter of the law, which would require massive contributions and the potential insolvency of hundreds of businesses, just in the Central States example?

Ms. WONG. We think it is unclear and that they definitely can come in and assess it, but it is unclear about how and when or if they could do that.

Senator PORTMAN. Mr. Langan, how would uncertainty regarding a possible funding deficiency crisis affect the mass withdrawal possibility?

Mr. LANGAN. A mass withdrawal is defined. It is not insolvency that creates a mass withdrawal, it is when all the employers leave, or substantially all of the employers leave, or it can be triggered by the trustees making that decision.

Senator PORTMAN. But this could be resolved, right?

Mr. LANGAN. Yes, it could. What will happen, in essence, that a lot of folks are concerned about is, people will start leaving. They will see that there is no benefit for their participants who are in the plan, they will see that there is no hope, this plan is going under, and they will start heading to the exits at that point.

Senator PORTMAN. Yes, which would lead to the meltdown of the entire multiemployer system probably.

Mr. LANGAN. Yes.

Senator PORTMAN. Yes. Anyway, I think it is something we are going to have to address as part of whatever solution we come up with, certainly at least adding clarification to it.

Thank you, Mr. Chairman.

Co-Chairman BROWN. Thank you, Senator Portman.

This is a sort of "what happens if we do nothing" hearing. And I think the four of you have done a good job explaining that.

I want to kind of step back and ask you sort of, generally, where you think your member companies or individual companies go—start with that and go into this in greater depth.

Ms. Wong, describe the impact on member businesses if Congress does nothing. And describe what happens, in your view, in the economy. Quantify as much as you can the impact inaction would have on businesses and the general economy.

Ms. WONG. So first, I want to emphasize that there are already impacts being felt today. As we have discussed with the withdrawal liability estimates, you know, companies are already feeling impact from that in terms of their credit lines and creditworthiness. You are seeing problems with employee retention because of the high contribution rates and because those employees are not getting the accruals that are commensurate with the contribution rates.

So we are already in a process of seeing an impact. And as we go forward with this and as the crisis worsens, these issues will worsen.

So we can see, as we have talked about, if people try to withdraw from plans, their withdrawal liability is going to be even greater. There could be mass withdrawals that they have to contend with so that those liabilities are even greater. The minimum funding rules and excise taxes could also be an issue.

Any one of these things, all of these things, could cause employers to go bankrupt and definitely impact their business in terms of their ability to expand their businesses, provide jobs, and to continue working in the most efficient way.

Co-Chairman BROWN. Mr. Langan, I understand—I just spoke with Senator Isakson a moment ago between votes on the floor about your testimony. And we were just talking about what you did a decade-plus ago. And your company did the right thing, but your liability, some of it obviously still stands. What would be the impact on UPS, on the plans that it is still a part of, and other businesses that participate in these plans, if Congress does nothing?

Mr. LANGAN. Our concern is that the pressure that will be put on these plans for raised contributions, not only on us, but the remaining employers, the small employers, will start driving them out of business. And we are in these plans together. They can only go out of business once. And our ownership of these plans will just continue to grow.

And there is the last man standing rule out there, and we could eventually be the last man standing in some of these plans. And the contribution rates that we are putting in are very, very high, north of $20,000 per participant in every plan, and they are not getting the benefits of those monies in some cases.

And it is just going to be continued absorbed liability that we are facing if we stay in these plans.

Co-Chairman BROWN. Thank you.

Ms. Moorkamp, what would be the impact on your company if this committee fails and Congress does not enact legislation?

Ms. MOORKAMP. Well, I am here today and you are here today to ensure that does not happen, because failure is not an option.

Co-Chairman BROWN. Well, I agree with that. I have said that many times, but I do not know that Congress yet understands and the public yet understands what failure would mean. So can you dig a little deeper and tell me what would happen in your company with your employees and your businesses and your suppliers and all?

Ms. MOORKAMP. I have no idea what is going to happen when a plan of the size and scope of Central States goes insolvent. I do not know how our lenders are going to react; I do not know how our auditors are going to react.

But again, Senator Brown, I for one am not willing to just wait and watch it happen.

Co-Chairman BROWN. Okay; thank you. Thanks for being here and saying that.

Mr. Blackman?

Mr. BLACKMAN. Yes, I think I have some idea of what would happen to us specifically. If Congress does nothing, I expect the Boilermaker's plan will continue to decline. That is because I believe the actuarial assumptions are not reasonable.

So what I would expect to happen is, our contribution rates will continue to climb, our withdrawal liability will continue to climb. So as contribution rates go up, we continue to get less and less competitive.

At some point, we are at the point where we may not survive the next recession, because under recessions, margins get squeezed. If our costs are too high, we lose money. We do not know how long it is going to last. Nobody likes to see that much red ink with an indefinite end period.

If the withdrawal liability keeps getting bigger, then I think at some point my bank would likely say, you know, up to this point we have had confidence in you, but it appears as though this is out of control, and we are now concerned that we need to start limiting your credit.

Co-Chairman BROWN. Thank you, Mr. Blackman.

Ms. Wong, last question. There have pretty much been two proposals around this. One is the Butch Lewis Act, and there has been some bipartisan support in the House on that, not yet in the Senate. It is on the table. But as Senator Portman suggests, everything should stay on the table as we discuss this.

The other is the plan that Congress should raise PBGC premiums, keep the agency afloat, and maintain the insured benefit levels for participants. Is that inadequate? And if so, why?

Ms. WONG. It is inadequate as the only solution. Not only is it inadequate in not saving the plans, it could also push more plans into insolvency or at least into the critical and declining status. So we definitely do not see that as a solution.

Co-Chairman BROWN. Because of the increase in premiums.

Ms. WONG. And we would even offer that raising premiums should not be looked at until we address really the insolvency of the system or these issues in the system to see really the impact that changes have and how much those premiums still need to be increased.

Co-Chairman BROWN. Thank you.

Congressman Norcross?

Representative NORCROSS. Thank you, Mr. Chairman.

And I want to thank the employers for trying to do the right thing, and that is to provide for the golden years of your employees. That is the way you say "thank you."

Bankruptcy has been mentioned a number of times and the position of our pension system. Pensions are deferred wages. They have been put aside out of the regular paycheck so you would have that opportunity to retire with dignity.

I have a bill, along with Senator Brown and Dick Durbin, to address this issue, because years ago it used to be in first position with wages. I understand there will have to be a transition, but bankruptcy has shifted that responsibility from the employer to the employee.

And quite frankly, the conversation that you are having, Mr. Blackman, is, in a defined benefit the risk is with the employer. When times are great and you are getting tremendous returns, your contribution goes way down. And conversely, when times are bad, it goes up.

When you go to a defined contribution, you have now shifted everything away from the experts and made every individual employee an investment firm. This is the risk that goes in. And that is why Dr. Roe and I have put together a hybrid plan that is completely voluntary.

I want to address a couple of questions here.

Mr. Langan, when Central States faces their ultimate desire to stay in business, but the numbers, because of the pension plan which is declining rapidly, come in, I understand there are three different options that can take place: insolvency, which is PBGC pays in and that $12,870 is the maximum anybody can get; mass withdrawal, which you talked about; and to go to the question that came up, if we force them to pay, that would just drive the employer to bankruptcy, and then they would walk away with nothing.

This is history. And each one of these rules has a reason for being there. This is not a red or a blue issue. This is not a suburban or urban issue. This is an American issue.

Every one of us has retirement plans that we look forward to one day. Take that away from us—what you earned is what they earned. It is not only our job, it is our obligation to try to fix this. And the only way it gets fixed is if we come together.

So there is a term that is used to address some of the funding issues: pension smoothing. They do it without a loan. Would you address that issue and how we turn it into Butch Lewis or Butch Lewis number two? Address how that takes away the additional income and lets us, quite frankly, invest in Americans so it keeps the plan from going under.

Mr. LANGAN. Well, the smoothing method I believe that you are referring to is an actuarial method that takes the gains and losses of a plan and smooths them out over time so that you do not have spikes and valleys in the valuations as you are going forward.

It is used to—because these plans are a long-term view, they are not a tomorrow-type view—it is used to stabilize it so that the contribution rates based on the assumed returns can be met.

I think one of the points that you made in regards to the PBGC and the levels that the PBGC is at—I would like to just take one second to address that piece. Because I think the thing we have to keep in mind is, as we are addressing the PBGC, they have a 65-billion-plus-dollar liability out there as well. So the question really is, do we move money over to the PBGC or do we get it to these plans so they have the cash flow so they can smooth their way out of this into the future?

Representative NORCROSS. Absolutely. When we look at the underfunding for Central States, it is, what are they, $38.9 billion. The 10 plans or the 9 plans behind them takes it up to $76 billion.

So this is the issue that we are dealing with.

Mr. LANGAN. If I could add one other thing. I do not mean to interrupt, sir, but I wanted to add one other thing.

If we just look at the PBGC levels in regards to Central States, they are going to go insolvent in 2025, 2026. They have publicly said that.

The PBGC levels, in order to come in and step in and provide that benefit, it is going to require about $700 million to $800 million worth of cash from PBGC just to help with that lower benefit.

Representative NORCROSS. How much would you have to raise the premiums in order to cover that?

Mr. LANGAN. Over 800 percent at a minimum in order to solve that.

Representative NORCROSS. Eight hundred percent.

Mr. LANGAN. Eight hundred percent in regards to what we are paying. It is not sustainable. It is just not really a viable option.

Representative NORCROSS. So the cost of doing nothing to our great country far exceeds what we need to do.

I yield back.

Co-Chairman BROWN. Senator Smith?

Senator SMITH. Thank you, Mr. Chairman. And thank you so much to all of our testifiers today.

You know, I probably have met with hundreds of Teamsters in Minnesota and North Dakota with my colleague Senator Heitkamp. And I have also talked with a lot employers.

And you know, just last week I met with a Minnesota employer. It is a family business, close to a 100-year-old business. Maybe some of you can relate to this. And they are looking at the shadow of all of this on their balance sheet. They are ready to pass the business on to the next generation, and they cannot figure out what to do. And this is a really proud family business. They are proud of what they have done as responsible employers, and also they are proud of their family legacy.

And I am here to say that I have talked to a lot of employers and a lot of employees, and I have never heard employers cast blame on the employees or vice-versa. There is a lack of blame in that conversation. And I think that that ought to be a motto for all of us. And I appreciate so much then the tone that you are bringing here.

There has been a conversation here about the risks of inaction, which I am very attuned to. And so I want to just ask you, there has also been some discussion that some would argue that the idea of a loan strategy that some of us on this panel have proposed is too risky—too risky to the taxpayers, does not share the risk.

Would anybody just like to comment on that? How would you respond to somebody who says that the loan strategy is too risky?

Mr. LANGAN. Well, I think that when you are looking at a loan strategy, you have to look at mechanisms; first, how it is going to be paid back. Because the definition of a loan—obviously it has to be paid back. So that is step number one.

But there is also another thing that we can do if we draw these loans down over time. We can create what we have referred to as a risk reserve pool. This risk reserve pool is money put aside over time. It can be housed either at the DOL or the PBGC. And it can step in when the loan repayments start occurring down the road and help backfill that if any of these plans have a hiccup due to the markets or whatever.

So if we do both—have a lower insurance pool over to the side to ensure these loans are paid back and have the proper mechanism, whatever that may be in the end, to ensure it is paid back—I think loans are very viable.

Senator SMITH. So that is a way of mitigating the risk.

Does anyone else want to comment on that?

Ms. Wong?

Ms. WONG. Yes. We have not come up with a specific proposal.

Senator SMITH. I appreciate that.

Ms. WONG. But we do appreciate the effort that UPS has done, obviously, and are looking for something that can also be paid back and is fair to the taxpayer.

Senator SMITH. Yes. So related to that, there are some who argue basically that, though this is maybe not anybody's fault, this is essentially the problem of the businesses and the employers that are in this situation, and they are kind of questioning what is the stake of the public in solving this problem.

How would you respond to that? I mean, what are the risks if the public does not engage here?

Ms. WONG. So, as we are talking about employers, I think one of the things we have left out is that a number of employers that are participating in the multiemployer system do not just have union employees, they also have nonunion employees. And so the jobs we are talking about impact all employees; it is not just one or the other.

Also, a lot of these employers also participate in single-employer plans and 401(k) plans. So if these employers are going bankrupt or they are having cash shortages, it can be impacting the retirement security of those workers as well, even outside of the multiemployer system.

And then we do have the catastrophic instances where, if you have businesses or companies going out of business, that impacts the economy in local communities, obviously impacts that business itself and the jobs it creates.

Senator SMITH. So there is this ripple effect that is partly this contagion effect that we are talking about: impacts on other pensions plans, but also the impact on local communities.

Ms. Moorkamp, would you like to comment on this at all? I think about your family business, the company that you run, and what you think would be the impact to the community that you operate in if we were not able to fix this problem.

Ms. MOORKAMP. Senator Smith, I would first like to focus on the role this contagion effect has to your question.

Senator SMITH. Right.

Ms. MOORKAMP. We are in eight multiemployer plans. In three of those plans, we are at least 25 percent of the contribution base. Two of those three are critical and declining plans. And as Central States goes, those certainly are going to be impacted as well—and think about the different people that those represent.

We also are part of the Food Association. And the 15 Food Association members contribute to 84 plans, of which 34, or 40 percent, are critical and red. And the concern is, as Central States goes, so too will those critical and declining plans.

And as an integral member of all the communities in which we operate, I mean, just the thought of this catastrophe, what that is going to do not only to our teammates, but to our communities as well——

Senator SMITH. The number of people who are impacted ultimately has a big impact on all of us. I mean certainly morally it does, but financially it does as well because people still need to have a way to pay the rent and buy their groceries.

Thank you, Mr. Chairman.

Co-Chairman BROWN. Congressman Dingell?

Representative DINGELL. Thank you, Mr. Chairman.

Before I ask questions, I want to make a comment. Several people here, members of Congress, have observed that taxpayers have no interest in this issue. And I want to strongly disagree.

I think first, retirees and employees are taxpayers; at least last time I checked they were.

And we have heard much testimony about the impact the failure of a large plan could have on the economy. I would respectfully submit that every taxpayer has an interest in what this committee is going to do, what the outcome is going to be, and what the impact will be on the economy. So I want to make that point.

I secondly would like to thank my colleague Representative Buchanan for saying that I think that Republicans and Democrats need to start talking more between themselves, because failure is not an option. It is not an option for the retirees who are counting on us. It is not an option for the employers who are struggling and facing issues. And it is not an option for this economy.

When Senator Portman emphasized that all options should be on the table, I hope we are all taking that to heart.

So having said that, I think I am the last questioner.

I want to start with a series of quick "yes" or "no" questions so I ensure that we are all on the same page, having had a lot of back-and-forth as we finish this. I want to get this on the record.

So these questions are for Ms. Wong, Ms. Moorkamp, and Mr. Langan.

Do you believe that there would be negative impacts on the economy if we stick with the status quo and do nothing to help declining multiemployer plans? "Yes" or "no"?

Mr. LANGAN. Yes.

Ms. WONG. Yes.

Ms. MOORKAMP. Yes.

Representative DINGELL. Mr. Blackman?

Mr. BLACKMAN. Yes.

Representative DINGELL. Thank you. Do you support Congress doing something this year and not kicking the can down the road any longer? "Yes" or "no"?

Mr. LANGAN. Yes.

Ms. WONG. Yes.

Ms. MOORKAMP. Yes.

Mr. BLACKMAN. Yes.

Representative DINGELL. And do you support the concept of a loan program for critical and declining multiemployer plans? "Yes" or "no"?

Mr. LANGAN. Yes.

Ms. WONG. Yes.

Ms. MOORKAMP. Yes.

Mr. BLACKBMAN. Not without structural changes.

Representative DINGELL. Okay, thank you.

Now, these questions are for Mr. Langan of UPS. Who administers multiemployer pension plans? And what role do employers play in this process?

Mr. LANGAN. Multiemployer plans are administered by a board of trustees. A lot of them that we participate in are jurisdictional in nature. So if you contribute in that area, that is where you put your monies.

We are in 27 different plans. There is employer and employee representation on those boards. And on those boards, they have support from attorneys, investment advisers, actuaries—and those are the folks who run the plan day to day.

Representative DINGELL. So what concerns me is that—I am going to ask you another question, and I am probably going to run out of time, so I may submit some questions for the record.

Mr. Blackman said he had no input into the administration of that plan, did not know who was doing it. That worries me. And I think that there has been—well, can you help me? Who helps the governing board of trustees carry out their duties, such as determining the plan investment strategies, investing plan assets, and determining accrual levels that are supported by contributions?

Mr. LANGAN. Yes. There is an investment adviser on every board that I sit on, for example, and they help you set the allocation based on what——

Representative DINGELL. Has UPS participated in those? Have they picked the person who does it? How do people get picked for those?

Mr. LANGAN. How do people get picked to be on boards?

Representative DINGELL. Did you feel that you had a fiduciary responsibility there?

Mr. LANGAN. When you become a member on a board of trustees, by law you are held at the highest standard of fiduciary responsibility. The entire board vets out and determines who is the best investment adviser. We look at that on a regular basis to make sure we have the right people, the right——

Representative DINGELL. So UPS did that as a company.

Mr. LANGAN. As a trustee sitting on the board, as a representative on the board, yes, I have participated in that.

Representative DINGELL. So, building off that, you mentioned in your testimony that changing the actuarial assumptions for multiemployer pension plans would only exacerbate, not address, the underlying problem. Can you elaborate on this point further? Why would this be so harmful?

Mr. LANGAN. Well, as far as the actuarial assumptions, what I was referring to, as far as the interest rate or the discount rate, all that does is lift up the amount of the liability. The contributions do not support it.

It is kind of like a three-legged stool. If you raise the liability, you either have to reduce benefits or bring in more contributions. That pressure just continues on the remaining employers. And if they cannot afford it today, they will not be able to afford it tomorrow.

As a way of a quick example, every plan has to fill out a 5500 report. And on that 5500 report, their liabilities as far as the current liability, which is the lower discount rate that folks are referring to, is on there. In Central States alone, that added over $15 billion of additional liability to the obligation.

You have to double the contribution on the remaining employers to even take a shot at reducing that liability. It is just not feasible.

Representative DINGELL. I am out of time, Mr. Chairman, but with more questions.

Co-Chairman BROWN. Thank you. Okay, thank you, Congresswoman Dingell.

Thank you to those of you who sat through this on both sides for this entire couple-of-hours hearing.

Thank you to the witnesses.

Members of this panel will have 1 week to submit questions through Senator Hatch and me that we will get to the four panelists.

Anybody in the public who is watching or interested in this audience or anybody watching this live-streamed, feel free in the next 2 weeks to submit questions to Senator Hatch and me. And we will then forward those to the four of you. And please, respond as quickly as you can to those questions.

This was very illuminating today. Thank you so much to all of you.

Representative SCOTT. Mr. Chairman?

Co-Chairman BROWN. Congressman Scott?

Representative SCOTT. I have a unanimous consent request to introduce a letter from several bipartisan members of the House encouraging us to get a solution quickly for fear of devastating consequences.

Co-Chairman BROWN. Okay. Without objection, so ordered.

[The letter appears in the appendix on p. 57.]

Co-Chairman BROWN. The committee is adjourned. Thank you.

[Whereupon, at 4:10 p.m., the hearing was concluded.]

APPENDIX

Additional Material Submitted for the Record

Prepared Statement of Burke Blackman, President, Egger Steel Company

Good afternoon, Co-Chairman Hatch, Co-Chairman Brown, and members of the Joint Select Committee on Solvency of Multiemployer Pension Plans.

Thank you for the opportunity to speak with you today about a topic that has significantly impacted my business. I am the president of Egger Steel Company, a third-generation family-owned business located in Sioux Falls, SD. We are a structural steel fabricator that services markets in the upper Midwest. We purchase raw material from steel mills and transform it into assemblies that are shipped to job sites to become the structural framework for bridges and buildings.

We currently have 51 employees, 34 of whom are hourly shop workers who belong to the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers. On their behalf, we contribute to the Boilermaker-Blacksmith National Pension Trust. We have been contributing to this pension since 1971.

HISTORICAL PENSION PERFORMANCE

We first became aware that the Boilermaker-Blacksmith pension had an unfunded liability when we were notified that our company's 2002 withdrawal liability was over $900,000. Prior to that notification, we had never heard the term "withdrawal liability," much less understood that it could apply to us. Since 2002, our withdrawal liability has fluctuated due to variations in overall contributions to the pension, investment returns and actuarial assumptions, but the overall trend of our withdrawal liability has been upward and the largest increase in a single year was over 300 percent coinciding with the stock market crash of 2008–2009 (*see* Figure 1 below). The stock market has since recovered, but our withdrawal liability has not returned to pre-crash levels. Our most recent valuation indicates a withdrawal liability of approximately $2.1 million, or over $60,000 per active eligible employee.

The pension trustees have made multiple changes since 2002 to reduce the plan's unfunded liability, implementing a Funding Improvement Plan, a Rehabilitation Plan and various Amendments. They have imposed increased contribution rates, reduced benefit accrual rates and eliminated some future benefits for active employees. They have not cut retiree benefits. Our company's total contribution is now 2.4 times higher than the rate we negotiated with our bargaining unit. Despite these changes, the plan's funding status has continued to decline (*see* Figure 2 below).

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[1] Boilermaker-Blacksmith National Pension Trust, "Withdrawal Liability Estimate" letters to Egger Steel Company (2003–2017).

Figure 1: Egger Steel Withdrawal Liability[1]

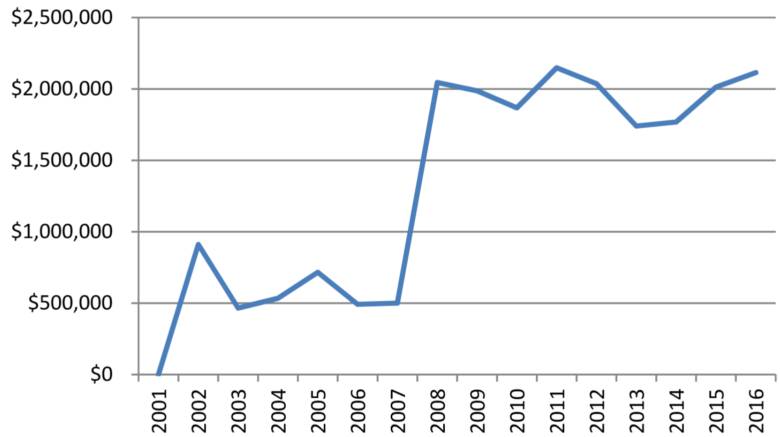
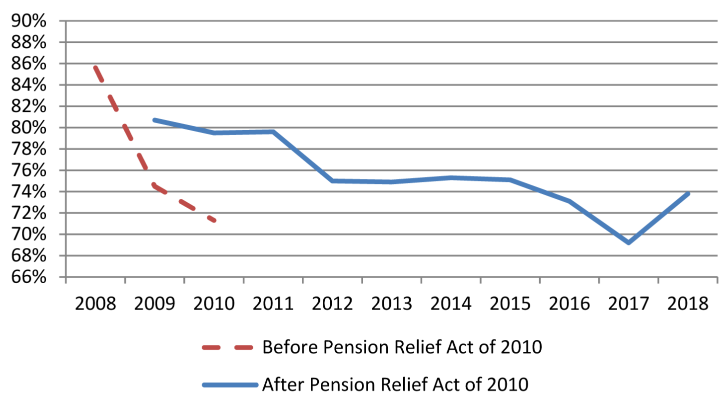


Figure 2: Boilermaker-Blacksmith Pension Funding[2]



There is an uptick in the funding status for 2018, but I don't take much comfort from that because I don't believe that the pension's accounting reflects its true liability. The Boilermaker-Blacksmith pension makes two actuarial assumptions that I question. First, it projects an actuarial rate of return on its investments of 7.5 percent net of investment expenses.[3] During the latest bull market, its actuarial returns have averaged only 6.0 percent (*see* Figure 3 below), so in my opinion the pension should be assuming an actuarial rate of return lower than 6.0 percent in order to account for the inevitable losses during a bear market.

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[2] Boilermaker-Blacksmith National Pension Trust, "Annual Funding Notice for Boilermaker-Blacksmith National Pension Trust" (2010–2018).

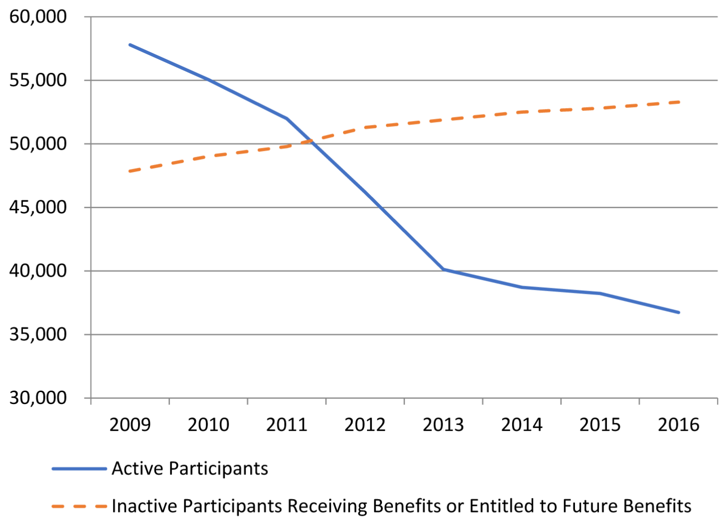
[3] Segal Consulting, "Actuarial Status Certification as of January 1, 2016 Under IRC Section 432" (Boilermaker-Blacksmith National Pension Trust Form 5500, 2016), 9.

Figure 3: Boilermaker-Blacksmith Pension Estimated Investment Return on Actuarial Value of Assets[4]

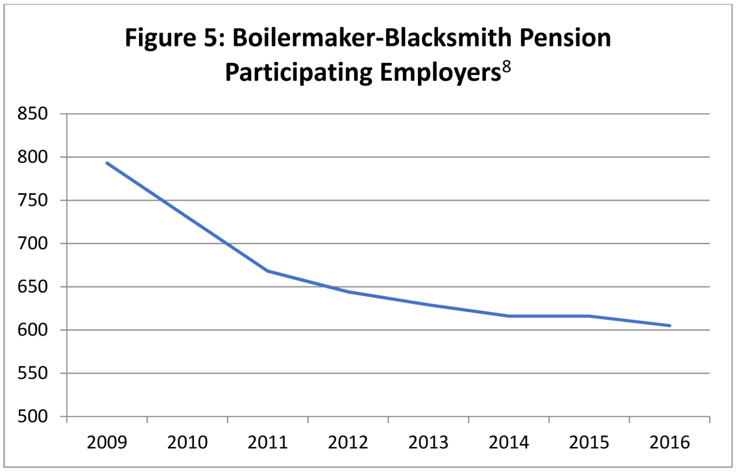
2010	7.5%
2011	8.0%
2012	3.1%
2013	6.3%
2014	7.8%
2015	5.7%
2016	3.5%
Average Annual Return	6.0%
Compound Annual Growth Rate	6.0%

Second, the pension assumes that hours worked by active participants will continue at current levels.[5] This assumption ignores the historical trend of declining numbers of active participants and declining numbers of employers who are contributing to the plan (*see* Figures 4 and 5 below). Moreover, the pension recently disclosed that hours worked in 2017 were estimated to be 4 million hours lower than projected.[6]

Figure 4: Boilermaker-Blacksmith Pension Participants[7]



[4] Boilermaker-Blacksmith National Pension Trust, "Form 5500, Schedule MB" (2010–2016), 3.
[5] Segal Consulting, 9.
[6] Boilermaker-Blacksmith National Pension Trust, "Important Notice Regarding Amendment 5 to the 13th Restatement of the Pension Plan" (December 2017).



IMPACT ON EGGER STEEL COMPANY

What impact does this have on my company? The short-term impact of the multi-employer pension crisis is that it increases my shop labor costs. In order to attract and retain employees, I have to offer competitive take-home wages. Younger employees are cynical about the value of their pension benefits, so they will leave my company for a non-union competitor if their paychecks aren't equivalent to what they could receive somewhere else. The problem is that while my non-union competitors are offering between 3 percent and 6 percent 401(k) contributions, the equivalent rate for my company's total pension contribution is 14 percent. My shop labor costs are therefore 8 percent to 11 percent higher than my non-union competitors because of the underfunded pension. Every time the pension imposes higher contribution rates to make up for its funding shortfall, my costs rise, it becomes more difficult for me to compete in the marketplace and I grow more concerned about whether or not my company will be able to survive the next recession.

The long-term impact of this crisis is related to my company's withdrawal liability. Because I don't intend to withdraw from the pension, it is considered a contingent liability for now, and it is disclosed in the notes to my financial statements rather than appearing on the balance sheet. Nevertheless, my bank is aware of this liability—which is why I can speak about it publicly today—and I make management decisions as if this liability does appear on my balance sheet. While my competitors are purchasing expensive new technology to improve their productivity, I am limited to fixing or replacing broken equipment because at any time my withdrawal liability could skyrocket like it did in 2008, the pension could impose steep increases in contribution rates or if too many employers withdraw from the pension it could fold and assess withdrawal liabilities on whichever participating employers are left to absorb its losses. I don't know how likely any of these scenarios is, but if this crisis is not addressed I am assuming that at least one of them will occur during my tenure as president.

While it is true that if a withdrawal liability were to be assessed I could pay the liability at the same annual rate that I had been making contributions, in reality I would incur the additional cost of contributing to a new 401(k) account for those employees who would no longer be earning a pension benefit and would otherwise leave my company for a competitor that does offer retirement benefits. Instead of my labor costs being 8 percent to 11 percent higher than my competitors, they would now be 13 percent to 16 percent higher.

[7] Boilermaker-Blacksmith National Pension Trust, "Form 5500" (2009–2016), 2.
[8] Ibid. Note that the 2010 Form 5500 indicates that 1,170 employers were obligated to contribute. This data point appears to be an error and was omitted from the chart.

RECOMMENDATIONS

The multiemployer pension crisis is serious, and it is getting worse every day because the pension plans are still making new defined benefit commitments without collecting enough contributions to cover their true costs. Before we do anything else, we must recalculate the true extent of the problem using realistic actuarial assumptions. I'm not suggesting that all multiemployer pension plans should immediately recast their projections. Doing so risks a cascading failure in which weaker companies will fold under the pressure of higher contributions or higher withdrawal liabilities and will dump their obligations onto a shrinking number of survivors. This committee, however, should independently determine the realistic funding status of these plans to ensure that any solutions offered do more than just kick the can down the road for a future Congress to address.

My second recommendation is to transition "orphaned" beneficiaries to the Pension Benefit Guaranty Corporation (PBGC). The "last man standing" provision of multiemployer pension legislation was a mistake and correcting it would eliminate the risk of cascading failure. The PBGC would require additional funding to support these orphans which could come from higher premiums or from transferring proportional assets from the orphans' former pension funds to the PBGC. In either case, the PBGC should consider the funding status of the affected pension plans and vary the premiums or funds collected to avoid harming significantly underfunded plans.

My third and final recommendation is to stop making new defined benefit commitments. In my company's example, instead of paying 14 percent of wages to the pension, I would propose to redirect 5 percent to a defined contribution plan for all new hours worked and continue contributing the remaining 9 percent to the pension until its unfunded liabilities are paid off. The pension may require Federal loans to satisfy its short term cashflow needs, but if it stops making new commitments while continuing to collect contributions it will eventually be able to pay back its loans. If it would take the pension fifty years under this scenario to pay off its liability then perhaps we need to consider current retiree benefit cuts or direct taxpayer assistance, but before we do either of those things we need to admit that the era of defined benefit retirement plans is over.

Thank you for giving me the opportunity to testify.

PREPARED STATEMENT OF HON. SHERROD BROWN, A U.S. SENATOR FROM OHIO, CO-CHAIRMAN, JOINT SELECT COMMITTEE ON SOLVENCY OF MULTIEMPLOYER PENSION PLANS

WASHINGTON, DC—U.S. Senator Sherrod Brown (D–OH)—co-chair of the Joint Select Committee on Solvency of Multiemployer Pension Plans—released the following opening statement at today's hearing.

I would like to welcome my colleagues and everyone in attendance to the third hearing of the Joint Select Committee on Multiemployer Pension Reform.

We know our job on this committee: to find a bipartisan solution to the crisis threatening 1.3 million Americans and thousands of small businesses across this country.

This is what Chairman Hatch and I have set out to do, and I want to thank him for all of his work so far, and all of the members on this committee for the seriousness with which everyone is approaching this.

Chairman Hatch and I decided from the outset to use this initial period to educate ourselves and our colleagues about this complicated issue and its broad impact on the people we serve.

We've made real progress already. This will be our third meeting, and we have three more hearings scheduled. In addition, we have assembled a committee staff made up of top people from the Pension Benefit Guarantee Corporation and the Department of Labor.

The staff are working to provide us with the critical technical information the members of this committee require, and deepening and broadening their expertise on the subject. In June alone we are convening a dozen staff briefings, half of which have already taken place.

We've received hundreds of comments online at *pensions.senate.gov*. In fact, one of our witnesses today came to our attention when he wrote in to the committee.

As I said, we will hold two more hearings here in DC, and one more in the field, where the workers and businesspeople and retirees will have the chance to weigh in.

And then by the end of July, it will be time to take what we have learned through this process, and get serious about negotiating a bipartisan solution.

That is what it will take to address the problem. We all have to put our talking points and biases aside and take what we are learning to craft a bipartisan solution. Senator Hatch and I intend to do just that.

Because, as we will hear today, not passing a solution to this crisis is simply not an option.

It's not an option for the millions of Americans who are part of these multiemployer pensions, it's not an option for the millions more who will still be affected if the system falls apart, and it's not an option for the thousands of employers whose entire business is at stake.

We've heard a lot over the past year about the very real threat to the retirees who paid into these pensions over a lifetime of work. Many of us have talked with them and heard their stories. It's because of their activism and their refusal to give up that we created this committee in the first place.

But the threat to current workers and to small businesses—and to our economy as a whole—is equally real. If the multiemployer pension system collapses, it won't just be retirees who will feel the pain.

Current workers will be stuck paying into pensions they'll never receive. Small businesses will be left drowning in pension liability they can't afford to pay.

And that will have ripple effects throughout our economy.

Small businesses that have been in the family for generations could face bankruptcy. Workers will lose jobs at businesses forced to close up shop. These businesses are already feeling the effects of this crisis. Uncertainty surrounding their future threatens their access to credit, their ability invest in the business, and their decisions as to whether to expand and create jobs.

That's why this issue cuts across party lines, across ideological lines, and through every region of the country.

One of the reasons we have heard more from workers than from businesses is that retirees are more free to speak their minds.

But we need to think about the plight of these small business owners. If they speak publicly about fearing their business could go bankrupt, they'll alarm their customers, their employees, and their creditors.

So I want to thank the witnesses here today for speaking for the thousands of small business people who can't.

You represent businesses that have, by and large, done everything right.

They joined multiemployer pension plans to do right by their employees—they thought they were guaranteeing their workers a secure retirement, making their business an attractive place to work.

They followed the rules set by Congress. They kept doing the work to make their business thrive. They kept contributing to the pension plan. Now, these employers are being punished for succeeding where their competitors failed, and for living up to their obligations when so many have walked away.

Meanwhile, it was Congress that passed upside-down tax incentives and required insufficient premium levels. Congress allowed inadequate tools and financing for the PBGC.

It was that government regulation that allowed this crisis to fester, and it's our responsibility to clean up the mess Congress helped make.

And that means more than increasing PBGC premiums and marginally improving the minuscule PBGC guarantee.

Businesses and the groups that represent them all agree, saving the PBGC alone does not help anyone—retirees will still see dramatic cuts to their pensions, workers will still pay into a retirement they may never see, and businesses will face increased PBGC premiums, while a crippling liability still hangs over their heads.

I'm confident we can find a bipartisan solution that will both solve this current crisis, and improve and strengthen the system so that it never happens again.

I'm willing to consider any idea that meets those goals, and I believe Chairman Hatch agrees. And with that, I yield to my co-chairman, Senator Hatch, for his opening statement.

PREPARED STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH, CO-CHAIRMAN, JOINT SELECT COMMITTEE ON SOLVENCY OF MULTIEMPLOYER PENSION PLANS

WASHINGTON—Joint Select Committee on Solvency of Multiemployer Pension Plans Co-Chairman Orrin Hatch (R–Utah) today delivered the following opening statement at a hearing examining employer perspectives on multiemployer pension plans.

We have brought in business representatives to provide their perspectives on issues with the defined benefit system in order to better understand the realities employers face participating in the multiemployer system.

We will delve into some fundamental questions, including why employers entered into collective bargaining contracts to participate in these plans; how participation affects a business's ability to operate as a going concern; and how the financial condition of these plans affect their ability to access credit, invest in new facilities, equipment, expand operations, and hire new employees.

Before I proceed, I want to provide a brief update on the activities of the Joint Select Committee. The committee is operating on several tracks.

We have the outward-facing process of the hearings, which have been useful to better understand the issues confronting the committee. Committee staff have also held a number of briefings on a wide variety of technical issues in the multiemployer area, including topics that will be touched upon today, such as the impact of withdrawal liability and the operation of the bankruptcy laws in the multiemployer space.

The committee is also working on a range of possible policy options for review. And we continue to develop and evaluate these options, working with the PBGC, our in-house experts, and other agency officials to put some flesh on the bones of these ideas.

I remain open as to what the committee may consider later this year, and my co-chair, Senator Brown, has similarly expressed openness. I also know that there are members of this committee who are actively working on proposals, which they may put forward after fully analyzing their ideas.

But with all of that said, there remains a lot of work to do. And I think I should be clear that I do not see our choices as being limited to a referendum on some sort of loan program.

I bring this up because some prior comments have indicated to me that some of my friends have become convinced that we are stuck with a loan or nothing choice. I have a few thoughts about that.

First, some of us have genuine concerns and questions about the nature of the proposed loan programs, which have yet to be fully analyzed. And a major question remains: what is the limiting principle on risk to the American taxpayer? Multiemployer plans are private arrangements between employers and unions, covering wage compensation and fringe benefits.

Yes, they are shaped to some degree by the tax and pension laws, but so are defined contribution plans and other pension arrangements, as well as a whole host of other financial arrangements in the private sector.

It is clear that the employer and union participants entered into these contracts with an understanding of the terms and conditions that should have allowed them to manage these obligations in a way that would ensure their financial viability.

And although Federal actions over the last 50 years have helped shaped where these plans stand today, the arrangements are, at their core, privately bargained-for contracts—negotiated without the Federal Government's input. And, candidly, the vast majority of Federal taxpayers have no financial interest in these plans.

So let's be diligent and methodical as we approach these issues and negotiate solutions. I want to be sure we are mindful of all of the consequences of our approach—intended or not—so that we can prevent future failures, mismanagement of taxpayer dollars, and the economic dangers of moral hazard.

We need to learn from our mistakes and do better here. Now, none of what I am saying is to dismiss the real concerns of participants, including active workers and retirees who face real hardship as these plans decline and even fail.

As a former skilled union member, I understand these perspectives, and I recognize that the difficult, but necessary choices we have to make as this committee will affect real people with real families. But I also know that real people, who are currently employed and paying taxes, are also affected by the decisions these businesses have to make.

And the difficulty businesses encounter because of the current condition of these pension plans is sometimes bizarre, if not ludicrous.

As just one example, it is alarming, as we will hear today, to learn that the estimates of withdrawal liability frequently exceed the book value of the sponsoring companies. And as some companies will testify, there is a real fight to get out from underneath the burdens of pension liability for employees who were never even employed, let alone received a pay packet.

It is truly a complicated issue, one that requires us to move thoughtfully, instead of jumping to conclusions to score political points. That's why I look forward to exploring these issues in depth today and beyond, and am pleased by our witnesses today, who will share with us their views on these matters.

Prepared Statement of Christopher Langan, Vice President of Finance, UPS

INTRODUCTION

The multiemployer pension system is in a crisis from which it will likely never recover if Congress does not take immediate action. The Joint Select Committee on Solvency of Multiemployer Plans is uniquely empowered to find a responsible solution to this issue of critical importance for more than 10 million Americans who participate in multiemployer pension plans, their families, and thousands of employers that contribute to the plans to provide their employees with retirement income. If Congress does not find a viable solution for plans like Central States and the Mineworkers Plan, the claims for financial assistance by these plans will quickly bankrupt the PBGC's own multiemployer insurance program. Retirees under these plans would then see their benefits drop to just a fraction of the already modest benefit guarantee under the PBGC's multiemployer insurance program.

UPS began to contribute to multiemployer pension plans in the 1950s and currently contributes nearly $2 billion per year to 27 different plans across the country. These plans include some of the largest in the country, such as the Western Conference of Teamsters Pension Plan, the New England Teamsters and Trucking Industry Pension Fund, and the I.A.M. National Pension Fund. The plans to which UPS contributes vary in funding status. As of last year, out of the 21 plans to which UPS makes the largest contributions, eight were in "critical status," three were in "endangered status," and the remaining ten were in the "green zone."

UPS supports a solution to this problem so that the multiemployer pension system remains a viable method of providing retirement benefits into the future for all participants and to avoid the catastrophic collateral effects on our economy that would necessarily arise from a failure of the system.

HISTORICAL BACKGROUND

The present multiemployer pension crisis did not arise overnight or through the fault of employers or employees. The crisis is also not generally due to mismanagement by plan trustees, who are subject to the strict fiduciary standards outlined below.

Multiemployer pension plans are governed by a board of trustees with equal representation from labor and management. Labor trustees and management trustees generally are required by law to have equal voting power. If the trustees reach a deadlock on any issue, the issue is resolved by arbitration. These trustees have fiduciary responsibility for the management and administration of the plans as a whole, including the management of the plan assets. The fiduciary standards under ERISA require trustees to act prudently, follow plan documents, diversify investments and act for the exclusive benefit of participants and beneficiaries. Due to these high fiduciary standards, trustees typically retain investment managers and delegate to them responsibility for the day-to-day investment of plan assets. In addition to retaining investment managers, trustees will typically also retain investment consultants to assist in the selection and ongoing monitoring of investment managers, asset allocation, and similar issues. Trustees rarely make day-to-day investment decisions.

The current crisis is not the result of poor decision-making in retaining investment professionals. It is instead the result of a perfect storm of events that were never contemplated when the multiemployer pension system was first created. In particular, multiemployer pension plans have suffered from (i) macro changes to many of the established industries in the United States with significant multiemployer plan participation, and (ii) the 2008 market crash—which happened while many plans were still recovering from the earlier burst of the dot-com bubble. These macro changes and unprecedented negative market events had a number of derivative effects on multiemployer pension plans, including significant investment losses, dramatic reductions in the number of contributing employers, declines in the number of active participants, increases in the number of retirees, an unusually low interest rate environment, and increasing employer failures that have prevented plans from fully collecting withdrawal liability.

Macro Changes to Established U.S. Industries

Many multiemployer pension plans primarily cover participants in established industries that have significantly changed in the United States over the past 30 to 40 years. An example of one of these changes that has uniquely impacted a number of Teamster plans is the passage of the Motor Carrier Act of 1980, which deregulated the trucking industry and gave rise to a new breed of non-unionized trucking company with which many established trucking companies could no longer compete. Central States reported that out of its 50 largest contributing employers in 1980, only three remained contributing employers by 2015, and that over 600 of its contributing employers have gone bankrupt since 1980.[1] These pressures also impact non-Teamster funds. As an example, the Western States Office and Professional Employees Pension Fund was acutely impacted by the decline in contributions due to the 2002 bankruptcy of one of its largest contributing employers, Consolidated Freightways—an established trucking company.[2]

Employers in these established U.S. industries have also had to cope with other market forces, such as increased competition from foreign companies and the outsourcing of significant work to other companies. For example, furniture imports began to rapidly increase in the 1970s, which in turn harshly impacted furniture companies in the United States. The United Furniture Workers Pension Fund reported in its MPRA application that from 1981 to 2009, 35 of its contributing employers alone filed for bankruptcy (or effected an assignment for the benefit of creditors) and withdrew from that fund.[3]

These changes have been compounded by the broader decline of unions in the United States, increases in labor productivity, the emergence of new, non-unionized industries that have begun to dominate the American economy, and the increasing numbers of baby boomers who are retiring and applying to commence their pension benefits.

Economic Recessions

In the past 20 years, multiemployer pension plans have suffered from two significant economic recessions—first in 2002 with the burst of the dot-com bubble and then in 2008 with the burst of the housing bubble and the financial crisis that followed. These recessions resulted in significant, unprecedented investment losses for multiemployer pension plans. Central States experienced $7.5 billion in investment

[1] *See, e.g.,* Central States MPRA Application, page 18.2, available at *https://www.treasury.gov/services/AppsExtended/(Checklist%2018)%20All%20Reasonable%20Measures.pdf.*

[2] *See, e.g.,* Western States MPRA Application, Checklist 2, page 9, available at *https://www.treasury.gov/services/KlineMillerApplications/Checklist%202%208%2013%2015%2017-22%2024%2030-33%20WSOPE%20MPRA%20Benefit%20Suspension%20Application%20-%20pages%201-25_Redacted.pdf.*

[3] *See, e.g.,* United Furniture Worker Pension Fund A First MPRA Application, page 12, available at *https://www.treasury.gov/services/KlineMillerApplications/United-Furniture-Workers-Pension-Fund-A-Application-for-Benefit-Suspensions-1.pdf.*

losses in 2008 alone.[4] However, the impact of these recessions were not limited to investment losses. The recessions also bankrupted many contributing employers and constrained the ability of other employers to bear significant increases in contribution rates.

Although these economic recessions followed periods of relative prosperity in the United States, multiemployer plans were largely unable to fully prepare for the threat of significant downturns. This is because the Tax Reform Act of 1986 limited the ability of employers to deduct contributions to overfunded multiemployer plans. As a result, when plans were projected to become overfunded—particularly in the 1990s—trustees of many of the plans began to increase benefit levels to lower the funding status of their plans and ensure that contributing employers could continue to deduct their contributions.[5] Until legislation became effective in 2002 that modified this limitation on contribution deductions, plans were effectively unable to preserve their investment gains as a hedge against future downturns. It is estimated that this issue impacted over 70 percent of multiemployer plans.[6]

Derivative Effects

The macro changes and economic recessions had a number of derivative effects on multiemployer pension plans.

First, active participation in multiemployer pension plans has declined over time. The ratio of retirees and terminated vested participants in multiemployer pension plans increased from 48 percent to 63 percent from 1995 to 2013 alone.[7] As PBGC Director Reeder has previously testified, today, the ratio of active to inactive participants is at its lowest point in history.[8] As a result, many plans receive ongoing contributions for a decreasing number of participants.

Second, many plans have fewer contributing employers than ever before due not only to withdrawals by those seeking to limit their potential exposure but also due to the failure of contributing employers. Specifically, a number of contributing employers have simply proven unable to weather these macro changes and economic recessions. These employers have ceased contributions to multiemployer pension plans altogether—often through bankruptcy—and often failed to fully satisfy their withdrawal liability obligations. As a recent example, when The Great Atlantic and Pacific Tea Company filed for bankruptcy in 2015, it was a contributing employer to 12 multiemployer pension plans.[9] Each time a contributing employer to a multiemployer pension plan fails, it effectively leaves the plan's remaining contributing employers, who may themselves already be damaged from various macro events, liable for the unfunded vested benefits of the failed employer's participants.

The combined impact of these first two derivative effects—the ongoing decline in contribution base and the decline in contributing employers—is profound. Because there are fewer contributing employers among which to spread risk, these derivative effects make the plans more reliant on the financial fortunes of their remaining contributing employers. These derivative effects also require the plans to demand ever-increasing contribution rates from their remaining contributing employers—a vicious cycle that in turn leads to even more employer withdrawals.

Third, and related to the foregoing point, because many plans have a disproportionate share of retirees relative to active participants, these plans often pay more in annual benefits than the plans collect in annual contributions. While this may not be financially toxic for healthy plans, it has a disastrous effect for underfunded plans that have shrinking asset bases from which to generate investment returns. Rather than using their current asset base to generate the returns needed to bring

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[4] Government Accountability Office, GAO–18–106, "Central States Pension Fund—Investment Policy Decisions and Challenges Facing the Plan," page 36 (2018).

[5] W. Thomas Reeder, testimony before the House Committee on Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions, November 29, 2017.

[6] Randy DeFrehn, testimony before the House Committee on Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions, September 22, 2016.

[7] Jasmine Ye Han, "Retiree-Employee Ratios Are Dooming the Multiemployer Pension," *Bloomberg BNA,* May 9, 2017, available at *https://www.bna.com/retireeemployee-ratios-dooming-n73014450632.*

[8] W. Thomas Reeder, testimony before the House Committee on Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions, November 29, 2017.

[9] *See* "Motion of Debtors Pursuant to 11 U.S.C. §§ 105(A), 363, and 507(A) for Interim and Final Authority, but Not Direction, to (A) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefit Programs, and for Related Relief," *in re The Great Atlantic and Pacific Tea Company, Inc., et al.* (S.D.N.Y., July 19, 2015).

themselves back to health, these plans are forced to sell their investment assets in order to pay benefits.

Finally, multiemployer pension plans have suffered through an unusually low interest rate environment since the 2008 recession that is just starting to inch back to normal levels. With yields on treasuries and investment grade bonds at nearly historic lows, plans have generated smaller returns than usual on their fixed income portfolios. This has dragged investment returns for certain troubled plans.

CURRENT PROBLEM

The current problem is that even after the recent improvements in the economy, the most troubled underfunded multiemployer pension plans, such as Central States, have significantly negative annual cash flow. These plans simply pay much more in benefits each year than the plans collect from employers and earn through investment returns—and the annual disparity between the plans' cash inflows and outflows is only growing as more participants retire and start benefit payments, contributions for ongoing participants decrease, and plans are left with shrinking asset bases from which to generate investment returns.

If large plans like Central States and the Mineworkers Plan become insolvent and turn to the PBGC's multiemployer insurance program, the PBGC will not be able to fully satisfy its already modest guarantee for the participants in *any* insolvent plans. As of 2016, the Congressional Budget Office estimates that out of the $35 billion in financial assistance claims from multiemployer plans that the PBGC is projected to receive from 2027 through 2036, the PBGC will only be able to pay $5 billion.[10] This should not be an acceptable result to Congress for retirees on fixed incomes who need every dollar of their pension benefits.

FINDING A SOLUTION

The multiemployer pension system is in crisis and the problem becomes worse each day. This committee is uniquely empowered with the ability to develop a legislative solution that will help ensure that multiemployer pension plan participants receive the retirement benefits they earned through years of hard work and on which many are relying to support themselves and their families after their working years.

Given that the failure of Central States and the Mineworkers Plan will effectively bankrupt the PBGC's multiemployer insurance program, UPS respectfully submits that the highest priority should be on solutions that will work for the largest, and most critically underfunded, multiemployer pension plans, which in turn will help save the PBGC's multiemployer insurance program.

To that end, UPS notes as an initial matter that changing the actuarial assumptions for multiemployer pension plans to more closely reflect those used by single-employer plans would only exacerbate, not address, the underlying problems. At this point, the most troubled plans are "mature" plans with more retirees than active participants. The cash flow needs for these plans are known and quantifiable and, as required by law, the plans have generally implemented employer contribution schedules that reflect the maximum that the trustees have determined that they can collect from employers without impairing their ability to remain in business and willingness to continue contributing to the plans. Modifying the actuarial assumptions in a manner that significantly increases the valuation of the plans' liabilities will result in a perceived, but artificial, need for additional contributions, but in reality will not result in additional cash flow or otherwise solve the pressing problem. Indeed, modifying the actuarial assumptions may make the problem worse if the revised assumptions result in even higher withdrawal liability calculations for employers that would already struggle to pay any withdrawal liability assessed in accordance with current law.

Similarly, there has been much discussion recently regarding the GROW Act and a new type of plan known as a "composite plan." While UPS does not intend to take a position on composite plans at this time (other than to state that any composite plan legislation should be crafted in a manner that does not undermine the viability of so-called "legacy plans"), it is important to note that the GROW Act simply will not fix the most pressing problem at hand for plans like Central States and the Mineworkers Plan, and therefore will not save the PBGC either. While the com-

[10] Congressional Budget Office, "Options to Improve the Financial Condition of the Pension Benefit Guaranty Corporation's Multiemployer Program," page 2 (2016).

mittee should determine whether the GROW Act is still potentially beneficial for other plans, UPS urges the committee to remain focused on the more pressing problem at hand.

In order to derive a solution to the pressing problem, UPS encourages the committee to focus attention on the key factors that suggest what will work. While the nuances of multiemployer pension funding are complicated, the basic premise is quite simple. Plans' finances depend on two things: (i) the plans' cash inflows in the form of employer contributions and investment returns, and (ii) the plans' cash outflows in the form of benefit payments and administrative expenses. Put simply, troubled plans are unable to recover because they face significant negative cash flow—an imbalance between these two factors, and quickly exhaust their remaining assets.

For these troubled plans, increased employer contributions will not solve the cash inflow problem. Troubled plans have been required since the enactment of the Pension Protection Act of 2006 to create contribution schedules that are projected to improve their financial condition within specified timeframes. These contribution schedules have significantly increased the contribution rates for most employers to troubled plans. Many employers are now contributing double what they contributed per employee before these legal changes were enacted.[11] Troubled plans have found that increases at these levels are simply unsustainable for contributing employers—particularly those that are increasingly forced to compete with non-union employers in the marketplace and that already operate on low margins. These contribution increases have already hastened the pace at which employers have stopped contributing to troubled plans due to either the inability to pay these increased contributions, which further shrinks the plans' contribution bases, or due to liquidation or bankruptcy (in which case employers also fail to pay their full share of withdrawal liability). In addition, employers often contribute to several multiemployer plans. If these employers go out of business due to the unsustainable contribution increases owed to just one of their plans, they will stop contributing to all of their plans. The result is a shrinking contribution base, and the financial health of an ever increasing number of multiemployer plans is put at risk. There is simply no workable fix that can be strictly funded through employer contributions for plans like Central States.

In the case of cash outflows, multiemployer pension plans generally offer modest retirement benefits to participants who have typically worked in blue-collar jobs. Significant benefit reductions for these people come at a huge human cost that cannot be overlooked. Multiemployer pension participants have planned on this income throughout their entire working lives and taken the income into account in planning how much, if anything, to separately set aside for additional retirement savings. As a practical matter, for many participants, their modest pension benefits and Social Security benefits are the only available source of income in retirement and they have no other meaningful source of savings. Benefit reductions also have broader ramifications and costs for the government in the form of lost tax revenue on the unpaid benefits and increased demand of other government services like SNAP (food stamps) and other welfare and social programs. For example, a retiree on a fixed income with a modest pension of $600 per month may not be able to absorb an even $100 reduction to his or her monthly benefit. As a result, similar to the notion of increased employer contributions, there is also no workable fix that can be funded strictly through benefit reductions for the most troubled plans.

LOAN PROGRAM

UPS believes that a carefully designed loan program could save the most troubled plans without imposing undue hardships on participants, contributing employers, the PBGC, the Federal Government, taxpayers, or healthy plans. As PBGC Director Reeder testified before this committee, the most troubled plans need an infusion of cash as soon as possible to stay viable. Each of the loan programs proposed by various parties would provide troubled plans with this desperately needed lifeline while still ensuring that the plans are projected to repay the loans in full.

[11] For example, the "default" contribution schedule implemented by Central States after PPA required 5 years of compounded 8-percent annual contribution rate increases, 3 years of 6-percent annual compounded increases, and then continuous 4-percent compounded annual increases (without factoring in any additional contribution increases for benefit improvements). *See, e.g.,* Central States MPRA Application, page 18.7. At this rate, an employer's contribution rate doubles within 12 years after the adoption of the schedule.

As you know, UPS has provided some ideas on how to structure a successful loan program about which we are happy to provide additional information. Generally, we think long-term, low interest rate loans to the most troubled plans would allow them to stop selling assets to pay benefits and provide them with the opportunity to regain their financial strength and repay the loans in full over time. We think there are ways to provide assurances that the loans can be repaid so that taxpayers can be protected as well. While these assurances may require some level of shared sacrifice among all of a borrowing plan's stakeholders—it will avoid the significantly worse, and catastrophic, effects of inaction.

Of course, the committee will ultimately need to decide the right balance to strike among the important issues and considerations at stake. More important than the specific details of any particular loan program at this point is our demonstration as to why—short of a government bailout—a loan program is the only solution that has been raised to date that would help solve the current crisis. *In this regard, we note that Central States and the United States Mineworkers Plan have confirmed that a loan program could help save the plans, avoid insolvency, and therefore avoid the need to turn to the PBGC's multiemployer insurance program for assistance.*[12]

CONCLUSION

Some have asked why the Federal Government should step in at all to help these plans that cover just a subset of the broader American population. The fact is that the Federal Government made a promise to all participants in private-sector defined benefit plans with the creation of ERISA and the PBGC. Over 40 years of literature and pronouncements on pension benefits disseminated in the United States have included a disclaimer that, in the worst case scenario, the PBGC—a Federal corporation—would guarantee a certain portion of an individual's benefits. As it stands, the PBGC will not be able to do that much longer.

The consequences of the PBGC's failure will be extraordinary. At the very least, it is clear that failure will result in, among other things, participants receiving small fractions of their benefits, lost tax revenue, higher demands on Federal, State and local government safety nets, and a loss of confidence in our social institutions.

The loan solution described above is not intended as a bailout in any sense, but would still allow the government to make good on its promise. At this point, there is also no other reasonable alternative that can save the most critically underfunded plans or our economy from the collateral effects of their failure.

Thank you for the opportunity to testify before the committee and to submit this written supplement. UPS stands ready to continue to help find a solution to this important problem.

Prepared Statement of Mary Moorkamp, Chief Legal and External Affairs Officer, Schnuck Markets, Inc.

Co-Chairman Hatch, Co-Chairman Brown, and members of the Joint Select Committee ("committee"), thank you for the opportunity to participate in today's hearing on "Employer Perspectives on Multiemployer Pension Plans." I am Mary Moorkamp, chief legal and external affairs officer at Schnuck Markets, Inc., in St. Louis, MO. I am appearing today on behalf of Schnuck Markets and the Association of Food and Dairy Retailers, Wholesalers, and Manufacturers ("Food Association"). I also hope to provide a voice to the more than 5,400 employers who contribute to multiemployer pension plans that are projected to be insolvent in 20 years or less.[1]

My message today is simple. This committee must succeed in its mission to solve the funding crisis facing the multiemployer pension system. We understand and fully appreciate the enormous challenges facing this committee. But the consequences of failure are both real and significant—not only to retirees, but to em-

[12] *See, e.g.,* letter from Mr. Thomas C. Nyhan, Executive Director of the Central States Pension Fund, dated November 13, 2017, to U.S. Senator Sherrod Brown and Representative Richard Neal, available at *https://d3n8a8pro7vhmx.cloudfront.net/teamstersforademocraticunion/pages/10476/attachments/original/1510782483/Central_States_-_Letter_to_Sherrod_Brown_and_Richard_Neal_11132017.pdf?1510782483;* United Mine Workers of America, press release, American Miners Pension Act (Oct. 3, 2017), available at *http://umwa.org/news-media/press/american-miners-protection-act* (addressing a prior loan proposal).

[1] NCCMP Multiemployer Pension Facts and the National Economic Impact, slide 3 (Jan. 5, 2018).

ployers, employees, and our local communities. To quote from the movie *Apollo 13:* "Failure is not an option."

I. WHAT IS SCHNUCK MARKETS?

Schnuck Markets is a third-generation family-owned retail grocery chain. It was founded in Anna Donovan Schnuck's kitchen in 1939 as a way to feed her family and neighbors during the Depression. Back then, as today, she was seeking a way to nourish people's lives. From those humble beginnings, the company has grown to its current size of more than 13,000 teammates serving 100 grocery stores in five States: Missouri, Iowa, Indiana, Illinois and Wisconsin. More than 75 percent of our workforce is unionized. Our CEO is Todd Schnuck—a proud grandson of Anna Schnuck.

The Schnuck Family believes deeply not only in providing a quality and competitive grocery experience, but also in giving back to the community—both near and far. Three illustrations highlight this commitment. First, we are proud to say that in each community in our five-State region, we partner with local food banks and pantries to ensure that the hungry in our communities are fed. In St. Louis alone, one out of every three meals served by Operation Food Search comes from Schnuck Markets. That is annually almost $12 million in food donations. Second, when Hurricane Harvey devastated the Texas Gulf Coast last year, in one day's time—and at one store alone—our teammates collected over $23,000 in cash donations, and we filled six tractor trailer loads with supplies, which Teamster drivers took to the Houston hurricane victims. Just to be clear, the closest Schnuck store to Houston, Texas is in Jefferson City, Missouri—over 750 miles away. Finally, we are proud to partner with Folds of Honor to provide scholarships to the children and spouses of fallen and wounded service members. To date—and the program has only been going since Memorial Day week—we are on pace to raise over $1 million by July 4th, which translates to over 200 scholarships. From 1939 to present day, our mission to nourish people's lives has been unwavering.

II. THE HISTORY OF SCHNUCK MARKETS AND CENTRAL STATES

A. Contribution History

Schnuck Markets entered the Central States Teamsters Pension Fund ("Central States") in 1958. The date is important, because it was many years before Congress enacted ERISA or the withdrawal liability rules. There was no "last man standing" concept or tax deduction limitation when we entered Central States. And there was no PBGC multiemployer fund. We did not "make a bad deal." These rules were forced upon us after the fact. We simply wanted to provide our drivers, mechanics, and grocery warehousemen with a retirement benefit for the work they did for Schnuck Markets.

Since 1958, we have made all of our required pension contributions. I want to emphasize this point, because this committee cannot get caught in the trap of trying to place blame for the crisis. Just like the participants who say—correctly so, I would add—that they are not to blame, nor are the contributing employers. Schnuck Markets has done everything we were supposed to do. No one is to blame, which is why everyone must share in the sacrifice to solve the crisis.

In 1958, our weekly contribution rate was $3 per week. At the time, this contribution was about 3 percent of our Teamster teammates' total compensation package (salary, retirement, and health and welfare benefits). There was no such thing as "withdrawal liability," and our liability was limited to funding our pension obligation for our teammates under our Collective Bargaining Agreement.

Fast forward to our situation today. Our contribution rate to Central States for 2018 is $342 per week. This contribution rate amounts to between 19 percent and 21 percent of our Teamster teammates' total compensation package. This compares to a compensation percentage of around 4 percent to 6 percent for our non-Teamster teammates. (In our industry, it is typical for a retirement contribution percentage to be in a 4 to 6 percent range or less. Anything above that puts a company at a significant competitive disadvantage.)

The $342 per week contribution level is 114 times the contribution rate in 1958. For some historical context, in 1958, a gallon of milk cost $1, a loaf of bread was 20 cents, and a gallon of gasoline was 25 cents. What would our customers and your constituents say today if they were paying $114 for a gallon of milk, $22.80 for a loaf of bread, and $28.50 for a gallon of gas? That is what has happened to our contribution rate in a "penny margin business."

B. Unfunded Liabilities—the "Last-Man Standing" Rule

A major reason our contribution rate has increased so much is because of the unfunded liability rules. In effect, each employer in a multiemployer plan is jointly and severally liable for a plan's unfunded liabilities. When an employer leaves a plan without paying its portion of the plan's unfunded liabilities (or if a plan suffers an investment loss following the employer's withdrawal), the responsibility for the unfunded liabilities not paid by the exiting employer shifts to the remaining employers. This is referred to as the "last-man standing" rule. The shift in unfunded liabilities drives up our contribution rates, and employers such as Schnuck Markets are forced to fund the retirement of workers who never worked for us—and in fact may have worked for our competitors or, more likely, completely outside our industry and region in which we operate. What this also means is that prudent and responsible employers who followed all the rules are the ones left holding the proverbial "bag."

This point is clearly illustrated by Central States. According to Central States, 59 percent of the retirees are orphans, meaning that their contributing employer is no longer paying into Central States. Moreover, 54 percent of our contribution dollars (or $185 of the $342 we contribute) go to pay for the benefits of participants that never worked for Schnuck Markets.

It is not as though our Teamster teammates will enjoy a retirement benefit commensurate with our contribution rate. Given Central States' projected insolvency in 2025, our teammates will be fortunate to receive the maximum PBGC guarantee of $429 per year of service (or $12,870 per year for a teammate with 30 years of service)—which is only about one-third of the benefit they otherwise would have received. And this is only if the PBGC multiemployer program remains in existence—which at this point is projected to be insolvent in 2025. When the PBGC program goes insolvent, Central States participants will receive next to nothing.

It is for this reason that in 2017, out of concern that our Teamster teammates would have nothing at retirement—despite years of our pension contributions to Central States—we established a 401(k) plan on their behalf. The 401(k) is a 100-percent company match up to 4 percent of the teammate's salary. This is in addition to the weekly contributions we continue to make to Central States. We see this as a way for our Teamster teammates to accumulate some type of retirement income, in addition to their own personal savings—as there will be little to nothing for them once Central States goes insolvent. This is our only bargaining unit that has a pension (albeit a potentially insolvent one) and a match feature to their 401(k). The Central States situation is unfair to our Teamster teammates and to all of our other teammates—and is untenable for Schnuck Markets in our highly competitive, penny-margin business.

C. Withdrawal Liability

The unfunded liabilities not only affect our required contribution rate, but also create a staggering withdrawal liability.

Congress enacted the withdrawal liability rules in 1980. (As a reminder, we had been in Central States for 22 years at this point.) The withdrawal liability rules require employers that terminate their participation in a plan to make payments that cover their share of any unfunded benefits. The payments are based on each employer's proportional share of a plan's underfunding.[2]

According to the latest estimate from Central States, our share of the plan's unfunded vested benefits at the end of 2016 was in excess of $281 million. We expect that this number is significantly higher today, as the amount has nearly doubled in the last 5 years. Bear in mind that out of our 13,000 Schnuck Markets teammates, only about 200 are covered by Central States. For some context, our total Teamster payroll last year was $16.8 million. Yet, the withdrawal liability attributable to these 200 Teamster teammates is estimated at $281 million (more than 16 times last year's Teamster payroll). That averages to $1.4 million per Teamster teammate. While we expect to pay less than this amount (the liability is limited to 20 annual payments based on a formula that takes into account contribution base units and contribution rates during the 10 preceding years—referred to as the "20-year payment cap"), we are in unchartered waters given the magnitude of a Central States insolvency. From a policy perspective, it makes no sense that an employer

[2] By way of example, in general, if an employer's contributions to a plan comprise 10 percent of the plan's contributions, the employer's withdrawal liability is calculated as 10 percent of the plan's unfunded benefits.

whose contributions have increased 114-fold and has made all of its required contributions could have a withdrawal liability that even approaches this amount.

III. IMMEDIATE IMPLICATIONS TO SCHNUCK MARKETS

The combination of burdensome contribution requirements, the withdrawal liability rules, and the projected insolvency of Central States, has created the proverbial "albatross" around Schnuck Markets' "neck." And we are feeling the effects right now. This is not a "year 2025 problem." The Central States crisis already has an impact on our current operations and strategic long-term planning decisions. Specifically:

1. A reluctance to grow our business. If we open a new store, we have to hire a driver to service the store. Per our Collective Bargaining Agreement, that Teamster driver has to become a participant in Central States. This adds to our Central States contribution base, which increases our withdrawal liability. By our calculations, each new Central States participant increases our withdrawal liability amount by approximately $200,000—which is money they will never see at retirement.
2. Recruiting problems. The Central States crisis has created recruiting issues for Schnuck Markets. When we inform a prospective Teamster driver that his or her pension will come from Central States, they lose interest in the position. They know what's going on and don't want to depend on a withering fund for their retirement savings.
3. Distorting business decisions. Business decisions that otherwise make complete business sense—such as repositioning business assets in a particular market—cannot be made because of the impact of the withdrawal liability rules.
4. Impact on our capital structure and cost of capital. The April 18th submission by the NCCMP (at p. 27) notes how "the insolvency of Central States and the liabilities that would be imputed to employers will be a topic for the accounting profession, including the FASB. Withdrawal liability has been a topic that many accountants have discussed with their employer clients, and those discussions become more real when you actually have a plan insolvency." Schnuck Markets has been required to make additional disclosures on our financial statements. And the financial accounting concerns could impact our capital structure. We rely on private placement debt and bank lines of credit to augment our cash flow. As Central States positions itself for insolvency, our lenders are becoming increasingly concerned about the impact of the insolvency on our financial statements. When assessing a company's financial strength, lenders and credit rating agencies factor potential pension withdrawal liabilities into their analysis, which affects our credit rating and our cost of capital. PBGC Director Reeder, in his testimony before this committee, indicated that "the consensus of the PBGC is that most plans facing insolvency in the near future will not terminate," implying that Central States' insolvency will not negatively impact employers. Setting aside that Director Reeder's "consensus" assumes employers such as Schnuck Markets will continue contributing over $17,700 per year to an insolvent plan on behalf of an employee who may receive next to nothing, the real story is that we do not know how our lenders and auditors will react when Central States becomes insolvent. But I am not willing to wager the future of Schnuck Markets based on a PBGC "consensus view."

In summary, Schnuck Markets is forced to continue making contributions to a plan that is projected to be insolvent within 7 years, from which our teammates will be fortunate if they receive any significant portion of their anticipated benefits. Already, the pending Central States insolvency is limiting our ability to expand our business and attract new drivers. It is distorting our strategic business decisions and impacting our capital structure. This is happening right now, not in year 2025.

IV. SCOPE OF THE LOOMING CRISIS

What I have described is the Schnuck Markets story. I know each of your districts and States have similar compelling employer stories. The recently released PBGC Projections Report states that there are about 130 multiemployer plans that are projected to be insolvent in 20 years or less ("Critical and Declining Plans"); and data collected by the NCCMP states that about 5,400 employers contribute to these plans. I have to think that the future of many of these employers is very uncertain if the 130 pension plans go insolvent.

In quantifying the insolvency impact of Central States and other similar plans, it is certainly reasonable to expect there will be a "contagion" effect. Economists and actuaries will have differing views as to the magnitude and extent of the effect; I can only speak for Schnuck Markets and the Food Association. Schnuck Markets contributes to a total of eight multiemployer plans. In three of these plans, we account for at least 25 percent of the contribution base. More broadly, the Food Association compiled plan information from 15 of its companies. The 15 Food Association companies contribute to a total of 84 multiemployer plans. Of the 84 plans, 34 plans (40 percent) are currently "Red Zone" (critical) plans. If Central States goes insolvent, no one, including the PBGC, can say with any certainty how this will impact other Red Zone plans. I certainly can't. But it won't be positive. And even "Green Zone" plans are not immune from this phenomenon.

The 2017 PBGC Projections Report begins its overview of the multiemployer program with the following statement: "The current multiemployer system, covering approximately 10 million participants in about 1,400 plans, remains under severe stress."[3] We agree. And the stress is bound to worsen with the insolvency of the Critical and Declining Plans.

V. POSSIBLE SOLUTIONS

A comprehensive reform of the multiemployer system—addressing the shortcomings of the current system—offers the greatest opportunity to ensure the retirement benefits of participants and the continued participation by employers. But this committee has less than 6 months to solve the myriad of complicated issues in the multiemployer system. In the meantime, plans such as Central States and the Mine Workers continue their downward spiral toward insolvency, retirees are reacting to fears of losing their retirement benefits, and contributing employers are preparing to take desperate measures in an effort to stave off what we consider an existential threat to our businesses.

The Food Association believes that the solution to the multiemployer funding crisis will require multiple phases. The fundamental rules governing multiemployer plans date back nearly 40 years and have not kept pace with the new economy, changing demographics, and today's mobile workforce. The system needs to be overhauled.

While a new multiemployer system is needed, this committee must focus first and foremost on adopting measures to "stabilize the patient" before undertaking reforms to "cure the patient." The committee must address the funding problems of those plans that are heading toward insolvency. The retirees, participants and employers in these plans face daunting and uncertain futures. These plans have the fewest options and the least amount of time to plan for contingencies.

Immediate action is needed to stave off the funding crisis, and any realistic solution must necessarily involve some Federal loan structure, coupled with contributions and sacrifices by all other stakeholders. Only after this financial crisis is addressed should the committee address the systemic problems with the current system.

As noted by members of this committee, the Critical and Declining Plans face a math problem that can only be solved with more assets, fewer liabilities, or some combination thereof. On the asset side, the contribution rates to plans such as Central States are already straining the resources of employers such as Schnuck Markets. As to investment returns, Central States would have to earn in excess of 14 percent per year (every year) to avoid insolvency. No realistic, sustainable level of increased employer contributions, investment returns, and benefit reductions can solve the funding woes of a plan such as Central States. The math simply doesn't work.

The unavoidable reality is that solving this problem will require some form of a long-term, low-interest rate Federal loan. To reduce the cost associated with a loan program, it must be accompanied by equitable and compassionate reductions in participant benefits and increased employer costs (*e.g.,* increased PBGC premiums). The cost of a loan program has to be spread among all stakeholders in a fair and equitable manner, as none of the stakeholders are to blame. The retirees provided years of service in the workforce and did what was asked of them. The contributing employers made the contributions required by their collective bargaining agreements and the funds' rehabilitation plans. Taxpayers had no involvement in these arrange-

[3] At pg. 7.

ments. It is precisely because no one is to blame that all stakeholders must share in the financial responsibility in an equitable and compassionate manner.

At the same time, the loan program must be structured in such a way, and include the necessary safeguards, as the committee deems necessary to ensure that the loan is repaid.

For those who question the Federal government's participation in the loan program, the government has a role inasmuch as the current situation is partly the result of well-intentioned, but misguided Federal policies. For example, from 1986 until the Pension Protection Act of 2006, the Federal tax law deduction limitations to multiemployer plans essentially prevented plans from establishing a financial "cushion." Because these contributions were required, plans that realized significant investment gains in the 1990s were forced to increase benefits in order to avoid triggering an excise tax on contributing employers. There was no mechanism to claw back the added benefits in subsequent years following a market downturn. The tax law never contemplated the consequences of these limitations on plans that suffered significant declines. Moreover, the withdrawal liability rules have discouraged new employers from entering these plans and have motivated companies to leave the plans early without paying their full withdrawal liability.

While we are not endorsing any specific loan program, we urge the Joint Select Committee to develop a program that (i) allows Critical and Declining Status plans to recover, (ii) can be implemented quickly, (iii) ensures the continued viability of the employers that contribute to these plans, (iv) shares the cost and sacrifice among all stakeholders in a fair and equitable manner, and (v) includes adequate safeguards to ensure their repayment.

Time is of the essence, I cannot stress that enough. November 30th is less than 6 months from now, and designing and implementing a sound, workable, and affordable loan program will take time.

The Joint Select Committee faces some very difficult challenges. Developing a solution won't be easy, the process won't be pretty, and if structured fairly, all of the stakeholders will dislike parts of it. But keep in mind that failure is not an option.

Schnuck Markets and the Food Association stand ready to work with you and do whatever we can to assist the committee. Thank you again for the opportunity to share our views with the committee.

SUBMITTED BY HON. RICHARD E. NEAL,
A U.S. REPRESENTATIVE FROM MASSACHUSETTS

Multiemployer Pension Reform Principles 2018

In 2015, the multiemployer system provided $2.2 trillion in economic activity to the U.S. economy, generated $158 billion in Federal taxes, $82 billion in State and local taxes, supported 13.6 million American jobs, and contributed more than $1 trillion to U.S. GDP. This includes $41 billion in pension payments and $203 billion in wages to active employees.

Why a Solution Is Necessary. Over 1 million retirees in multiemployer plans are in danger of losing benefits because the plans that pay them will go insolvent. In addition, the Federal agency that acts as a backstop—the Pension Benefit Guaranty Corporation—is also in danger of insolvency. Without a resolution to this crisis, there will be billions lost in retirement benefits.

The Multiemployer Pension Reform Act of 2014 ("MPRA") provided pension plan trustees with a powerful solvency restoration tool that enabled them to ensure solvency of the plan. This was specifically designed to protect retirees from the even larger benefit reductions that they will see when their plans go insolvent and subject to the Pension Benefit Guaranty Corporation ("PBGC") guarantee. Treasury was provided approval authority over MPRA applications. Unfortunately, Treasury rejected the largest, most systemically important plan, Central States Teamsters Pension Fund ("Central States"). The insolvency of Central States threatens not only the employers in the fund, but the PBGC and the entire multiemployer system itself.

Rescue Legislation Is Urgently Needed. Some multiemployer plans are in imminent financial danger. Legislation to save them must be passed as soon as possible.

While these are difficult issues and we encourage thorough consideration of the legislation, it is critical to have a program that restores the solvency of critical and declining status plans while protecting the U.S. economy as soon as possible.

Financial Assistance Through Loans Is a Necessary Part of Multiemployer Reform. The financial and demographic circumstances of certain plans will not allow them to survive without cash infusions. The loan program should optimize solvency of the plan and provide the taxpayer with confidence that the Federal loan will be repaid.

All Parties Should Contribute to the Resolution. It is unfair for only one party to bear the brunt of the reform efforts. Employer contributions and PBGC premiums have increased exponentially, while workers have suffered reductions in accrual rates and the loss of ancillary benefits, all in a proactive attempt to address the financial distress of many plans. We encourage Congress to consider options that put "skin in the game for all." This may be in the form of benefit modifications or other provisions. At the same time, these options should provide flexibility for plans.

PBGC Premium Increases Should Be Evaluated After the Solvency Restoration Tools Are Implemented. We understand that the proper funding of the PBGC is important to the viability of the multiemployer system and to ensuring that the PBGC can meet its statutory obligations. However, this cannot be the only—or even the primary—solution to this crisis. Premiums should be raised only as part of a comprehensive reform plan. The PBGC's net deficit in its multiemployer program is currently $65 billion. An effective implementation of MPRA and the loan proposal are tools that would restore the solvency of plans that comprise the PBGC's net deficit. These tools need to be allowed to work in order to understand what exactly the unresolvable net deficit at the PBGC is, which should serve as the basis for any future premium increases inclusive of those that are already in current law.

Composite Plan Legislation Is Necessary to Ensure Continued Viability of Certain Plans. While the crisis focuses on plans in the critical and declining stages, there are healthy plans that also need tools to remain viable. Composite plans are a voluntary tool to help those plans.

For background information on the multiemployer system, please refer to the following references: "The Multiemployer Pension Plan Crisis: The History, Legislation, and What's Next?"; "Multiemployer Pension Facts and the National Economic Impact."

For additional information, please contact:

Aliya Wong
Executive Director, Retirement Policy
U.S. Chamber of Commerce
awong@uschamber.com

Michael D. Scott
Executive Director
National Coordinating Committee for Multiemployer Plans
mscott@nccmp.org

SUBMITTED BY HON. BOBBY SCOTT, A U.S. REPRESENTATIVE FROM VIRGINIA

Congress of the United States
Washington, DC 20515

May 31, 2018

The Honorable Orrin Hatch
Co-Chairman
Joint Select Committee on Multiemployer Pension Solvency
104 Hart Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown
Co-Chairman
Joint Select Committee on Multiemployer Pension Solvency
713 Hart Senate Office Building
Washington, DC 20510

Dear Co-Chairmen Hatch and Brown,

Thank you for your leadership of the Joint Select Committee on Multiemployer Pension Solvency. We are encouraged by the progress that has already been made to advance this issue and we remain committed to helping the Committee work toward a solution that will provide solvency and fairness to the millions of beneficiaries and thousands of employers impacted by underfunded plans.

As you know, those most affected are in need of a solution soon. According to recent estimates, of the approximately 1,400 multiemployer pension plans covered by the Pension Benefit Guaranty Corporation (PBGC), 114 of them are categorized as severely underfunded and face significant budget shortfalls. These 114 plans cover approximately 1.3 million Americans and are expected to go insolvent within the next 5 to 20 years without congressional intervention.Some plans have already had to take the step of sharp benefit cuts to maintain plan solvency.

The declining fiscal condition of these benefit plans creates tremendous uncertainty for plan participants and also threatens the solvency of the PBGC. Systemwide, over 10 million Americans nationwide participate in plans covered by the PBGC. An unfortunate domino effect might be triggered should these plans become insolvent, which could lead to devastating consequences for beneficiaries and the overall economy.

Thank you for your commitment to a legislative solution that will provide fairness to the millions of Americans participating in these plans. Congress must demonstrate leadership and resolve on this issue—the American people are counting on us.

Sincerely,

Rep. Paul Tonko
Member of Congress

Rep. Peter King
Member of Congress

Rep. Jim Banks
Member of Congress

Rep. David A. Joyce
Member of Congress

Rep. Bradley S. Schneider
Member of Congress

Rep. Daniel M. Donovan Jr.
Member of Congress

Rep. Lucille Roybal-Allard
Member of Congress

Rep. Adam Kinzinger
Member of Congress

Rep. Daniel W. Lipinski
Member of Congress

Rep. Michael R. Turner
Member of Congress

Rep. Robert E. Latta
Member of Congress

Rep. John Katko
Member of Congress

Rep. Bill Johnson
Member of Congress

Rep. Jacky Rosen
Member of Congress

Rep. Lisa Blunt Rochester
Member of Congress

Rep. Glenn Grothman
Member of Congress

Rep. Jeff Fortenberry
Member of Congress

Rep. Rodney Davis
Member of Congress

Rep. Bobby L. Rush
Member of Congress

Rep. Betty McCollum
Member of Congress

Rep. William Keating
Member of Congress

Rep. Bob Gibbs
Member of Congress

Rep. Mike Quigley
Member of Congress

Rep. Susan W. Brooks
Member of Congress

PREPARED STATEMENT OF ALIYA WONG, EXECUTIVE DIRECTOR OF RETIREMENT POLICY, U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce would like to thank the Co-Chairs, Senators Hatch and Brown, and all members of the Joint Select Committee on Multiemployer Plans for the opportunity to participate in today's hearing on "Employer Perspectives on Multiemployer Pension Plans." I am Aliya Wong, executive director of retirement policy for the U.S. Chamber of Commerce. The Chamber is the world's largest business federation, representing more than 3 million businesses and organizations of every size, sector, and region. More than 96 percent of the Chamber members are small businesses with fewer than 100 employees. With members that include sponsors of multiemployer pension plans, the U.S. Chamber has been concerned about the multiemployer system for several decades and worked with Congress on the Pension Protection Act of 2006, the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, and, most recently, the Multiemployer Pension Reform Act of 2014. Despite the intentions of these pieces of legislation, the multiemployer pension system remains in crisis, and indeed, the crisis is growing worse.

BACKGROUND

At the end of 2017, the Chamber issued a report entitled, "The Multiemployer Pension Plan Crisis: The History, Legislation, and What's Next?", which provides an overview of the current multiemployer crisis, an in-depth analysis of the events leading up to it, attempts to fix it, and the current reform proposals to address the crisis.

Although many multiemployer plans were fully funded in the 1980s and 1990s, this period of financial stability came to an end in 2000 when the price of technology stocks fell drastically. Many multiemployer plans had ridden the wave of dot-com companies to achieve record high asset levels, but when the market crashed, investment returns fell precipitously. Multiemployer plans were hit twice as hard as other investors because of declines in the contribution base due to demographic issues. Less than a decade later, the 2008 global recession led to further dramatic declines in funding levels. For those plans that had not sufficiently recovered from the bursting of the dot-com bubble, the 2008 recession proved catastrophic. National and global events exacerbated the financial troubles of multiemployer plans that already faced significant demographic and financial pressures.

Shrinking industries and declining union participation further eroded the contribution base of many plans. Between 1983 and 2016, the number of unionized workers dropped by almost half. Moreover, there has been increased competition facing contributing employers and their employees. Due to competition and fewer unionized workers, untenable ratios of inactive-to-active participants were created. Many plans now see ratios of one active worker for every two, three, or even five retirees. As expected, industries with high inactive-to-active retiree ratios experience the lowest average funding levels.

Due to all of these factors, certain plans will enter a "death spiral" where there is no realistic chance of recovery. And although the introduction of withdrawal liability was supposed to prevent withdrawing employers from shifting pension obligations to remaining employers, a major problem now is that many employers lack the financial means to satisfy that liability.

While it is important to understand the context leading to the current crisis, the Chamber does not believe that continuing to dwell on the causes of the crisis are helpful. Contributing employers are currently facing enormous burdens—and these burdens will only increase.

THE THREAT TO BUSINESSES AND JOBS

This week, the Chamber is issuing a report entitled, "The Multiemployer Pension Plan Crisis: Businesses and Jobs at Risk." This report underscores the risk to contributing employers and the economy if a resolution to this crisis is not found.

Withdrawal Liability and High Contribution Rates Are a Current Threat to Business.

There is understandable focus on plan insolvencies but even without plans reaching insolvency, there is cause for concern. There are several issues that employers are currently facing that are impacting their ability to remain viable. As multiemployer plan liabilities have expanded, employers are experiencing an ever-increasing threat of withdrawal liability and continual hikes in contribution rates.

Fear of Future Withdrawal Liability Assessment Jeopardizes Current Business Opportunities. Withdrawal liability is not "booked" until there is a termination (or partial termination) of the plan. However, as the depth of the multiemployer pension crisis is increasing, employers are finding that ordinary business activities are being impacted by the potential for withdrawal liability. Employers are starting to see banks and lenders question their creditworthiness, leading to less optimal lending rates, or even denial of credit. Employers have lost the opportunity to expand their business operations through mergers because other companies do not want to be associated with the potential withdrawal liability. Furthermore, small, family businesses are deciding not to pass the business down to heirs for fear of leaving them to pay a future withdrawal liability. Instead of continuing these family businesses, owners are shutting down the businesses and selling the assets—which is a preferable outcome to paying a withdrawal liability that could bankrupt the business. All of these events result in lost business opportunities and fewer jobs.

Employers Are Already Impacted by Partial Withdrawal Liability Assessments. Due to the declining number of union workers, there are businesses that may have only one or two employees left in a business unit. If those employees decide to leave or retire, the employer is assessed with a partial withdrawal liability estimate. Because of the unfunded liabilities, the partial withdrawal liability can be several times the amount of the employee's actual benefit. Such liabilities clearly constrain the ability of an employer to efficiently run a business and immediately impact a business's cash flow.

High Contribution Rates Make it Difficult to Retain Employees and Remain Competitive. As unfunded liabilities have increased, the contributions made by remaining employers have increased. There are some employers paying $15.00 per hour (or more) to plans for every hour an employee works. Because of these unfunded liabilities, employees understand that they are never going to receive a benefit that is commensurate with the contribution rate the employer is paying. This provides a disincentive for the employee to stay with the employer, and this retention problem threatens an employer's competitiveness.

Plan Insolvency Will Devastate Contributing Employers.

Contributing employers face a very uncertain future. Whether insolvent plans officially terminate or not, the consequences for contributing employers can be dire.

Ongoing Contribution to Insolvent Plans Is Not Viable for Business. In testimony before the Joint Select Committee, the Director of the PBGC stated that it was the opinion of the PBGC that plans would not terminate, but would instead continue indefinitely with employers making ongoing contributions. However, even if this scenario is plausible, there are still significant concerns for employers.

The contribution rates that many employers are currently paying into multiemployer plans are exorbitantly high because the contribution rates for the last several years have been imposed by the plan's trustees via rehabilitation plans. While most employers would rather absorb the higher contribution rates than incur withdrawal liability in the near-term, the long-term effect of the high rates is that they make the employer less competitive. For example, higher pension costs are ultimately passed on to customers, who might look elsewhere to do business. In addition, high contribution rates paid into an insolvent plan exacerbates the inability to retain employees. As discussed above, active employees already are concerned about future benefit accruals. Once a plan is insolvent, the maximum benefit the worker can receive is the PBGC guaranteed benefit so employees will receive even less compared to what is being paid on their behalf, so there is no incentive for the employee to stay with the employer.

Furthermore, while continuing to pay contributions into an insolvent plan may save an employer from short-term economic disaster, it is doubtful that employers can endure such high pension contribution rates over the long-term. It is likely that plan insolvency could lead to employers going out of business, filing for bankruptcy, or both.

Plan Termination Can Lead to Unplanned Withdrawal Liability Assessments. There is a very real concern for employers that plans will terminate. When that happens, employers will face withdrawal liability assessments, minimum funding requirements, and possible excise taxes.

While continuing to contribute to an insolvent plan will generally allow an employer to avoid the imposition of withdrawal liability, there are scenarios where withdrawal liability can be imposed despite the employer's intention to remain a contributing employer to the plan. The issue is problematic for employers because in many cases they have no control over the withdrawal.

One such instance could occur if an employer tries to negotiate lower contribution rates—to avoid bankruptcy or to shift cash to active employees. Attempting to negotiate lower contribution rates could lead to unplanned withdrawal liability assessments if either the plan trustees or the PBGC object to the decreased contribution rate. If the trustees reject the lower contribution rate, the employer must either continue contributing at the higher rehabilitation plan rate or risk the plan's trustees rejecting the employer's continued participation in the plan, which will lead to full withdrawal liability. As a secured party in all assets of an insolvent plan, the PBGC could take the position that a reduction in the contribution rate constitutes a diminution in the collateral in which it is secured. Additionally, PBGC has the authority under the insolvency provisions of ERISA to provide financial assistance under conditions the PBGC determines are "equitable and are appropriate to prevent unreasonable loss to" the [PBGC] with respect to the Plan.[1] While the PBGC has not yet

[1] ERISA section 4261(b)(1).

opined on a post-insolvency employer contribution rate decrease, the statutory language gives the PBGC the authority to do so.

Even if an employer makes the decision to withdraw, it could see an unexpected spike in withdrawal liability if there is a mass withdrawal. A "mass withdrawal" occurs upon withdrawal of every employer from the plan, the cessation of the obligation of all employers to contribute to the plan,[2] or the withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw from the plan.[3] If substantially all employers withdraw during a period of three consecutive years, the employers are assumed to have withdrawn due to an agreement or arrangement.[4] This means that an employer that intentionally withdraws from a plan and intends to pay its calculated withdrawal liability could become part of a mass withdrawal if substantially all of the other employers that contribute to the plan withdraw within the 3-year period after the employer withdraws. The employer that intends to withdraw has no control over what the other employers do.

The danger of being part of a mass withdrawal is that it can require an employer to pay much more in withdrawal liability than it would under a standard withdrawal. Certain employers are subject to reallocation liability. Reallocation liability means that plan's full costs of all unfunded vested benefits are allocated among all withdrawing employers. In a mass withdrawal, the withdrawal liability is calculated using PBGC interest rates that are often lower than the rates used by the plan in a standard withdrawal. Reallocation liability can significantly increase the amount of the plan's unfunded liability that is allocated to an employer. In addition, the 20-year cap applicable in a standard withdrawal does not apply to mass withdrawal liability. This results in some employers having to pay withdrawal liability for a period longer than 20 years. This unexpected and expanded withdrawal liability could cause a business to end up in bankruptcy.

Uncertainty Concerning Minimum Funding Considerations Is a Significant Risk for Contributing Employers. Multiemployer plans are generally subject to minimum funding standards; however, the Pension Protection Act of 2006 ("PPA") allowed necessary changes to these general funding rules for multiemployer plans in critical status.[5] Trustees of plans in critical status are required to adopt a rehabilitation plan that is expected to put the plan on track for making scheduled progress toward emerging from critical status. One of the advantages of a plan's critical status designation is that if the trustees adopt and comply with the terms of a rehabilitation plan, then the plan is not required to satisfy the minimum funding rules.

Thus far, plans that have become insolvent have not been terminated, and, because employers continue to contribute to the plan in accordance with the rehabilitation plan, the minimum funding rules do not appear to automatically apply just because a plan becomes insolvent. However, there are situations where it appears a contributing employer to an insolvent plan could be required to make up a plan's minimum funding deficiency and/or be assessed an excise tax. Although this has not happened yet, the risk of it happening increases as the insolvency date of the PBGC gets closer.

One scenario that poses a risk to employers as plans and the PBGC go insolvent is the requirement that a plan's rehabilitation plan must satisfy certain code provisions. If a multiemployer plan fails to make scheduled progress under the rehabilitation plan for three consecutive plan years or fails to meet the requirements applicable to plans in critical status by the end of the rehabilitation period, for excise tax purposes, the plan is treated as having a funding deficiency equal to (1) the amount of the contributions necessary to leave critical status or make scheduled progress or (2) the plan's actual funding deficiency, if any.[6]

It is possible that the IRS could take a more aggressive approach in assessing excise taxes when the PBGC can no longer provide a backstop for insolvent plans. Such an outcome would be troubling because employers have no control over whether the rehabilitation plan satisfies the requirements of the Code, nor do they have

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[2] ERISA section 4041A(a)(1)(2).
[3] 29 CFR § 4001.2.
[4] The presumption can be rebutted by the employer.
[5] A plan is in critical status if the plan: (1) is less than 65-percent funded and will either have a minimum funding deficiency in 5 years or be insolvent in 7 years; or (2) will have a funding deficiency in 4 years; or (3) will be insolvent within 5 years; or (4) liabilities for inactive participants is greater than the liability for active participants, and contributions are less than the plan's normal cost, and there is an expected funding deficiency in 5 years.
[6] Plans may apply for a waiver if the failure is due to reasonable cause and not willful neglect.

any control over the actuarial certification. This means that an employer that continues to make contributions in accordance with its rehabilitation plan post-insolvency can still be required to make up a funding deficiency and pay an assessed excise tax. Because the funding deficiencies of most insolvent plans would be expected to be large, this would effectively put the employer out of business.

Another complication for employers is the broad authority the PBGC wields over an insolvent plan. As noted previously, the PBGC has the authority under the insolvency provisions of ERISA to provide financial assistance under conditions the PBGC determines are "equitable and are appropriate to prevent unreasonable loss to" the [PBGC] with respect to the plan. Accordingly, if the PBGC determines that the continued operation of the plan somehow poses a financial risk to itself, the PBGC may impose as a condition of providing financial assistance that the plan be terminated. While ERISA states that minimum funding does not apply to a plan that terminates by mass withdrawal, there is no such provision relating to termination by plan amendment. Though the PBGC has opined that insolvent plans will continue to operate, there does appear to be at least a statutory mechanism through which a plan can be terminated without consent of the employer or even the trustees. If such a scenario were to arise, many employers would be forced out of business.

The Contagion Effect Is a Serious Threat Due to the Number of Employers That Contribute to Numerous Plans. Many employers contribute to more than one multiemployer plan. There is a valid concern that the failure of a multiemployer plan (particularly a large plan) could cause other plans to go insolvent. For example, if employers were assessed withdrawal liability, a minimum funding deficiency and/or an excise tax, it could cause the employer to go out of business. If such an employer contributes to one or more other plans, then it would likely be unable to continue contributing to the other plans. If the employer is the major contributing employer to these plans, all the plans to which the employer contributes would be in jeopardy. While to date no extremely large plan has gone insolvent, there are several that are projected to go insolvent within the next 5 to 10 years.

Additionally, many Critical and Declining Status plans are dependent on a very small number of employers to provide a disproportionate share of the contributions being made to the plans. For example, in the UMW 1974 Pension Plan, currently there are 10 contributing employers with approximately 97 percent of the contributions derived from two controlled groups of signatory companies. For the New York State Teamsters Conference Pension and Retirement Fund, there are 156 contributing employers with approximately 83 percent of the contributions derived from two companies. For the Local 707 Teamster Pension Fund, there are 8 remaining contributing entities with 84 percent of the contributions coming from 2 companies. For the Tri-State Pension Plan, there are 9 contributing employers with one controlled group entity accounting for 95 percent of the contributions.

Taken together, these factors pose a dual risk. If a large, "systemically important," plan was to become insolvent, it has the potential to adversely impact the contributing employers and their participation in other plans. Conversely, if one of the large employers were to exit one of the above mentioned plans, it would significantly and negatively impact the plan, the remaining contributing employers, and ultimately the beneficiaries.

RESOLVING THE CRISIS

We admit that there are no easy solutions and that finding a comprehensive solution will be difficult. The Chamber worked with the National Coordinating Committee on Multiemployer Plans to issue joint principles to provide direction in reaching a solution. We have shared these principles with the committee to aid in your work and reiterate them here.

- First, all members of the committee must recognize that rescue legislation is urgently needed. Congress can no longer kick the can down the road.
- Second, struggling plans will need financial assistance. Our recommendation is for long-term, low-interest loans that will protect taxpayers from financial liability.
- Third, all parties will have to be part of the solution, including plan beneficiaries and participating employers.

- Fourth, while the PBGC may ultimately need more money, in the form of increased premiums paid by employers, these increases must be evaluated after tools to restore the solvency of these plans are put in place.
- Finally, composite plans must be authorized so that healthy multi-employer plans can stay that way. Composite plans are a hybrid between traditional pension plans and individual accounts plans that can bridge the gap between current existing options.

We realize these principles are a start, and we look forward to working with the committee and the administration on finding specific and comprehensive solutions.

CONCLUSION

These are difficult issues. The answers will not be easy. However, the problem is not going away, and only grows worse with inaction. Put simply, something that cannot go on forever, will not. And if we do not find a comprehensive solution, there will be a devastating impact on the entire multiemployer system when the day of reckoning arrives.

The Chamber is here to represent the employer voice. At the same time, we are keenly aware that all parties are inextricably connected in this scenario. Within the multiemployer system, businesses are already being impacted by high contributions and potential withdrawal liability; active workers are seeing fewer and fewer benefit accruals; and some retirees are already experiencing reduced benefits. As the crisis grows, the impact will be felt beyond the multiemployer system through a significant drag on the economy, decreased tax revenues, and possible increased reliance on social programs. A definitive solution is needed to address a looming crisis that will affect us all.

The Multiemployer Pension Plan Crisis: The History, Legislation, and What's Next?

U.S. Chamber of Commerce

December 2017

EXECUTIVE SUMMARY

There is a looming pension crisis in the U.S. that unless addressed quickly by the federal government could jeopardize the retirement security of hundreds of thousands—if not millions—of Americans. Multiemployer pension plans provide pension benefits to over 10 million Americans in industries as diverse as construction, mining, trucking, and retail and a significant number of these plans find themselves in seriously distressed financial condition. If these funds become insolvent—and the timeframe for that insolvency ranges from 2 to 8 years—the results could be devastating for retirees, for current employees, for the companies that contribute to the plans, and for the communities in which companies and beneficiaries reside.

The financial crisis is not limited to one region or industry. It potentially will affect companies, workers, retirees, and communities throughout the U. S. and would include states as diverse as Ohio, Texas, New York, Wisconsin, Kentucky, West Virginia, Kansas, and North Carolina.

The narrative is bleak. A recent report found that 114 multiemployer defined benefit plans (out of approximately 1,400 nationally), covering 1.3 million workers, are underfunded by $36.4 billion. Without a solution, most of these plans will be bankrupt within the next 5 to 20 years. Moreover, the federal agency that backstops pension benefits—the Pension Benefit Guaranty Corporation (PBGC)—is itself in financial distress. It is projected that the PBGC could be insolvent in a mere five years and, if that occurs, the retirement security of multiemployer plan beneficiaries could be wiped out entirely. Action is needed now to avert this pending crisis.

This report chronicles how the multiemployer pension plan system arrived at this point. It provides a history of the multiemployer plan system, the demographic issues that have plagued it, and attempts to fix it. Additionally, the report identifies several initiatives to resolve the crisis. Ultimately, however, the report presents a strong case for why Congress and the Administration need to act now.

Although many multiemployer plans were fully funded in the 1980s and 1990s, this euphoria came to an end in 2000, when the price of technology stocks fell drastically. Many multiemployer plans had ridden the wave of these dot-com companies to historic highs in asset levels, but when the market crashed and investment returns were disastrous, plans were hit twice as hard because of their declining contribution bases. Moreover, the 2008 global recession led funding levels in most plans to plummet. For those plans that had not sufficiently recovered from the bursting of the dot-com bubble, 2008 proved catastrophic.

National and global financial events exacerbated the financial troubles of multiemployer plans that already faced significant demographic and financial pressures. Shrinking industries and declining union participation eroded the contribution base of many plans. Between 1983 and 2016, the number of unionized workers dropped by almost half. Moreover, there has been increased competition facing contributing employers and their employees. Due to competition and fewer unionized workers, untenable ratios of inactive-to-active participants were created. Many plans now see ratios of one active worker for every two, three, or even five retirees. As expected, industries with high inactive-to-active retiree ratios experience the lowest average funding levels. Due to all of these factors, certain plans will enter a "death spiral" where there is no realistic chance of recovery.

There have been several attempts to address the multiemployer pension funding problem. In 1980, Congress passed the Multiemployer Pension Plan Amendments Act (MPPAA), which was designed to discourage employers from leaving financially troubled multiemployer plans by implementing a withdrawal liability. Although the introduction of withdrawal liability was supposed to prevent withdrawing employers from shifting pension obligations to remaining employers, the biggest problem is that many withdrawing employers do not have the financial means to satisfy their withdrawal liability.

In 2006, Congress passed the Pension Protection Act (PPA). The purpose of the PPA is to give plan trustees more flexibility in dealing with funding while at the same time forcing them to identify and correct existing and potential funding issues in time to prevent further funding level deterioration and stabilize the plans' finances. While PPA did provide additional tools, it was not enough for those underfunded plans with a declining active population base and severe negative cash-flow problems.

Recognizing that some plans could not avoid insolvency without drastic changes in the law, Congress passed the Multiemployer Pension Reform Act (MPRA) in 2014. MPRA created three new tools to help plans stave off insolvency: plan mergers, plan partitioning, and benefit suspensions. Most notably, for the first time under the Employee Retirement Income Security Act of 1974 (ERISA), Congress allowed plans that were in severe financial distress to reduce benefits that had already accrued, including benefits that were in pay status.

In addition, plan trustees have also implemented strategies to solve plans' funding issues. These strategies include; reductions to future benefit accruals, increased employer contributions, new funding policies, and a "two-pool withdrawal liability method."

While the legislation has provided benefit to some plans and some of these strategies have been helpful, the funding issues for the most underfunded plans remain. If these plans fail, the impact will affect individuals, businesses, the retirement system and entire communities. If the largest underfunded plans become insolvent, they will bankrupt the PBGC. The subsequent benefit cuts that follow will also have deep impacts on the communities where participants live. Retirees will see their standard of living reduced. In addition, the insolvencies could bankrupt employers, potentially leaving workers without income.

Reduced spending by workers and retirees will be felt by businesses, and less money will be paid to local government in sales and other taxes. While tax revenue decreases, the demand for social programs will increase, because many retirees and workers could lose their homes and/or have difficulty paying for medical costs. This will cause many to become reliant on social programs that have to be funded by taxpayers at a time when tax revenue will decline.

Consequently, new ideas and proposals are being discussed. Some are purely legislative proposals, whereas others deal with new pension plan designs. Solutions will not be easy, but they are necessary to address the looming crisis that will affect us all.

OVERVIEW OF CURRENT MULTIEMPLOYER PENSION PLAN FUNDING PROBLEM

Since the beginning of the last decade, many multiemployer defined benefit pension plans have seen their funding level erode to the point that their ability to pay pension benefits into the future is severely threatened. While the majority of multiemployer plans are sufficiently funded, several distressed plans are facing insolvency within the next 5 to 15 years. Some of the most underfunded plans cover hundreds of thousands of participants. If they fail, the economic impact will be disastrous for the U.S. economy as a whole and for certain industries. In addition to the direct impact to contributing employer companies, many secondary businesses will fail and retirees living on a fixed income will see their benefits significantly reduced, resulting in additional stresses on already strapped social service programs and reduced revenues to state and local governments.

There are several reasons for this pending funding crisis. There have been shifts in U.S. regulatory and trade policies over the years, which have resulted in increased competition for businesses in certain industries. The number of employees covered by collective bargaining agreements (CBA) in these industries has declined precipitously. This has resulted in a change in demographics, where many plans have two or more retired participants receiving pension benefits for every one active participant on whose behalf the plan is receiving contributions.

The increased ratio of retirees to active employees has led to negative cash flow; many plans are paying significantly more in pension benefits than they are receiving in employer contributions. This negative cash flow can only be made up through investment returns. However, not only can market returns not be predicted, but taking an overly aggressive approach in investing pension plan assets in the hope that outsized investment gains will be realized is risky and raises other potential legal concerns.

Severe market downturns at the beginning of this century and in 2008 exacerbated the problem for many plans because they compounded the effect of the already existing negative cash flow. Many plans have seen their contribution base further eroded by contributing employers that left the plan due to bankruptcy with little or no remaining assets to pay their share of the plan's unfunded liability. The employees of these employers are referred to as "orphans," and the cost for funding their benefits was placed on those employers who remained behind.

Historically, there were only three ways for multiemployer pension plans to improve their funding: (1) reduce future benefit accruals, thus saving costs; (2) increase employer contributions; and (3) obtain investment returns above the rate assumed by the plan actuary.

While many plans have reduced future benefit accruals, the savings yielded from doing so have generally not been sufficient to materially improve funding. This is because the liabilities that jeopardize pension plans mostly relate to past service (*i.e.,* benefits that have already accrued and in many cases are already being paid to retirees). Until recently, there has been a blanket prohibition against reducing benefits already accrued, so plans reduced future accruals. Plans have also consistently increased employer contributions. However, plans in some industries have increased employer contribution rates to the point that employers cannot be competitive or are on the brink of bankruptcy. Investment returns cannot be predicted, and historically have not provided the type of returns that would be needed to cure most plans' underfunding.

Despite changes in the law designed to provide multiemployer plans with greater flexibility in dealing with funding problems, there is nothing that exists under current law that will save the multiemployer system's most underfunded plans. The risk is not theoretical; some projections show the Pension Benefit Guaranty Corporation (PBGC), the government entity designed to be a backstop for multiemployer pension plans that need financial assistance, will itself become insolvent by 2025. It has become increasingly clear that additional legislative solutions are necessary if the largest and most underfunded plans are to be saved. If these plans become insolvent, the negative repercussions will be felt throughout the U.S. economy.

Current Statistics

As of 2014, there were a total of 1,403 multiemployer defined benefit plans, covering 10.1 million participants.[1] Approximately 4 million were active participants, while a little over 6 million were retired participants. It is estimated that more than 1 million defined benefit plan participants are in plans that have serious funding issues.[2] The gap between plans with severe funding issues (known as "critical-status plans") and those that are not in critical status continues to widen.[3]

According to an August 2017 analysis conducted by the actuarial firm Cheiron, 114 multiemployer defined benefit plans (out of approximately 1,400 nationally), covering 1.3 million workers, are underfunded by $36.4 billion. Participants covered by plans in the coal, trucking, manufacturing, service, retail, and food industries are, and will continue to be, at the center of the funding crisis. Unless a solution is found, most of these plans will go insolvent during the next 5 to 20 years.[4]

In 2016, 167 multiemployer plans filed notices with the Department of Labor (DOL) advising that they were in "critical status" (critical-status plans are sometimes referred to as being in the "red zone").[5] As of 2012, the funding ratio for plans in critical status was 37.1% based on the market value of assets and 62.5% based on the actuarial value of assets. The aggregate underfunding on a market value basis was $166 billion, and on an actuarial basis $65 billion.[6] The difference between market value and actuarial value is explained in the "Funding Rules" section of this paper.

In 2016, an additional 83 multiemployer plans filed notices with the DOL advising they were in critical and declining status. Critical and declining status plans are plans in critical status, but, which, have been certified as facing impending insolvency. These plans generally have the highest ratios of inactive-to-active participants and the most severe negative cash flow.

As assets decline and money continues to flow out of these plans, investment income is insufficient to offset the negative cash flow. Since the market crash of 2008, plans that find themselves in critical and declining status have not only failed to improve their funded percentage, but have seen their funded percentage continue to decline to the point that their only hope of survival is to reduce benefits to retirees who are already receiving benefits (referred to as benefits in "pay status").

For some plans, even reductions in benefits to retirees are not enough to stave off insolvency. Plans such as Central States, Southeast and Southwest Areas Pension Fund (Central States) and the United Mine Workers of America 1974 Pension Plan (UMWA Plan) are nearing the point of no return. Sometimes referred to as the "death spiral," these plans' negative cash flow is so severe that they will have to shift their assets away from investments that can provide long-term growth to investments that preserve cash to pay benefits.

When this happens, insolvency is no longer a matter of "if" but of "when," and by most accounts, "when" is before the end of the next decade. Therefore, without a viable resolution, in less than 10 years there will be significant benefit cuts for current retirees, active participants without retirement benefits, and employers bankrupted because of pension obligations.

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[1] *Multiemployer Defined Benefit (DB) Pension Plans: A Primer and Analysis of Policy,* Congressional Research Service report prepared for members and committees of Congress, John J. Topoleski, November 3, 2016.

[2] Alicia H. Munnell and Jean-Pierre Aubry, "The Financial Status of Private Sector Multiemployer Pension Plans," Center for Retirement Research at Boston College, September 2014, Number 14–14, 3, *http://crr.bc.edu/briefs/the-financial-status-of-private-sector-multiemployer-pension-plans/.*

[3] Kevin Campe, Rex Barker, Bob Behar, Tim Connor, Nina Lantz, and Ladd Preppernau, Milliman Multiemployer Pension Funding Study, *Milliman,* Fall 2017, *http://www.milliman.com/uploadedFiles/insight/Periodicals/multiemployer-pfs/multiemployer-pension-funding-fall-2017.pdf.*

[4] "Cheiron Study Finds 114 Multiemployer Pension Plans Projected to Fail Within 20 Years, More Than a Million Participants Could Lose Benefits," August 27, 2017, *https://cheiron.us/articles/Cheiron%20Analysis%20Critical%20and%20Declining%20Plans.pdf.*

[5] Critical, Critical and Declining, Endangered and WRERA Status Notices, Department of Labor, public disclosure, *https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/public-disclosure/critical-status-notices.*

[6] Alicia H. Munnell and Jean-Pierre Aubry, "The Financial Status of Private Sector Multiemployer Pension Plans," Center for Retirement Research at Boston College, September 2014, Number 14–14, 3 *http://crr.bc.edu/briefs/the-financial-status-of-private-sector-multiemployer-pension-plans/.*

The PBGC "Backstop" Is in Danger

The funding crisis for multiemployer plans is exacerbated because the Pension Benefit Guaranty Corporation's multiemployer program is itself in crisis. The PBGC is a federal agency created by Employee Retirement Income Security Act of 1974 (ERISA) to protect the benefits of participants in private-sector defined benefit plans. PBGC insures both single-employer and multiemployer defined benefit plans, but under two separate programs.

The PBGC's multiemployer program is funded from premiums paid by multiemployer pension plans and interest income on U.S. Department of the Treasury (Treasury) debt. There is no taxpayer funding.[7]

ERISA Section 4002 reads, in part, "The U. S. is not liable for any obligation or liability incurred by the corporation [PBGC]." Unlike public-sector plans that are completely financed by American taxpayers, multiemployer plans have always paid their own way, with U.S. businesses bearing the bulk of the cost.[8]

The crisis in the PBGC multiemployer program has been recent and swift. Until 2003, the PBGC multiemployer program operated with a surplus. As of 2017, the multiemployer program has a $65 billion deficit.[9] This drastic increase in liabilities is directly due to the insolvency and projected insolvency of plans in industries that have been adversely affected by regulatory and trade policies. PBGC noted that in 2017 there were 19 plans newly classified as probable claims against the insurance program as they either terminated or are expected to run out of money within the next decade. The liabilities represent the present value of $141 million in financial assistance to 72 insolvent multiemployer plans, up from the previous year's payments of $113 million to 65 plans.[10]

In addition, employers have seen a steady increase in premiums. In the 10 years starting in plan year 2007, premiums have increased $20 per participant and are now set at $28 per participant for plan year 2018. Despite these increases, the PBGC maximum benefit payout has remained relatively low and is currently $1,251 per year.

As contributing employers to these plans failed, funding levels plummeted. Remaining employers see their long-term viability threatened by ever-increasing pension liability brought on by employers that went bankrupt, liquidated, or otherwise went out of business. When employers stop contributing to a pension fund, all remaining employers are required to pick up the slack and assume proportionate liability for the payments owed to the exited employer's "orphan" employees. As employers leave the pool of contributors, each remaining employer's percentage of the growing funding deficit gets larger. This is known as the "last man standing" rule and was established to protect plan participants from the consequences of employer withdrawals. The "last man standing" rule has rendered multiemployer plans unstable as nobody wants to be the last man standing. This provides incentive for even healthy employers to leave, and puts the PBGC in the role of the ultimate "last man."[11]

Given the deficit between total assets and the present value of liabilities, PBGC projects that there is a greater than 50% chance that the multiemployer plan program will run out of money by 2025, and a greater than 90% chance that it will run out of money by the end of 2035.[12] Absent a dramatic increase in premiums that multiemployer plans pay (which would further undermine many plans' funding levels and is thus likely not feasible), or a change in how the PBGC is funded, pen-

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[7] John J. Topoleski, "Multiemployer Defined Benefit (DB) Pension Plans: A Primer and Analysis of Policy," July 24, 2015, Congressional Research Service, 1, *http://digitalcommons.ilr.cornell.edu/key_workplace/1436/*.

[8] As noted in John J. Topoleski's November 3, 2016 paper, some in Congress have expressed reluctance to even consider providing financial assistance to the PBGC. *See* U.S. Congress, House Committee on Education and the Workforce, Subcommittee on Health, Employment, Labor, and Pensions, "Examining the Challenges Facing the PBGC and Defined Benefit Pension Plans," 112th Cong. 2nd sess., February 2, 2012, 112–50 (Washington: GPO, 2012); and U.S. Congress, House Committee on Education and the Workforce, Subcommittee on Health, Employment, Labor, and Pensions, "Strengthening the Multiemployer Pension System: What Reforms Should Policymakers Consider?", 113th Cong. 1st sess., June 12, 2013.

[9] *Annual Report 2017,* Pension Benefit Guaranty Corporation, November 16, 2017, *https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2017.pdf.*

[10] *Id.*

[11] Carl Horowitz, "New Report Shows Severe Shortfalls in Multiemployer Union Pensions," National Legal and Policy Center, July 3, 2013, *http://nlpc.org/2013/07/03/new-reports-show-severe-shortfalls-multiemployer-union-pensions/*.

[12] PBGC FY 2016 Annual Report, 61.

sion plans facing impending insolvency (or even those that are already insolvent and receiving PBGC financial assistance) cannot rely on assistance from PBGC beyond the next 10 years.

The pressure the projected plan insolvencies will place on the PBGC will be catastrophic, absent congressional action. In 2014, the Center for Retirement Research in Boston College delivered an ominous assessment of the situation:

> The actuarial model projects that it is more likely than not that the program [PBGC] will be insolvent by 2022, with a 90-percent chance of insolvency by 2025. Once the fund is exhausted, the PBGC would have to rely on annual premium receipts and would be forced to pay only a fraction of its paltry guaranteed benefit. One estimate is that a retiree who once received a monthly benefit of $2,000 and whose benefit was reduced to $1,251 under the PBGC guarantee would see the monthly benefit decline to $125. The exhaustion of the multiemployer insurance fund could also undermine confidence in the entire system.[13]

MULTIEMPLOYER DEFINED BENEFIT PENSION PLAN BASICS

Private-sector multiemployer defined benefit pension plans are plans jointly sponsored by a labor union(s) and a group of employers. Such plans usually cover employees working in a common industry such as, for example, coal, construction, food, maritime, textile, trucking, etc. Many multiemployer plans cover employees working at a particular craft within an industry, such as electricians, bricklayers, and truck drivers. While most plans are “local plans” and cover employees working in a specific geographical area, there are also “national plans,” which cover employees working in crafts or trades throughout the U.S. Many of the industries in which multiemployer plans prevail have high worker mobility and/or seasonal employment.

Due to the migratory nature of the work, employees frequently work for more than one employer during their careers. Oftentimes, employees would not work long enough for one employer to vest in a benefit under that specific employer’s pension plan; however, multiemployer plans allow employees to move from employer to employer and still earn service credit under the multiemployer plan, provided the employers for which the employee works participate in the multiemployer plan.

Multiemployer plans are established via collective bargaining between a union and two or more employers. Ordinarily, the union and the employers will enter into a collective bargaining agreement which is negotiated between local, regional, or national unions and individual employers or an association of employers bargaining as a group. The collective bargaining agreement establishes the employer’s obligation to contribute to the plan, identifies the bargaining unit to which the collective bargaining agreement applies, and sets the rate and basis on which employers pay contributions to the plan. The contribution rate is usually a specific sum per hour or unit of time worked by or paid to the employee.

Negotiations over pension contribution rates are not done in a vacuum. The union and employers also must negotiate contribution rates to other multiemployer benefit plans (health and welfare, vacation, defined contribution pension, etc.) as well as wages. The combination of wages and benefit plan contributions is commonly referred to as the “wage and benefit package” or the “total package.” Thus while pension plan funding is a factor that bargaining parties must take into account during negotiations, they also must be cognizant of ever-increasing medical inflation and its impact on medical costs as well as employees’ desire to receive increases in their hourly wage. As many employers operate on thin profit margins, addressing these competing factors can be complex. Compounding the complexity is that, once negotiated, the pension contribution rate is often subject to review and approval by the plan’s trustees.

STATUTES GOVERNING MULTIEMPLOYER PENSION PLANS

Labor Management Relations Act

The Labor Management Relations Act (LMRA), commonly known as the Taft-Hartley Act, requires employers to pay contributions into a trust fund that must be jointly administered by an equal number of union and employer representatives.

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[13] Alicia H. Munnell and Jean-Pierre Aubry, “Can PBGC Save Multiemployer Plans?,” Center for Retirement Research at Boston College, September 2014, Number 14–16, 5, *http://crr.bc.edu/uncategorized/can-pbgc-save-multiemployer-plans/*.

The obligation to contribute must be set forth in a written document (usually a collective bargaining agreement), and the contributions must be used for the sole purpose of providing benefits to employees.[14]

Employee Retirement Income Security Act

The union and employer representatives who manage the pension plan and administer the trust are called trustees. As trustees of the monies deposited into the trust, the trustees are fiduciaries to the participants (both active employees and retirees) covered by the pension plan. The fiduciary duties to which the trustees must adhere are established under the Employee Retirement Income Security Act of 1974[15] and are enforced by the U.S. Department of Labor's Employee Benefits Security Administration. ERISA requires the trustees to act with the "care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with a like aim."[16] This is known as the "prudent expert" rule and is the standard to which all fiduciary decisions are held.

Internal Revenue Code

While a plan's trustees generally have the discretion to determine the amount of benefits a plan will provide, there are other plan features that must comply with the requirements of the Internal Revenue Code of 1986 (Code).[17] One such requirement is that, in general, a plan cannot be amended to reduce accrued benefits, optional forms of payment, early retirement benefits, and retirement-type subsidies.[18] This is known as the anti-cutback rule, which until recently was the lynchpin of the federal pension system. Amendments are generally allowed to reduce future benefit accruals, as well as optional forms of payment, early retirement benefits, and retirement- type subsidies that accrue after the date of the amendment.[19]

The anti-cutback rule, which has been a backbone of federal pension law since ERISA's inception in 1976, has been considerably weakened by passage of the Pension Protection Act of 2006 (PPA) and the Multiemployer Pension Reform Act of 2014 (MPRA). The weakening of the anti-cutback rule has been in direct response to the pending funding crisis of certain multiemployer plans and has been helpful to many plans trying to avoid insolvency. However, MPRA has not been entirely successful, as there are many severely underfunded plans that are going to need additional help from Congress to survive.

Funding Rules

ERISA's and the Code's minimum funding rules require multiemployer plans to maintain a funding standard account. The funding standard account gets debited for charges related to benefit accruals, investment losses, and other negative plan experience. Credits are given for employer contributions, investment gains, and other positive plan experience. The minimum required contribution to a multiemployer plan is the amount needed, if any, to balance the accumulated credits and accumulated debits to the funding standard account. If the debits exceed the credits, there is a negative balance, and contributing employers must pay the amount necessary to balance the account. The liability is allocated to all of the plan's contributing employers.

If participating employers do not make the contribution necessary to balance the funding standard account, the plan has a minimum funding deficiency and contributing employers can be assessed excise taxes on top of having to make up the deficiency. On the other hand, if the plan was overfunded, it would have to increase benefits in order to prevent paying an excise tax on the overfunding.

The calculations related to determining the amount in a multiemployer plan's funding standard account are performed by an actuary. The plan must use a specific funding method to determine the elements included in its funding standard account for a given year. Such elements include the plan's normal cost and the supplemental

[14] LMRA section 302 (c)(5).
[15] ERISA section 1001, *et seq.*
[16] ERISA section 404(a)(1)(B).
[17] Some Code requirements are also found in ERISA.
[18] Code section 411(d)(6) and ERISA section 204(g).
[19] "Present Law, Data, and Selected Proposals Relating to Multiemployer Defined Benefit Plans," The Joint Committee on Taxation, February 26, 2016, *https://www.jct.gov/publications.html?func=startdown&id=4872.*

cost. Normal cost is the cost of future benefits allocated to the year under the plan's funding method. Supplemental cost is generally the costs attributable to past service liability or to investment returns that were less than those assumed by the actuary. The supplemental costs are amortized over a specified period of years by debiting the funding standard account over that period. If experience is good, there can also be actuarial gains that result in credits being made to the funding standard account.[20] When calculating debits and credits to the funding standard account, the plan actuary must use reasonable actuarial assumptions.

Actuaries calculate plan funding using both actuarial values and market values. Actuarial values are computed by the plan's actuary to predict how much money a plan needs to set aside to pay future retirees. Actuaries cannot use market values for this prediction, because market values fluctuate from day to day as the stock market rises and falls. An actuary predicts the long-term performance of the plan's investments by using mathematics to smooth out year-to-year market variations. This means that when investment performance is bad for a given year, the actuary will not recognize the entire loss in the year it occurs, but rather will "smooth" the loss by recognizing a portion each year for a period of years. Investment gains are treated similarly.

The actuary uses this smoothing method to create an actuarial value of the plan's assets, which is the likely value of the investments based on typical long-term investment results. Market value is the actual value of the plan's assets on any given day without regard to any smoothing and provides a more realistic view of a plan's financial condition.

As of 2012, the funding ratio for plans in critical status was 62.5% based on the actuarial value of plan assets. Under normal circumstances, such a ratio would not be disastrous; if the plan's investment earnings matched or exceeded its actuarial assumed rate of return and if the trustees made changes to benefits, a plan in critical status could be expected to right itself. The actuarial assumed rate of return is the rate the actuary assumes the plan's investment will earn annually, and generally ranges from 7% to 8%. Unfortunately, many plans have seen their contribution bases erode to the point where their cash flow is so negative they cannot earn their way out of critical status. As of June 30, 2017, the aggregate funding percentage of plans in critical status fell to 60%, whereas the funded percentage of non-critical status plans was almost 90%.[21]

THE CURRENT FUNDING CRISIS IS BEING DRIVEN BY A SMALL PERCENTAGE OF PLANS WITH COMMON CHARACTERISTICS

Multiemployer defined benefit pension plans are not a monolith. The most recent surveys illustrate that, as of today, many plans are structurally stable and well managed. In fact, a Milliman study recently reported that "in the first six months of 2017, the aggregate funding percentage for all multiemployer pensions climbed from 77% to 81%, reducing the system's shortfall by $21 billion—an improvement driven largely by favorable investment returns."[22] According to the study, the estimated investment returns have outpaced actuarial assumptions, reflecting the strong performance of the U.S. stock market.

During the 1980s and 1990s, many plans were fully funded.[23] This was primarily due to a soaring stock market. While most multiemployer plans' actuaries assume that annual investment returns will be in the 7% to 8% range, investment returns were well above those percentages for many plans in the 1990s. The surging stock market seemed like a blessing at the time. However, the outsized investment returns masked a significant problem.

While pension assets increased at historical rates, union membership nationally was in a steady decline. Private-sector union membership in 1983 was 12 million. By

[20] *Id.*

[21] Kevin Campe, Rex Barker, Bob Behar, Tim Connor, Nina Lantz, and Ladd Preppernau, Milliman Multiemployer Pension Funding Study, Milliman, Fall 2017, *http://www.milliman.com/uploadedFiles/insight/Periodicals/multiemployer-pfs/multiemployer-pension-funding-fall-2017.pdf.*

[22] *Id.*

[23] Alicia H. Munnell and Jean-Pierre Aubry, "Private Sector Multiemployer Pension Plans—A Primer," Center for Retirement Research at Boston College, August 2014, No. 14–13, *http://crr.bc.edu/briefs/private-sector-multiemployer-pension-plans-a-primer/*.

2015, that number had fallen to 7.6 million.[24] Thus, while pension plans assets were increasing thanks to the stock market, many plans' contribution bases were declining. With fewer contributions coming in, plans relied more heavily on investment returns to keep assets growing.

Today, almost half of all union members are between 45 and 64 years old.[25] As these workers age into retirement, there are not enough younger union workers to replace them. This exacerbates negative cash flow and essentially requires some plans to earn annual investment returns that are likely unrealistic based on the investment markets' cyclical nature. Moreover, as mentioned above, funds were not able to "bank" these extra returns because they would be subject to an excise tax.

The euphoria of the 1990s came to an end in 2000, when the price of technology stocks fell drastically. Many multiemployer plans had ridden the wave of these dot-com companies to historic highs in asset levels, but when the market crashed and investment returns were disastrous, plans were hit twice as hard because of their declining contribution bases. By the mid-2000s, most plans had recovered, but several plans remained in dire straits. While very few industries were immune from funding issues, certain plans in industries that had seen a significant decline in active participants, such as trucking, or in industries with cyclical work, like construction, did not recover. In 2008, a global recession rocked the investment markets, causing funding levels in most plans to plummet. For those plans that had not sufficiently recovered from the dot-com bubble burst a few years earlier, 2008 was catastrophic.

Although the investment markets have had favorable returns in recent years, many plans' funding levels have continued to deteriorate. Since passage of MPRA in December 2014, 15 multiemployer defined benefit plans have filed applications with the Treasury Department to reduce benefits to avoid insolvency. As of December 2017, Treasury has approved only 4 of the 15 applications. These 15 applicants currently account for only 1.35% of multiemployer defined benefits plans, but cover roughly 5% of all multiemployer defined benefits plan participants. These plans represent a segment of multiemployer pension plans that are failing and that, although in the minority, could cause the entire multiemployer pension system to crumble if additional legislative action is not taken.

What does a plan facing impending solvency look like? By looking broadly at the plans and industries they are in we can identify many of the conditions and events that lead a plan down the path to critical and declining status, and eventual insolvency.

Shrinking Industries and Declining Union Roles

The Bureau of Labor Statistics (BLS) reports that in 1983, there were approximately 12 million American workers covered by a collective bargaining agreement, which represented 16.8% of the American workforce. By 2016, the number had fallen to about 7.6 million, or 6.4% of the workforce.[26]

From 2000 to 2015, union membership in the transportation sector, alone, declined by 6.7 percentage points. Union membership rates in construction, manufacturing, and wholesale and retail trade also declined over that period.[27]

Unionized workers on average are older than nonunion workers. In 2015, nearly half of union members were between 45 and 64 years old, but only about one-third of nonunion members belonged in this age group. Workers aged 45 to 64 were heavily represented in the manufacturing and transportation industries, which also had relatively high unionization rates. Furthermore, the lowest union membership rate is among workers aged 16 to 24 (4.4 %), which makes the systemic replacement of older union members with younger members impracticable.[28]

Competition and Economic Factors Impacting Contributing Employers

Increased competition facing contributing employers and their employees is another factor leading to declining pension plan funding levels. There has been an onslaught

[24] Megan Dunn and James Walker, "Union Membership in the United States," Bureau of Labor Statistics, September 2016, *https://www.bls.gov/spotlight/2016/union-membership-in-the-united-states/home.htm.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

of new competition in the last half century caused in part by changes in U.S. regulatory and trade policy. These policy changes have contributed to the hollowing out of entire industries and their associated retirement plans.

For example, the United Furniture Workers Pension Fund A (Furniture Workers Fund) was crippled by an influx of imported goods. In 1999, the furniture and related products industry had 537,000 workers. By 2010, the industry had only 251,000 workers.[29] Some of this attrition was caused by the 2008 financial crisis, but not all of it. Between 1981 and 2009, a period that coincides with significant increases in importation by foreign manufacturers, 35 contributing employers to the Furniture Workers Fund filed for bankruptcy protection and withdrew from the plan.

In the trucking industry, the competition was domestic in origin, but similarly dramatic. In 1980, Congress deregulated the trucking industry, allowing companies to compete in a free and open market. While the deregulation of the trucking industry has been beneficial for economy and the American consumer, deregulation has significantly impacted trucking companies that participate in multiemployer plans.

Researchers at the Center of Retirement Research at Boston College summarized the effects, noting "of the 50 largest employers that participated in the Central States Fund in 1980, only four remain in business today. More than 600 trucking companies have gone bankrupt and thousands have gone out of business without filing for bankruptcy. As a result, roughly 50 cents of every benefit dollar goes to pay benefits to 'orphaned' participants, those left behind when employers exit."[30] Even though an employer leaves, the fund—meaning the remaining employers—is still responsible for paying the benefits due to all participants in the plan. The orphan participants constitute a significant share of total multiemployer participants and are much likelier to participate in severely underfunded plans.

Plan Demographics—The Inactive-to-Active Participant Ratio

As competition and demographic shifts reduced the participant populations in plans, untenable ratios of inactive-to-active participants were created. New York State Teamsters Conference Pension and Retirement Fund (New York State Fund) provides a vivid illustration.

In 1990, the New York State Fund had 23,883 active participants and 10,150 retired participants, for a ratio of more than two active participants for every one retired participant. By 2000, the ratio was reduced to almost one to one, as the number of active participants declined to 16,827, and the number of retired participants increased to 14,198. As of January 1, 2016, there were 11,576 active participants, compared to 15,936 retired participants, reversing the ratio of active to retired participants in a single career span.[31]

According to a survey of multiemployer plans, 87% of beneficiaries in critical and declining plans were inactive (either already retired or entitled to a benefit at some time in the future but are no longer working), compared with 63% in non-critical and declining plans.[32]

The survey also found some correlation between average plan funding levels by industry and inactive-to-active retiree ratios. Plans from the manufacturing sector had the lowest average funding levels at 79% and the highest inactive-to-active ratio at 5.8 retirees per active employee. Transportation sector plans fared a little better with funding levels averaging 81% but with a much more manageable inactive to retiree ratio of 2.9:1. Compared to those plans, construction sector plans are 89% funded on average and have an average ratio of 1.6:1.[33] As ratios worsen, and the rate of negative cash flow grows, employer contribution rate increases have little overall effect on plan funding. Instead plans must rely more heavily on investment returns.

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[29] United Furniture Workers Pension Fund A—Second Application for Approval of Suspension of Benefits (File 1), 12.

[30] Alicia H. Munnell, Jean-Pierre Aubry, Wenliang Hou, and Anthony Webb, "Multiemployer Plans—A Proposal to Spread the Pain," Center for Retirement Research at Boston College, October 2014, 8, *http://crr.bc.edu/wp-content/uploads/2014/10/IB_14-17.pdf.*

[31] New York State Teamsters Conference Pension and Retirement Fund Treasury Application, 24.

[32] *Summer 2017 Survey of Plans' Zone Status,* Segal Consulting, Summer 2017, 4.

[33] *Id.,* 6.

Financial Pressure

Plans with negative cash flow can survive only if the investment return outpaces the benefit payments. During the 1980s and 1990s many multiemployer pension plans rode the bull market gains, thereby masking ominous trends in the growing retiree population. When the tech bubble burst in 2000, many plans, which had been relying on investment returns to cover negative cash flows, had to pay benefits directly from plan assets. As they did so, plan funding levels dropped, and plans had a lower asset base with which to invest. Since the negative cash flow problems for many plans did not improve, they were forced to seek higher investment returns to bridge the gap between the amount of money coming into the plan and the amount going out.

As a plan's assets dwindle, however, trustees are forced to shift investments out of equities and into more conservative investment vehicles to preserve cash to pay benefits for as long as possible. Such investments generally provide for little growth, so there is no opportunity for the asset base to grow. If the trustees were to continue to leave assets invested in equities, a sharp downturn in equity markets could cause a plan to go insolvent much sooner than anticipated and to provide trustees with little time for corrective action or to request the PBGC's assistance. In such circumstances, trustees are at risk of a fiduciary breach claim for imprudently investing the assets of the plan. Accordingly, trustees will almost always err on the side of making assets last longer to avoid potential legal liability. This approach generally leads a plan to enter the death spiral where there is no realistic chance of recovery.

The 2008 financial crisis was a disaster for multiemployer plans. Just prior to 2008, 80% of plans had funding levels in excess of 80% (referred to as the "green zone"), whereas only 9% of plans were in critical status, or the "red zone." By 2009, in the wake of the market collapse, the percentage of green zone plans plummeted to 38%, while the percentage of plans in the red zone increased to 30%. Over time, as the investment markets rebounded, many plans were able to claw their way back into the green zone. While some plans are just now returning to their pre-2008 funding levels, virtually all funding improvements have come exclusively from positive investment performance. This suggests that nothing has changed demographically, and that these plans will remain vulnerable to investment market conditions, which are unpredictable.

ATTEMPTS TO FIX THE MULTIEMPLOYER PENSION PLAN FUNDING PROBLEM

Given the negative cash flow and diminishing contribution bases of plans that are facing impending insolvency and the PBGC's precarious financial condition, finding a solution to the funding woes of many plans will not be easy. Congress and trustees of pension plans have attempted to address multiemployer funding issues in the past, especially within the last several years. These attempts have helped some plans, but additional measures will be needed to save some of the most underfunded plans.

Multiemployer Pension Plan Amendment Act

In 1980, Congress passed the Multiemployer Pension Plan Amendments Act (MPPAA).[34] MPPAA amended ERISA and was designed to discourage employers from exiting financially troubled multiemployer plans. Congress recognized that when a contributing employer stopped contributing to an underfunded multiemployer plan, the unfunded liability related to the departing employer was absorbed by the plan's remaining contributing employers. Although in 1980 most multiemployer pension plans were not facing funding issues as severe as those today, withdrawing employers increased pension costs for employers that remained, and in many cases threatened their financial viability. Withdrawing employers also caused multiemployer plans' contribution bases to erode.

Prior to MPPAA, an employer that withdrew from a multiemployer plan did not have to pay anything to the plan unless the plan was terminated within 5 years of the employer's withdrawal. Even then, the employer's liability was limited to no more than 30% of the employer's net worth. Under MPPAA, an employer that totally or partially withdraws from a multiemployer pension plan must pay "with-

[34] *See* ERISA sections 4201–4225.

drawal liability." [35] An employer's withdrawal liability is the amount of the employer's proportionate share of the plan's unfunded vested benefits or liabilities, or UVBs (*i.e.,* the withdrawing employer's proportionate share of the deficit between the amount of the plan's vested benefits and the plan's assets).

When an employer withdraws from an underfunded multiemployer plan, MPPAA requires the plan's trustees to (1) determine the amount of withdrawal liability, (2) notify the employer of the amount of that liability, and (3) collect that liability. Generally, in order to determine an employer's withdrawal liability, a portion of the plan's UVBs is first allocated to the employer, generally in proportion to the employer's share of plan contributions for a previous period. The amount of UVBs allocable to the employer is then subject to various reductions and adjustments.

ERISA sets forth the amount of annual withdrawal liability payments the employer must make directly to the plan. Generally speaking, ERISA calls for annual payments to continue until the employer pays the liability in full, but caps the annual payments at 20 years. Thus, it is possible for an employer that does pay withdrawal liability for 20 years to still not pay off all of its unfunded liability. When this happens, other employers must make up the difference.

An employer's annual withdrawal liability payment amount is generally structured to approximate the employer's annual contributions to the plan. The amount is equal to the employer's highest recent average number of contribution base units, or CBUs (essentially, the amount of contribution paid to the plan) multiplied by the employer's highest contribution rate in the past 10 years. An employer can prepay its liability or attempt to negotiate the amount with the plan. There are additional withdrawal liability rules applicable to certain industries, exemptions for certain sales of assets, employer and plan disputes, and plan terminations following mass employer withdrawals.

Although the introduction of withdrawal liability was supposed to prevent withdrawing employers from shifting pension obligations to the remaining employers, MPPAA has not always worked as intended. The biggest problem is that many withdrawing employers do not have the financial means to satisfy their withdrawal liability. Employers often withdraw when they are going out of business or when they file for bankruptcy. When this happens, it is difficult, if not impossible, for the plan to collect the employer's withdrawal liability. As a result, some plan participants with vested benefits may have worked for an employer that no longer participates in the plan. The liability for these "orphaned" participants has devastating effects on plan funding and is a major contributor to the funding issues that many plans face today.

Pension Protection Act of 2006

In 2006, Congress passed the Pension Protection Act. The PPA amended ERISA and the Code to make certain changes to multiemployer funding rules. These changes were designed to give plan trustees more flexibility in dealing with funding while at the same time forcing them to identify and correct existing and potential funding issues in time to prevent further funding level deterioration and stabilize the plans' finances.[36] The PPA requires a multiemployer plan's actuary to provide an annual certification to the Internal Revenue Service of the plan's funded status. The certification specifies that the plan falls into one of three categories: endangered status, critical status, or neither.

Endangered-Status Plans

A plan is generally in endangered status, also known as the "yellow zone," if the plan's funded percentage is less than 80%, or the plan has an accumulated funding deficiency for the plan year or is projected to have an accumulated funding deficiency in any of the six succeeding plan years. A plan's funded percentage for purposes of the PPA certification is determined by dividing the value of plan assets by the accrued liability of the plan. The trustees of a plan in endangered status are required to adopt a funding improvement plan.

[35] Not only is the contributing employer to the plan responsible for paying withdrawal liability, but also MPPAA provides that all trades or businesses under common control (as defined in section 414 of the Code) are jointly and severally liable for a withdrawing employer's withdrawal liability. *See* ERISA section 4001(b)(1).

[36] Segal Consulting, Segal Bulletin, August 2006.

A funding improvement plan consists of a list of options, or range of options, for the trustees to propose to the union and the employers (the bargaining parties). The funding improvement plan is formulated to provide, based on anticipated experience and reasonable actuarial assumptions, for the plan to attain "applicable benchmarks" by the end of the funding improvement period. The range of options generally is a combination of contribution rate increases or reductions in future benefit accruals that would allow the plan to obtain a statutorily specified increase in the funded percentage and not have an accumulated funded percentage by the end of the funding improvement period, which is generally 10 years.

Many plans certified as endangered in the early years of the PPA were able to fix their funding problems and now are in neither endangered nor critical status (known as the "green zone"). Other plans were not so fortunate, and their status deteriorated from endangered to critical. It should be noted that the PPA did not allow plans in endangered status to make any changes to benefits that were not already allowed under pre-PPA rules. In other words, trustees of endangered plans are not allowed to violate the anti-cutback rule of ERISA and the Code, and can only reduce future accruals and eliminate other protected benefits on a prospective basis. This led some trustees to take the counterintuitive action of allowing their plans to fall into critical status, because there was more statutory flexibility under the critical status rules to address funding problems.

Critical-Status Plans

A plan is in critical status if the plan:

(1) Is less than 65% funded and will either have a minimum funding deficiency in 5 years or be insolvent in 7 years; or
(2) Will have a funding deficiency in 4 years; or
(3) Will be insolvent within 5 years; or
(4) The liability for inactive participants is greater than the liability for active participants, and contributions are less than the plan's normal cost, and there is an expected funding deficiency in 5 years.

Trustees of plans in critical status are required to adopt a rehabilitation plan. Unlike endangered plans, critical-status plans whose trustees adopt and follow a rehabilitation plan generally do not have to meet the minimum funding rules of ERISA and the Code.

A rehabilitation plan is a plan that consists of a range of options for the trustees to propose to the bargaining parties, formulated to provide (based on anticipated experience and reasonable actuarial assumptions) for the plan to cease to be in critical status by the end of the rehabilitation period, which is generally 10 years. Options include reductions in plan expenditures, reductions in future benefit accruals, increases in contributions, or any combination of such actions. The rehabilitation plan must be updated annually, and the plan must show that it is making scheduled progress toward emerging from critical status.

If the trustees determine that, based on reasonable actuarial assumptions, the plan cannot reasonably be expected to emerge from critical status by the end of the rehabilitation period, the plan must include reasonable measures to emerge from critical status at a later time or to forestall possible insolvency. If a multiemployer plan fails to make scheduled progress under the rehabilitation plan for three consecutive plan years or fails to meet the requirements applicable to plans in critical status by the end of the rehabilitation period, for excise tax purposes the plan is treated as having a funding deficiency equal either to the amount of the contributions necessary to leave critical status or make scheduled progress or to the plan's actual funding deficiency, if any. Plans may apply for a funding waiver if the case failure is due to reasonable cause and not willful neglect.

The PPA allows trustees of critical-status plans to make changes to benefits that endangered-plan trustees cannot. They are allowed to reduce or eliminate benefits that were previously protected by the anti-cutback rule. Critical-status plans can be amended to reduce or eliminate certain adjustable benefits, including post-retirement benefits, subsidized optional forms of payment, disability benefits not yet in pay status, early retirement benefits or retirement subsidies and benefit increases adopted less than 60 months before the plan entered critical status. In addition, critical-status plans that provide for payment of benefits in the form of a lump sum are required to cease paying lump-sum benefits on the date they enter critical status.

The ability to eliminate or reduce previously protected benefits was heretofore unprecedented, and many plans in critical status have taken advantage of these new rules and are projected to emerge from critical status or to forestall possible insolvency because of them. However, for those underfunded plans with a declining active population base and severe negative cash-flow problems, the savings generated by eliminating these adjustable benefits were not great enough to improve the plans' funded percentages.

Compounding the problem is that after cutting benefits to the maximum extent possible, there was little else that could be done to reduce costs. That left employer contribution rate increases as the only viable option to improve funding. Over the years, however, many plans have found that annual increases in employer contribution rates are not so viable because employers cannot absorb the costs. Out-of-control pension costs threaten employers' very survival.

Multiemployer Pension Reform Act of 2014

Although the investment markets have had favorable returns in recent years, many plans' funding levels continue to deteriorate. Under the PPA, a prohibition against reducing accrued benefits on a retroactive basis remained. Recognizing that some plans could not avoid insolvency without drastic changes in the law, Congress passed the Multiemployer Pension Reform Act in 2014.[37] MPRA changed the multiemployer defined benefit plan landscape.

The law created three new tools to help plans stave off insolvency. Most notably, for the first time under ERISA, Congress allowed plans that were in severe financial distress to reduce benefits that had already accrued, including benefits that were in pay status (these reductions are referred to as "benefit suspensions" under MPRA). This was a landmark change and a radical departure from what was previously allowed. MPRA also revised ERISA's existing merger and partition rules.

Critical and Declining Status

MPRA created a new funding status called "critical and declining" for those plans that were the most deeply troubled. A "critical and declining" plan is one that meets one of the statutory requirements for critical status *and* is actuarially projected to become insolvent within 14 years (or within 19 years if more than two-thirds of its participants are inactive or retired). A plan that is in "critical and declining" status can file an application with Treasury to reduce or suspend benefits that have already accrued and that are in pay status (*i.e.,* are already being paid to retirees and beneficiaries). MPRA provides for the following three mechanisms to help critical and declining plans avoid insolvency:

PBGC-Facilitated Plan Mergers

Mergers can improve a financially troubled plan's funding issues. By transferring its assets to a more financially stable plan, the weaker plan can lessen or eliminate the effect of negative cash flow while gaining a larger asset base with which to invest. Generally, however, a trustee's decision to merge is subject to the fiduciary duty provisions of ERISA.[38] These fiduciary duties are applied to the trustees of both plans involved in a contemplated merger. The trustees of both plans have to determine that a merger would be in the best interest of their respective participants. Both plans' trustees have to examine the financial condition of their respective plans before and after the merger, as well as the viability of the surviving plan post-merger.

Because generally one of the plans in the proposed merger is in worse financial condition than the other, finding a good merger partner was and is sometimes difficult. For example, the trustees of a financially sound plan will likely not want to merge with a plan that is projected to become insolvent because of the affect the poorly funded plan would have on the funded level of the financially sound plan. Traditionally, a merger between a stronger plan and a weaker plan—but not one facing insolvency—would have the benefit of a larger asset base in which to obtain investment gains.

[37] The Multiemployer Pension Reform Act of 2014, Pub. L. No. 113–235, Division O (2014).

[38] Merging a plan is arguably a settlor function that would not be subject to ERISA's fiduciary rules. The DOL has offered the opinion that certain actions taken by trustees of multiemployer plans that would ordinarily be settlor functions will be treated as fiduciary functions if the plan's trust agreement provides that the trustees act as fiduciaries when engaging in what otherwise would be settlor functions. If the governing plan documents are silent, activities generally considered settlor functions in a non-multiemployer setting will be considered as settlor functions with respect to the multiemployer plan. DOL Field Assistance Bulletin 2002–2.

Under MPRA, the PBGC can facilitate mergers between two or more plans, including providing financial assistance. By providing financial assistance, the PBGC can alleviate the healthier plan's financial/fiduciary concerns, which might make the healthier plans more willing to merge. Upon a plan's request, the PBGC may facilitate a merger if PBGC determines the merger is in the interests of the participants and beneficiaries of at least one of the plans, and the merger is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans. The PBGC may provide assistance to a plan such as training, technical assistance, mediation, communication with stakeholders, and support with related requests to other governmental agencies. MPRA allows trustees of plans in "critical and declining" status to apply for both a facilitated merger and a benefit suspension.

The PBGC may also provide financial assistance to facilitate a merger if one or more of the plans in the merger is in "critical and declining status"; the PBGC reasonably expects that financial assistance will reduce it's expected long-term loss with respect to the plans involved and, the PBGC reasonably expects that the financial assistance is necessary for the merged plan to become or remain solvent; the PBGC certifies its ability to meet existing financial obligations will not be impaired by providing the financial assistance; and the assistance is paid from the PBGC's fund for basic benefits guaranteed for multiemployer plans.

PBGC Plan Partitions

MPRA also expanded ERISA's partition rules, which previously allowed only the PBGC to partition plans that suffered significant contribution losses as a result of employer bankruptcies. In a partition, PBGC gives approval to divide a severely underfunded plan into two plans. Generally, the liability for orphaned participants is transferred to a new plan, which is technically insolvent from inception. The PBGC pays the orphan benefits up to the PBGC guaranteed amount. The original plan remains as is, and the goal is to restore its financial health.

A plan in critical and declining status may submit coordinated applications to the PBGC for a partition and to Treasury for a benefit suspension.

The PBGC may order a partition if the following conditions are satisfied:

(1) The plan is in critical and declining status;
(2) The PBGC determines that the plan has taken all reasonable measures to avoid insolvency, including the maximum benefit suspensions as discussed above;
(3) The PBGC reasonably expects that the partition will reduce its expected long-term loss with respect to the plan and partition is necessary for the plan to remain solvent;
(4) The PBGC certifies to Congress that its ability to meet existing financial assistance obligations to other plans will not be impaired by such partition; and
(5) The cost arising from such partition is paid exclusively from the PBGC's fund for basic benefits guaranteed for multiemployer plans.

Suspension of Benefits

MPRA allows trustees of plans in critical and declining status to apply to Treasury to suspend (temporarily or permanently) participants' accrued pension benefits, including those already in pay status. MPRA defines "suspension of benefits" as the "the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits."

A plan may suspend benefits only if the plan's actuary certifies that the plan is projected to avoid insolvency if the benefit suspensions are implemented.

Benefit suspensions are subject to the following limitations:

(1) A participant or beneficiary's monthly benefit cannot be reduced below 110% of the PBGC-guaranteed amount;
(2) Participants and beneficiaries aged 75 and older at the date of suspension have limitations on the suspension;
(3) Participants and beneficiaries aged 80 and older at the date of suspension are exempt from suspensions;
(4) Disability pensions are exempt from suspensions; and
(5) Benefit suspensions must be reasonably implemented to avoid plan insolvency.

MPRA also includes a list of factors the plan may consider to ensure the benefit suspensions are equitably distributed among the participants and beneficiaries, including age, number of years to retirement, and the participants' benefit history.

MPRA requires plans with 10,000 or more participants to select a retiree representative to act as an advocate for the interests of the retirees and inactive participants during the suspension application process. The plan must pay for all reasonable legal, actuarial, and other costs the representative incurs.

Benefit Suspension Application Rules

In order to suspend benefits, the trustees must submit a detailed application to Treasury and demonstrate that the plan meets the statutory requirements. Once Treasury accepts the application for review, it has 225 days to render a decision or the application is automatically deemed approved. Treasury will generally request additional information and pose questions to the plan's attorneys and actuaries regarding the application.

If Treasury rejects a plan's application, the plan may challenge the denial in court. If Treasury approves a plan's application, the suspension is subject to a participant and beneficiary vote within 30 days of the approval. If a majority of all participants and beneficiaries (not simply a majority of those who vote) do not actively vote to reject the suspensions, the suspensions are approved. Suspensions may not take effect until after the vote, and Treasury issues final authorization. If the participants and beneficiaries vote to reject the suspensions, Treasury, in consultation with the DOL and PBGC, must determine whether the plan is "systemically important." A plan is "systemically important" if the plan's insolvency will result in $1 billion or more in projected PBGC liabilities. If a plan is deemed systemically important and suspensions were not approved by the participants, Treasury has the discretion either to accept the terms of the proposal or to modify the benefit suspensions in some other manner projected to avoid plan insolvency.

Since the passage of MPRA, 15 multiemployer defined benefit plans have filed applications with the Treasury Department to reduce benefits to avoid insolvency. As of December 2017, Treasury has approved only 4 of the 15 applications. These 15 applicants currently account for only 1.35% of multiemployer defined benefits plans, but cover roughly 5% of all multiemployer defined benefits plan participants. These plans represent a segment of failing multiemployer pension plans that, although in the minority, could cause the entire multiemployer pension system to crumble if additional legislative action is not taken. Details on these applications are provided in "MPRA Suspension Applications to Date" in this paper.

Individual Plan Initiatives

Over the past 15 years, trustees of financially troubled plans have employed numerous strategies to solve plans' funding issues. While some of these strategies have been helpful, most of these plans' funding issues remain.

Reductions to Future Benefit Accruals and Increased Employer Contributions

The PPA requires trustees to take an active and forward-looking approach in managing their plans. Plans in critical and endangered status have to take corrective action. As part of that corrective action, plans can continue to reduce future benefit accruals and increase contributions. Critical-status plans can also reduce and eliminate adjustable benefits for those participants that have not retired.

Prior to the PPA, trustees had limited options to combat underfunding issues. Most plans had to solve funding problems by: (1) reducing the future benefit accruals of the active participants; and/or (2) requiring employers to increase their contributions.[39] While these strategies were sometimes successful, for employers in industries like coal, trucking, manufacturing, and bakery, continued contribution increases became unsustainable.

Many trustees now recognize that they can no longer feasibly cut benefits for active employees and raise employer contributions. Employers and bargaining unit groups have left plans at alarming rates over the last decade as contribution rates have steadily increased and plans have repeatedly reduced benefits for active participants. Additional contribution increases are not sustainable in many industries, and threaten the employers' competitiveness, and in some cases, their existence. Losing

[39] In general terms, a participant's accrued benefit represents the benefit that the participant has earned or "accrued" under the plan as of a given time. For example, if a participant terminated covered employment before reaching normal retirement age under a plan's rules, the benefit to which the participant is entitled to receive on reaching normal retirement age is the accrued benefit. The plan usually specifies the accrual method used to determine a participant's accrued benefit.

employers would further erode the stream of contribution revenue on which a plan relies and exacerbate the negative cash flow problem for severely underfunded plans.

For example, in 1980 the Central States Pension Fund had approximately 12,000 employers; by July 2015 the number was down to 1,800.[40] Between 2010 and 2014, Central States experienced approximately 260 involuntary employer withdrawals as a result of employer bankruptcies. During this same period, the New York State Fund also had a significant number of employers leave, negatively affecting its funding level.[41] In December 2013, the New England Teamsters and Trucking Industry Pension Fund (New England Teamsters Fund) reported that in order to avoid filing bankruptcy, one of its 10 largest employers negotiated an agreement with the International Brotherhood of Teamsters to temporarily cease pension contributions, with a subsequent resumption at a significantly reduced level. Another large employer emerged from bankruptcy and notified the Fund that it was unable to pay its current contributions.[42]

Funding Policies

Some trustees have adopted policies with strict rules on the acceptance of employer contributions to ensure that the bargaining parties, *i.e.,* the union and the employer, do not negotiate a CBA containing pension provisions that would adversely affect plan funding. These trustees have drafted policies or included rules in the plans' governing documents explicitly reserving sole discretion to reject a particular CBA if it is not in compliance with the policy or if it is deemed economically bad for the plan. While some plans have had such policies for many years, others are now just implementing them.

For example, the Board of Trustees of the Western Conference of Teamsters Pension Trust Fund does not allow CBAs that permit or require pension contributions for non-bargaining unit members or CBAs that limit the employees on whose behalf contributions are to be made.

The Trustees of the Central States Pension Fund have taken a similar but more aggressive position. They reserved discretion in the Fund's trust agreement to reject any CBA it determines to be unlawful or would "threaten to cause economic harm to, and/or impairment of the actuarial soundness of, the Fund, and/or that continued participation by the Employer is not in the best interest of the Fund."[43]

Two-Pool Withdrawal Liability Method

Some trustees have requested approval from the PBGC to adopt an alternative method to calculate withdrawal liability called the "two-pool withdrawal liability method" (the two-pool method). Under the two-pool method, the plan maintains two withdrawal liability pools for contributing employers: one new pool for new employers and current employers that elect to pay off their existing withdrawal liability and transition over; and a second old pool for existing employers who, for a variety of reasons, decide not to trigger a withdrawal and remain in the plan.

Usually, an employer that is not contributing or does not owe withdrawal liability to the plan can qualify to be in the new pool. If a new employer enters the plan, it would automatically enter the new pool. When an already contributing employer moves from the old pool to the new pool, it generally agrees to withdraw from the existing withdrawal liability pool, to adhere to a withdrawal liability payment schedule, and to reenter the plan through the new pool for contributions made and benefits earned after that date.

Over the past few years, PBGC has received a number of requests from plans looking to implement the two-pool method.[44] The Central States Pension Fund, the New

[40] Central States, Southeast and Southwest Areas Pension Fund's MPRA Suspension of Benefits Application, dated September 25, 2015, section 19.8.4.

[41] New York State Teamsters Conference Pension and Retirement Fund's MPRA suspension of benefits application, dated May 15, 2017, section 5.

[42] New England Teamsters and Trucking Industry Pension Fund 2013 Review of the Rehabilitation Plan.

[43] "Trust Agreement of the Central States, Southeast and Southwest Areas Pension Fund as amended through April 1, 2016," 9, *https://mycentralstatespension.org/-/media/Pension/PDFs/Legal/pension_fund_trust_agreement_as_amended_april_2016.pdf?la=en&hash=1A796461E51C6BB84ED3111B62C59A326D881686.*

[44] "Retirement Matters, Request for Information: Two Pool Withdrawal Liability," PBGC Blog, January 4, 2017, *https://www.pbgc.gov/about-pbgc/who-we-are/retirement-matters/request-information-two-pool-withdrawal-liability.*

Continued

England Teamsters Fund, the New York State Fund, and the Bakery and Confectionery Union and Industry International Pension Fund have received PBGC approval to use the two-pool method. In order to encourage employer participation in the new pool, the trustees offer favorable settlement terms to satisfy withdrawal liability, but the extent of the relief is related to the employer's sustained commitment and continued contributions to the Fund.

The two-pool method has the potential to provide significant benefits to some plans. Trustees that have implemented the two-pool method believe it helps retain contributing employers that might otherwise withdraw.[45] A plan's long-term funding is affected by the strength of its base of contributing employers. Often times, a plan's more financially stable employers become frustrated as other employers withdraw from the plan. These withdrawals transfer costs and liability to the remaining employers over time in the form of higher contributions and increased reallocated withdrawal liability. This trend encourages healthy employers to withdraw before additional financial responsibility shifts to them, which ultimately places financial stress on the plan. The two-pool method offers an opportunity for healthy employers to remain in a plan while insulating them from the less financially stable employers.[46]

Despite its potential benefits, to date the two-pool method has not attracted new employers. It is a relatively new concept, however, and may be helpful in conjunction with other strategies, such as mergers and partitions.

DEVELOPMENTS UNDER THE MULTIEMPLOYER PENSION REFORM ACT OF 2014

Since its passage almost three years ago, MPRA has been criticized in part because of the manner in which it was enacted but more substantively because of the law's allowance for reductions to accrued benefits, including benefits already in pay status. Additionally, critics claim that implementation of MPRA failed to provide relief to the one plan that arguably was the primary focus of Congressional concern: the Central States Fund. Supporters assert, however, that absent benefit reductions, there are some plans that cannot avoid insolvency and thus will result in benefit reductions for most participants far greater than proposed under the rescue plan, since participants' benefits will be reduced to the PBGC guarantees. That the PBGC itself is projected to become insolvent only complicates things.

MPRA Suspension Applications to Date

As of December 2017, 15 plans covering a variety of industries, including transportation, furniture, machinery, and bricklaying, have applied to Treasury to suspend benefits, while four of those same plans submitted coordinating partition applications to the PBGC.[47]

Treasury has denied the following MPRA applications:

- Automotive Industries Pension Plan;
- Central States, Southeast and Southwest Areas Pension Fund (Central States);
- Iron Workers Local Union 16 Pension Fund;
- Road Carriers Local 707 Pension Fund (Local 707 Pension Fund); and
- Teamsters Local 469 Pension Plan.

The following plans withdrew their applications prior to Treasury's issuance of a ruling:

- Alaska Ironworkers Pension Plan;
- Bricklayers and Allied Craftsmen Local No. 7 Pension Plan;

The Western Pennsylvania Teamsters and Employers Pension Fund has implemented the two-pool method but is still waiting for the PBGC's official approval. *See* Plan Document of the Western Pennsylvania Teamsters and Employers Pension Fund.

[45] "Response to Request for Information on Alternative Two-Pool Withdrawal Liability Methods," American Academy of Actuaries, February 21, 2017; *see also* PBGC letter to the Bakery Confectionery Union and Industry International Pension Fund, January 19, 2017.

[46] "Response to Request for Information on Alternative Two-Pool Withdrawal Liability Methods," American Academy of Actuaries, February 21, 2017.

[47] Applications for Benefit Suspension, U.S. Department of the Treasury, October 26, 2017, *https://www.treasury.gov/services/Pages/Plan-Applications.aspx.*
See also Partition Requests, Pension Benefit Guaranty Corporation, October 26, 2017, *https://www.pbgc.gov/prac/pg/mpra/multiemployer-plans-and-partition.*

- Bricklayers and Allied Craftsmen Local No. 5 Pension Plan (Bricklayers Local 5 Pension Plan);
- Local 805 Pension and Retirement Plan (Local 805 Pension Fund); and
- Southwest Ohio Regional Council of Carpenters Pension Plan.

The following application is under review:

- Western States Office and Professional Employees Pension Fund.

Treasury has approved the following applications:

- Iron Workers Local 17 Pension Fund;
- United Furniture Workers Pension Fund A (Furniture Workers Fund);
- New York State Teamsters Conference Pension & Retirement Fund (New York State Fund); and
- International Association of Machinists Motor City Pension Fund (Motor City Fund).

MPRA Application Denials

Central States Pension Fund

Treasury denied Central States Pension Fund's suspension application in May 2016. The Central States Pension Fund's application was the first application submitted under MPRA. Central States, the largest multiemployer pension plan in the country with close to 400,000 total participants, roughly half of whom currently receive annual benefits totaling close to $3 billion,[48] has been reeling from investment losses stemming from the 2008 financial crisis. When Central States submitted its MPRA application, it had $16.8 billion in assets against $35 billion in liabilities. In 2015, the Fund was certified to be in critical and declining status, at 47.7% funded and projected to go insolvent by 2026.

Decades ago, the Fund had four active workers for every retiree or inactive member. But, like many other Teamster plans, that ratio reversed to approximately five retirees for every one active worker, as a decline in membership due to the deregulation of the trucking industry and two economic catastrophes in the 2000s resulted in far fewer active workers paying into the plan than receiving benefits. The Fund's retirees currently earn $1,128 per month on average, although that total includes workers with tenures of all different lengths. The longest-tenured workers receive about $2,400 a month.

Treasury rejected the Central States Pension Fund's application because it failed to satisfy several MPRA technical requirements.[49]

According to Treasury, the Fund did not meet the following statutory requirements:

(1) To use reasonable investment return assumptions;
(2) To use a reasonable entry age assumption;
(3) To equitably distribute the suspensions; or
(4) To draft its suspension notices to be understandable by the average plan participant.

Many commentators were shocked that Treasury denied the Central States application, because it is one of the largest and most financially troubled plans in the multiemployer system. Many believe MPRA was passed specifically to save Central States, on the grounds that if the plan went insolvent it would effectively bankrupt the PBGC's multiemployer plan insurance program. On the same day that Treasury rejected Central States' application, Treasury Secretary Jacob J. Lew sent a letter to Congress wherein he advised that the larger funding issues facing Central States and other multiemployer plans remain unsolved, especially as the PBGC is simultaneously heading toward insolvency. Secretary Lew's letter explained that Treasury's rejection of the application may have provided participants with some short-term re-

[48] Central States, Southeast and Southwest Areas Pension Fund's MPRA suspension of benefits application, September 25, 2015, section 5.1.9, *https://www.treasury.gov/services/AppsExtended/(Checklist%205)%20Critical%20and%20Declining%20Status%20Certification.pdf.*

[49] Kenneth R. Feinberg, U.S. Department of the Treasury's MPRA suspension application denial letter to the Board of Trustees of the Central States, Southeast and Southwest Areas Pension Plan, May 6, 2016, *https://www.treasury.gov/services/Responses2/Central%20States%20Notification%20Letter.pdf.*

lief but pointed out that even larger cuts may be required in the future for the Fund to meet MPRA's requirements.[50]

Central States' executive director, Thomas Nyhan, said the decision was disappointing because the trustees believed "the rescue plan provided the only realistic solution to avoiding insolvency." Nyhan said the Fund's retirees would have been better off with the cuts than they would be if the plan became insolvent. Given PBGC's looming insolvency, Nyhan noted that without the PBGC safety net, the Fund's participants could see their pension benefits reduced to "virtually nothing."[51]

As of this writing, the Fund has posted the following sobering message on its website:

> Although the decision to request approval of a pension rescue plan was very difficult for the Fund's Trustees, we are disappointed in Treasury's decision and strongly disagree with the reasons expressed by Treasury for denying our rescue plan application. Central States' proposed rescue plan was a proposal of last resort, and clearly not an option that the Trustees preferred. It was, however, based on a realistic assessment that benefit reductions under a rescue plan were the only available, practical way to avoid the hardship and countless personal tragedies that will result if the Pension Fund runs out of money.

Since the Central States Pension Fund submitted its application, its funding percentage has decreased to approximately 42.1%, with an estimated insolvency date of 2025. Its liabilities have increased to approximately $39 billion, and its assets have decreased to $16.1 billion.[52]

Road Carriers Local 707 Pension Fund

Treasury and the PBGC denied the Road Carriers Local 707 Pension Fund's coordinated partition and suspension applications in June 2016.[53] The Fund, a Teamster plan based in Hempstead, New York, is currently insolvent and receives financial support from the PBGC in the amount of $1.7 million per month to pay benefits.[54]

At the time the Fund submitted its applications in February and March 2016, it was less than 5% funded and had only $24.5 million in assets, a 2:1 retiree-to-active participant ratio, and only nine remaining contributing employers.[55]

The trustees had already reduced benefit levels for those in pay status and filed the Fund's notice of insolvency with the PBGC, informing the Corporation that it would become insolvent and require financial support beginning in February 2017. Like many other Teamster plans, this Fund has never been able to recover from a combination of trucking deregulation, little to no growth in the trucking industry, an increasing retiree population, bankrupt employers failing to pay their withdrawal liability, and the two financial crises in the 2000s.

In its denial of the partition request, PBGC concluded that the Fund failed to demonstrate that it would remain solvent following a partition, and that its application was based on unreasonably optimistic assumptions related to active participants

[50] Jacob J. Lew, Secretary of the U.S. Department of the Treasury, letter to Congress, May 6, 2016, *https://www.treasury.gov/services/Documents/MPRA%20SecLew%20Letter%20to%20Congress%20050616.pdf.*

[51] Thomas Nyhan, Executive Director and General Counsel of the Central States, Southeast and Southwest Area Pension Plan letter to participants, May 20, 2016, *https://mycentralstatespension.org/-/media/Pension/PDFs/cspf-letter-to-participants-05-20-16.pdf?la=en&hash=5A9F9CCFF4AD8A48781D30CDD684B02092531264.*

[52] 2017 Notice of Critical and Declining Status of the Central States, Southeast and Southwest Area Pension Plan, *https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/public-disclosure/status-notices/declining/2017/central-states-southeast-and-southwest-areas-pension-plan.pdf.*

Central States, Southeast and Southwest Area Pension Plan 2016 Annual Form 5500, Schedule MB, October 6, 2017.

[53] Kenneth R. Feinberg, U.S. Department of the Treasury's MPRA suspension application denial letter to the Board of Trustees of the Road Carriers Local 707 Pension Fund, June 24, 2016, *https://www.treasury.gov/services/Responses2/Local%20707%20Notification%20Letter.pdf.*

See also PBGC letter to the Board of Trustees of the Road Carriers Local 707 Pension Fund, June 2016, *https://www.pbgc.gov/documents/PBGC-Letter-June-2016.pdf.*

[54] Notice of Insolvency Benefit Level of the Road Carriers Local 707 Pension Fund, dated December 2016, *https://www.pbgc.gov/news/other/res/road-carriers-local-707-faqs* (October 29, 2017).

[55] Road Carriers Local 707 Pension Fund Coordinated Application for Approval of Suspension of Benefits Under MPRA, Exhibits 2–3, March 15, 2016, *https://www.treasury.gov/services/KlineMillerApplications/Redacted%20Files%20Local%20707%20application_001.pdf.*

and future contribution levels, including those of the Fund's dominant employer, YRC Worldwide.[56] Treasury also denied the Fund's suspension application, mainly because the projection of solvency in the application was based on the implementation of a partition, which the PBGC denied.[57]

Other MPRA Application Denials and Withdrawals

The applications of the Automotive Industries Pension Plan, the Ironworkers Local Union 16 Pension Fund, and the Teamsters Local 469 Pension Plan were all rejected, because they did not meet MPRA's technical requirements. According to Treasury's denial letters, these plans' applications were denied because the proposed suspensions were not reasonably estimated to avoid insolvency, the actuarial assumptions and methods (*i.e.,* assumptions about mortality rates, hours of service, and spousal survivor benefits) were unreasonable, and/or assumptions about the return on investment were unreasonable.[58]

On the other hand, a few plans, such as the Alaska Ironworkers Pension Plan and the Bricklayers and Allied Craftsmen Local No. 5 and No. 7 Pension Plans, made the strategic decision to withdraw their applications from Treasury consideration before the Department could issue its decision.[59] These plans likely withdrew their applications based on discussions with Treasury. To date, three of the four plans that received Treasury's approval withdrew their initial applications and resubmitted revised applications after consultation with Treasury.[60] The recent approvals may give these plans hope that Treasury will approve a refiled application.

MPRA Application Approvals

Treasury has now approved four plans' applications to suspend benefits under MPRA. Three of these approvals have occurred under President Donald Trump's administration and may indicate a changing trend in the review and approval process at Treasury.

Iron Workers Local 17 Pension Fund

On December 16, 2016, Treasury issued its first MPRA suspension application approval to the Iron Workers Local 17 Pension Fund based in Cleveland, Ohio.[61] At the time the Fund submitted its application, it was 44.3% funded with approximately $84 million in assets and $263 million in liabilities and was projected to become insolvent in 2024.[62] This Fund was one of the smaller plans to submit an application, with a little fewer than 2,000 participants and a 1:2 active-to-retired-worker population ratio.

The Fund's proposed suspensions generally involved reducing accrued benefits and eliminating early retirement subsidies and extra benefit credits indefinitely. Benefits were generally estimated to be reduced between 20% and 60%. Under the proposed suspensions, 52%, or 1,029 of the plan's 1,995 participants, will not have their retirement benefits cut. More than 30% of participants will see benefits cut by at least 20%. Specifically, 30 participants will see extreme cuts between 50% and 60%; 115 participants will see cuts between 40% and 50%; 191 will see cuts between 30% and 40%; and 265 will see cuts between 20% and 30%. Another 168 participants will see benefits cut by 10% or less. The suspension will reduce the average monthly benefit for all participants by 20%, from $1,401 to $1,120. With these proposed suspensions, the Fund's actuaries estimated that the Fund will remain solvent through April 2055.

[56] PBGC letter to Board of Trustees of the Road Carriers Local 707 Pension Fund, June 10, 2016, *https://www.pbgc.gov/documents/PBGC-Letter-June-2016.pdf.*

[57] Kenneth R. Feinberg, U.S. Department of the Treasury's MPRA suspension application denial letter to the Board of Trustees of the Road Carriers Local 707 Pension Fund, June 24, 2016, *https://www.treasury.gov/services/Responses2/Local%20707%20Notification%20Letter.pdf.*

[58] *See* U.S. Department of the Treasury letter to Board of Trustees of the Automotive Industries Pension Plan, May 9, 2017; U.S. Department of the Treasury letter to Board of Trustees of the Ironworkers Local 16 Pension Fund, November 3, 2016; U.S. Department of the Treasury letter to Board of Trustees of the Teamsters Local 469 Pension Fund.

[59] *See* Applications for Benefit Suspensions, U.S. Department of the Treasury, October 31, 2017, *https://www.treasury.gov/services/Pages/Plan-Applications.aspx.*

[60] *Id.*

[61] Letter to the Board of Trustees of the Ironworkers Local 17 Pension Fund, U.S. Department of the Treasury, December 16, 2016.

[62] Iron Workers Local 17 Pension Fund's Application to Suspend Benefits, July 29, 2016.

United Furniture Workers Pension Fund A

In July 2017, the Furniture Workers Pension Fund A, based in Nashville, Tennessee, became the second plan to receive Treasury's approval to suspend benefits.[63] The Fund has approximately 10,000 participants and also received approval for a partition from the PBGC effective in September 2017.[64] At the time the Fund submitted its suspension plan, it had assets of approximately $55 million and almost $200 million in liabilities, was approximately 30.6% funded, and was projected to become insolvent by 2021.[65] As with other plans facing insolvency, the plan's funding had slowly deteriorated over the years due to its inability to recover from the market downturns in 2000 and 2008 and to competitive pressures caused by increased furniture imports from overseas, the loss of some of its larger contributing employers, the further decline of its active participant base, and its inability to attract new contributing employers in the industry.

In the Fund's application, its trustees estimated that 2,800 participants would receive on average a reduction of 12.7%, and 7,100 participants would receive no reductions because they were protected under MPRA (*i.e.,* they were over age 80, disabled, etc.).[66] The reductions were estimated to range from 0% to 62%.[67]

In the Fund's partition application, the trustees proposed to partition to the successor plan 100% of the liability associated with the terminated vested participants and 56% of the liability associated with those in paid status (retirees, beneficiaries, and disabled participants).[68] The PBGC generally would become responsible for paying the partitioned liabilities in the successor plan. The trustees estimated that this would be the minimum amount of liability necessary to transfer to the PBGC to relieve some of the financial burden and to remain solvent for the 30-year period required under MPRA.

New York State Teamsters Conference Pension and Retirement Fund

The New York State Teamsters Conference Pension and Retirement Fund was the third and largest plan to receive Treasury approval.[69] Like the other two successful plans before it, this plan withdrew its original application and submitted a new one.

Over the past 35 years, this Fund faced a significant deterioration in its contribution base. In 1990, the Fund had 37,953 total participants, with an active population of approximately 23,883 workers and a retiree and terminated vested population of 14,070.[70] The Fund had almost 500 contributing employers and received $60 million in annual contributions, while paying about $46.9 million in annual benefits.

At the time the Fund submitted its revised application to Treasury in May 2017, it had almost the same number of participants (34,459); however, it now had two retirees for every active worker, and only 184 contributing employers. The Fund was receiving $118.7 million in annual contributions but paying approximately $280.1 million in annual retiree benefits. While almost fully funded in 2000, as of January

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[63] Letter to Board of Trustees of the United Furniture Workers Pension Fund A, U.S. Department of the Treasury, August 31, 2017, ***https://www.treasury.gov/services/Responses2/UFW_Final_Approval_Letter.pdf.***

[64] Letter to Board of Trustees of the United Furniture Workers Pension Fund A, U.S. Department of the Treasury, August 31, 2017, ***https://www.treasury.gov/services/Responses2/UFW_Final_Approval_Letter.pdf.***

See also PBGC FAQs on the United Furniture Workers Pension Fund, ***https://www.pbgc.gov/about/faq/ufw-partition-faqs.***

[65] United Furniture Workers Pension Fund A's Second Application to Suspend Benefits Under MPRA, Exhibit 3, U.S. Department of the Treasury, March 15, 2017, ***https://www.treasury.gov/services/KlineMillerApplications/United%20Furniture%20Workers%20Pension%20Fund%20A%20-%20Second%20Application%20for%20Approval%20of%20Suspension%20of%20Benefits%20-%20File%202a%20of%203_Redacted.pdf.***

[66] Letter from the United Furniture Workers Pension Fund A to Participants, March 15, 2017.

[67] *Id.*

[68] United Furniture Workers Pension Fund A's Second Application to Suspend Benefits Under MPRA, U.S. Department of the Treasury, March 15, 2017, ***https://www.treasury.gov/services/KlineMillerApplications/United%20Furniture%20Workers%20Pension%20Fund%20A%20-%20Second%20Application%20for%20Approval%20of%20Suspension%20of%20Benefits%20-%20File201%20of%203_Redacted.pdf.***

[69] Letter to Board of Trustees of the New York State Teamsters Conference Pension and Retirement Fund, U.S. Department of the Treasury, September 13, 2017, ***https://www.treasury.gov/services/Documents/NYST%20final%20approval%20letter.pdf.***

[70] New York State Teamsters Conference Pension and Retirement Fund Second Application to Suspend Benefits, U.S. Department of the Treasury, May 15, 2017, ***https://www.treasury.gov/services/KlineMillerApplications/01a%20NYSTPF%20MPRA%20App%20C%20Exhibits%2001%20to%2016_Redacted.pdf.***

1, 2017, the plan was 37.8% funded, with $1.28 billion in assets and $3.39 billion in liabilities.

In its application, the trustees proposed a 19% reduction for all active participants and a 29% benefit reduction for all inactive participants. It was estimated that nearly 28% of participants would not see any cuts due to MPRA's protections.

International Association of Machinists Motor City Pension Fund

On November 6, 2017, the Troy, Michigan-based International Association of Machinists Motor City Pension Fund (Motor City Fund) became the fourth plan to receive Treasury's approval to suspend benefits.[71] This Fund became the first one to receive Treasury's approval without undergoing a resubmission process.

Over the last 15-plus years, the Motor City Fund's finances have been affected by the same factors plaguing other plans seeking MPRA relief—loss of contributing employers, a decrease in active participants, and an inability to recover from the economic catastrophes of the 2000s.[72] In 2006, the Fund was 74% funded with a market value of assets of approximately $84 million and about $111 million in liabilities.

Since then, the Fund's demographics and asset base have declined. The Fund has experienced numerous employer withdrawals over the years. The Fund had 20 contributing employers in 2012, 16 in 2015, and 11 in 2016, and is currently down to five. As of June 30, 2016, the Fund was about 58% funded with only $51 million in assets and about $101 million in liabilities. It pays out $8.69 million in benefits to its retirees annually, while receiving only $1.6 million in employer contributions. Unbelievably, it has almost eight inactive participants receiving benefits per every one active worker. Without the benefit suspensions, the Fund is projected to be insolvent by the end of the 2026 plan year.

Under the Fund's suspension plan, monthly benefits payable to participants in pay status as of January 1, 2018, would be reduced to 110% of the PBGC-guaranteed amount, which is the maximum reduction allowed under MPRA. The reduction applies to benefits earned up to January 1, 2018. Accruals after January 1, 2018, will return to 0.5% of credited contributions. As of December 2017, the Fund was in the process of submitting its proposal to its 1,134 members for voting.

IS MPRA WORKING?

MPRA has been neither an unmitigated disaster nor a panacea for multiemployer pension plans. Many commentators and, without a doubt, most plan participants are unhappy with MPRA because it allows plan trustees to violate the most basic tenet of ERISA: that once a benefit is earned, it cannot be taken away. There is little doubt, however, that prior to MPRA there was nothing some plans could do to avoid insolvency given the anti-cutback rule and the unsustainability of employer contribution increases. For plans that have recently reduced benefits, there is now hope that they will provide benefits for at least the next 30 years and perhaps in perpetuity. For other plans like Central States and the UMWA Pension Plan to survive, additional legislative action will need to be taken.

Yes

MPRA now allows plans to reduce accrued benefits, which are by far the highest expense most plans have. It is virtually impossible for a plan with severe funding issues to reduce costs sufficiently when reductions are limited to future accruals. While there is a cost to providing future service credit, it is the past liabilities, many of which are unfunded but still owed, that normally sink a pension plan. With limited cost-cutting measures available pre-MPRA, plan trustees looked to employers

[71] Letter to the Board of Trustees of the International Association of Machinists Motor City Pension Plan, U.S. Department of the Treasury, November 6, 2017, *https://www.treasury.gov/services/Pages/Benefit-Suspensions.aspx.*

[72] Board of Trustees of the International Association of Machinists Motor City Pension Plan Application to Suspend Benefits, U.S. Department of the Treasury, March 29, 2017, *https://www.treasury.gov/services/Pages/International-Association-of-Machinists-Motor-City-Pension-Fund.aspx.*

to pay more and more every year. Now that well has run dry and the ability to cut accrued benefits is the last tool available for some plans to avoid insolvency.

The MPRA application process also appears to be getting more streamlined. The first several MPRA applications were denied because Treasury was not comfortable with the actuarial and investment assumptions that plans were making in proposing their benefit suspensions. Treasury has since issued new regulations governing suspension applications and has demonstrated a willingness to engage plan advisors during Treasury's review process. This allows for the exchange of information and the tweaking of certain assumptions that make it easier for the plan to demonstrate that suspensions will avoid insolvency for at least 30 years, which is what is required for Treasury to approve an application.

Treasury has now approved four MPRA applications, with the Motor City Pension Fund being the first plan to obtain an approval on its initial application. This could possibly bode well for future applications.

No

Although Treasury seems to have implemented a process that may ultimately result in more suspension application approvals, the process is still lengthy and expensive. This is partly attributable to Treasury's use of its own actuarial and investment assumptions when reviewing and evaluating a plan's suspension application. By substituting its own assumptions for those of the plans' actuaries, Treasury adds a layer of complexity that slows the process and makes it more expensive.

MPRA's statutory text does not require (or authorize) Treasury to make such a detailed review of suspension applications. The statute authorizes Treasury to review applications to determine if the plan is eligible for the suspension and has satisfied the requirements of MPRA. In fact, the statute specifically says that when evaluating an application, Treasury must accept the trustees' determinations unless the plan's determinations are clearly erroneous.

While MPRA allows plans to make drastic reductions in costs by reducing accrued benefits, nothing in MPRA helps to infuse new money into the plans. Ultimately, some of the larger and most underfunded plans will need a new income stream in addition to benefit cuts to avoid insolvency. A combination of new money and benefit reductions could stop the bleeding from negative cash flow and allow a plan to earn its way out of critical and declining status. There is nothing in MPRA that helps on the income side of the equation.

Benefit cuts alone do not appear to be sufficient to address the payment of the orphan liability some plans have. MPRA has been unable to save two of the largest and most underfunded plans: Central States and the UMWA Plan. Central States' application was denied, and the UMWA Plan's benefit levels do not seem to make it a candidate for benefit suspensions under MPRA because it is already paying out benefits in many cases that are below the minimum amount allowed under MPRA. PBGC's projected insolvency is in part based on the liabilities it sees coming from these two plans. Although other legislative proposals have been made to provide relief to the UMWA Plan, nothing has been passed to date.

MPRA has been helpful to some plans and may prove helpful to others. But MPRA will not save Central States, the UMWA Pension Plan, and the other most severely underfunded plans because it provides no additional funding mechanism, which these plans will require. For these plans, and the more than 1 million participants in them, additional legislation is needed in short order.

WHAT HAPPENS IF NOTHING HAPPENS?

Central States, the UMWA Plan, and other plans approaching insolvency are not in a position to impose additional benefit cuts or employer contribution increases. These plans generally have no realistic expectation that any new employers will enter the plan. As assets dwindle, the trustees' fiduciary duty limits their ability to diversify the plan's investments.[73] Now begins the death spiral, the inexorable slow march that will see the assets depleted while benefits are still due and owing.

[73] As mentioned earlier, as a plan's assets dwindle, trustees are obligated by their fiduciary duties to shift a plan's investments out of equities and into more conservative investment vehicles to preserve cash to pay benefits for as long as possible. Such investments generally provide

If insolvency occurs, participants will receive significant cuts in payments, because PBGC insurance covers only a fraction of the promised pension benefit payment. For example, a Local 707 Pension Fund participant with 30 years of service once received approximately $48,000 a year from the plan. Since the plan's insolvency, that participant receives only $12,870 per year from the PBGC, which is the maximum guaranteed amount. This reduction obviously puts participants in a difficult position.

Many cannot return to work because of age and health issues, not to mention potential skill and certification gaps. As a result, they will have to find other ways to make up for the reduction, including liquidating their assets, relying on family members, and looking to the government, and by extension the taxpayer, through the use of Medicare, Medicaid, Social Security, Supplemental Nutrition Assistance Program benefits, and other social safety net programs.

The failure of the largest and most underfunded plans will ultimately bankrupt the PBGC. In its FY 2016 Projections report, the PBGC stated that the multiemployer insurance program is likely to run out of money by the end of 2025. The PBGC Multiemployer Program's 2016 deficit of $59 billion increased to $65.1 billion in 2017 and is expected to explode to $80 billion by 2026.[74] Once the multiemployer program is bankrupt, participant payments will be cut even further and may even cease. As such, the scenario described above will become even direr.

A failure of this magnitude in the multiemployer system will damage the entire economy—not just employers in the multiemployer plan system. Insolvencies and the subsequent benefit cuts that follow also have deep impacts on the communities where participants live. Retirees will see their standard of living reduced. At a minimum, they will have less income to spend in local economies. The reduced spending will be felt by businesses, especially in small communities. Less money spent by retirees also means less paid to local government in sales and other taxes. When tax revenue decreases, the demand for social programs will increase, because many retirees will likely lose their homes and/or have difficulty paying for medical expenses. This will cause many to become reliant on social programs that have to be funded by taxpayers at a time when tax revenue will be declining. Simply put, pension plan insolvencies and a PBGC collapse will have a cumulative negative effect on entire communities. Individuals, government, and businesses will all suffer unless a solution is found.

POTENTIAL SOLUTIONS

Several proposals have been designed to address the multiemployer pension plan funding problem. Some are purely legislative proposals, whereas others deal with new pension plan designs. The most widely considered of the proposals are discussed below.

PBGC Takeover of Critical and Declining Status Plans

The prospect of the PBGC taking over all plans that are classified as critical and declining has some appeal. After all, the PBGC was established in 1974 to provide insurance to private pension plans, including multiemployer plans. If the PBGC's mission is to provide assistance to financially troubled multiemployer plans, the plans in the worse shape should look to PBGC to not only help pay benefits if necessary, but to operate the plan as well.

Proponents of a complete PBGC takeover of critical and declining plans cite these primary reasons for their position—PBGC-operated plans will save money by reducing administrative expenses; or the threat of a PBGC takeover will provide an incentive for trustees to ensure adequate funding, because their jobs will be at risk otherwise.[75]

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for little growth, so there is no opportunity for the asset base to grow. If the trustees continued to leave assets invested in equities, a sharp downtown in equity markets could cause a plan to go insolvent much sooner than otherwise anticipated.

[74] "PBGC Projections: Multiemployer Program Likely Insolvent by the End of 2025; Single-Employer Program Likely to Eliminate Deficit by 2022," press release, Pension Benefit Guaranty Corporation, August 3, 2017, *https://www.pbgc.gov/news/press/releases/pr17-04.*

[75] Rachel Grezler, "Congress Needs to Address the PBGC's Multiemployer Program Deficit Now," The Heritage Foundation Issue Brief, September 13, 2016, 2.

When a single-employer defined benefit pension plan goes insolvent, the PBGC takes over the operation of the plan. When a multiemployer plan goes insolvent, the PBGC offers financial assistance in the form of a loan. Not only are these loans almost never repaid, but the plan continues to operate under the pre-insolvency structure. This means that there remains a board of trustees comprised of an equal number of union and employer representatives who are charged with administering the plan in accordance with the fiduciary requirements of ERISA and the tax-qualification requirements of the Code. The trustees hire actuaries, attorneys, accountants, investment consultants, and investment managers to help comply with the various legal requirements. These professional advisors cost money, and therefore even an insolvent plan receiving financial assistance from PBGC has continuing administrative costs.

A PBGC takeover of critical and declining multiemployer plans would likely reduce administrative costs. The costs would not be eliminated, because the PBGC would still need the same actuarial, legal, accounting, and investment advisory services that the plan's trustees use. Nevertheless, many of the advisors would either already be on staff at PBGC, or the services could be provided in a less costly manner due to economies of scale.

However, the PBGC is not currently funded well enough itself to offer any meaningful long-term financial relief to multiemployer plans under its current structure of offering only loans. If the PBGC were to take over the administration of critical and declining plans, PBGC's costs would increase, even if only slightly. More important, plans that are in critical and declining status are not in that condition because of their administrative expenses; rather, they are in critical and declining status primarily because of massive negative cash flow issues brought on by having to pay millions more in benefits to retirees than they receive in contributions for active employees. While a PBGC takeover would most assuredly reduce administrative expenses, a reduction in administrative expenses alone, without shoring up the PBGC's financial condition, would not provide a long-term solution.

Another reason frequently cited by those advocating for PBGC takeovers is that the threat of a takeover will incentivize plan officials to more closely monitor a plan's funding level. This line of thinking assumes that once a plan becomes critical and declining, the PBGC takeover of the plan will cost people their jobs, and therefore, for self-preservation purposes, plan officials will do everything possible to prevent a plan from becoming critical and declining. While it is true that a plan's professional advisors and in-house administration (if any) would not be needed after a PBGC takeover, professional advisors and administrative staff do not have the authority to make decisions for the plan that affect funding.

Those decisions are made by the plan's trustees, who generally are not fulltime plan employees. Being a trustee of a multiemployer plan is often one of the duties of a union official or employer-appointed trustee, but it is not a job in and of itself. Therefore, it is doubtful that very many plan trustees will lose their jobs if the PBGC were to take over a plan; the professional advisors whose jobs would be at risk are already incentivized to help keep a plan out of critical and declining status, because if their advice is shoddy, the trustees will terminate them. Finally, the PBGC "takeover as incentive/threat" position assumes that critical and declining plans are in that condition because plan officials were not diligent or were asleep at the wheel. This is rarely the case, as changing demographics and stock market returns have been more influenced by government policy and market forces than by trustees' decisions.

PBGC Funding

There are limited tools available to improve the PBGC's funded status. Historically, the PBGC multiemployer program has been funded solely through annual premiums that multiemployer plans are required to pay, and not by individual tax payers. Broadening the PBGC's funding mechanisms to include taxpayer dollars from the general treasury is appealing to some but anathema to others.[76] Some pundits believe that the federal government has been complicit in the downfall of some multiemployer plans by imposing strict funding rules and deregulating certain industries.[77] These pundits believe that the government should help fund the PBGC to make up for prior policies that have put the plans at risk. Others believe that Amer-

[76] *Id.,* 2.
[77] Mary Sanchez, "The Federal Government's Little Known Pension Heist," *Baltimore Sun,* February 17, 2015.

ican taxpayers, the majority of whom do not participate in multiemployer pension plans, should not be asked to sacrifice for others when they have their own retirements to fund.[78]

Another way to improve PBGC funding is to increase the annual premiums that multiemployer plans pay. This has already been done in recent years, but increases have not been large enough to solve the PBGC's funding deficit. In 2014, multiemployer plans paid an annual flat rate premium of $12 per participant. In 2018, multiemployer premiums will be $28 per participant. Despite more than doubling the premium, the PBGC still projects that there is a 90% chance it will be insolvent by 2035. Even more disturbing is that the PBGC estimates that if premiums were increased to $120 per participant, its deficit in 2022 would still increase by $15 billion.[79]

According to the Congressional Budget Office, PBGC premiums would have to be increased to $232 per participant to achieve a 90% probability of covering its deficit by 2036.[80] Based on the fair-value estimated deficit of $101 billion, a $232 premium increase would cover only 36% of the PBGC's deficit.[81] Furthermore, raising premiums eightfold would require increasing employer contributions. As many plans are in critical and declining status because employers could not afford the contribution increases required under their rehabilitation plans, it seems unlikely that employers would be able to pay the increases necessary to increase PBGC premiums to a level that would cure the PBGC's deficit.

Partitioning of Orphans

Orphan participants constitute a significant portion of total multiemployer participants. Approximately 1.6 million of the 10.7 million multiemployer plan participants are orphans.[82] To relieve severely underfunded plans of the burden of unfunded orphan liability, many practitioners suggest that the liability be transferred to the PBGC via a partition. Once a partition is approved, and the original plan transfers liabilities to the PBGC, the PBGC becomes responsible for paying benefits to the partitioned participants at the PBGC guaranteed level.

Since MPRA's enactment, only the Furniture Workers Fund has successfully applied for a partition.

While partitions can help reduce a plan's underfunding, they are far from a panacea because they rely on the PBGC to pay the partitioned participants' benefits. PBGC is simply not funded well enough to pay all orphaned liabilities for all critical and declining plans. The PBGC funding issue is actually exacerbated in a partition, because PBGC starts paying the partitioned benefits immediately, unlike when the plan as a whole goes insolvent. Absent additional funding, this move would likely accelerate PBGC's projected insolvency.[83] Assuming the funding issue could be resolved, the value of partitioning would be to help plans to focus on maximizing contributions to pay for current costs.

Plan Mergers

As discussed previously, MPRA provides the PBGC with the authority to facilitate mergers. Some commentators believe that, with PBGC-assisted mergers or partitions, many plans will be able to recover using contributions from the remaining active employers and employees, which might help preserve plans covering some 800,000 people.[84] However, it does not appear that many plans have sought PBGC

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[78] Rachel Grezler, "Congress Needs to Address the PBGC's Multiemployer Program Deficit Now," The Heritage Foundation Issue Brief, September 13, 2016.

[79] Alicia H. Munnell and Jean-Pierre Aubry, "Can PBGC Save Multiemployer Plans?," Center for Retirement Research at Boston College, September 2014, Number 14–16, 5, *http://crr.bc.edu/uncategorized/can-pbgc-save-multiemployer-plans/*.

[80] Rachel Grezler, "Congress Needs to Address the PBGC's Multiemployer Program Deficit Now," The Heritage Foundation Issue Brief, September 13, 2016, 2.

[81] Alicia H. Munnell and Jean-Pierre Aubry, "Can PBGC Save Multiemployer Plans?," Center for Retirement Research at Boston College, September 2014, Number 14–16, 5, *http://crr.bc.edu/uncategorized/can-pbgc-save-multiemployer-plans/*.

[82] Alicia H. Munnell, Jean-Pierre Aubry, and Caroline V. Crawford, "Multiemployer Pension Plans: Current Status and Future Trends," Center for Retirement Research at Boston College, November 2017, 170.

[83] Alicia H. Munnell and Jean-Pierre Aubry, "Can PBGC Save Multiemployer Plans?", 5.

[84] "What Can Congress Do to Help People in Multiemployer Pension Plans: Testimony by Hon. Joshua Gotbaum Before the Senate Committee on Finance," March 1, 2016, *https://www.*

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assistance in effectuating mergers under MPRA. This could be because trustees of critical and declining plans have been focused on determining whether a benefit suspension and/or partition application would solve their plans' solvency issues rather than on investigating potential mergers.

The MPRA application process is labor intensive, time consuming, and expensive and requires only the involvement of one board of trustees. It would thus be difficult and time consuming to explore potential mergers or perform a merger study and to prepare a MPRA application at the same time. It is possible that those plans that have had their MPRA applications rejected, or who have withdrawn their applications, may investigate whether a PBGC-facilitated merger with another plan is feasible. However, any solution that requires PBGC funding is not necessarily going to permanently resolve a plan's funding issues because of PBGC's own precarious financial condition. To make plan mergers a viable tool for critical and declining plans, more guidance is needed from Treasury/PBGC and/or Congress.

Benefit Modifications

While the PPA has allowed many plans to make benefit modifications to future accruals and other adjustable benefits, and MPRA now authorizes reductions to benefits in pay status, some are calling for even more flexibility to allow financially troubled plans to make benefit modifications. It is possible that for some deeply troubled plans that are nearing the death spiral, benefit reductions that go beyond those allowed by MPRA may be necessary.

The more time that elapses without a workable solution, the bigger the cuts will have to be. These plans' plights are exacerbated by PBGC's underfunded status. It is estimated that if the PBGC becomes insolvent, ongoing premiums that multiemployer plans pay would cover only about 10% of the benefits for which Central State is responsible. This would require participants to take a 90% reduction in their benefits.[85]

In an article for the Heritage Foundation, Rachel Grezler proposed several ideas to improve multiemployer plan funding. First, she suggested creating special rules for critical and declining plans that "have no hope of becoming solvent." Under the proposal, critical and declining plans would not be allowed to continue adding new liabilities. Instead, they would be required to freeze new benefits and reduce existing benefits, including to those in pay status, similar to MPRA.[86] The paper also advocates for rules making it easier for plans to reduce benefits prior to becoming insolvent as doing so would prevent older workers in underfunded plans from continuing to receive full benefits, while younger worker accrue very little. The authors suggest that plans looking to make MPRA reductions be able to do so without demonstrating that the reductions will result in the plan's long-term solvency.[87] Another concept is to allow the PBGC, on its initiative, to reduce benefits within a plan prior to the plan going insolvent, or to reduce the PBGC guaranty after insolvency. The Heritage Foundation recognizes however, that reductions in the PBGC guaranty alone would not be enough to prevent PBGC insolvency, and that other changes are necessary.

Variable Defined Benefit Plans

While technically a defined benefit plan, a variable defined benefit plan has characteristics of both defined benefit and defined contribution plans. Interestingly, the variable defined benefit plan has been used by multiemployer defined benefit plans with severe funding issues (like the Sheet Metal Workers' National Pension Fund) to allocate part of the investment risk to employees, as well as by multiemployer 401(k) plans (like the UNITE HERE Local 26 Pension Plan) to shift some investment risk to employers.

Variable defined benefit plans can be designed to be 100% funded.[88] They are similar to traditional defined benefit plans in that the contributing employers bear the financial obligation and the plan's assets are invested in a pooled account. They are unlike defined benefit plans in that they spread investment risk among contributing

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finance.senate.gov/imo/media/doc/03012016%20Gotbaum%20SFC%20Gotbaum%20Multiemployer%20Pensions%20Testimony.pdf.

[85] *Id.*

[86] Rachel Grezler, "Congress Needs to Address the PBGC's Multiemployer Program Deficit Now," The Heritage Foundation, September 13, 2016, 3.

[87] *Id.*

[88] David B. Brandolph, "Hotel Industry Trust That Left 401(k) for Pension Gets IRS OK," August 2017, *Bloomberg BNA, https://www.bna.com/hotel-industry-trust-n73014462612/.*

employers and participants and rely on less risky investment assumptions.[89] The benefit the plan pays is "variable," because the amount varies depending on actual investment performance.

Basically, the variable defined benefit plan pays the greater of a floor defined benefit and a variable benefit. After taking into account contribution levels, the plan actuary will determine the floor benefit based on plan demographics and a conservative interest assumption (for example 4% to 5%). The floor benefit would also be converted into investment units in the plan's collective assets, which would be professionally managed. These investment units fluctuate in value annually, increasing in value if the plan's investment return exceeded the conservative interest assumption (plus a reserve factor) and decline in value if the plan's investment return falls below the assumption.

At retirement, the employee would receive the greater of the sum of his or her floor benefits or the sum of his or her investment units.[90] The floor benefit is thus designed to be the minimum that a participant might receive at retirement, but the variable component allows the benefit to increase (within certain specified limits) when investment returns are higher. Extraordinarily high investment returns above those specified in the plan are placed into reserve to protect against the inevitable negative investment return years.

Proponents of the variable defined benefit plan laud the design's ability to pay an adequate benefit in the form of a life annuity, while at the same time allocating the investment risk among contributing employers and participants. The conservative investment assumption is lower than the traditional 7% to 8% that most defined benefit plans assume, which provides a higher probability that the promised floor benefit will never have to be adjusted because the lower return is more likely to be achieved.[91]

Variable defined benefit plans are of recent vintage in the multiemployer arena. While there appear to be benefits to all stakeholders, these plans might be more helpful for younger workers and could possibly become the defined benefit plan of the future. The variable defined benefit plan does not do anything to solve the funding issues of plans that face insolvency today and that jeopardize the retirement security of those near or in retirement.

Composite Plans

Another plan design that has gained traction among multiemployer plan stakeholders and practitioners is the composite plan. The concept of the composite plan was first introduced in 2013 by the National Coordinating Committee for Multiemployer Plans (NCCMP).[92] Draft legislation language was released by the House Education and Workforce Committee in September 2016, but to date no legislation has been enacted.

Like variable defined benefit plans, composite plans are designed to allocate investment risk to both employers and participants. A composite plan is neither a defined benefit nor a defined contribution plan, but has characteristics of each. Like multiemployer defined benefit plans, the trustees would determine the rate at which benefits accrue and benefits would be paid in the form of an annuity. However, unlike defined benefit plans, the ultimate benefit paid would be variable and depend on the market value of assets.[93] Benefit amounts would be adjusted on an annual basis to mitigate the frequency and impact of market fluctuations, projected for a 15-year period.[94] Composite plans would not have any withdrawal liability and would not be subject to PBGC guarantees. The employers' contribution obligation would be limited to the rates negotiated with the union.[95]

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[89] Gene Kalwarski, "The Variable Defined Benefit Plan," Cheiron, accessed December 13, 2017, *https://www.cheiron.us/cheironHome/doc/Retirement_USAv1.pdf.*

[90] Gene Kalwarski, "Re-Envisioning Retirement Security: Variable Defined Benefit Plan," *Retirement USA,* October 21, 2009, *http://www.retirement-usa.org/re-envisioning-retirement-security-variable-defined-benefit-plan.*

[91] David B. Brandolph, "Hotel Industry Trust That Left 401(k) for Pension Gets IRS OK," August 2017, *Bloomberg BNA, https://www.bna.com/hotel-industry-trust-n73014462612/.*

[92] *See* NCCMP 2013 Retirement Security Review Commission Report, *Solutions not Bailouts.*

[93] The United States House of Representatives Committee on Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions, "Examining Reforms to Modernize the Multiemployer Pension System," testimony of Randy G. DeFrehn, April 29, 2015.

[94] *Id.*

[95] *Id.*

Those advocating for composite plans note that composite plans no longer place the risk of ensuring performance of the investment markets solely on employers, while at the same time providing a mechanism for union workers to receive retirement income for life.[96] The composite plan design also has its critics. International Brotherhood of Teamsters President James Hoffa believes the composite plans would not be adequately funded under the proposed legislation and the net result would be two underfunded plans.[97] The Pension Rights Center describes the proposed legislation as a bill that would allow "relatively healthy multiemployer plans with secure adequate benefit structure to transition to two inferior plans."[98]

Loan Program Proposals

In recent months, stakeholders representing both union and management have put forth potential legislative solutions they believe could solve even the most severely underfunded plans' funding problems. Recognizing the uphill political battle procuring a pure tax payer bailout of multiemployer plans would entail, these proposals involve providing loans to pension plans that would be paid back to the U.S. government over time.

Butch Lewis Act

In November 2017, Senator Sherrod Brown (D–OH) and Representative Richard Neal (D–MA) introduced the Butch Lewis Act (S. 2147 and H.R. 4444, respectively), which would allow struggling multiemployer pension plans to borrow money from Treasury to remain solvent.

The bill would create a new office within Treasury, known as the Pension Rehabilitation Administration (PRA). The PRA would allow financially troubled plans to borrow money for up to 30 years at low interest rates. The PRA would raise money for the loan program through the sale of Treasury-issued bonds to financial institutions. The 30-year period is supposed to give the borrowing plans ample time to repay the loan, while simultaneously incentivizing it to make smart long-term investments. The legislation would also prohibit the plans from making certain "risky" investments during the loan period. Every 3 years, the plans will have to report back to the PRA and demonstrate they are rehabilitating themselves and avoiding insolvency. The PBGC would also share some responsibility in financing the loan program by providing a plan the funds it requires beyond the loan program to pay benefits.[99]

Curing Troubled Multiemployer Pension Plans: Proposal

A stakeholder group made up of employers and unions has been proactive in formulating its own legislative proposal, and has been actively marketing the proposal to multiemployer plans, the NCCMP, and members of Congress. The proposal is titled "Curing Troubled Multiemployer Pension Plans" and the theme is that saving multiemployer plans will require shared sacrifices. Under this proposal, multiemployer plans will be saved from impending insolvency through a combination of federal loans, benefit reductions, and surcharges to plan participants.

Under the proposal, any plan that is in critical and declining status would be eligible for a federal loan. The plan would submit an application to the Department of Treasury, together with an actuarial certification that the plan is critical and declining and that the loan proceeds would be sufficient to cure the plan's funding issues and that the plan could repay the loan. The loan proceeds would cover the plan's negative cash flow (*i.e.,* the difference between the amount the plan pays in benefits each month, plus administrative expenses and the amount the plan receives in employer contributions).

A plan would be able to take up to three loans. The total amount of the loan would be calculated by the plan's actuary, and would be sufficient to pay five times the projected contribution income and earnings minus benefit payments and administra-

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[96] "Examining Reforms to Modernize the Multiemployer Pension System," testimony of Randy G. DeFrehn, April 29, 2015.

[97] "Teamsters Strongly Oppose New House 'Composite' Pension Legislation," *Teamsters,* September 22, 2016, *https://teamster.org/news/2016/09/teamsters-strongly-oppose-new-house-composite-pension-legislation.*

[98] "Composite Bill Legislative Summary," Pension Rights Center, November 10, 2016, *http://www.pensionrights.org/issues/legislation/composite-bill-legislative-summary.*

[99] "Brown Announces Plan to Protect Ohio Pensions, Keep Promises to Ohio Workers," press release, Sherrod Brown Senator for Ohio, November 12, 2017, *https://www.brown.senate.gov/newsroom/press/release/brown-announces-plan-to-protect-ohio-pensions-keep-promises-to-ohio-workers.*

tive expenses. The proposal refers to this amount as the "shortfall." The interest rate on the loan would be 1% and would be paid over 30 years, with interest-only payments during the first 5 years (or 10 years if two loans are necessary, and 15 years if three are needed).

The proposal also requires plans to reduce all benefit payments by 20% within 60 days after the loan application is approved. These benefit reductions would apply to all participants and there would be no protected classes. The reductions would apply even if they resulted in a participant receiving less than the PBGC guarantee. The 20% reduction would also apply to those participants who are not yet receiving benefits. Proponents of the proposal assert that because the loan will cover the shortfall, and the shortfall is calculated using the unreduced benefit amounts, plans will have an opportunity to improve its funded status through investment performance.

After the initial 5-year loan period, the plan's actuary will determine whether the plan is still in critical and declining status. If the plan is still critical and declining, the shortfall is recalculated (again without including benefit reductions) and a new loan amount is calculated and paid in monthly installments. If the plan is no longer in critical and declining status, repayment of the loan principal begins. Benefit reductions would remain in place until the plan is neither in critical or endangered as defined in the PPA.

The Curing Troubled Multiemployer Pension Plans proposal estimates that approximately $30 billion in loans might be necessary to save underfunded multiemployer plans. In order to reduce the risk of default on the loans (the plans will be paying interest only for 5 to 15 years), a multiemployer plan risk reserve pool (MRRP) would be established. The MRRP would be funded by imposing monthly surcharges on participants and employers, and by increasing PBGC premiums that multiemployer plans pay. PBGC would administer the MRRP and would invest the money in a trust separate from PBGC's other assets.

Draft Federal Credit Proposal

The NCCMP has put forth its own proposal. The NCCMP was instrumental in designing and lobbying for the passage of MPRA and firmly believes that Central States' funding issues would have been resolved if Treasury had approved Central States MPRA application.[100]

The NCCMP proposal is similar to the shared sacrifices proposal. The NCCMP's Draft Credit Proposal (DCP) also contemplates federally subsidized 30-year loans at a 1% interest rate. According to NCCMP, it has modeled its program using data from five plans and that each plan demonstrated that it would maintain solvency and be able to repay the loan. The DCP provides for three alternatives to be presented to Congress.

Alternative 1 would require no benefit reductions and the federal government would pay all credit subsidy costs. The credit subsidy cost is the estimated long-term cost to the government of a direct loan or loan guarantee, calculated on a net present value basis and excluding administrative costs. The NCCMP concedes that there is no precedent for any federal credit program that did not require the recipients to restructure their obligations and governance.[101] It is thus hard to imagine that Alternative 1 would be adopted given the current political climate.

Alternative 2 requires the same 20% across the board reduction in benefits that the shared sacrifices proposal calls for. Unlike the 20% UPS reductions, which would be used to provide plans with the ability to earn their way back to solvency, the reductions under the DCP would be paid to the government to reduce the cost of the government subsidy. The government would pay any remaining subsidy costs. The NCCMP is on record that it will not support any tax or other payment on the multiemployer plan system to pay for or credit-enhance the loan program because the structure is consistent with the Federal Credit Reform Act.[102]

Alternative 3 also requires a 20% across-the-board benefit reduction, and then requires any additional amounts needed to achieve a zero credit subsidy to the government.[103]

[100] Michael D. Scott, *Multiemployer Pension Facts and the Draft Emergency Multiemployer Pension Loan Proposal,* September 20, 2017, 8.
[101] *Id.,* 11.
[102] *Id.*
[103] *Id.*

The NCCMP recognizes that for plans like Central States and the UMWA Plan, time is of the essence in passing a solution. Each day that goes by brings both plans closer to the death spiral from which there would likely be no return. The NCCMP believes that its proposal maximizes the probability of success and would be palatable to the government, which makes implementation more likely.

CONCLUSION

Although most multiemployer pension plans are not in endangered or critical status, a significant crisis is looming in the multiemployer system. Most plans have survived last decade's two financial crises and absorbed the impact of a dwindling ratio of active participants to retirees. These plans survived primarily due to a combination of benefit reductions and contribution increases allowed by the Pension Protection Act of 2006, as well as an improving economy. Some plans might be able to survive if they make significant Multiemployer Pension Reform Act of 2014 reductions to benefits in pay status. Those appear to be the fortunate plans.

Unfortunately, some plans are nearing the death spiral, where even maximum reductions under the Multiemployer Pension Reform Act of 2014 will not be sufficient to stave off insolvency. At the same time, the gap between those critical and declining plans and healthier funds continues to widen, while the Pension Benefit Guaranty Corporation's insolvency is quickly approaching. If these plans fail, the negative effects will be felt by the participants and their families, local economies, and U.S. taxpayers as a whole.

The Multiemployer Pension Plan Crisis: Businesses and Jobs at Risk

U.S. Chamber of Commerce

EXECUTIVE SUMMARY

Employers that are contributing to multiemployer pension plans entered into these agreements with the goal of providing competitive benefits and a secure retirement to their workers. However, many of these plans are now in jeopardy, with insufficient resources to pay promised benefits. This is a threat both to retirees and employers.

At the end of 2017, the U.S. Chamber of Commerce issued a report detailing the many factors that have led to the current multiemployer pension plan crisis.[1] With the Joint Select Committee on Solvency of Multiemployer Pension Plans now considering solutions, the Chamber is issuing this new report to inform the Committee, and others, of the issues facing contributing employers and the potential consequences likely to befall these businesses should the plans they are funding become insolvent.

In many ways, this crisis has put the multiemployer system into uncharted waters. Although 72 multiemployer plans have gone insolvent to date, the sheer number and size of plans headed toward this fate during the next decade present the system with challenges of a size and scope never seen before.

But the threat to businesses has already begun to hit home. The potential fate of the multiemployer system has already begun to impact how they operate. As the financial conditions of multiemployer plans have deteriorated, required contributions have increased—often doubling or tripling within a space of only a couple of years. Despite these increased contributions, active workers are seeing a decrease in the accrual of benefits, which reduces the ability of a business to retain talent. Some employers who may wish to exit the multiemployer system are trapped, because withdrawal liability exceeds the value of their business. In addition, the potential for withdrawal liability is beginning to impact the ability of some employers to get and maintain credit.

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[1] U.S. Chamber of Commerce, "The Multiemployer Pension Plan Crisis: The History, Legislation, and What's Next?", December 19, 2017, *https://www.uschamber.com/report/the-multiemployer-pension-plan-crisis-the-history-legislation-and-whats-next.*

Plan insolvency will obviously exacerbate the problems faced by contributing employers. If a plan goes insolvent but does not terminate, businesses could be required to pay contributions in perpetuity—meaning a permanent strain on their finances. However, if an insolvent plan does terminate, the financial situation for employers becomes even more drastic. Contributing employers could be assessed with immediate withdrawal liability; could be part of a mass termination; and/or could be subjected to minimum funding rules which would require even higher contributions and possible excise taxes. Any one of these scenarios could drive an employer into bankruptcy.

In addition to the threat of an individual plan becoming insolvent, there is a significant concern that such an outcome will cause other plans to fail—what is known as the "Contagion Effect." The financial solvency of a number of multiemployer plans is dependent upon only one or two contributing employers, and these businesses also contribute to several other plans. If one plan failure causes a major contributing employer to be unable to make continued contributions to other plans, those plans could fail as well. Again, this is uncharted territory; however, it is reasonable to foresee that if a contributing employer becomes financially distressed by one plan failure, it would have a detrimental effect on the other plans to which that employer contributes.

It is important for those charged with finding a solution for the multiemployer funding crisis to understand the very real threats facing employers as well as retirees and taxpayers. The U.S. Chamber presents this report to help all interested parties understand the serious risks that the multiemployer pension crisis present to businesses, jobs, and retirement security.

INTRODUCTION

The multiemployer pension plan system is in crisis and its potential collapse will have a catastrophic effect on participants and beneficiaries of multiemployer pension plans, contributing employers to such plans, and the U.S. economy in general. Retirees face the prospect of severely reduced benefits; current workers face the prospect of accruing little or no benefit for the contributions being made on their behalf; and many contributing employers face liabilities that far exceed the net worth of their companies. Making matters worse, the Pension Benefit Guarantee Corporation (PBGC), the federal corporation that insures private multiemployer plans, is itself projected to go insolvent by 2025.

According to the PBGC, approximately 130 multiemployer pension plans—including two of the largest plans—are in Critical and Declining Status, which means that they are projected to become insolvent within 15 years.[2] While it is true that the vast majority of multiemployer pension plans are Green Zone plans—meaning they are not in distress status—it is equally true that the contributing employers to those plans are often the same contributing employers to the 130 Critical and Declining plans. If only a handful of those 130 plans become insolvent within the next 3–5 years—a very likely scenario—the contributing employers will face severe consequences, including the ultimate price of bankruptcy.

In enacting the Multiemployer Pension Reform Act of 2014 (MPRA), Congress focused on providing tools to plan trustees to avoid insolvency. Left unanswered was the question of what happens when there are large-scale plan insolvencies. Multiemployer plans, participants, and contributing employers are in uncharted waters when it comes to the issues confronting them today. The funding problems that currently exist are unprecedented in the more than 70 years that these plans have been in existence. While most of the focus, and rightly so, has been on the catastrophic effect pension plan insolvencies will have on plan participants and the communities in which they live, the employers that employ these participants (and in many cases, that employ many more people than just the plan participants) are at extreme risk of being put out of business. Whether they are required to contribute at exorbitantly high contribution rates in perpetuity to stave off withdrawal liability or plan termination, or whether they are forced to withdrawal by trustees and/or the PBGC, or whether they become required to make up a minimum funding deficiency, American business are in a precarious position.

[2] Pension Benefit Guarantee Corporation, "FY 2017 Projections Report," *https://www.pbgc.gov/sites/default/files/fy-2017-projections-report.pdf.*

CRITICAL ISSUES CURRENTLY FACING EMPLOYERS

Even before a plan reaches insolvency, there are critical issues that can plague contributing employers—many of which are adversely affecting the ability of employers to grow their businesses, expand their workforces, or pass on businesses to family.

Potential Withdrawal Liability Negatively Impacts Business Decisions. Withdrawal liability is not "booked" until there is a termination, or partial termination, of the plan. However, the Financial Accounting Standards Board (FASB) requires contributing employers to disclose certain information about the multiemployer pension plans in which they participate.[3] As the depth of the multiemployer pension crisis is increasing, employers are finding that ordinary business activities are being affected by the fear of the potential for withdrawal liability. Even though the employers have not been assessed a withdrawal liability, some banks and lenders are questioning these employers creditworthiness, leading to less optimal lending rates or even denial of credit.

In other situations, certain employers have lost the opportunity to expand their business operations through mergers because other companies do not want to be associated with the potential for future withdrawal liability. Small family businesses are deciding to shut their doors, rather than pass the business down to heirs for fear of leaving them to pay a future withdrawal liability. All of these events results in lost business opportunities and fewer jobs.

Employers Are Facing Unexpected Partial Withdrawal Liability. To ensure employers that gradually reduce their contributions to a multiemployer plan do not escape withdrawal liability, ERISA has rules under which a partial cessation of the employer's obligation to contribute could trigger liability. A partial withdrawal occurs when there is:

- A decline of 70% or more in the employer's contribution base units; or
- A partial cessation of the employer's obligation to contribute.

Due to the declining number of union workers, there are businesses that have a dwindling union workforce. If the number of those employees declines by 70% or more or if an employer ceases to contribute for those employees at a facility that continues to operate, the employer can be assessed a partial withdrawal liability. The amount of liability for a partial withdrawal is based on the liability for a complete withdrawal liability, calculated under a formula in the law.[4] Because of the amount of some plans' unfunded liabilities, the partial withdrawal liability can be high enough to impact the ability of an employer to efficiently run a business and can put a small employer out of business completely.

High Contribution Rates Thwart Employee Retention. Owing to increased liabilities, employer are faced with increasing contributions. There are some employers paying $15.00 or more per hour to plans for every hour an employee works. Because of the unfunded liabilities associated with bankrupted contributing employers, employees understand that they are never going to receive a benefit that is commensurate with the contribution rate the employer is paying. This provides a disincentive for the employee to stay with the employer. Employee retention problems threaten an employer's competitiveness. Furthermore, if enough employees leave, and the employer cannot replace them, it can lead to a partial or complete withdrawal.

CRITICAL ISSUES FACING EMPLOYERS DURING A PLAN INSOLVENCY

Most of the discussion involving the consequences of multiemployer pension plan insolvency has focused on what will happen to retirees when some of the larger mul-

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[3] FASB requires the following disclosures: (1) The amount of employer contributions made to each significant plan and to all plans in the aggregate; (2) An indication of whether the employer's contributions represent more than five percent of total contributions to the plan; (3) An indication of which plans, if any, are subject to a funding improvement plan; (4) The expiration date(s) of collective bargaining agreement(s) and any minimum funding arrangements; (5) The most recent certified funded status of the plan, as determined by the plan's so-called "zone status," which is required by the Pension Protection Act of 2006; and (6) A description of the nature and effect of any changes affecting comparability for each period in which a statement of income is presented. "Financial Accounting Standards Board Accounting Standards Update No. 2011–09" (the Update), *https://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=1176156724606.*

[4] ERISA § 4205, 4206, and 4208.

tiemployer plans become insolvent and can no longer pay promised benefits.[5] While there is no doubt that widespread multiemployer pension plan insolvencies will have disastrous consequences for retirees and will negatively affect the communities in which they live, insolvencies also pose severe risks to the continued viability of contributing employers. Skyrocketing pension costs have already made it difficult for employers in some industries to compete. An onslaught of pension plan insolvencies would likely lead to employers filing bankruptcy and/or dissolving. Many of these companies employ union and nonunion workforces. When these employers shut down because of multiemployer pension plan costs, all employees' jobs are threatened—not just those employees who participate in multiemployer pension plans.

The Credit of Employers, Particularly Small Employers, Could Be Impacted by the Insolvency of a Systemically Important Plan. There are current consequences, short of bankruptcy, that contributing employers could face. Of primary concern are the consequences of the insolvency of a systemically important plan. For purposes of approving a benefit suspension, MPRA established a new category of multiemployer plans—systemically important—that was formally defined as those plans the PBGC determines as having a present value of projected financial assistance payments exceeding $1 billion if benefit suspensions were not implemented.[6]

Less formally, a systemically important plan is viewed as a plan that poses a system-wide risk if allowed to become insolvent. Since passage of MPRA, no systemically important plan has gone insolvent. Yet several plans—including Central States—are in Critical and Declining status, meaning that they are projected to become insolvent within 15 years. The financial markets and other lenders may be willing to accept withdrawal liability risk from relatively small multiemployer plans that are currently insolvent, but it is highly unlikely they will accept such risk from an insolvent systemically important plan like Central States.

Nine out of 10 contributing employers to Central States are small businesses with fewer than 50 employees. It is highly probable that the overwhelming majority of these businesses have lines of credit or other capital debt predicated on maintaining asset/liability ratios that would be violated following a Central States insolvency.

Ongoing Contributions to an Insolvent Pension Plan Can Impose Insurmountable Financial Burdens on Contributing Employers. A misconception exists on the part of some that when a multiemployer plan becomes insolvent, the PBGC takes over administration of the plan or that the plan is terminated. While the PBGC does take over insolvent single employer plans, it does not take over the administration of multiemployer plans. When a multiemployer plan becomes insolvent, the plan continues to operate and be administered by the plan's trustees.

If the plan is not terminated,[7] it continues collecting employer contributions and paying pension benefits at a reduced level. After insolvency, employers will continue to have an obligation to contribute to the plan at the collectively bargained rate, consistent with the rehabilitation plan. Active employees of contributing employers will continue to earn pension credit. The PBGC provides financial assistance to the multiemployer plan in the form of a loan. The plan's trustees are required to sign a promissory note and a security agreement giving the PBGC a security interest in all plan assets, which generally includes all employer contributions.

The continuation of employer contributions allows the employer to avoid paying withdrawal liability. Additionally, the contributions are usually being made consistent with the terms of the plan's rehabilitation plan. This is important because so long as the plan's trustees continue to comply with the rehabilitation plan, the minimum funding requirements of ERISA and the Internal Revenue Code (Code) do not apply.[8] Avoiding minimum funding and withdrawal liability is critical for most employers if they have any hope of staying in business.

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[5] According to a study by the Society of Actuaries, there are approximately 1.4 million participants currently covered by multiemployer plans that are in danger of becoming insolvent in the very near future, 719,000 of whom are retirees currently receiving annual benefits totaling more than $7.4 billion. "Multiemployer Pension Funding a Big Challenge for PBGC, Wider Economy," *www.planadvisor.com/multiemployer-pension-funding-big-challenge-pbgc-wider-econmy,* John Manganaro.

[6] IRC § 432.

[7] A discussion of plan termination upon insolvency is discussed later in the paper.

[8] Although the general funding rules do not apply to plans that have adopted and comply with the terms of a rehabilitation plan, there are differing interpretations of how insolvency affects the ability to comply with a rehabilitation plan.

Nevertheless, the contribution rates that many employers are paying into multiemployer plans are exorbitantly high because the contribution rates for the last several years have been imposed by the plan's trustees via rehabilitation plans. Rehabilitation plans are designed to have the plan emerge from critical status or forestall possible insolvency and therefore require significantly higher contributions than what had previously been required. Most current contribution rates for plans facing impending insolvency have not been established through traditional collective bargaining between the union and the employer. While most employers would rather absorb the higher contribution rates than incur withdrawal liability in the near term, the long-term effect of the high rates is that they make the employer less competitive. For example, higher pension costs are ultimately passed on to customers, who may look elsewhere to do business.

Another problem for employers that contribute to insolvent plans is that the exorbitantly high contribution rates make it harder to retain employees. Employees know what the contribution rates are, and they know they are not receiving any additional benefit accruals because of those rates. In fact, the exorbitant pension contribution rates cause wage stagnation, or even reduction, because the employer cannot afford to pay both pension and wage increases. While active employees already are concerned about future benefit accruals, once a plan is insolvent, the maximum benefit the worker can receive is the PBGC guaranteed benefit. Employers are essentially paying contributions into a "black hole." Employees understand that they are never going to receive a benefit that is commensurate with the contribution rate the employer is paying. Consequently, there is no incentive for the employee to stay with the employer.

While continuing to pay contributions in an insolvent plan may save an employer from short-term economic disaster, it is doubtful that employers can endure such high pension contribution rates over the long term. It is likely that plan insolvency will lead to employers going out of business, filing for bankruptcy, or both. It is just a matter of time.

Employers May Not Be Able to Avoid Withdrawal Liability. While continuing to contribute to an insolvent plan will generally allow an employer to avoid the imposition of withdrawal liability, there are scenarios where withdrawal liability can be imposed despite the employer's intention to remain a contributing employer to the plan. The issue is problematic for employers because they have no control over the withdrawal.

To avoid bankruptcy and continue to retain and pay their employees, employers may try to negotiate lower contribution rates after the PBGC has begun to provide financial assistance. This would allow the employer to potentially reduce its pension costs and/or pay a portion of what otherwise would be paid into a "black hole" into another benefit plan for its employees or directly to the employee in the form of wages.[9]

Since employers are generally paying contributions pursuant to a rehabilitation plan even post-insolvency (complying with the terms of a rehabilitation plan likely prevents the employer from being subject to the minimum funding requirements), employers would have to get the plan's trustees to agree to accept the lower rate. This would require the trustees to amend the rehabilitation plan in most cases. If the trustees reject the lower contribution rate, the employer must either continue contributing at the higher rehabilitation plan rate or risk the plan's trustees rejecting the employer's continued participation in the plan. If the trustees reject the employer's continued participation, the employer will incur withdrawal liability. Given the choice between a forced withdrawal and the assessment of withdrawal liability, most employers will choose to continue to pay the higher contribution rate.

Even if the plan's trustees are inclined to accept a lower contribution rate, it is possible that the PBGC would object to a decrease in the contribution rate. Although the PBGC does not get involved or weigh in on labor-management negotiations, the PBGC is a secured party in all assets of an insolvent plan. Because employer contributions are part of the plan's assets, the PBGC could take the position that a reduction in the contribution rate constitutes a diminution in the collateral in which it is secured. Additionally, the PBGC has the authority under the insolvency provisions of ERISA to provide financial assistance under conditions the PBGC determines are "equitable and are appropriate to prevent unreasonable loss

[9] Negotiating lower contribution rates is not always possible because doing so would likely require the approval of entities other than the employer and the union.

to" the [PBGC] with respect to the Plan.[10] Although the PBGC has not yet opined on a post-insolvency employer contribution rate decrease, the statutory language arguably gives the PBGC the authority to do so. If the PBGC advises plan trustees that PBGC-provided financial assistance will be withheld if the trustees accept a lower contribution rate, it is an absolute certainty that the trustees will reject the lower rate.

If an employer cannot negotiate a lower contribution rate but agrees to continue paying at whatever exorbitant rate is in effect, the employer can still find itself subject to a withdrawal liability assessment. As discussed earlier, an employer that is contributing to an insolvent multiemployer plan is generally paying a fairly high contribution rate. The employees on whom the employer is contributing are not earning any benefit or at least will not accrue more than the PBGC guarantee. Employees who know that their employers are paying $15.00 or more per hour into a pension plan for which the employee perceives they are not receiving any benefit is likely to leave that employer. It will be hard for the employer to attract new employees to replace the departing employee for the same reasons. If all the employees working under the collective bargaining agreement leave, the employer will have essentially ceased operations under the plan, and withdrawal liability, or at least a partial withdrawal liability, could be assessed.[11]

A Mass Withdrawal Substantially Increases Expected Withdrawal Liability and Can Push an Employer Into Bankruptcy. The previous examples in this report describe scenarios where an employer wants to stay in the plan but still incurs an unwanted or unplanned withdrawal. Some employers may do a cost-benefit analysis and determine that exiting an insolvent plan and paying their current withdrawal liability is less risky than remaining in the plan and continuing to pay exorbitant contribution rates in perpetuity. However, employers that leave an insolvent plan are exposed to a greater risk of unintentionally being part of a mass withdrawal. In general, withdrawal liability payments are limited to 20 years; however, this cap does not apply to mass withdrawal liability. And employers with mass withdrawal liability are often required to pay withdrawal liability over a period that is longer than 20 years.[12]

A mass withdrawal occurs upon withdrawal of every employer from the plan, the cessation of the obligation of all employers to contribute to the plan,[13] or the withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw from the plan.[14] Employers that withdraw during a period of three consecutive years within which substantially all employers that have an obligation to contribute to the plan are presumed to have withdrawn due to an agreement or arrangement.[15] Therefore, an employer that intentionally withdraws from a plan and intends to pay its calculated withdrawal liability could become part of a mass withdrawal if substantially all of the other employers that contribute to the plan withdraw within the three-year period before or after the employer withdraws. The employer that intends to withdraw has no control over what other employers do. The fact that the plan is insolvent and participants are not receiving any benefit beyond the PBGC guaranteed amount makes it more likely that a mass withdrawal may occur than if a planned withdrawal is made from a financially healthy plan.

The danger of being part of a mass withdrawal is that it can require an employer to pay much more in withdrawal liability than it would under a standard withdrawal. In a mass withdrawal, employers are subject to reallocation liability. Reallocation liability means that the plan's full cost of all unfunded vested benefits is allocated among all withdrawing employers. In a mass withdrawal, the withdrawal liability is calculated using PBGC interest rates that are often lower than the rates used by the plan in a standard withdrawal, which results in a higher liability.[16]

Reallocation liability can significantly increase the amount of the plan's unfunded liability that is allocated to an employer. In addition, the 20-year cap applicable in a standard withdrawal does not apply to mass withdrawal liability. This could result in some employers having to pay withdrawal liability for a period longer than 20 years. In situations where an employer's annual payments are not high enough to amortize the full liability, the employer theoretically has to pay forever.

[10] ERISA § 4261(b)(1).
[11] ERISA § 4203(a)(2).
[12] ERISA § 4219.
[13] ERISA § 4041A(a)(1)(2).
[14] 29 CFR § 4001.2.
[15] The presumption can be rebutted by the employer.
[16] ERISA § 4219.

An employer that makes a business decision to withdraw from a plan and pay its withdrawal liability could end up in bankruptcy if a mass withdrawal occurs within the three-year period after the employer withdraws. For employers that make up a large percentage of a plan's contribution base, the risk of a mass withdrawal occurring is greater because once smaller employers find out that the largest employer is leaving, the smaller employers might be incentivized to leave too so that they are not the "last man standing." [17]

Plan Termination Could Result in the Reinstatement of Minimum Funding Rules and Excise Taxes. Multiemployer plans are generally subject to minimum funding standards.[18] If the employers do not make the contribution necessary to balance the funding standard account, the plan has a minimum funding deficiency, and contributing employers can be assessed excise taxes on top of having to make up the deficiency. The initial tax is 5% of the funding deficiency.[19] If the funding deficiency is not cured within the taxable period, the excise tax is 100% of the funding deficiency.[20]

The Pension Protection Act of 2006 (PPA) changed the general funding rules for financially troubled multiemployer plans. Plans that are certified as being in critical status are allowed to have minimum funding deficiencies without the employers having to make up the deficiency within the taxable year or paying excise taxes if certain conditions are satisfied.[21] One such condition is that trustees of plans in critical status are required to adopt a rehabilitation plan. A rehabilitation plan is one that consists of a list of options, or range of options, for the trustees to propose to the bargaining parties, formulated to provide, based on anticipated experience and reasonable actuarial assumptions, for the plan to cease to be in critical status by the end of the rehabilitation period (generally 10 years). The rehabilitation plan may include reductions in plan expenditures, reductions in future benefit accruals, or increases in contributions, or any combination of such actions. The rehabilitation plan must be updated annually and the plan must show that it is making scheduled progress toward emerging from critical status. If the trustees determine that, based on reasonable actuarial assumptions, the plan cannot reasonably be expected to emerge from critical status by the end of the rehabilitation period, the plan must include reasonable measures to emerge from critical status at a later time or to forestall possible insolvency.[22]

Thus far, plans that have become insolvent have not terminated, and because employers continue to contribute to the plan in accordance with the rehabilitation plan, the minimum funding rules do not appear to automatically apply just because a plan becomes insolvent. There are situations, nonetheless, where it appears that a contributing employer to an insolvent plan could be required to make up a plan's minimum funding deficiency and/or be assessed an excise tax. Although this has not happened yet, the risk of it happening increases as the insolvency date of the PBGC gets closer. An insolvent PBGC leaves insolvent plans with no other funding source other than contributing employers. When the PBGC can no longer pay the guaranteed benefit, employers could be required to fund the benefits that PBGC previously paid.

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[17] Every employer in a multiemployer pension plan is responsible for all pension liabilities of every other employer in the plan. Thus, employers that withdraw from the plan without paying their withdrawal liability leave their liabilities behind for those still left in the plan—thus, this is referred to as the "last man standing."

[18] ERISA and the Code's minimum funding rules require multiemployer plans to maintain a funding standard account. The funding standard account gets debited for charges related to benefit accruals, investment losses, and other negative plan experience. Credits are given for employer contributions, investment gains, and other positive plan experience. The minimum required contribution to a multiemployer plan is the amount needed, if any, to balance the accumulated credits and accumulated debits to the funding standard account. If the debits exceed the credits, there is a negative balance, and contributing employers must pay the amount necessary to balance the account. ERISA §§ 302 and 304; IRC §§ 412 and 431.

[19] IRC § 4971(a)(2).

[20] IRC § 4971(b)(2). A multiemployer plan can apply for a minimum funding waiver from the IRS. However, the IRS cannot waive the minimum funding standard for more than 5 of any 15 consecutive plan years. There are also procedures for employers to apply for a waiver of the 100% excise tax, but the IRS will not appear to waive the 5% excise tax. ERISA § 302(c).

[21] ERISA § 302(a)(3). A plan is in critical status if it (1) is less than 65% funded and will either have a minimum funding deficiency in 5 years or be insolvent in 7 years; or (2) will have a funding deficiency in 4 years; or (3) will be insolvent in 5 years; or (4) liabilities for inactive participants is greater than the liability for active participants, contributions are less than the plan's normal cost, and there is an expected funding deficiency in 5 years. ERISA § 305(b)(2).

[22] IRC § 432.

One scenario that poses a risk to employers as plans and the PBGC go insolvent is the requirement that a plan's rehabilitation plan must satisfy certain Code provisions. If a multiemployer plan fails to make scheduled progress under the rehabilitation plan for three consecutive plan years or fails to meet the requirements applicable to plans in critical status by the end of the rehabilitation period, for excise tax purposes, the plan is treated as having a funding deficiency equal to (1) the amount of the contributions necessary to leave critical status or make scheduled progress or (2) the plan's actual funding deficiency if any.[23]

It is possible that the IRS could take a more aggressive approach in assessing excise taxes when the PBGC can no longer provide a backstop for insolvent plans. This is troubling because employers have no control over whether the rehabilitation plan satisfies the requirements of the Internal Revenue Code. Nor do they have any control over the actuarial certification. This means that an employer that continues to make contributions in accordance with its rehabilitation plan post-insolvency can still be required to make up a funding deficiency and pay an assessed excise tax. Because the funding deficiencies of most insolvent plans are large, this requirement would effectively put the employer out of business.

Another complication for employers is the broad authority that the PBGC wields over an insolvent plan. As noted previously, PBGC has the authority under the insolvency provisions of ERISA to provide financial assistance under conditions that the PBGC determines are "equitable and are appropriate to prevent unreasonable loss to" the [PBGC] with respect to the plan.[24] Accordingly, if the PBGC determines that the continued operation of the plan somehow poses a financial risk to it, the PBGC could impose as a condition of providing financial assistance that the plan be terminated. There are three ways a multiemployer plan can be terminated: (1) by mass withdrawal, (2) by converting the plan to an individual account plan, (3) or by amending the plan to provide that participants will not receive credit for any purpose under the plan for service with any employer after the date specified in the amendment. While ERISA provides that minimum funding does not apply to a plan that terminates by mass withdrawal, there is no such provision relating to termination by plan amendment. While the PBGC has opined that insolvent plans will continue to operate, there appears to be at least a statutory mechanism through which a plan can be terminated without consent of the employer or even the trustees. If such a scenario were to arise, many employers would be forced out of business.

THE CONTAGION EFFECT

Many employers contribute to more than one multiemployer plan. That is because they have regional or national operations, or because they employ people who work in multiple industries or trades. There is a valid concern that the failure of a multiemployer plan, particularly a large plan, could cause other plans to go insolvent. For example, if any of the scenarios described in this paper were to come to fruition, and employers were assessed withdrawal liability, a minimum funding deficiency and/or an excise tax, it could cause the employer to go out of business. If such an employer contributes to one or more other plans, then it would likely be unable to continue contributing to the other plans. If the employer is the major contributing employer to these plans, all the plans to which the employer contributes would be in jeopardy. To date, no extremely large plan has gone insolvent, but there are several that are projected to go insolvent within the next 5 to 10 years.

Moreover, many Critical and Declining Status plans are dependent on a very small number of employers to provide a disproportionate share of the contributions being made to the plans. For instance, in the UMW 1974 Pension Plan, there are currently 10 contributing employers with approximately 97% of the contributions derived from two controlled groups of signatory companies. For the New York State Teamsters Conference Pension and Retirement Fund, there are 156 contributing employers with approximately 83% of the contributions derived from two companies. For the Local 707 Teamster Pension Fund, there are 8 remaining contributing entities with 84% of the contributions coming from 2 companies. For the Tri-State Pension Plan, there are 9 contributing employers with one controlled group entity accounting for 95% of the contributions.

[23] Plans may apply for a waiver if the failure is due to reasonable cause and not willful neglect.

[24] ERISA § 4261(b).

Taken together, these factors pose a dual risk. If a large, systemically important plan were to become insolvent, it has the potential to adversely impact the contributing employers and their participation in other plans. Conversely, if one of the large employers were to exit one of the plans mentioned here, it would significantly and negatively impact the plan, the remaining contributing employers, and ultimately the beneficiaries.

CONCLUSION

The multiemployer pension plan crisis puts businesses and jobs at significant risk. Under current rules, employers cannot leave these plans without paying large sums or claiming bankruptcy. At the same time, ongoing contributions to plans that are not able to provide promised benefits is an untenable financial situation for many employers, and plan terminations threaten to bankrupt many contributing employers. All these situations negatively impact the ability to provide jobs, make capital investments, and increase salaries. Congress must find a solution to avoid the most devastating effects of this multiemployer pension crisis.

COMMUNICATIONS

AMERICAN BAKERS ASSOCIATION
601 Pennsylvania Avenue, Suite 230
Washington, DC 20004

TESTIMONY OF ROBB MACKIE, PRESIDENT AND CEO

Chairmen Hatch and Brown, and Members of the Committee:

Thank you very much for the opportunity to submit testimony to the Committee today as it hears from the employer community on the unique challenges facing multiemployer plans. The American Bakers Association ("ABA") is the Washington D.C.-based voice of the wholesale baking industry. Since 1897, ABA has represented the interests of bakers before the U.S. Congress, federal agencies, and international regulatory authorities. ABA advocates on behalf of more than 1,000 baking facilities and baking company suppliers. ABA members produce bread, rolls, crackers, bagels, sweet goods, tortillas and many other wholesome, nutritious, baked products for America's families. The baking industry generates more than $153 billion in economic activity annually and employs more than 799,500 highly skilled people.

Many of those people participate in multiemployer pension plans sponsored jointly by ABA member companies and the labor organizations that represent their employees in collective bargaining. ABA member companies that participate in these plans have much invested in them—hundreds of millions of dollars in contributions; countless hours serving—with labor representatives—on boards of trustees that oversee the operation of these plans; and—most importantly—the retirement security of our employees and associates.

Consequently, it is critical that one point be clear from the outset. This is not—as some have portrayed it—a "union problem." This is an employer problem; an industry problem; a national problem. Indeed, this is our collective problem—a challenge that we can and must meet to secure the retirements of many employees and former employees in our industry. The ABA therefore believes it is critical that all stakeholders—employers, plan participants, labor organizations, and the government and regulatory agencies responsible for pension plan oversight—be open to creative solutions as this Committee, and the entire multiemployer plan community, work to solve this issue in the days and weeks to come.

A Problem With a Number of Causes

The challenge facing the multiemployer plan community did not arise overnight; it developed over decades and was caused by numerous forces. Multiemployer plans have been in existence since at least the 1950s and have provided secure and relatively inexpensive retirement income to countless Americans. For years, these plans were financially healthy, enjoying relatively steady rates of return and with many more active participants than retirees.

Over time, demographic, financial and other challenges all took their toll. Many of these plans were well-funded into the last decade of the 20th century- enjoying very strong market returns for several years in a row. Indeed, due to artificially low limits on funding levels imposed by the tax code, many of these plans found themselves not only "fully funded" for withdrawal liability purposes (meaning that an employer could withdraw from the plan in those years with little or no withdrawal liability), but also having to adopt benefit increases to participants and/or give "contribution holidays" to contributing employers in order to maintain the tax deductibility of contributions for those employers. Ironically, while these changes benefitted all parties in the short term, these benefit increases contributed to longer term costs for these plans with which many are still contending today. In short, these artificially low limits on funding levels prevented many multiemployer plans from building up reserves in the good years that they could desperately use today.

In addition, many of the industries that historically supported these plans were shrinking. The deregulation of the trucking industry in the 1980s saw many smaller trucking companies exit the industry. Many manufacturing jobs were downsized or moved overseas. As the active base of these plans shrank, their retirement rolls increased. Plans that previously had many more actives than retirees saw those ratios shrink, approach even, and—in many instances—"flip" so that many such plans now have more retirees than actives, in some cases more than double the amount.

Finally, economic and legal factors played a role. The "Great Recession" of 2008 and 2009 hit many of these plans particularly hard. A plan that already has more retirees than actives is often using earnings on accrued assets (in addition to operating income from contributions) to pay benefits. While that is expected for a "mature" multiemployer plan, if such a plan suffers a dramatic and unexpected drop in asset values, it can be difficult for such a plan to recover.Because earnings and contributions are no longer sufficient to pay benefits, the plan has to dip into reserves to pay its ongoing benefit obligations, and the reserves are not there to support future earnings.

In addition, the nation's bankruptcy laws have often left these plans—and their participants—without sufficient protection in the wake of employer bankruptcies. When employers withdraw in bankruptcy, multiemployer plans are treated as unsecured creditors—resulting in little or in some cases no recovery. The withdrawing employer's share of the plan's underfunding remains with the plan, to be borne by the remaining employers in the event they ever withdraw.

Impact on the Baking Industry

The baking industry and ABA members have been directly confronted with these issues. Many ABA member companies participate in the Bakery and Confectionery Industry Union and Industry Pension Fund, one of the nation's largest multiemployer plans. This plan, historically well-funded, suffered losses similar to many other plans in the Great Recession. Shortly thereafter, its largest contributing employer withdrew in bankruptcy. Not only did this plan lose its single largest contributor, but the company utilized the bankruptcy laws to avoid paying any withdrawal liability to the plan—a loss to the plan of almost $1 billion.

Another plan to which ABA member companies contribute is the Central States Teamsters Plan, which has publicly projected insolvency in the 2025 plan year. Once the plan becomes insolvent, participant benefits will be reduced to levels guaranteed by the PBGC—if the PBGC multiemployer program still exists. PBGC's own multiemployer program is likewise projecting insolvency in 2025.

All of this uncertainty has a detrimental impact on our industry. Employers that remain active in these plans are seeing their potential withdrawal liability grow year after year. Moreover, many of these plans have funding improvement or rehabilitation plans in place that require annual increases in contributions. For example, one member company that participates in a multiemployer plan for its transportation employees reports that, in 2007, it was paying $3.49 per hour ($7,259 per year) for its transport drivers to participate in a multiemployer plan. Today, that contribution has increased to $8.55 per hour ($17,784 per year) and is projected to increase to $11.63 per hour ($24,169 per year) by 2022.

Such increases are simply not sustainable. They divert money that could otherwise be used for wage and health care contributions. Moreover, these increasing costs make it very difficult to devote capital to needed equipment improvement, or to attract investment for future growth. Indeed, the presence of these obligations on company balance sheets and the uncertainty they create imposes very real barriers to the acquisition of capital to fund future growth. And, perhaps most unfortunate of all, many of our smaller member companies—family-owned bakeries that have contributed to the cultural and social fabric of their communities for generations—are faced with no alternative other than bankruptcy because they can no longer bear the ever-increasing cost of these benefits.

The Quest for a Solution

The challenge is great; the solution will not come easily. Fundamentally, there are only three ways to rectify an underfunded multiemployer pension plan: (i) more time; (ii) reduced benefits; and (iii) more money. Time is in short supply. Many of the multiemployer funds in which our member companies participate are in "critical and declining" status, which means they have a projected insolvency date. Moreover, the "safety net" for these plans, the PBGC's multiemployer program, is itself projecting insolvency in 2025. Clearly we are out of time, which is why it is so important that this Committee find a workable solution that can be enacted this year.

Reducing benefits poses similar challenges. Many of these plans already pay relatively modest benefits. Reducing those benefits will move some recipients from impoverished to destitute. Many recipients of these benefits are at a point in their lives where they cannot—through work or otherwise—replace the income that is lost. Due to their advanced age, these retirees are simply unable to return to work in the industry—or in any job—to replace lost pension income. Finally, some of these plans have already reduced or eliminated so-called "adjustable benefits" under the Pension Protection Act of 2006 ("PPA"). Additional benefit reductions would compound those already (in some cases) significant cuts.

And finally, money. As noted above, many of the plans to which our member companies contribute have in place so-called "funding improvement plans" or "rehabilitation plans" required by PPA that impose percentage increases in employer contributions year after year. As detailed above, these increases are already driving member companies that cannot afford them out of the industry and into bankruptcy. Even employers who can afford them are diverting capital needed for improvements or that could be used for other employment needs to these ever increasing contributions, which are buying the same or—in some cases—reduced benefits.

If the money cannot come from the industry, where can it come from? One potential solution that is common to several proposals being discussed in the multiemployer plan community is the notion of low-interest loans to these plans, funded by debt instruments issued by—or guaranteed by—the federal government. Such a solution could give these troubled plans the short-te1m capital infusion they need to recover their funded status while continuing to pay benefits.

Obviously there are many issues that would need to be discussed and many questions that would need to be answered before such a proposal could be implemented: (i) What would be the conditions for receiving such a loan? (ii) What rules would govern repayment, including interest rate and term of the loan? (iii) Would loan proceeds need to be segregated from general plan assets? (iv) Would plans be required to reduce benefits in order to qualify for loans? If so, by how much? These are but a few of the myriad of questions and issues that would need to be addressed.

Concluding Thoughts

The multiemployer plan system does not need a federal "bail out," nor does the ABA support one. We do, however, support the quest for a solution that addresses the challenge before us—that restores retirement security to the more than 10 million Americans participating in 1,400 multiemployer plans. Low-interest loans to these plans could form the cornerstone of a plan that would restore these plans to solvency. Clearly, there could be other solutions that would similarly protect the interests of our members, their employees and former employees, and the communities in which they live. We encourage the Committee to keep an open mind and to work in a bipartisan spirit as it seeks a long-term solution to this problem. The ABA and its member companies stand ready to assist you through further dialogue, providing additional information specific to our industry, or in any other way that we can.

Thank you for the opportunity to submit these comments to the record of the Committee's deliberations.

ArcBest Corporation
8401 McClure Drive
Fort Smith, AR 72916

Statement of Judy McReynolds, Chairman, President, and Chief Executive Officer

Co-Chairs Hatch and Brown, and other distinguished members of the Committee, thank you for the opportunity to submit this statement regarding the impact of potential multiemployer pension plan reforms on employers generally and on the trucking industry specifically.

I am the Chairman, President, and Chief Executive Officer of ArcBest Corporation. Our largest operating subsidiary, ABF Freight System, Inc. (ABF), currently contributes to 24 multiemployer pension plans. ABF, which is based in Fort Smith, Arkansas, has been in continuous operation since 1923 and is one of the largest less than truckload (LTL) motor carriers in North America. ABF has more than 10,000 employees and provides interstate and intrastate direct service to more than 44,000 communities through 275 service centers in all 50 states, Canada, Puerto Rico, and Mexico.

ABF is a well-run company that has continued in business while competing in an industry now dominated by non-union carriers. We are at or near the top of the industry in all cost efficiency measures other than employee benefits. We are consistently recognized for excellence in safety, security and loss prevention. We are an eight-time winner of the American Trucking Association's Excellence in Security Award, a seven-time winner of the President's Trophy for Safety, and a seven-time winner of the Excellence in Claims & Loss Prevention Award. In January 2016, we were named to Chief Executive Magazine's "2016 Best Companies for Leaders List," and also received the Circle of Excellence award from the National Business Research Institute for our efforts in increasing employee engagement. We were named to Forbes' "America's Best Employers" list for 2016 and has been ranked on Fortune magazine's "Fortune 1000" list annually since 2013.

We have also done the right thing by funding lifetime retirement benefits for our employees. We have consistently made timely contributions to the 24 different multiemployer plans in which we participate. Over the last ten years, ABF has contributed more than $1.3 billion to multiemployer pension plans. Just since 2008, more than half of ABF's contributions have been to fund pensions of "orphan" participants, who were never employed by ABF. Due primarily to the bankruptcies of other participating employers, ABF has been forced to shoulder an increasing load as the plans have required increased contribution rates. The wave of bankruptcies in our industry was the result of trucking deregulation that was enacted in 1980. Since that time, the number of unionized trucking companies with which we compete has shrunk from more than 1,000 to a handful.

Despite our relatively small size, we are now the largest contributor to the deeply troubled Central States Teamsters Pension Fund (close to $80 million in 2017, compared to $32 million for the second largest contributor). The Teamsters, who represent about 83% of our workforce, have recognized the risk that these obligations place on ABF's viability. In our recently concluded bargaining of the National Master Freight Agreement, the Teamsters agreed to a contribution freeze for all of the plans to which we contribute because they were convinced ABF could not afford any increases in pension costs. ABF's retirement plan obligations have made it less competitive; hurt its market share due to higher costs that must be passed through to customers; and constricted future growth by reducing cash flow. If these costs increase further, they could jeopardize the financial viability of ABF.

A comparison of our retirement plan costs compared to those of our closest competitors is jarring. Our contributions to multiemployer pension plans average more than $18,000 per employee each year. For some plans, the contributions far exceed the average. For example, ABF's per-employee contribution to the New York State Teamsters Pension Fund was $33,221 in 2017. This compares to average contributions of $3,640–$4,576 per employee per year by YRCW, one of ABF's largest competitors, with other competitors far below even YRCW's level. In fact, ABF's retirement plans costs for its drivers are 10 to 20 times higher than those of its closest competitors that do not have multiemployer plan obligations. In addition, ABF's hourly pension and health plan costs now represent more than 75% of employees' wage rates, compared to around 30% in 1990.

There has been and will continue to be a lot of talk about "shared sacrifice." However, ABF has already made that sacrifice through its outsized pension contributions. ABF simply cannot afford any more direct or indirect increases in its pension-related costs. We care deeply about our active and retired employees. We want to be able to continue contributing to these plans and to ensure that our employees and retirees receive the promised benefits that we have so steadfastly funded.

ABF has been working since 2009 with other interested parties on possible legislative solutions to the multiemployer plan crisis. Our engagement has included proposals by Representatives Pomeroy and Tiberi; the Kline-Miller Multiemployer Pension Reform Act of the 2014; and the present, federal loan proposals. Despite the efforts of so many, the crisis has continued unabated, with many plans a decade or less away from insolvency. As the members of the Committee are well aware, the Pension Benefit Guaranty Corporation's Projection Report that was released on May 31, 2018 concluded that the multiemployer program will almost certainly run out of money by the end of fiscal year 2026, if not sooner.

The system needs to be fixed as quickly as possible. However, the details, mechanics, and funding of the reforms are up to the Congress. ABF is open to a program that saves plans from insolvency. However, as outlined in Exhibit B, there are three critical issues that ABF needs to be included in any reform program:

- First, there must be no direct or indirect cost increases for ABF and other struggling employers. We need to make sure that the cure does not kill the patient. ABF and other employers simply cannot afford any more increases. The loss of contributing employers is what has put so many multiemployer plans in their current predicaments. Imposing additional costs on struggling employers through, for example, contribution increases, surcharges and increased PBGC premiums (which are generally passed through to employers), would jeopardize the viability of these companies and further harm plans' contribution bases. In addition to the loss of thousands of jobs, it would compromise the ability of the plans to repay any loans they may have received if that is the approach the Congress chooses, and would make it more likely that the PBGC would ultimately have to step in.
- Second, struggling employers should be permitted to negotiate reductions in their pension contribution rates. If there is another economic downturn, ABF and other struggling employers may need to seek a reduction in their contribution rates in order to survive. The failure to allow such a reduction could result in the loss of thousands of jobs and further shrink the contribution bases of plans. It would be better to have a company reduce contributions rather than have the plan receive no contributions at all because the employer has been driven into bankruptcy. Of course, any contribution rate reduction could occur only if the labor union agreed to it.
- Third, there should not be any changes to statutory withdrawal liability calculation rules that would increase the costs of struggling employers that negotiate withdrawals from multiemployer plans. It may be in the best interests of active employees, the plan and the employer if the employer withdrew from the plan; paid its full withdrawal liability; and provided retirement benefits to active employees through a different mechanism. Because these withdrawals would be negotiated with the union, employees' interests would be protected. In addition, the plan would be protected because it would receive the withdrawal liability payments, determined in the normal manner, which is very protective of plans' interests.

Thank you for the opportunity to present our views on these critical issues. I would be pleased to answer any questions that the members of the Committee may have.

LETTER SUBMITTED BY JAMES E. JOHNSON

To: Congresswomen Debbie Dingell (D–MI)

This letter is to ask you to take a look at the Butch Lewis Act and vote for it to help my other 1.4 million workers and retirees and myself.

I have worked in the trucking industry for over 40 years as a mechanic. This retirement is very important to all of us. We worked hard for it. When I started work I was only making $1.65 an hour, which did not buy very much then, and it is also about that now.

I am a veteran of the Navy from 1960 to 1964. When I signed up for VA benefits, they told me I did not qualify for anything.

Please take a look at the Butch Lewis Act and vote for it. We would appreciate it very much.

Thank you,

James E. Johnson

LETTER SUBMITTED BY DAVID NADOLINSKI

June 20, 2018

Joint Select Committee on Solvency of Multiemployer Pension Plans
219 Dirksen Senate Office Building

To the Attention of: Mr. Chris Langan, Vice President of Finance, UPS, Atlanta, GA

Subject: Comments on Mr. Lagan's testimony on June 14, 2018

Dear Mr. Langan,

This is a rebuttal to your testimony in front of the Joint Select Committee.

I am a retired 31-year United Parcel Service employee from Buffalo, NY Teamsters local 449.

I challenge your testimony and am sickened by it.

You were in the position to give an objective opinion and representation of facts in the presence of that committee who are not as well informed as you are. Instead you chose to express the slanted corporate view with focus on the profits that you and other major stakeholders have in the outcome of this multiemployer pension crisis.

For the purpose of this rebuttal and commentary, I will focus on the New York State Teamsters Pension Fund which you coyly are strongly attempting to bundle into the demise of declining and critical status funds, most mentioned was the Central States Pension Fund.

I was very disappointed that there was no mention of NYS Teamsters Pension Fund (NYSTF) and the cuts sustained to our fund under the Multi-employer Pension Reform Act, also known as MPRA.

Roughly 34K Teamsters are affected by these cuts, of which *4K to 5K are UPS retirees.*

Be assured there will be those that will not stand by and accept quietly your proposal for a 20% cut in our retiree's pensions for stated reasons that follow:

- Pensions that were promised the day a new hire was spoken to by an HR member of Corporate UPS.
- Pensions earned by collective bargaining by both employee and Corporate UPS of what is approaching $17/hr. This amounts to approximately $35k per employee per year. Of which *less than $100* per month is benefit bearing for the UPS employee; the remaining going towards the unfunded liability of NYSTF. Would it be correct to assume the tax write-offs that UPS receives on its pension contributions are more advantageous to corporate UPS and their shareholders than the consideration of those who made this a Fortune 500 company, the men and women in "Brown" who gave the best 30 plus years of their lives?
- Would it be accurate to state that OSHA created a special label referred to as "Industrial Athlete" due to the harsh job requirements of the UPS employee?
- Is it a stretch to state that the life expectancy is reduced due to the many injuries sustained that are common due to the volume of heavy repetitive weight bearing activity required for employment at UPS in comparison to the population norm. Associated with these injuries are significant decreased options for future employment.
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Once again, why are you not considering UPS money for UPS people?

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UPS is the largest stakeholder in this multiemployer pension debacle. They are only looking out for corporate interests and not those who made the company the financial success it ensues. Their 20% reduction is unacceptable when other more respectable and viable options are presented.

To the Joint Select Committee, please do not disregard what is happening to us in NYSTF. The Central States Pension Fund by sheer volume is getting most attention. Yet we here in New York have been delivered the MPRA cuts which in reality range from 29% to 42%.

Once again UPS has become the successful company it is by those being delivered this travesty in the latter years of their life.

Thank you for your attention to the content of this letter. The following undersigned have read and are of same mind in what is presented in here.

Respectfully,

David Nadolinski
Retired UPS, Buffalo, NY
Thirty-one years

LETTER SUBMITTED BY THOMAS A. NOON

U.S. Senate
U.S. House of Representatives
Joint Select Committee on Solvency of Multiemployer Pension Plans
219 Dirksen Senate 0ffice Building
Washington, DC 20510

Dear Senators Orrin Hatch, Sherrod Brown, Lamar Alexander, Michael Crapo, Rob Portman, Heidi Heitkamp, Joe Manchin, Tina Smith, and Representatives Virginia Foxx, Phil Roe, Vern Buchanan, David Schweikert, Richard E. Neal, Bobby Scott, Donald Narcross, Debbie Dingell.

Thank you for serving on the Joint Select Committee on Solvency of Multiemployer Pension Plans. The work this committee performs and the legislative solution it ultimately chooses will have an immense impact on the lives of millions of retirees, their families, and the country. The economic impact of cuts and/or loss of these pensions is both personally and nationally enormous. According to a study by the

National Institute on Retirement Security, in 2015 alone the Multiemployer System provided $2.2 trillion in economic activity to the U.S. economy, generated $158 billion in federal taxes, supported 13.6 million American jobs, and contributed more than $1 trillion to the U.S. GDP.

As you begin your work in considering the best plan to solve the multiemployer pension crisis that this country is currently facing, I urge you to give your support to the Butch Lewis Act (H.R. 4444/S. 2147). The Butch Lewis Act is the only proposed solution that will provide a path to financial health for troubled pension plans, alleviate pressure on the Pension Benefit Guaranty Corporation, and ensure that retirees and active Teamster members receive all of the benefits that they earned.

I know the Committee has a difficult mission, but the Butch Lewis Act is the best solution to the multiemployer pension crisis, and I sincerely hope that it will be the legislation that you ultimately adopt.

Sincerely,

Thomas A. Noon

June 23, 2018

In October of 2017 the Teamsters Local 292 took a 29 percent cut on our pension. To me that is $700.00 per month or $8,400 a year; that is a big loss.

When we went to sign up for the pension they promised it was guaranteed, we never had to worry.

Now I am 71 years old and still working with no end in sight. My wife is 62 years old, and still working also, with no end in sight. When it comes time when either one of us can no longer work anymore, or if we get sick, our hardship will begin. I have worked very hard my whole life thinking I will be okay in my later years with my pension. Now that they made the cut in October of 2017 everything has changed. If something happens to me, my wife is not set with the survivor's package. She will have to keep working until she can't anymore.

Please consider the Butch Lewis Act; my wife and I would be very grateful.

Thank you,

Thomas A. Noon
Shirley Noon

Letter Submitted by Mary Lynn Skrabacz

June 20, 2018

Joint Select Committee on Solvency of Multiemployer Pension Plans
219 Dirksen Senate Office Building

To the Attention of: Mr. Chris Langan, Vice President of Finance, UPS, Atlanta, GA

Subject: Comments on Mr. Lagan's testimony on June 14, 2018

Dear Mr. Langan,

This is a rebuttal to your testimony in front of the Joint Select Committee.

I am a retired 31-year United Parcel Service employee from Buffalo, NY Teamsters local 449.

I challenge your testimony and am sickened by it.

You were in the position to give an objective opinion and representation of facts in the presence of that committee who are not as well informed as you are. Instead you chose to express the slanted corporate view with focus on the profits that you and other major stakeholders have in the outcome of this multiemployer pension crisis.

For the purpose of this rebuttal and commentary I will focus on the New York State Teamsters Pension Fund which you coyly are strongly attempting to bundle into the demise of declining and critical status funds, most mentioned was the Central States Pension Fund.

I was very disappointed that there was no mention of NYS Teamsters Pension Fund (NYSTF) and the cuts sustained to our fund under the Multi-employer Pension Reform Act, also known as MPRA.

Roughly 34K Teamsters are affected by these cuts, of which *4K to 5K are UPS retirees.*

Be assured there will be those that will not stand by and accept quietly your proposal for a 20% cut in our retiree's pensions for stated reasons that follow:

- Pensions that were promised the day a new hire was spoken to by an HR member of Corporate UPS.
- Pensions earned by collective bargaining by both employee and Corporate UPS of what is approaching $17/hr. This amounts to approximately $35k per employee per year . Of which *less than $100* per month is benefit bearing for the UPS employee; the remaining going towards the unfunded liability of NYSTF. Would it be correct to assume the tax write-offs that UPS receives on its pension contributions are more advantageous to corporate UPS and their shareholders than the consideration of those who made this a Fortune 500 company, the men and women in "Brown" who gave the best 30 plus years of their lives?
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Thank you for your attention to the content of this letter. The following undersigned have read and are of same mind in what is presented in here.

Respectfully,

Mary Lynn Skrabacz
Retired UPS employee, Buffalo, NY
Thirty-one years

LETTER SUBMITTED BY MICHAEL R. STREBE

June 11, 2018

Dear members of The Joint Select Committee on Solvency of Multiemployer Pension Plans, you take on the task of making right a situation that affects the lives of millions of Americans, now, and in the future. This task has no easy solution and will not be perfect. I pray that the end result will not be putting a band aid on it and kicking the can down the road for future legislators! A MAJOR TIDAL WAVE OF FAILING PENSIONS, INCLUDING STATE RUN PENSIONS, WHICH ARE CURRENTLY ⅓ UNDERFUNDED, ARE GOING TO THROW OUR SOCIETY INTO CHAOS!

Life isn't fair! Never has been, never will be! But this pension issue isn't about fairness at all! The pensions' terrible financial situation shouldn't be where it is now! There is plenty of blame to go around! By not correcting the system that led to the downfall and just throwing money at it, history will repeat itself! THE SYSTEM HAS TO CHANGE OR THE PEOPLE THAT STOLE AND MISMANAGED THE PENSION WILL CONTINUE TO DO SO!

I have completely watched the two sessions your committee has had and I am hopeful something beneficial can be done. I've come away with the feeling from the two meetings that the situation is being completely looked into and members are understanding there needs to be a bipartisan solution. I sense that your committee realizes the magnitude of the problem, the terrible negative economic impact and hardships that will result, and the fact that employer pension fund systems cannot reasonably sustain themselves over a long period of time given too many unpredictable factors!

Two of your experts testifying, Mr. Reeder and Mr. Goldman, stated there are "structural problems" that need to be changed.

PBGC was never set up correctly by trustees and government, guaranteeing multiemployer participants a maximum of $12,800 if their pension fails. That is only 30% of my pension! Plus the PBGC is so far under water it can't possibly recover!

And what about the millions of Americans still working and contributing? With the last man standing situation, more companies will go out of business and the workers that had been contributing all those years will be left with nothing!

Giving a loan to pension funds is only a band aid which we all know will never get repaid!

A statement by Congressman Norcross, and confirmed by Mr. Goldman and Mr. Barthold, was, "Pensions are for the exclusive use of pensioners!" Trustees of pensions are "fudiciaries," which means, in the best and only interest of the worker! In 2015 an investigation by a Washington, DC-based independent review board reported September 25, 2015 that Cincinnati-based Teamsters misused member funds. The President of that conference, William Lichtenwald, is (or was at the time) also a trustee of the Central States Pension Fund!

There are too many fingers in the Pension Pie! Goldman Sachs lost billions investing our funds at the same time making record profits! Trustees of our pension get their salaries (head trustee Tom Nyhan makes close to $700,000), health insurance, raises and their pensions from our plan. Six hundred thirty Central States Pension Fund employees get all their benefits from our fund. TOO MANY LAYERS, TOO MANY FINGERS IN THE PIE!

MORE RETIREES THAN WORKERS! This system will not survive!

It was pointed out at your meetings that the government bailed out the banks, automakers, etc., so they can surely bail out the backbone of American workers! Absolute perfect logic! BUT . . . where does the government get the funds from? My sons, my friends, my grandchildren for the rest of their lives! I was against all government bailouts and still am. My solution is to get rid of the pensions and divide the money prorated equally among active and retired workers. The funds could be put in a retirement fund such as a 401(k) plan. The problem is many pensioners rely on every penny of their pension check which may be quite small already and would be devastating to them.

This is our Teamster problem! The problem facing the state-funded pensions will be catastrophic, much worse if that's possible, because of the greater magnitude of the numbers!

I could go on forever but your time is valuable and short! I would gladly come and testify if you wish, at my expense.

I've included a few of my many, many articles on the severity of this issue. May God bless you all and grant you wisdom!

Sincerely,

Michael R. Strebe

Pension Crisis

(From the Associated Press)

CHERRY HILL, N.J.—A public employee pension crisis for state governments has deepened to a record level even after nearly 9 years of economic recovery for the nation, according to a study released Thursday, leaving many states vulnerable if the economy hits a downturn.

The massive unfunded pension liabilities are becoming a real problem not just for public-sector retirees and workers concerned about their future but also for everyone else. As states try to prop up their pension funds, it means less money is available for core government services such as education, public safety and parks.

The annual report from the Pew Charitable Trusts finds that *public* worker *pension funds* with heavy state government involvement *owed retirees* and *current workers $4 trillion as of 2016.* They had about $2.6 trillion in assets, creating *a gap of* about one-third, or a record $1.4 trillion.

While the study looks only at pension funds with major state-government involvement, systems run by cities, counties, school districts and other local entities have had similar problems. Just this week, the Chicago suburb of Harvey, a city with a history of underpaying its pension obligations, announced deep layoffs in its police and fire departments. Officials blamed their rising pension obligations.

Larger cities and school districts across the country also have had service cuts or freezes over the years to pay for rising costs for their retirees.

Pew says that pension funds were well-funded until about 2000. Around that time, many states increased pension benefits without a way to pay for them. In some states, such as California and Illinois, courts usually find that the government must honor those commitments.

Also in the early 2000s, the tech stock bubble burst, spiraling investment returns downward. Some states, such as New Jersey, made things worse by skimping on their contributions.

Many pension funds had not recovered from the dot-com bust by the time the Great Recession hit less than a decade later. And many haven't recovered from that, either.

"When the next downturn comes, there will be additional pressures," David Draine, a senior officer at Pew, told The Associated Press.

Colorado, Connecticut, Illinois, Kentucky and New Jersey had less than half the assets they needed to meet their pension obligations, according to the report. Kentucky and New Jersey have the largest gaps, with just 31 percent of the needed funding.

Kentucky has been roiled by weeks of protests over a bill passed by the Republican-dominated Legislature and signed by the Republican governor that makes changes to the state's teacher retirement system in an attempt to close the funding gap. Teachers have packed the state Capitol by the thousands to protest the changes. On Wednesday, they joined the state's attorney general, a Democrat, in filing a lawsuit seeking to overturn the law.

Just four states—New York, South Dakota, Tennessee and Wisconsin—had at least 90 percent funding. Draine said those states and some others that have repaired pension shortfalls since the Great Recession will be in better shape the next time the economy slides.

The Pew report found that lackluster investment returns in 2016 explained most of why the condition of pensions declined from the previous year. Pension administrators were counting on median returns of 7.5 percent that year. Instead, they made just 1 percent.

But the study says that even if the investments had met expectations, the overall position of pension funds still would have declined because state governments were not contributing enough. Only Kansas contributed more to its pension system in 2016 than it paid out, Pew found.

In New Jersey, actuaries say it will take around $6 billion a year in contributions from the state to shore up its pension system. It's taken years to get to less than half that amount in the current budget. Maintaining that progress makes it difficult to pay for other priorities, such as boosting school funding.

The study finds that states increasingly rely on investment returns in an attempt to stabilize their finances, which makes them more vulnerable to market fluctuations.

Because of a strong market last year, next year's report, which will assess the state of pensions as of 2017, is expected to look better. But market slides so far this year have not been encouraging, Draine said.

GE's $31 Billion Pension Nightmare

(By CNN Wire Service)

January 18, 2018

John Flannery, the man hired to fix General Electric, inherited a $31 billion ticking time bomb when he replaced longtime CEO Jeff Immelt last year.

Like other companies, GE has accumulated a significantly underfunded pension. But like most things lately at GE, its pension shortfall is much worse.

Not only does GE have the largest pension deficit among S&P 500 companies, that deficit is $11 billion worse than the next closest company, according to Dow Jones S&P Indices. (The $31 billion figure is from the end of 2016. Fresher numbers haven't been released.)

GE's pension nightmare is the result of years of inattention, and of historically low interest rates that have driven up pension liabilities around the world.

This is not just a math problem: More than 600,000 current and former GE employees are relying on these crucial retirement benefits.

The pension shortfall is yet more evidence of GE's financial troubles, which forced the iconic company to slash its dividend last year for just the second time since the Great Depression. GE shares closed below $17 on Thursday for the first time in 6 years.

"GE's balance sheet is a mess;" said Gautam Khanna, an analyst for Cowen and Co. "They don't generate a lot of cash, and they have a severely underfunded pension plan."

GE doesn't owe the $31 billion immediately. Instead, the company is required to make pension payments over time.

Under Flannery, GE announced plans in November to tackle the pension problem by taking advantage of cheap borrowing costs. GE said it will borrow $6 billion in 2018 to cover mandatory pension payments through 2020.

But that doesn't fix the problem: It's just swapping one IOU for another. "It just buys you time," said Deutsche Bank analyst John Inch.

Related: GE could break itself apart as cash crisis deepens

Immelt inherited a huge pension surplus

GE's pension shortfall is even more glaring when you consider that the company was sitting on a pension surplus of $14.6 billion in 2001, when Immelt replaced Jack Welch as CEO.

Then GE decided to put money into mergers and acquisitions instead of socking it away for what it owed its employees, Inch said. Many of those deals were poorly timed, contributing greatly to GE's current cash crunch.

By the end of 2008, GE's pension was running a deficit of $7 billion, and it exploded from there. Despite that shortfall, Immelt rewarded shareholders with stock buybacks, which are aimed at boosting the share price. Between 2010 and 2016, GE spent about $40 billion to buy back its own stock, according to FactSet.

"The company was debatably mismanaged," Inch said. "It didn't fund the pension properly, and now you've got a massively unfunded pension."

Immelt declined to comment, directing questions to GE. The company declined to comment.

Related: How decades of bad decisions broke GE

Low rates pose pension risk

To be sure, other major companies have large pension shortfalls. *Boeing listed a $20 billion* pension *deficit* at the end of 2016, and *General Motors* faces an *$18 billion liability.*

Corporate pension funds typically invest 40% or more of their assets in bonds like low-yielding government debt, according to the OECD. And a decade of near-zero interest rates has forced companies to assume lower returns.

In an SEC filing last year, GE said the increase in its pension deficit is "primarily attributable to lower discount rates" as well as higher liabilities.

GE warned that one financial risk it faces is "sustained increases in pension" costs caused by market turbulence or a "continued environment of low interest rates." Yet GE also said that its pension liabilities could go down significantly if rates rise.

GE has a huge family of current and former workers to support. The company's various pension plans support about 619,000 people: about 298,000 retirees and beneficiaries, 227,000 vested former employees and 94,000 active workers.

GE also sponsors post-retirement health and life insurance benefit plans that cover about 187,000 people. The company tried to ease its pension liabilities by closing the pension plan in 2011 to new salaried workers.

But the problem still hangs over GE as it considers a radical shift in the coming months. Flannery confirmed on Tuesday that GE is contemplating what was once unthinkable: breaking the conglomerate up into smaller pieces.

But analysts warned that GE's pension liabilities are so large that it could make dismantling the company very messy, if not impossible.

"It only makes sense if you ignore GE's pretty massive liabilities—like the underfunded pensions," said Cowen's Khanna.

Infrastructure Costs: States Can Afford More of it if They Reduce Pensions

(From *The National Review*)

Two hundred billion dollars in federal funding is especially inadequate when one considers these numbers against the state and local crisis that could define the next generation: pension and health-care costs. As of 2015, the last full year for which complete data are available, states had funded only 72 percent of their future obligations to government workers, according to the Pew Charitable Trusts. That leaves a $1.1 trillion deficit. On health care for public-sector retirees, states owe $646 billion.

In states from New Jersey to Kentucky, these numbers mean real, looming cash calls of billions of dollars a year. New Jersey, for example, has set aside just 30 percent of the money it needs to fund pension payments, according to a new Manhattan Institute study. New Jersey taxpayers face a grave risk. A mild recession could mean that in a few years it would have to triple, or more, its current $2 billion annual pension contribution just to pay current retirees, let alone set aside money to grow for the future tab. This is a state that, along with New York, is supposed to come up with new revenues, under Trump's proposal, to fund the Hudson Tunnel. And it's not just blue states that are distressed by retirement liabilities: Kentucky, for example, has funded just 38 percent of its pension obligations, and South Carolina, 58 percent. States that have funded their pensions in the range of two-thirds or so—Alabama, Alaska, Indiana, Louisiana, and New Hampshire among them—could benefit from some modest shoring up.

There is a way, though, for the White House and Congress to ease, if not solve, this crunch: Offer states credit, in the form of more federal infrastructure money, if they pare back their pension and health-care obligations to future retirees. States that gradually move newer workers to 401(k)-style accounts with low-fee investment options, for example, should get some percentage of that money now, to invest in projects that will pay off in the future. States that pare back future health-care liabilities would receive a similar reward.

Of course, paring back future health-care costs over time is easier than cutting pension costs. America already has a public-sector health-care program for people deemed too old to participate in the workplace: Medicare. Most private-sector retirees are happy with it. There's no justification for those who pay state and local taxes to subsidize private health care for government workers who choose to retire before 65, a big driver of future liabilities. And there's no justification for some states and cities to force their taxpayers to pay for private health care for older retirees when the federal government set up Medicare for just that purpose.

When it comes to retirement income, though, private-sector efforts to supplement Social Security are a mess. As AARP reports, half of American workers don't have a workplace retirement plan, even a 401(k). Only 22 percent of Americans with such access have saved $100,000 or more, according to the Employee Benefit Research Institute.

To address this problem, Washington should return to an old idea: creating a way for workers and spouses to create voluntary private savings accounts alongside their Social Security contributions, via an extra payroll deduction. A good start would be to give people the option of diverting the extra money most will soon see in their paychecks thanks to the Christmas tax cut. Private-sector managers could invest such money broadly, on a low-fee basis, in a range of stocks and physical assets—including infrastructure—designed to track the larger economy. With such savings plans, state and local unions would have no reason to use their political power to insist on a separate and unequal system for their workers: Why isn't what taxpayers get good enough for them, too?

The climate in Washington is hardly ripe for bipartisan, big-picture thinking. But a real possibility exists here. Blue states with some of the worst pension woes—Connecticut and Illinois, in addition to New Jersey—need a constructive way to reduce their obligations before they run out of money to provide even basic public services. Some supporters of the tax law's elimination of the federal deduction for state and local taxes above $10,000 annually claim that cutting off the money is how to do it. But that radical change did nothing to address the long-term nature of these entrenched liabilities.

LETTER SUBMITTED BY DR. IRENE TRZYBINSKI

June 20, 2018

Joint Select Committee on Solvency of Multiemployer Pension Plans
219 Dirksen Senate Office Building

To the Attention of: Mr. Chris Langan, Vice President of Finance, UPS, Atlanta, GA.

Subject: Comments on Mr. Lagan's testimony on June 14, 2018

Dear Mr. Langan,

This is a rebuttal to your testimony in front of the Joint Select Committee.

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I challenge your testimony and am sickened by it.

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- How is it that UPS can give Stocks and Bonuses of up to 34% and beyond of annual wages to management?

  Woe to the downtrodden employee, the UPS representative, of this vastly successful company. Cough up the cash, you should be ashamed of what this company is asking in concessions! Is there the need to cite the many various recent news articles on the popularity of the UPS driver? How ignorant is UPS to the value of these men and women in the success of this company OR is the truth they consider these faithful employees just throw away commodities more interested in corporate profits? It is becoming common knowledge to the general public what value corporate UPS puts on their employees and especially so in these current contract negotiations. This will be reflective on the quality of service the company will get from current and future employees. Where did those company signs stating the expected behavior, attitude, and presentation of the UPS driver go? This image conveyed respect for the UPS label and the public responded. Show these men and women the dignity they earned. Give them back their earned and promised pensions as UPS did in the New England Pension Fund

2012, where UPS paid and negotiated the terms of their liability and partitioned their employees; those employees mostly kept their full earned and promised pensions. Return to NYSTF the concessions of Schedule El Of which my understanding is less than 2K affected employees. Why should these roughly 2K suffer that additional reduction under that sham of a rehabilitation plan? I have a reasonable question to ask you, a man of your knowledge and stature. Why would UPS allow its continual contributions to a pension fund under scrutiny for adopting an extraordinarily risky investment portfolio and unrealistic investment assumption rates? $85 million paid out annually! It would be fair to assume this does not appear to be prudent business practice. Yet you suggest 20% cuts plus what actives and recent retirees have already taken of nearly 15% under the adopted rehabilitation plan in 2010 without concern of where did the money go . . . OUR MONEY! Our future survival in our last decades of our lives is dependent on this income. Not to mention the many with permanent injuries and poor prognosis. Shameful! Why is it there is NO UPS representation on our Board of Trustees? Mostly Trustees of orphan companies and a soon to be orphan company. When you look in the mirror where did the human component disappear to? Where did feelings of respect, admiration, dignity and a respectful work ethic go? Do those of you who think a 20 cut is equitable and fair fail to distinguish these are people no less deserving to live in dignity than the reflection you see in the mirror on a daily basis? These ″downtrodden in Brown″ are representative of those that built this great nation. Shame on anyone to be dismissive of these UPS employees and retirees. It is shameful to allow corporate greed, mismanagement and government malfeasance to victimize the United Parcel Service Employees and Retirees in the New York State Teamsters Pension Fund.

Once again, why are you not considering UPS money for UPS people?

The current Butch Lewis proposal as written was found to be not feasible by the authors of it, as many plans would not be able to repay the loans. Inherent investment returns as written would not be sufficient for repayment, and further rehabilitation cuts could be necessary. There was discussion of self-funding surcharge proposal, or banking surplus add-on to eliminate the deficiency. Are all options being considered? Worth mentioning, in 2017 both Ken Hall and James Hoffa supported the UPS proposal (the 20% cut Proposal). Shameful!

UPS is the largest stakeholder in this multiemployer pension debacle. They are only looking out for corporate interests and not those who made the company the financial success it ensues. Their 20% reduction is unacceptable when other more respectable and viable options are presented.

To the Joint Select Committee, please do not disregard what is happening to us in NYSTF. The Central States Pension Fund by sheer volume is getting most attention. Yet we here in New York have been delivered the MPRA cuts which in reality range from 29% to 42%.

Once again UPS has become the successful company it is by those being delivered this travesty in the latter years of their life.

Thank you for your attention in the content of this letter. The following undersigned have read and are of same mind in what is presented in here.

Respectfully,

Dr. Irene Trzybinski