

# HOW THE MULTIEMPLOYER PENSION SYSTEM AFFECTS STAKEHOLDERS

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## HEARING BEFORE THE JOINT SELECT COMMITTEE ON SOLVENCY OF MULTIEMPLOYER PENSION PLANS UNITED STATES CONGRESS ONE HUNDRED FIFTEENTH CONGRESS SECOND SESSION

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JULY 25, 2018  
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Solvency of Multiemployer Pension Plans

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## **HOW THE MULTIEMPLOYER PENSION SYSTEM AFFECTS STAKEHOLDERS**

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**WEDNESDAY, JULY 25, 2018**

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

The hearing was convened, pursuant to notice, at 10:10 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (co-chairman of the committee) presiding.

Present: Senator Brown, 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; Julie Cameron, PBGC Detailee; and Constance Markakis, PBGC Detailee.

### **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. Good morning and welcome to the fifth hearing of the Joint Select Committee on Solvency of Multiemployer Pension Plans.

The committee has taken a rigorous approach to the issues before it, examining in public hearings the complex range of problems that have led to the dire financial condition of a significant number of multiemployer pension plans, as well as of the Pension Benefit Guaranty Corporation, or what we call the PBGC.

According to the PBGC, here is where we stand with regard to funding. For 2015, the plans are underfunded by a total of 638 billion—with a “b”—dollars. Almost 75 percent of multiemployer plan participants are in plans that are less than 50-percent funded. More than 95 percent are in plans that are less than 60-percent funded. But if you look at them on an actuarial basis, using the plans’ proclaimed discount rates, they are 80-percent funded, and only have a \$120-billion shortfall.

The difference between these numbers should keep us up at night. Everyone knows the plans are in dire straits, but by using

unrealistic assumptions, the true extent of the problem is hidden until it is too late.

Indeed, these numbers have kept this committee properly busy. The committee and its staff have held dozens of meetings with stakeholders, and we are continuously bringing in experts to brief our team. This has been an intensive, time-consuming but worthwhile exercise. And these briefings and discussions will continue, because I believe it is important that the committee leave no stone unturned in discussing how we may address the conditions of the multiemployer plans.

In addition to the great deal of work that has gone into understanding the system and its challenges, the committee staff has started to consider a range of policy ideas to address the challenges faced by the multiemployer system. They have started to crunch numbers on these ideas, reviewing them, and looking at the complex interactions of the legal requirements of the current system and the proposals for change. This is all complicated stuff, somewhat like playing three-dimensional chess.

A lot of work still needs to be put into this process, but at this point, the committee is not taking anything off the table, nor necessarily putting anything on the table for consideration either. But it is necessary and prudent to begin conducting in-depth due diligence on these ideas.

During this morning's hearing, we continue to work on understanding the current system, by hearing more from stakeholders in the system. We have brought in four witnesses today to help us. One is a retiree in an at-risk program, who will share his perspective as a participant.

We have also brought in two respected academics and a practitioner with years of experience in the system, who will review for us some fundamentals of these plans and share their views on what does and does not work. Their perspective is important, because clearly the system is, in certain aspects, flawed.

Our witnesses today will help us delve into some key questions. What is at stake here for retirees? What is the appropriate measurement of plan funding? Are the plans generally healthy or not? What major structural reforms are needed? And one issue in which I am most interested, are Federal taxpayers responsible under current law for funding any PBGC shortfalls?

Let me now turn to Senator Brown, whom I am very appreciative of, for his opening statement.

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

**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. Thank you, Senator Hatch.

Mr. Chairman, I appreciate your continued work on this committee. I appreciate the relationship we have built over the years, first on the HELP Committee, then on the Finance Committee, and the work that we are doing jointly in this.

And we all know how important it is that we succeed.

I want to thank Senator Johnson and Senator Baldwin for joining us. They will introduce one of our witnesses, Kenny Stribling, who sits at the table, whom Tammy introduced me to one day in the hallway. And we have seen Mr. Stribling, as we have seen Rita Lewis and so many others, walking the halls, and mine workers walking the halls of Congress, fighting for themselves, but especially fighting for their brothers and sisters in the trade union movement.

I want to thank members of the committee, a number of you who joined Senator Portman and me 2 weeks ago in Ohio for our field hearing. Mike Walden, who is sitting behind Tammy, was one of our witnesses at that hearing.

It was particularly important for us to hear the perspectives of the workers and retirees and small-business owners who have the most to lose if Congress does not do its job.

Roberta Dell works at Spangler Candy Company in Bryan, OH. She put it pretty succinctly. She said if nothing is done, a lot of us will go belly up; that is the bottom line.

We know the same could be true for small businesses. Bill Martin, the president of Spangler Candy in northwest Ohio, explained, quote, "In Central States, the vast majority of the 1,300 contributing employers are small businesses like us. This issue hinders the success and growth of our businesses that already struggle to be competitive."

These businesses and their employees did everything right. They contributed to these pensions, in many cases over decades and decades. They are the ones whose lives and livelihoods will be devastated if Congress does not do its job.

When I think about the responsibility the 16 of us have, I think about the words of Larry Ward at that hearing at the Statehouse in Columbus. He said, "I do not understand how it is that Congress would even consider asking us to take a cut to my pension or see it go away entirely when it had no problem sending billions to the Wall Street crooks who caused this problem in the first place. They used that to pay themselves bonuses; we use our pensions to pay for medicine and food and heat. There is something wrong with this picture," he said.

If we do not find a way to compromise and come together in a bipartisan solution, there will be something very wrong with this picture.

I think we are going to be successful. I saw a lot of opportunity for bipartisan cooperation at that hearing. Senator Portman and I talked about how we are putting aside talking points, listening to all ideas, working in good faith, not wed to only one idea, but looking at ways to solve this. I believe it is not just true of Rob and me. I know of conversations that pretty much every one of you has had with other members of the committee irrespective of party.

The staffs of all 16 members have met for more than 30 hours, as Chairman Hatch said, of briefings by stakeholders and experts. We have met six times, we have held five public hearings. We know this is complicated. We know it is not easy.

It is really three related issues. First and most importantly, we all understand the threat to participants and businesses in multi-

employer plans that are currently on the path to insolvency. Current law does not contain a remedy for the largest of these plans.

Second, the looming failure of these plans means the imminent failure of the PBGC. I was briefed yesterday by seven or eight PBGC or PBGC-affiliated individuals, loosely working with Treasury or Labor or this committee on all that this means with the potential collapse of PBGC on the multiemployer side.

PBGC and the multiemployer system made a devil's bargain years ago, trading vastly inadequate premiums for a vastly inadequate benefits guarantee. Now, that bargain threatens to bring down the entire multiemployer system.

We have heard over and over in this committee about the \$67-billion deficit of PBGC. What that means is, the moment one of these large plans fails, it brings down not just that plan, but the entire multiemployer system.

Third, finally, these impending crises mean that it is not enough just to fix the crisis today for these plans. We cannot put a Band-Aid over this; we cannot just leave the problems of the underlying system to fester and erupt into another crisis 5 years or 10 years down the road.

We need prospective changes to make sure we never find ourselves in this situation again. That is the jurisdiction of this committee.

These are the three issues we have a mandate to solve for the workers like Roberta and the businesses like Spangler Candy and the retirees like Larry.

Failing to address all three of these issues together would be abandoning the responsibility we have to our constituents and the reason all 16 of us wanted to serve on this committee.

Chairman Hatch and I met last week. We are both committed to a solution. We must begin bipartisan meetings with all the members of the committee soon. We are aware of the challenges that lie ahead, but I believe we are going to get there. Too much is at stake for us to retreat back into partisan corners.

Mr. Chairman, thank you.

Co-Chairman HATCH. Well, thank you, Senator.

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

Co-Chairman HATCH. I want to thank Senators Baldwin and Johnson for being here with us. We appreciate them and their efforts.

Our other witnesses this morning are, first, Mr. James Naughton, who is an assistant professor in the Accounting Information and Management Department at the Kellogg School of Management, Northwestern University.

Mr. Naughton's research examines the economic consequences of financial reporting practices and how regulatory and technological changes shape a firm's information environment. He has a particular focus on issues related to employee benefits and pensions.

Mr. Naughton received his doctorate in business administration from the Harvard Business School, his J.D. from Harvard Law School, and his B.S. from Worcester Polytechnic Institute, so he has had quite a good academic background.

Prior to graduate school, he was a credentialed actuary at Hewitt Associates, where he worked on the design and administration of employee benefit plans and executive compensation agreements.

Next we have Dr. Joshua Rauh, who is a professor of finance at the Stanford Graduate School of Business and a director of research at the Hoover Institution.

Dr. Rauh has conducted extensive research on the financial structure of pension funds and their sponsors and the measurement of public-sector pension liabilities. He specializes in empirical studies of corporate investment and financial structure.

Dr. Rauh is a senior fellow at the Stanford Institute for Economic Policy Research, SIEPR, and a research associate in corporate financing, public economics, and aging at the National Bureau of Economic Research.

He received his doctorate in economics from the Massachusetts Institute of Technology and has a B.A. in economics from Yale University.

We are also joined by Timothy Lynch, a senior director in the Government Relations Practice Group of Morgan, Lewis, and Bockius.

Mr. Lynch monitors legislative and political trends and developments and specializes in government relations and public policy issues. He has 25 years of management experience in corporate and trade association government affairs.

Before joining Morgan Lewis, Mr. Lynch was senior executive and chief lobbyist at the American Trucking Association, where he directed and managed the association's legislative affairs operations on pensions, labor and employee benefits, taxes, and a range of other issues.

Mr. Lynch also served as president and CEO of the Motor Freight Carriers Association.

Mr. Lynch received his M.B.A. and B.A. degrees from the University of Maryland.

Well, we welcome you all to the committee.

Co-Chairman BROWN. And if I could interrupt for a moment, Senator Johnson and Senator Baldwin will introduce Mr. Stribling.

Co-Chairman HATCH. That would be fine.

Co-Chairman BROWN. Senator Johnson?

Co-Chairman HATCH. Okay. Senator Johnson?

**STATEMENT OF HON. RON JOHNSON,  
A U.S. SENATOR FROM WISCONSIN**

Senator JOHNSON. Thank you, Mr. Chairman.

Co-Chairman Hatch, Co-Chairman Brown, and members of the committee, thank you for inviting me here today to introduce a fellow Wisconsinite who is here testifying before you today.

It is my honor and privilege to introduce Mr. Kenneth Stribling. Kenny is a retired teamster who was born in Milwaukee and raised in Menomonee Falls, WI.

After graduating from Sussex Hamilton High School, Kenny began working as a teamster in 1975. Over the next 35 years, Kenny drove trucks for multiple companies in Wisconsin before retiring in 2010. But of course, Kenny's really not retired. He's actually a RINO, retired in name only, because he currently works

part-time as a shuttle driver when he's not advocating for a solution to this challenging problem.

Kenny is a dedicated family man and a member of his community. He and his wife Beverly have five children and seven grandchildren, with two more on the way. In his free moments away from work and family time, Kenny has mentored young people in his neighborhood.

I first met Kenny in 2015 when he came to my office with his concerns about the troubled multiemployer pension system. Kenny has been a leader on this issue since 2015. He co-chairs the Wisconsin Committee to Protect Pensions and received an award for his efforts last November.

As co-chair, Kenny has worked tirelessly on behalf of his fellow workers and retirees, commuting to Washington, DC, often on a weekly basis, with a group of dedicated advocates for their cause. We have one of those, one of his buddies, Bernie Anderson, here behind me. And Bob Amsden was not able to attend. But I know they commute weekly, because we are often on the same flight back to Milwaukee.

Before I conclude, I want to emphasize the importance of this committee. I have met with and heard from many of my constituents who are deeply concerned about the dismal state of the multiemployer pension system. Like Kenny, they have traveled around Wisconsin, to Washington, DC, and recently to Ohio for hearings and meetings to make their concerns known.

They are asking for a transparent process and a fair outcome. I sincerely hope this committee can work effectively together to achieve those goals.

Thank you.

Co-Chairman HATCH. Thank you, Senator.

Senator Baldwin, we will take any statement you would care to make at this point.

**STATEMENT OF HON. TAMMY BALDWIN,  
A U.S. SENATOR FROM WISCONSIN**

Senator BALDWIN. Thank you, Co-Chairman Hatch, Co-Chairman Brown, and members of the committee.

I am also honored to introduce my friend Kenny Stribling, retired Teamster from Menomonee Falls, WI.

In 2015, Kenny received a letter. After working for more than 30 years in the trucking industry, the pension he earned and his family depends on could be cut by 55 percent.

After getting a letter like that, Kenny and other Wisconsin retirees have made countless trips to Washington to make sure that families like theirs receive the full pensions that they have worked for and depend on.

Last November, I was proud to stand with Kenny and other Wisconsin retirees who have made countless trips to introduce the Butch Lewis Act. I sincerely hope that this committee considers that legislation in your work to produce a solution to the multiemployer pension crisis that our country is facing.

After 3 years, I am guessing that there are not too many members of Congress whom Kenny and the Wisconsin retirees have not met with. Who knows? But I will tell you that, as Kenny meets

with members of Congress, he has held his personal story a little closer. And I am grateful to Kenny today for sharing his story with this committee.

This committee has been charged with a critical task. This is a complicated issue with high stakes, but not acting is not an option, not for Kenny or the more than 25,000 workers and retirees in my State with Central States Pension.

I thank you for your time this morning. And I especially want to thank the retirees who are in this room who have made many trips to Washington for this cause.

Co-Chairman HATCH. Well, thank you so much. We appreciate both of you Senators taking time off to be with us. We know that you have other duties to perform, so you can leave at any time and we will fully understand.

Mr. Naughton, we will turn to you; you will be the first to testify.

**STATEMENT OF JAMES P. NAUGHTON, ASSISTANT PROFESSOR, KELLOGG SCHOOL OF MANAGEMENT, NORTHWESTERN UNIVERSITY, CHICAGO, IL**

Mr. NAUGHTON. Thank you. And thank you to all the members of the committee for this opportunity. I sincerely hope that my testimony today will help move us towards a solution to this crisis.

To begin, I am going to state what I think is a fairly obvious fact. If multiemployer plans collected actuarially sound contributions and purchased annuity contracts, there would not be a crisis. Participants would be receiving or would be scheduled to receive the annuities that were purchased on their behalf. Instead, multiemployer plans chose to collect contributions that were inadequate, and they made investment decisions that were risky.

The reason trustees pursued such a strategy is pretty simple. Assuming that the overall cost per employee that an employer is willing to pay is fixed, a lower pension contribution means that employees might be able to gain higher non-pension compensation through the collective bargaining process.

So, one thing that is important here is that these inadequate contributions and risky investments were a choice. Under the current rules, trustees could just as easily collect reasonable, adequate contributions and follow more conservative investment strategies.

So a number of rules were developed in response to the freedom that trustees had with regard to contributions and investments. So most notably, employers who wish to exit a plan have to make additional contributions called withdrawal liability, and all employers agree to be jointly and severally liable for all plan promises, including those for so-called orphaned participants.

You know these rules, just to sort of reiterate my earlier point, are not necessary if actuarially sound contributions are collected and invested responsibly.

The rules further require that the PBGC, through a separate multiemployer system, step in if employers cannot cover underfunded pension promises and that participants have benefits curtailed further if the PBGC does not have the resources in the multiemployer system to cover unfunded benefits to the normal guaranteed amounts.

So these rules were developed specifically to address the discretion that the trustees had. And these rules really have not changed in more than 35 years.

Unfortunately, these rules, which were intended to safeguard the system, I believe have instead contributed to its decline. So financially healthy employers avoid multiemployer plans, because they are concerned with the possibility of withdrawal liability or the prospect that they have to fund benefits for orphaned participants.

I personally witnessed this during my career as a consulting actuary. Even when the proposed cost of the multiemployer plan was only a fraction of the cost of a single-employer plan, employers typically stayed away from the multiemployer plan. And this was something that was happening 20 years ago; it is not something that just started happening recently.

In addition, because withdrawal liability calculations do not really reflect the actual cost of settling obligations, there was a lot of opportunistic behavior where employers would leave these programs when it was financially advantageous to do so, leaving behind the remaining employers to pick up the shortfall.

So the inevitable consequence of inadequate contributions, risky investment choices, and the withdrawal liability provisions is the crisis that we are currently facing.

So 10 years ago when this crisis first manifested, the underfunding on the PBGC basis was about \$200 billion. More recently, as Senator Hatch noted in his opening comments, the system is \$638 billion underfunded on the same basis. So you can see that there has been a significant deterioration over the past 10 years, and this has occurred because the plans have continued to pay pensions and make promises without collecting the necessary contributions.

You know, my testimony really focuses on providing guidance for prospective changes. And I have three specific recommendations.

First, the multiemployer plans have to have accurate measurements of liabilities and strong funding rules that eliminate the trustee discretion. That is the source of most of the problems here.

When you look at what is done for single-employer plans, I would argue that you need to be more conservative with multiemployer plans, because there is an interconnectedness with multiemployer plans that make them much more risky.

Second, the PBGC should have broad discretion to assume control of plans and implement necessary changes. And there should also be triggering events so that they can step in early to prevent plans from becoming more poorly funded over time.

And third, I strongly recommend that we would amend the withdrawal liability provisions. So the goal of those provisions was to essentially collect the value of the benefits that have been promised. And so I would recommend doing something along those lines, similar to what is done for single-employer plans that plan to terminate: simply require that the exiting company pay for the purchase of annuities from a highly rated insurance company.

So in closing, I want to highlight that my suggestions focus on improving rather than replacing the current system. A well-run defined benefit plan is far more effective at assuring retirement security for the types of workers who participate in these plans.



I also want to highlight the importance of urgent action. Delays will inevitably lead to larger deficits and choices that will become more difficult.

Thank you for this opportunity, and I look forward to answering any questions you may have.

Co-Chairman HATCH. Thank you.

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

Co-Chairman HATCH. Dr. Rauh?

**STATEMENT OF JOSHUA D. RAUH, Ph.D., SENIOR FELLOW AND DIRECTOR OF RESEARCH, HOOVER INSTITUTION, AND ORMOND FAMILY PROFESSOR OF FINANCE, STANFORD UNIVERSITY, STANFORD, CA**

Dr. RAUH. Thank you, Chairman Hatch, Chairman Brown, and members of the committee.

Multiemployer pension plans are private economy arrangements between firms and labor unions. Employees earn benefits through their years of work, employers make contributions according to plan rules, and the trustees of the pension plan have a fiduciary responsibility to steward the plan in the interests of the beneficiaries.

Something has gone terribly wrong, and I believe much of it can be traced back to the systematic mismeasurement by plans of the costs of delivering on pension promises.

If the PBGC is going to guarantee multiemployer pensions, but trustees are not going to naturally operate in a way that ensures the solvency of plans, then Congress must impose strong rules-based requirements that plans measure liabilities according to sound financial principles and remedy underfunding swiftly.

Let me illustrate the fundamental measurement problem. Suppose a plan owes an employee an amount of money in 10 years, say \$50,000, and suppose the system has just \$25,000 in assets today. What actuarial funding ratio will the typical plan report? A funding ratio of just slightly over 100 percent.

You see, if a participating employer contributed just \$25,000 towards this promise, that employer could, in many cases, withdraw from the multiemployer plan without further obligation and without the plan having any recourse to that employer if the investment returns do not meet their target.

Basing decisions on expected returns without knowing risk is imprudent. And the fact that the stock market has earned high historical returns does not justify it. Past returns are not a guarantee of future performance, and there is no sense in which just waiting long enough will bail you out.

This logic also shows that a loan program is not what is needed. The loan program proposals seem to be based on the idea that if the plans can get a low-interest loan from the government and then invest the proceeds in risky assets and hopefully earn a high return, then the loan can be repaid in full and somehow free money has been created. A loan program would simply be doubling down on these kinds of investment problems.

It should have been clear long ago to trustees that minimum funding requirements were insufficient. Trustees had years to take

measures other than trying to force participants to take benefit cuts.

Trustees have always had the right to gradually require greater contributions from participating employers, to make more reasonable assumptions about expected returns, and to make more realistic benefit promises on a prospective basis.

Despite funding improvement plans, we have not seen much improvement. Plan trustees have done too little until it was too late.

So when is a multiemployer plan making sufficient contributions? Well, one standard would be treading water, meaning the unfunded liability is not getting larger. Another would be actually paying your normal costs plus paying down unfunded liabilities.

And under the actuarial measurement standard used by multiemployer plans, most of them are contributing at least enough to pay down this unfunded liability. But I calculate that under much more appropriate solvency standards based on the Treasury yield curve, that the picture looks quite different. Only 1.4 percent of plans are contributing the costs of new benefits plus a 30-year amortization of unfunded liabilities, and only 17 percent are treading water.

I think a very good comparison point is the single-employer defined benefit pension system in the U.S., which is not in great shape, but it is in much better shape than either the multiemployer space or the public plan space. And that is largely a function of the contribution requirements that have existed historically.

The legislation surrounding the single-employer system has adhered to a key principle: if a plan cannot or does not make required contributions, the sponsor must face an excise tax or terminate the plan. Plans should not get to just promise more benefits with a PBGC-enhanced, potentially, taxpayer backstop when they are not prudently funding their existing promises.

And as you know, Congress abandoned that basic principle for critical red-zone plans in 2006, presumably because it felt that those funding rules were too burdensome. But this just kicks the can down the road.

So my written testimony shows that to meet a rigorous funding standard, contributions would have to rise very substantially. Nonetheless, over time, we must approach this standard for all plans. And once phased in, all plans that do not follow funding rules should be subject to an excise tax. And ultimately, if the plan does not meet required contributions, there should be an automatic termination.

Furthermore, to address the incentive that this could provide for more employers to withdraw, Congress should immediately act to change the withdrawal liability calculation to also reflect the true value of unfunded liabilities.

I would just like to end by pointing out that Congress should consider carefully the impact on incentives that a loan program or bailout of the multiemployer system would have. And by the way, a loan program is a form of bailout.

And by incentives, I mean not only those of multiemployer plans that take risk, but also the moral hazard that bailouts might create for a host of other agents in the economy who might come before Congress to ask for assistance, either because they lost money on

their own investments or generally because private parties made flawed arrangements or trustees did not perform their fiduciary duties.

And I think first and foremost among them are the State and local pension systems out there that, on their own accounts, using discount rates of 7 percent, have \$1.7 trillion of unfunded liabilities, but on a solvency standard, they are actually \$4 trillion underfunded. This is the same set of issues that we are seeing in the multiemployer system.

And the stronger the belief by the State and local governments that the Federal Government will bail them out, the less discipline they are going to choose to impose upon themselves to address these problems.

Thank you very much.

Co-Chairman HATCH. Thank you.

[The prepared statement of Dr. Rauh appears in the appendix.]

Co-Chairman HATCH. Mr. Stribling?

**STATEMENT OF KENNETH STRIBLING,  
RETIRED TEAMSTER, MILWAUKEE, WI**

Mr. STRIBLING. First of all, I would like to thank you, Senator Hatch, Senator Brown, Senator Portman, and other members of the Joint Select Committee, for inviting me here today and being so supportive.

I would also like to thank my two Senators from the great State of Wisconsin, Senator Johnson and Senator Baldwin, for introducing me. I really appreciate their kind words and their support. They recognize as you do that fixing the multiemployer pension plans is a bipartisan issue.

Let me tell you my story.

I worked for 30 years for four different trucking companies that paid into Central States Pension Fund. I retired from USF Holland in 2010. My benefits moved with me because my employer paid into the same plan, assuring me that I would have a secure pension for life.

I need this pension income more than ever. I am married, and I have five adult children, seven grandchildren, and two more on the way. I love my family dearly. And thanks to my pension, I have not been a burden to my family, but instead, my wife and I have been able to help out our children, our grandchildren with child care and support when emergencies happen. And you know they happen.

I will never forget the day I received my letter from Central States Pension Fund with the news that they were applying to the Treasury Department to reduce my monthly benefits by 55 percent.

Life changed that day for me.

You have no idea what it is like to be retired on fixed income and suddenly be told your monthly check will be cut in half. I was devastated and so was my family.

After receiving this shocking news, I felt I needed to do something. I joined with other retirees to stop the cuts and find a solution. We have been at it ever since.

I felt compelled to become involved in this movement to find a solution for the pension crisis. Not only would this solution radi-

cally change my retirement years, but also affect countless households across the country.

This involvement has also changed our lives. I have been through contract negotiations where we have sacrificed wage increases to have better health care and pension benefits. I believe we have done our part in shared sacrifice.

In addition to giving up wages, we have often endured tough work conditions, long shifts, cold nights, unheated docks, and manual labor.

And I will never forget November 17, 2017, the day my wife learned she was terminally ill with pancreatic cancer, stage four that had spread to her liver. My wife is a fighter and plans to outlive her current diagnosis, bless her heart. She also is retired after nearly 30 years as a teacher. Fortunately, we have a close, supportive family. They put their careers on hold, moved back to Milwaukee, spent time with her and helped me care for her, along with her sister, who also retired and has moved back home and been very supportive.

With the help of all our children and extended family, I have been able to continue to remain active in this movement, which includes a lot of travel and meetings.

My involvement has taken much of my time and energy. And at times, I thought I could not continue. But my wife—again, bless her heart—made me promise to stay committed until a solution was found.

I live in a very uncertain future. My wife is dying; I know that. We have mounting health bills, medical bills, and the stress is impacting my health. I was recently diagnosed with an enlarged heart. This is due to high blood pressure and stress. My heart is working overtime just to keep up.

My wife is worried that I may end up like brother Butch Lewis, one of the cofounders of this movement, who died, inspiring the legislation named after him.

Let me be clear: my story is unique, but I am, like many other retirees, impacted by the possibility of benefit reductions. Life did not stop when our letters arrived.

We also endure life's storms: death, illness, physical and mental health challenges. Now we also have the burden of traveling through our golden years with an uncertain financial future, a future that has been promised to us throughout our working years.

I am supporting the Butch Lewis Act, which seems to be the right solution. I am asking you to think, pray, and do what is right for thousands of faithful, hardworking, active retirees and many who have served our country in the military.

And also, my wife would have liked to have been here, but she only has a few good days between chemo cycles. However, she is my rock. She is my full supporter, supports me and my work. And I want you to know how crucial your decision will be for millions of Americans. Her heart is with you and always will be with me.

In closing, I want to thank the Joint Select Committee members in agreeing to find a solution. And remember, this is not a partisan issue; this is an issue about fairness, keeping promises to working Americans who did everything right and are simply asking you to preserve what is due us now.

Thank you. I would be happy to answer any questions you may have.

Co-Chairman HATCH. Well, thank you for coming here today. Your testimony is very compelling, and we appreciate you taking time to be with us.

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

Co-Chairman HATCH. Mr. Lynch, you are the last one on the panel.

**STATEMENT OF TIMOTHY P. LYNCH, SENIOR DIRECTOR, GOVERNMENT RELATIONS PRACTICE GROUP, MORGAN, LEWIS, AND BOCKIUS LLP, ANNAPOLIS, MD**

Mr. LYNCH. Thank you. Good morning.

I would like to begin by thanking committee co-chairs Senators Hatch and Brown and all the members of the committee for the opportunity to participate in today's hearing.

You all volunteered, or at least I hope you all volunteered, for this important assignment. And I applaud your willingness to tackle one of the most important issues of the day: retirement security.

My testimony and any answers I provide singularly reflect my own views and not the view of Morgan Lewis or any of its individual clients.

My name is Tim Lynch, and I am a senior director of Morgan Lewis's Government Relations Group. Of more relevance to today's hearing, I am a member of our Multiemployer Pension Working Group, a group that includes attorneys who have experience counseling both contributing employers and multiemployer pension plans in a wide range of industries, including trucking, construction, bakery, maritime, and supermarkets, both wholesale and retail.

We have assisted a number of critical and declining multiemployer plans in navigating the MPRA process, including Road Carriers Local 707 Fund and the New York State Teamsters Conference Pensions and Retirement Fund, the latter being the largest fund receiving approval from the Treasury and PBGC.

It is because of that depth of experience we were asked by the U.S. Chamber of Commerce to assist in the preparation of two recent reports, "The Multiemployer Pension Crisis: The History" and "Businesses and Jobs at Risk."

My background is primarily on transportation and trucking. I have been involved in that industry since the enactment of the Motor Carrier Act of 1980, the act that deregulated the trucking industry.

The Motor Carrier Act transformed the entire trucking industry. The 1980 MPPAA legislation dramatically impacted the unionized portion of the industry.

Prior to 1980, 94 of the 100 largest freight-hauling companies in the United States had a collective bargaining agreement with the Teamsters under the National Master Freight Agreement. By the mid-1990s, that number was reduced to six.

For certain, some of that reduction was due to consolidation, but the overwhelming majority was as a result of bankruptcy. And since the 1980s, not a single mid- to large-size trucking company

has entered the market with a collective bargaining agreement with the Teamsters to replace all of those other trucking companies that have exited the market; in other words, no new contributing employers to cover an ever-increasing number of beneficiaries.

Fast forward to 2014 and the Multiemployer Pension Reform Act. Congress gave plan trustees some powerful tools to address the funding crisis: the ability to adjust benefits, the ability to seek a partitioning of beneficiaries, assistance for facilitation of plan mergers, and financial support.

MPRA was signed into law in December 2014, and plan trustees in critical and declining status immediately had to begin planning for how to utilize the new tools in the toolbox to address the funding crisis.

The Treasury website for tracking applications for benefit suspensions identifies the Central States plan as being the first MPRA application, filed on September 25, 2015. Technically true; however, the first application filed was by Road Carriers 707 on December 14, 2014, the date of enactment of MPRA.

The filing was in the form of a letter—I believe it was three sentences long—intended to dramatize the need for Treasury and PBGC to move expeditiously on the process, because time was not on the side of the Local 707 fund.

The fund formally filed on March 15th and eventually was denied, the principal reason being the fund could not demonstrate that the proposed actions would allow the fund to avoid insolvency. Unfortunately, the Local 707 fund went insolvent in February 2017.

Consider this: the very same week in December of 2016 that the notice went out to the plan participants that the fund was going to be terminated—or not terminated, excuse me, was insolvent in February—the fund was also obligated to send out the 13th check because they were not in a position to suspend any of the benefit.

The New York State Teamsters Conference Pension and Retirement Fund has a better ending, but the process to obtain approval is nonetheless instructive. The New York fund withdrew its initial application and refiled. Among the issues that the New York fund had to deal with was a mortality table, whether it was appropriate for the calculation of benefit modifications.

The correspondence was time-consuming and potentially pushed the fund into a more precarious financial position.

These funds had unique circumstances, but one constant: time. A delay or, worse, a denial simply puts more plans and the benefits of plan beneficiaries at risk.

That was the history, but it holds true today. Action is necessary sooner rather than later.

The current framework for evaluating the financial status of multiemployer pension plans utilizes five categories. As the committee begins to consider a course of action, it might be useful to contemplate what it hopes to accomplish with each of the zones and the plans that are in them.

The temptation for green-zone plans, undoubtedly, is simply to leave them alone, and that may very well be the prudent course of action. But you should consider, are there changes that could be made to help ensure that those plans remain healthy?

For yellow and orange zone plans, I would suggest the goal should be to provide as many tools as possible and as quickly as possible to the plan trustees. This could include the additional tool of hybrid plans as outlined in the GROW Act legislation.

Conversely, the committee should be cautious about adopting procedural changes that, while well-intentioned, could have the adverse impact of pushing these plans into the red zone.

For the red-zone plans, there is no avoiding the reality that they need a large infusion of cash to remain solvent.

Central States achieved a 12.74-percent rate of return in 2017, but it does not take a mathematician to calculate the benefit of a 12-percent return on \$15 billion in assets or \$13 billion or \$11 billion or less.

Finally, in my view, the tools given to the plan trustees under MPRA have been underutilized. Only five benefit suspension applications have been approved, only one application for petitioning has been approved, and I am aware of no efforts to fully utilize the merger language.

Thank you for the opportunity to testify, and I look forward to answering any questions you may have.

Co-Chairman HATCH. Well, thanks to each of you. You have been very helpful to us here today.

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

Co-Chairman HATCH. And it is mindboggling what approach we are going to need to take. But to the extent that you could help us, you have done a pretty good job.

Let me ask you this, Mr. Naughton. I want to thank you for your testimony. You established a compelling case for making systematic improvements to the multiemployer system.

Now, one of the key points that you raise is that trustees and managers of these plans have significant discretion in setting the inputs into the plans and how they measure and manage contributions and liabilities in the plans.

You suggest that trustees have chosen to take unique risks in operating the plans. Given that plan trustees are drawn equally from management and labor, what incentives can we look to in order to remove the management risk in the system?

If you could help us to understand that, I would appreciate it.

Mr. NAUGHTON. When you look at sort of the starting point for multiemployer plans, it was something that multiemployer plans themselves were actively involved in. And so the rules that were eventually developed, the idea, you know, pushed by the multiemployer plans was that they were low-risk and so they should have discretion with the funding rules, they should have discretion with the investments, they should pay a very low and inadequate premium to the PBGC, and it really was not necessary to have much in the way of guarantees.

And so when you look at sort of the natural progression of what happened, the trustees themselves determined the contribution amounts.

You know, Senator Hatch is absolutely right. Typically, the trustee board is made up of a combination of employers and union officials. My personal experience was that the union officials tended to dominate those proceedings. They were the majority, you know,

half the board. And then the employer officials that they typically had were usually people who were quite friendly to the union position.

And so in the end, you know, what happened was the trustees sort of got themselves in a cycle where they wanted to promise generous benefits, but they did not really want to pay for them.

And so the hope that they had was that, listen, if we take an inadequate contribution, if we invest it sort of in aggressive securities, maybe we will get a good return, but if not, we also have the chance that maybe the system will grow, we will have more participants in the future, and maybe that will help us.

And in the end, you know that type of logic is somewhat flawed when you look just 1 or 2 years into the future. If you look 5 years into the future, it becomes more flawed. And if you look at this from a sustainability standpoint—so 10 or more years into the future—it is incredibly problematic.

And what happened in terms of sort of the economic shocks—you know the specific shocks themselves are not predictable, but economic shocks are predictable. We know they are going to happen, we just do not know when they are going to happen. And so having a system that sort of relies on being able to collect in the future for past promises is deeply flawed.

So in terms of my testimony, if there is one thing that I would like to see going forward, it is that you just remove that discretion from the trustees.

So, going forward, if they are going to promise somebody a one hundred-dollar annuity, they should collect the cost of a hundred-dollar annuity, and they should put that money in a trust and then have that be there for their participant to collect on.

To have a system where you can make promises and not fund those promises is really not sustainable in the long term.

Co-Chairman HATCH. Right.

Mr. NAUGHTON. So I truly believe that, you know, these plans should continue. They provide valuable retirement security. And we should simply not be in the position where gentlemen like Mr. Stribling are worried about retirement. These plans should have been funded. Obviously, we cannot go back and correct that. But what we can do is make sure, at least going forward, they are funded appropriately.

Co-Chairman HATCH. Okay. Let me just end with this.

Dr. Rauh, your written testimony documents that 72 percent of multiemployer plan participants are in plans that are less than 50-percent funded. But less than 1 percent of single-employer plan participants are in plans that are less than 50-percent funded. Now, that is quite an astonishing difference.

What, in your view, explains that difference?

Dr. RAUH. Thank you, Senator Hatch.

Co-Chairman HATCH. Sure.

Dr. RAUH. So the statistic you are citing is that the multiemployer plans are just very, very poorly funded compared to the single-employer plans. Now, I believe that goes back to the overlay of solvency standards in 1987, in the older 1987 act, the overlay of solvency standards for funding on top of the actuarial standards that plans were already using.



Congress recognized at the time that it was not adequate to leave so much discretion to the plan trustees of single-employer plans. They did not implement something similar for multiemployer plans. And I believe that the funding differences that we are seeing really, you know, between the multiemployer and single-employer systems are the result of the fact that there have just been historically much stricter funding standards for the single-employer program, some funding relief in the last 5 or 6 years to that single-employer program notwithstanding.

Co-Chairman HATCH. Okay. Thank you.

Senator Brown?

Co-Chairman BROWN. Thank you.

I want to be clear that no provision exists in current law that can help Central States or the mine workers, period. And if they fail, the PBGC fails. We know that.

Mr. Lynch, you stated that sooner or later Congress will have to intervene. I would like to hear your case for sooner. Why should Congress intervene now as opposed to allowing the plans to fail and then supplying PBGC with the tens of billions of dollars it will need to remain solvent?

Mr. LYNCH. These plans are very competitive on investment terms now. You know, the longer the time frame that delays getting them an infusion of cash so that they can restore those revenues makes the problem just that much more difficult to solve.

If I could add one thing, just consider, in 1999, the Central States fund was virtually 100-percent funded. I negotiated a labor contract to fund that in 1997 and 1998. In 2002, we had obviously what occurred with the market. And in 2003, we had one of the largest truck companies in the United States, Consolidated Freightways, close their doors.

No one in 1997 and 1998, when we negotiated that contract, foresaw either of those two activities.

Co-Chairman BROWN. Thank you.

A quick "yes" or "no," Mr. Lynch. Would a low-interest, long-term loan program with strong guardrails to protect taxpayers be an appropriate way to intervene?

Mr. LYNCH. I believe it is the only way that you will save these red-zone critical and declining plans.

Co-Chairman BROWN. Okay. Thank you.

There is no doubt, I think for most—I mean, I cannot speak for the rest of the committee, but there is no doubt in my mind that Congress will eventually act to address the problem. The question is whether we are able to come together this year before the crisis inflicts devastating damage on workers, on retirees, on businesses, or whether Congress will put this off until, well, simply put, lives have been ruined and family businesses have gone bankrupt.

I want to quote one of our witnesses at the hearing that Senator Portman and I brought to Ohio, to the Statehouse. David Gardner, the CEO of Alfred Nickles Bakery in Congressman Regula's hometown of Navarre, OH, said, "Because of increasing pension contributions, our business is in jeopardy. Every day, we try to figure out ways to cut costs rather than invest in our business and grow our business." It is an over 100-year-old company.

Is that, Mr. Lynch, indicative of other employers all over the country that participate in the multiemployer system? And what happens if Congress fails to act this year? What happens to them?

Mr. LYNCH. I believe the number in Central States is something like 9 out of 10 of the employers in Central States have 50 employees or less. They will be devastated, in my view, if something is not done sooner or later.

As I said in reference to Local 707, they knew they were going insolvent, they needed help, and every day the clock ticked on them, it made the problem worse and frankly got to the point where the PBGC was incapable of even helping them.

Co-Chairman BROWN. Okay, that is the employer side.

Mr. Stribling, tell me what happens. Explain the impact if Congress fails this year to do anything. Tell me about the impact it would have on retirees like you and active members who you know are in the workplace today, but planning for the future with this defined pension benefit.

Mr. STRIBLING. For me personally, if Congress does not act, with what is happening in my personal life, the mounting medical bills, my wife passing away, I am looking at probably losing my house, going bankrupt, because her medical bills are just enormous. Her medical bills, her drugs, her prescriptions—I just barely can keep up right now. And that, again, is—I am not the only one who is having that problem. There are many of us who sit out here in this audience who are facing the same crisis.

So if Congress does not act, I will be knocking on your door some other way. I will be asking for some kind of public assistance, because I am going to need it.

Co-Chairman BROWN. Thank you.

Mr. STRIBLING. Thank you.

Co-Chairman BROWN. Mr. Stribling, tell me about—I mean, if you are like Teamsters I know in Ohio, you go to meetings and you, as a retiree, go to meetings in your Teamster hall in Milwaukee and you also rub shoulders with active workers, Teamsters. What are they telling you about this?

Mr. STRIBLING. Basically the same things, Senators and Congressmen. It is the same message. It is really hard some days to have meetings. And my phone rings all day long with people telling sad stories. It is going to be devastating. I just cannot make you people understand. Well, anyway, I cannot make you understand just how serious this really is.

We have our meetings monthly, and it is almost the same people coming up asking us, what is going to happen? Can I make a loan? Can I buy a car? Can I buy my home up north? Can I make home improvements? They are all holding off; nobody wants to make a major purchase. They are afraid. They are afraid.

Co-Chairman BROWN. Thank you.

Mr. STRIBLING. Thank you.

Co-Chairman HATCH. Okay. Senator Portman?

Senator PORTMAN. Thank you, Mr. Chairman. And thank you for holding this hearing today.

We did have a good hearing in Columbus, and we got to hear from workers and retirees and small employers. And for those of you who were there, you know that. Those of you who could not

come, it was powerful, because you heard from not just retirees who are seeing up to a 90-percent cut in their benefits if we do not do something, but also small businesses that were talking about the necessity of shutting down.

We have about 200 small businesses in Ohio, by the way, associated with Central States alone. So it is suppressing wages.

And, Mr. Lynch, I will not even ask you that question because it is; we will just stipulate that. It is making it more difficult to hire people at a time when it is tough enough to hire people. Who wants to come and join up with a company that has the kind of potential liabilities that these companies are facing that have stayed in?

And in one case, we heard about a company that is paying to the plan about 15 grand a year per active participant, and about half of that is going for those who never worked for the company, but are orphan liabilities. And that is just an example of the way the system, I think, is broken.

And you know, Mr. Naughton, Mr. Lynch, Dr. Rauh, you would agree with that, that the system itself has not worked with regard to how we deal with withdrawal liability and orphans, creating a disincentive for companies to stay in, which has, you know, exacerbated the problem, in addition to the other issues we talked about, the demographics, what happened to the market in 2008, 2009.

So it was good to hear you all talk a little about the future.

Senator Brown talked in his opening statement about needing to deal with the threat to businesses and beneficiaries, needing to deal with the PBGC, which is at risk of going under, which has this broader contagion effect on the economy, but also on how we put changes in place.

And Representative Schweikert has talked a lot about this too. How do we ensure that we are not just putting a short-term fix in place here, but actually solving the problem?

And that is going to require us looking at things like the discount rate, Dr. Rauh, that you talked about, at least indirectly, looking at withdrawal liability, how we deal with orphans, and so on.

Kenny Stribling and I first met in the offices of Speaker of the House Paul Ryan. And that was in 2016, as I recall.

Mr. STRIBLING. Something like that, yes.

Senator PORTMAN. And he came in with some other Wisconsin Teamsters to talk to their Congressman. And it was an important meeting, because I think that changed some of the dynamics of this issue in realizing that we are going to have to deal with this issue one way or the other.

And it is not easy. There are no simple answers. And as I said at the meeting we had in Columbus, there are lots of different players here, some of whom are actively involved and are going to see devastating results, if we do not do something, to small businesses, the retirees, others—a big group of taxpayers out there.

And you know, about 98 percent of taxpayers are not directly impacted as beneficiaries, and yet they are going to be asked to pick up some of the tab here. And I think we have to face that. And a lot of them are people I represent, we all represent, who may have a 401(k) that is underfunded. Almost half of them do not have a pension or a defined contribution plan at all. And so, you know, we

are all trying to help on the retirement system in other ways, and we should, but this is not an easy issue to resolve. We have to acknowledge that at the outset.

On the other hand, not dealing with it has tremendous impacts on individuals like Mr. Stribling, but also on the entire economy, I would argue. Small businesses are going to go bankrupt and create a contagion effect on other businesses.

Mr. Naughton, you talked a lot about the liabilities. And you said that the aggregate underfunding has more than tripled since 2006 when we passed the Pension Protection Act. I was a conferee on that. No one would have thought at the time, would they? You know, we thought we had put in place some things that would help to maintain the multiemployer pension plans and the single employer plans.

You talked about the issues, including the discount rate. Let me ask you a question. If the discount rate were changed for critical and declining status plans like Central States, in addition to the green zone plans, what would happen to those that are in critical and declining status? And wouldn't that risk putting contributing employers out of business altogether and, therefore, increase the risk to other multiemployer plans?

Mr. NAUGHTON. Thank you, Senator Portman. So I think, you know, just to back up a little bit, if you look at what is being promised, it is a very valuable benefit, right? So it is a promise, an annuity that they are going to collect for the rest of their life once they hit a certain age. That is a valuable thing to provide.

And the problem here is that the funds were not set aside for that. Okay?

If you now all of a sudden step in and say, well, listen, we need to all of a sudden sort of fund everything, it is simply not possible based on the resources that employers have.

So if you look at the way the system is set up, it goes from, you know, the money in the plan. Then to the extent that is not enough, you hit the employers up. And then to the extent that is not sufficient, then you hit the PBGC up. And to the extent they do not have the money, then the participants themselves have to absorb significant cuts in their benefit. So that is the way that the system is set up.

And where we are now is, you know, to the extent that we all of a sudden change the funding requirements, it would be debilitating to the employers that are currently contributing. They are already contributing, as you mentioned, significant amounts, more than perhaps the benefits that their employees are actually earning. But the system that they agreed to join is not one where they just fund their own employees.

So back when I was a consulting actuary and we discussed with employers, okay, you have a union workforce, do you want to have your own plan or do you want to be part of the multiemployer plan, it was almost always the case that the multiemployer plan was less expensive, and sometimes dramatically so.

Senator PORTMAN. Yes. Let me just interrupt you for a second. And we appreciate your expert testimony and your background and experience, but you are talking about what happened in the past. You are talking about how we got into the problem, you are talking

about the fact that it was sort of a moral hazard here and companies chose to go into multiemployer plans because it seemed like they were a better deal for them, and that is part of the reason we are in the situation we are in with multiemployers vis-à-vis, as Dr. Rauh said, the single-employer plans. Multiemployers were not as well-funded.

My question to you is about, what do we do now? You know, what do we do now? And understanding, as Senator Brown has said, we have to look forward and say, you know, we have to be sure the discount rate works, we have to be more conservative, probably, in our estimates.

But what would you do now for those critical and declining plans to ensure that they do not go belly up and we do not have an even larger problem on our hands with regard to the impact on the broader economy?

Mr. NAUGHTON. Fair enough. So if we just focus on the critical and declining plans, what we can say is that they have promised benefits that far exceed the resources that they have available to them.

And so what it comes down to is, who is going to pick up the difference? So that is not really my expertise, right? So my expertise is saying, going forward, if we fix the funding rules, at least this problem will not get worse.

As you noted in your earlier question, it has gotten worse over the past 10 years. And the reason for that is, even over those 10 years, we still have not required that contributions line up with what has been promised. And so every day there is another promise made, and every day there is a contribution that does not meet that promise to collect it.

Senator PORTMAN. My time is way expired. I appreciate your indulgence, Mr. Chairman.

We will come back to this. But again, I agree with you in terms of going forward, but our issue is, what do we do now to avoid the problem getting worse?

Thank you, Mr. Chairman.

Co-Chairman HATCH. Representative Neal?

Representative NEAL. Thank you very much, Mr. Chairman.

And I want to thank the panelists.

Senator Portman and Senator Brown would confirm that I have worked on retirement issues in the House for much of my career and spent a lot of time on these very issues. And Mr. Lynch would suggest that as well, because he has known me for a long time.

And I want to ask you a couple of questions, Mr. Naughton, based on the testimony you offered. You left out the recession and what that did to the retirement plans. Do you wish to comment on that?

Mr. NAUGHTON. Sure, I could comment on it. So, when you look at economic events, they are predictable. And I think the root cause of why we are in the position we are in is not, you know, consolidations, it is not recessions, it is really the mismanagement of the plans.

Representative NEAL. Did you find any CDOs were used during the challenges, or was there any employer that took the retirement plan and went to Las Vegas? Did you find that?

Mr. NAUGHTON. So let me give you an analogy. This is something that I got from my father. So imagine there is a guy in the ocean and, you know, he is swimming away and all of a sudden the ocean goes out, the tide goes out, and it turns out he is naked. That is a problem. He should not be out there. And the question is, is he naked because the tide went out, or is he naked because he chose to be naked?

And when you look at things like what happened here, the trustees made the choice. The stuff that happened in consolidations, the stuff that happened with the recession, with returns, with investments, you know, those are all the tide going out.

Representative NEAL. But what I am trying to get at here is that you do not find really malfeasance, and what worked 4 decades ago might not work quite as well today.

Mr. NAUGHTON. No; I disagree with that.

Representative NEAL. But part of the argument that Mr. Stribling has offered here today is that, in good faith, he did what he was supposed to do. And I am suggesting to the panelists, perhaps I was not here to create the S&L problem, but I watched the Federal Government resolve it.

I was here for the Wall Street fiasco, not having been a participant in those decisions, but we were asked to solve it.

And I think when you hear testimony as we did today and yesterday and at a very good get-together in Columbus, OH just a couple of weeks ago, we are reminded that the rearview mirror might be helpful in an academic setting to provide a correction going forward, but the problem we have is immediate and it is right in front of us, and if we do not act, the PBGC has all sorts of problems going forward as well.

So, Mr. Lynch—

Mr. NAUGHTON. Just one item. So I completely agree with your position that the participants did not know what was going on. That is not what I am arguing here. What I am arguing is, the trustees knew.

Representative NEAL. Okay.

Mr. NAUGHTON. So the trustees were the ones who made the promises. And what I would argue is, they knew, and that is not just based on a look back, that is based on my actual experience 20 years ago negotiating with employers and trustees at that time.

Representative NEAL. But you agree something has to be done.

Mr. NAUGHTON. Oh, for sure. Of course.

Representative NEAL. Okay. That is the point that I am trying—thank you.

Mr. NAUGHTON. Yes, I agree.

Representative NEAL. And I thank you for that part of the testimony.

And, Mr. Lynch, I have known you for a long time. Are you supportive of the concept? Because it is the legislation that I put forward that, at the moment, seems to be the marker—the loan.

Mr. LYNCH. As I have said, both in the written statement and in answer earlier, there is no way to save these critical and declining plans without some infusion of cash. If that is a loan program, some other variation of that—but there is no way to save those plans without it.

Representative NEAL. Mr. Stribling, did you use any derivatives in your retirement plan?

Mr. STRIBLING. Me personally?

Representative NEAL. Yes.

Mr. STRIBLING. No, I do not think so.

Representative NEAL. How about CDOs? Did you use any collateralized debt obligations?

Mr. STRIBLING. No, I did not.

Representative NEAL. No, you did not.

Mr. STRIBLING. I did not.

Representative NEAL. You did not take a journey to Vegas to double your pension?

Mr. STRIBLING. I have only been to Vegas one time and that was about 2 years ago.

Representative NEAL. All right. So the point I am trying to make is that the people who are being harmed by this did not do anything wrong. And nobody here has suggested fraud. Nobody has suggested across-the-board malfeasance. And I think that in the case of the retirees who are here and have offered sufficient testimony—and I want to say, from Columbus, I want to congratulate Senator Brown and Senator Portman. Those witnesses in Columbus, including the employers, were outstanding. The employers pointed out that they did everything they were supposed to do along the way, and the retirees, they said they have done everything they were supposed to do along the way. And they met the obligations that they were supposed to.

So again, I am delighted with the witnesses here.

But the point is that the rearview mirror could be helpful in a classroom—where I have spent much of my life—but it is not so helpful going forward on how do we do something before the end of the year with some recommendations so that we can get this back up and running and people like Mr. Stribling are not taking 50-percent cuts in their pensions.

Thank you, Mr. Chairman.

Co-Chairman HATCH. Is Senator Manchin here?

You are next, Joe.

Senator MANCHIN. Thank you.

And thank all of you all.

And I think most of you know I come from West Virginia, a wonderful little coal-mining State and extraction State, heavy-lifting State, heavy-working State with a lot of people who have given everything to this country.

They never thought at one time in 1946—the Krug-Lewis Act at that time was saying that for every ton of coal to be mined that there would be money set aside from that ton of coal that would take care of their pensions and retirement because of the difficult jobs they were doing and the need of this country to have the energy. They did everything they could do too.

The average pension of miners is less than \$600, and most of that is going to widows, because their spouses have paid the ultimate price. So we are not dealing with \$2,000, \$3,000 pensions at all, we are dealing with survivability.

We were asking—you know, we passed a bill called the Miners Protection Act. We passed half of it, and I was asking my col-

leagues and my friends on the Republican side, you know, at that time, please, let us pass this entire bill, because we had a fix. We were using AML, Abandoned Mine Land, monies that we had in excess that would have taken care of the cash infusion, and we would have been in good shape and we would not have been here. We would have been helping our friends in UMWA and Central States.

But we are in this now. We are the first ones to go down the tube if ours breaks. We have basically one major employer paying 80 percent of the cashflow coming into the system now. If that person has one hiccup or something happens along the way, we are in severe problems and we go down much quicker, and then the whole thing starts to unravel.

So you all have just said—I think Mr. Lynch, and I would think Mr. Naughton and Dr. Rauh—and I know, Mr. Stribling, you are the end result here; you are the face of what we are dealing with, and we have all of our miners and their families back here.

But none of you disagrees—I do not think. Dr. Rauh, I have not even heard you. You understand we have to have some fix. It is going to take an infusion of cash. I think all of you have agreed to that.

We could have fixed ours before, but we cannot now. So now we are going to need an infusion with the mine workers for basically a fix. So you are all in that position, right? It takes some sort of a fix. It cannot be fixed on its own without an infusion of cash.

Dr. RAUH. An infusion of cash from where?

Senator MANCHIN. I am just saying infusion of a loan. How do you think it can be fixed with a loan?

Dr. RAUH. So, listen, as has been said thus far, there is little that can save plans that are insolvent.

And I just want to, you know, I would like to express actually great admiration for you, Mr. Stribling, for a life of very hard work. And the American economic system is founded on the idea that factors of production, capital, and labor will be compensated when they contribute to the process of production. And it is clear you have personally contributed a tremendous amount and that the promises that have been made to you are in danger of not being kept.

And I think the question is, what is the role of the Federal Government when agreements between employers and trade unions go wrong and people like Mr. Stribling are hurt? Is it to provide loans which are going to be tantamount to bailouts of the plan? Or is it primarily to ensure that the responsible parties are held liable for the contractual obligations?

You know, I think employers entered these agreements, these arrangements; they are responsible. And so I think as a first pass we should be tightening the withdrawal liability rules.

Senator MANCHIN. Dr. Rauh, I am sorry, I only have so much time, and you are taking all my time. And with that being said, I can tell right now you and I are in a completely different universe, okay, completely different.

And with that being said, there is a responsibility. We have real people, real people's lives, families involved right now. And as I think my good friend Congressman Neal said, we did not hesitate, did not hesitate on the banks, did not hesitate on the auto indus-



try, did not hesitate on anything else. When there were large corporate stockholders involved, all the different things that basically happened, we came to their aid immediately overnight.

I was not here. I understood they worked on a 24-hour turnaround on some of this.

All we are asking for is, if they would have done what we asked for with the mine workers, the AML money, we would have been out of this. We are not. We cannot fix it now unless we have some assistance.

Dr. RAUH. I believe you should have hesitated on those corporate interests, by the way.

Senator MANCHIN. Should have hesitated?

Dr. RAUH. To bail out those corporate interests.

Senator MANCHIN. I wish you would have come and testified at that time. I did not hear you speaking up then.

Dr. RAUH. If I had been invited, I would have gladly done so.

Senator MANCHIN. Yes, you can always come; this is an open space. Feel free.

What we are looking for is solutions right now. And I am just saying that we have been talking here for, what, 6 months? We were created, when? And we are talking November? We have not gotten any closer, so we are going to have to come to agreement somehow. Is there some infusion of money, some sacrifices to be made?

I do not know how much of a sacrifice that anybody can I think, in good conscience, ask the miners to say, okay, you are making \$582, can you give us something back? That is ridiculous. So you are asking for sacrifices on that side.

And we are not asking for anything other than, basically, stepping forward and getting this done. The quicker we get this done, the better we are. Every month that goes by, every year that goes by, we are in trouble.

So I am asking my friends, sooner or later, we've got to have a bipartisan discussion, just us only, us sitting in a room.

Co-Chairman HATCH. We will. We will. Let us get all the facts.

Senator MANCHIN. Yes, I know that. And I am asking for that as soon as we possibly can to find out what we can agree on that we think is reasonable that we can move forward on, because we are coming down to where we are going to have to make a decision. We are going to run out of time and say, "Well, I am sorry, we have no solution."

Co-Chairman HATCH. Senator, your time is up.

Representative Scott?

Senator MANCHIN. Yes, I figured that would happen. Thank you, Mr. Chairman.

Co-Chairman HATCH. Representative Scott?

Representative SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, this select committee—this is the fifth committee hearing, and it is focused on how multiemployer pension systems affects various stakeholders.

I appreciate all of our witnesses' testimony and believe they raise worthwhile points for us to consider in the weeks ahead.

I look forward to the bipartisan meetings we are going to have and good-faith negotiations on how to address this looming crisis.

As we proceed, we have to keep in mind what Mr. Stribling told us today about the fundamental fairness and keeping promises to working Americans front and center and how we have to keep in mind what the workers and retirees and businesses told us in Ohio 2 weeks ago. We have to keep in mind what our constituents are telling us every day.

Through no fault of their own, hardworking Americans are at risk of losing nearly everything they have worked for and sacrificed for over their lifetimes.

Let me ask Mr. Lynch a question.

Mr. Lynch, can you tell us what problems the Federal Government budget will incur if we do not do anything at all?

Mr. LYNCH. Congressman, I wish I had the expertise to give you an answer to that. I mean, I have to think it is pretty severe. I mean, let us just play this out. At some point, if the Mine Workers and the Central States funds end up at the PBGC's doorstep, they do not have the resources to pay that; they are insolvent.

At that point, I think that Congress will have a very, very more difficult decision than they do today, as difficult as the decision is today.

Representative SCOTT. But the PBGC received premiums with a promise to pay minimum benefits if the plans went broke. If the PBGC runs out of money, do they not still have a moral obligation, does not the Federal Government have a moral obligation to make good on its promise?

Mr. LYNCH. Personally, I would say yes.

Representative SCOTT. Okay. Well, they took the premiums; the Federal Government took the premiums and made the promise.

Mr. LYNCH. And the PBGC is a Federal agency.

Representative SCOTT. Okay. If some of the plans that are presently in jeopardy go broke, what effect could that have on other plans that are presently not in jeopardy?

Mr. LYNCH. The system is very interconnected. I mean, you have large employers, small employers as well, but you have large employers that are typically contributing into 10, 25, 30 different plans in the same industry. I mean, that is typical in the trucking industry. So if one of those plans goes insolvent and if there is something that triggers a withdrawal by one of those contributing employers, that will have the contagion effect and a ripple effect throughout the system.

Representative SCOTT. Thank you.

Mr. Naughton, what problem occurs if we delay action?

Mr. NAUGHTON. So every day—

Representative SCOTT. Does the problem get easier or harder?

Mr. NAUGHTON. So every day, the system becomes more underfunded in its current form. If you look at it from the government standpoint, you know, the PBGC is a separate agency; it does cover the benefits. And to the extent that the premium or the funds they have are insufficient, then the benefits get reduced. That is sort of how things are set up right now.

So when you look at the decisions that will have to be made, they will become harder because there will be more people who would have to take larger benefit cuts.

And you know, once the PBGC is involved in making those cuts, there is no issue of fairness, right? They just sort of go down the line and cut everybody's benefits, so it is a very difficult sort of situation to be in.

Representative SCOTT. But the situation gets better or worse if we delay?

Mr. NAUGHTON. It gets much worse.

Representative SCOTT. And why does it get worse?

Mr. NAUGHTON. It is more money. You know, again, every day the unfunded obligations grow, because every day contributions are being collected that are insufficient relative to the promised benefits. And every day, there are funds that are paying out pensions that they do not have the resources to be paying. And so as you delay, those things are just going to grow over time.

And so, if you look at in the last 10 years, the \$438-billion increase in underfunding was somewhat predictable, you know, and that is just going to continue to grow into the future.

Representative SCOTT. You know, several members have mentioned the fact that there are fewer businesses involved. If these plans were really solvent by normal definitions of solvency, should that make any difference at all?

Mr. NAUGHTON. Absolutely not. If you have a system that relies on getting more employers to join or getting new employees, it is just an indication that you are not solvent.

So solvency means I can pay what I owe. If my credit card bill comes in the mail and I can pay the full balance, I am solvent. If I can only make the minimum payment, I am not. It is as simple as that.

Representative SCOTT. And are you aware of how the U.S. code defines solvency of these plans?

Mr. NAUGHTON. From an actuarial standpoint or from a corporate standpoint?

Representative SCOTT. From the statutory standpoint, where it says that it is insolvent if it cannot make payments.

Mr. NAUGHTON. Exactly, yes. So if you look at ERISA, the way it is defined is a little bit counterintuitive. And it basically says you become insolvent when you literally have no money left to pay benefits. Which is different, right? Because if I promise you \$100,000 a year from now and that is a promise I have to pay you, and if I literally have no money today, any reasonable person would say you are insolvent.

Representative SCOTT. Today.

Mr. NAUGHTON. Today. But what the ERISA code does is, it says you are insolvent a year from now when you actually have to make that payment. And yes, that is not—

Representative SCOTT. And that allows us to get in the mess we are in today, and that is the fault of the Federal Government for allowing that to happen, is it not?

Mr. NAUGHTON. You know, I personally think that if I were a trustee of one of these plans and I knew I had these payments, that I would collect the payments.

And if you look at the plans—obviously, I talk in averages—on average, the trustee did not collect sufficient contributions. And it

does not mean they all did not, it just means on average they did not.

And so the question is, who is at fault? Is it the trustee for not collecting the contribution, which the rules allowed? Or is it the government for giving that trustee the discretion to not collect the contribution?

Representative SCOTT. Well, I think that second one puts us on the hook.

Thank you, Mr. Chairman.

Co-Chairman HATCH. Thank you, Representative.

Senator Manchin desires 2 extra minutes. And then I will turn to Senator Heitkamp.

Senator MANCHIN. Thank you very much. And I will just—and I meant to, first of all, introduce this letter from the president of the United Mine Workers, Cecil Roberts, and it concerns their concerns and also the history of how we are where we are with UMW.

And I had one question I just wanted to follow up on. I talked briefly about the mine workers retirement fund dating back to the White House, 1946. In fact, the Coal Commission led by then Republican Secretary of Labor Elizabeth Dole found that the UMW fund, inasmuch a creature of government as the collective bargaining—there is a line running from the original report to the present system. In a way, the original Krug-Lewis agreement pre-disposed, if not predetermined, the system that evolved.

When we secured an agreement to ensure the health care of 22,600 miners last year, we made sure that everyone knew we were not done and we had to have a pension fix.

So I would ask both Mr. Naughton and Dr. Rauh, are you familiar with the Krug-Lewis agreement? And do you know of any other industry-wide multiemployer health pension fund agreement between the private sector and the government that guaranteed pension benefits for life? Just a “yes” or “no” if you knew about that or understood that the government had any type of an arrangement like that.

Mr. NAUGHTON. On the pension side, no, I am not familiar with any particular arrangement like that.

Dr. RAUH. I am likewise not familiar.

Senator MANCHIN. Yes. Well, the reason why is, there is not another one like it. That is why we are so different. And that is why I wanted to make sure that got into the record.

Thank you, Mr. Chairman.

Co-Chairman HATCH. Thanks, Senator.

Let us go to Senator Heitkamp now.

Senator HEITKAMP. Thank you, Mr. Chairman, and thanks to the ranking member for holding our hearing.

I would like to start by making an observation. Today’s hearing is entitled “How the Multiemployer System Affects Stakeholders.”

So I would like to know, Mr. Naughton, will your pension be cut if we do not solve this problem?

Mr. NAUGHTON. I do not have a pension.

Senator HEITKAMP. Yes. Well, but you do not have any personal stake in resolution of this problem beyond being a shareholder or a taxpayer.

Mr. NAUGHTON. You are correct.

Senator HEITKAMP. Okay.

Dr. Rauh, do you have any stake in resolution of this beyond being a taxpayer?

Dr. RAUH. Not beyond being a taxpayer, no, I do not.

Senator HEITKAMP. Yes.

Mr. Lynch?

Mr. LYNCH. I do not.

Senator HEITKAMP. But you are all sitting in chairs that were supposed to be reserved for stakeholders. And so I am going to turn my attention to Mr. Stribling.

You have worked a lot of years. You gave up wages in exchange for economic security, did not you?

Mr. STRIBLING. Yes, I did.

Senator HEITKAMP. Yes. You were willing to work long hours. In fact, you have told us what a demanding job you had and four different employers, I think you said. And you did that because you thought you could retire with some dignity, right?

Mr. STRIBLING. Yes, I did.

Senator HEITKAMP. Yes. And as a participant in a plan, did you ever make decisions about the operation of the plan? Were you sitting at the table trying to decide what the investments should be? Did you make a decision on how the premiums or the benefits were going to be resolved?

Mr. STRIBLING. No, I did not.

Senator HEITKAMP. Okay. Good. So, sadly, your story is not unique. Thousands of retirees are confronting similar circumstances. One of my constituents, who lives in Riverdale, ND named George Ganje, wrote a story, wrote in to tell me that he worked for SuperValu for 35 years and the majority of his working hours were in the middle of the night. He was unable to attend his children's school programs, he worked hard, and now he has been told that his pension will have to be cut. You know, he does not think that is fair.

And I think that is what this hearing is about. It is about the empathy and equity that we should be discussing about the stakeholders.

And so this possibility has caused him many sleepless nights and obviously has taken a toll on his health.

With these things in mind, I would like to ask the witnesses here today, the academics who are here, whether they believe that folks like Mr. Ganje and Mr. Stribling should have to take a cut. Is that the solution here, that they should have to have their pensions cut?

And we will start with you, Mr. Naughton.

Mr. NAUGHTON. The agreement is——

Senator HEITKAMP. No. I mean, is the only way that you see to resolve this to cut the pensions of the people sitting at this table and behind you?

Mr. NAUGHTON. There is only so much money to go around. So, the employers do not have the funds. The unions do not have the funds. That leaves either participants or taxpayers. And so the question is, should taxpayers bear any costs? Yes, they should. Of course, they should. I think it is totally inappropriate that somebody closes in on——

Senator HEITKAMP. Yes. So your answer is “maybe.”

Mr. NAUGHTON. Yes.

Senator HEITKAMP. Dr. Rauh, do you think that the only way out of this is for these stakeholders here, these pensioners, to take a cut?

Dr. RAUH. You know, it is not my decision to make. But if you decide that you want to avoid benefit cuts, then my recommendation would be to try doing that through supporting the PBGC as opposed to a loan program. It is not my decision to make. And there are——

Senator HEITKAMP. But you have recommended no Federal intervention.

Dr. RAUH. I recommended no loan program. And in general, I think you have to answer the question as to when agreements between employers and trade unions go wrong and people like Mr. Stribling are hurt, what should the Federal Government do?

Senator HEITKAMP. Well, you have answered the question for us. You have said “nothing,” the Federal Government should do nothing.

Dr. RAUH. Not through a loan program. They should consider whether supporting the PBGC financially would be a viable way to go if you believe that the guarantee levels of the PBGC are too low and that it is underfunded.

Senator HEITKAMP. I only have a few minutes left. So after today’s hearing, my office will be holding a Facebook Live event for people who have been involved and impacted by the collapse of our multi-pension system so they can tell their stories for the record.

I invite all members of this committee and the attendees in the audience to stop by Dirksen 534 and share your story for the record on Facebook.

And thank you, Mr. Chairman.

Co-Chairman HATCH. Representative Norcross, you are next.

Representative NORCROSS. Thank you. I am glad, first of all, to the chairs and to all 16 members of the committee who have been dealing with this issue for a number of months, but in particular, for the efforts that I know most of you feel.

And certainly, thank you to the panelists. We very much appreciate you coming by today.

But the realities that we are facing are daunting. It is not if, but when. The threats are so real, first of all to those retirees. Wages that were earned, but deferred—or as I call it, dreams deferred—for your golden years.

And quite frankly to the employers, because so many of the employers that we are talking about, not the ones who have gone into bankruptcy but the ones who continue today to employ people who are those future retirees, face a very real reality that they will go bankrupt, they will go out of business, adding to this problem.

And quite frankly, the threat to America, the loss of confidence in the retirement system. Your average person does not know the difference between a 401, 402, multiemployer pension. All they are going to hear is that a retirement system is collapsing; something that we inherently as Americans trust, is being ripped away from them.

And what is the difference between trusting that and trusting Social Security? The loss of confidence to our country in its retirement system, in its ability to have those dreams, those golden years, is literally at stake here.

You know, we are the greatest country on earth. We are viewed that way by the world, not by the way we treat those who have the most, but by the way we treat those who have the least, who are in trouble.

And in some of the testimony that we have heard, I would question, why do we ever help anybody who has been in a hurricane? Hey, you are in Texas, you are in Florida, you should have known that is a hurricane area. You should have lifted your house 10 feet off the ground. But we are a caring Nation; we come to those who, through no fault of their own, have been devastated.

But using some of the logic I hear today, you should have moved after that last hurricane. Do you know what we do in America, do you know what we do here in Congress? We come together to help those people, because we are a great Nation that understands this.

I hate to believe that if I went overboard and, God forbid, I did not have my life jacket on, sorry, we are not going to save you, you did not have a life jacket on, you should have known. No, that is not America.

So when I hear some of these things—and by the way, there are some great stories. The majority of multiemployer plans are in the green zone. And one of the questions that I want to bring up is, you as a trustee understand you get these figures each and every day—equally between management and labor; there is no majority—you suggest that somehow the unions have control. This is about retirees, this is not about a union issue. This is about literally the collapse of our system when people go and try to cash in and those companies now are dragged down by those unfunded liabilities.

Mr. Naughton, you are a trustee; put yourself in that position. You have seen the numbers. You are a member of, let us pick a number out, a 200-company multiemployer plan. How do you account, how do you see bankruptcy by other companies coming when you are making that contribution? How would you know company number 249 is going to go bankrupt and leave you that unfunded liability?

Mr. NAUGHTON. So, again, the only reason they are leaving an unfunded liability behind is because—

Representative NORCROSS. How do you know as a trustee—

Mr. NAUGHTON. I do not need to know. If I collect the right contributions—

Representative NORCROSS. You do not need to know—

Mr. NAUGHTON. I do not care.

Representative NORCROSS. Then let me ask you this question. Since you do not need to know and you have to fund that system, that is going to increase the amount of money your company has to put in, is it not? Is it not? If somebody goes bankrupt and they leave that unfunded liability to the last man standing—correct—why don't you need to know that? Doesn't that impact what you have to contribute?

Mr. NAUGHTON. Just to clarify. So you are putting me in the position of the trustee.

Representative NORCROSS. And you were saying it was their fault—

Mr. NAUGHTON. Clearly, their fault.

Representative NORCROSS. So how would you know what to contribute for a potential bankruptcy by a company unrelated to you other than being in the system? How would you know that?

Mr. NAUGHTON. So, again—

Representative NORCROSS. Would you know it, “yes” or “no”?

Mr. NAUGHTON. I do not need to know. If I collect the right contributions, I do not need to know.

Representative NORCROSS. So, you do not need to know, even though that would impact your premium that you have to pay.

Mr. NAUGHTON. But it does not impact it. If I collect the right amounts, it does not impact anything.

Representative NORCROSS. Whoa, whoa, whoa, whoa, whoa, stop. What do you mean, it does not? You are absolutely and factually incorrect. So the unfunded liability comes over to the remaining companies, the last man standing, correct? So you are part of the group that is left. That would change—

Mr. NAUGHTON. So you are talking about a plan today where I am already in a position where I have massive obligations—

Representative NORCROSS. No, I am not saying that. I did not bring that up at all.

Mr. NAUGHTON. Okay. If I am in a plan that I am setting up today and I collect—

Representative NORCROSS. No, you are in the midst of a plan—

Mr. NAUGHTON. I apologize.

Representative NORCROSS. I am running over. We will get back to it in maybe the second round. Think about your answer.

Mr. NAUGHTON. Okay.

Co-Chairman HATCH. Representative Dingell?

Representative DINGELL. Thank you to both of our chairmen.

I am going to express my concern, as some others have, that this is our fifth hearing. I think we have 19 workdays, or the House members; I do not know what the Senate is going to be doing workwise, but all of us together. And for me, failure is not an option. I think failure should not be an option for any of us on this committee.

I hope we are going to get together. This hearing is to hear from the stakeholders, but I have been hearing from the stakeholders every single day. And I have stories. I mean, some of the members have heard me talk about this. A man came to me during the district work period and said he had put a gun to his head, he did not want to live because he did not know what his options were. The desperation of family after family—I see them every weekend. They come to my front door at home and now they are coming and talking to me from across the country because they think I will listen. And I will. I never turn anybody away.

So I got pretty mad today, Mr. Naughton, when you made it sound, whether you meant it to sound like this or not, you made it sound like the employees were somehow to blame or that people were not collecting enough.



There were a lot of assumptions made on pensions. I think one of the things that we have to study in this committee is, how do we strengthen pension laws?

You know, many of my colleagues talk about previous bailouts. There were Republicans and Democrats who did not want to bail out the auto industry, but if the auto industry had not gotten support and loans that were paid back, the entire economy of these United States would have collapsed. And that was why people who did not even want to ever do something like that did.

And we are talking about what will happen to the economy, what will happen to communities, and what will happen to human beings across this country if we do not address this problem.

Because of this, I want to just ask Mr. Stribling questions first so we can be very clear for everybody in this room. Senator Heitkamp started down this way.

But have you made any investment decisions for the plan in which you participate?

Mr. STRIBLING. Absolutely not.

Representative DINGELL. Did you make any of the decisions about the amount of contributions that employers make or negotiate any withdrawal liability from employers leaving the plan?

Mr. STRIBLING. Absolutely not.

Representative DINGELL. As a multiemployer pension plan participant, are you simply informed of these decisions by the trustees of the fund?

Mr. STRIBLING. No, I am not.

Representative DINGELL. You are not even informed?

Mr. STRIBLING. I am not informed.

Representative DINGELL. So is there anything you could do as a participant in a multiemployer plan to right the course of your pension plan?

Mr. STRIBLING. No, there is not.

Representative DINGELL. Is it correct to say the current state of these plans is not your fault?

Mr. STRIBLING. Absolutely.

Representative DINGELL. When your union negotiated on your behalf, is it your understanding that you—and we talked about this, but I do not think people understand. How many people do you know who gave up pay raises, sacrificed compensation increases at the time, because of the promise of a safe and secure retirement?

Did you?

Mr. STRIBLING. Yes, I did.

Representative DINGELL. And did many of your colleagues do the same thing?

Mr. STRIBLING. Absolutely.

Representative DINGELL. So while we have testimony in this room that makes it, in a very callous way, sound like people had something to do with it and it is people, the people who are being impacted by this—across the country, by the way; it is not some of us have States that are more impacted than others—what is our human responsibility to people across the country?

Mr. Lynch, I want to come back to you. If I pick up one theme in your testimony, it is simply that Congress must act now. You

stated that action is necessary sooner rather than later. Why do you believe that to be true? And do you believe that the cost of a solution will only go up if the committee fails to act and what the cost is if we do not act?

Mr. LYNCH. The cost will absolutely go up. I think there is no, at least in my mind, there is just no question about that.

You have an opportunity now, if you can get yourselves to a position where there is an agreement on some kind of infusion of cash, you can have a plan like Central States that can then use those funds, pay back the loan, or they can use those funds in order to generate the investment income that keeps them alive and not go into insolvency.

Representative DINGELL. Mr. Chairman, I am almost out of time, so I am simply going to state again, failure is not an option. We have a moral responsibility to act for the people of this country.

Co-Chairman BROWN. Ms. Dingell, thank you.

And, Mr. Chairman, I wanted to just let people know—and Congresswoman Dingell has talked about, so have others, about the urgency of this.

Chairman Hatch and I met last week. We are asking, because of the House schedule and the Senate—and we are going to be, I think, the Senate is going to be in session 2 or maybe 3 weeks in August; you will not be. I guess you guys are out next week; we are here then and then in August.

But we have empowered, asked, empowered our staffs, deputized our staffs to get serious about negotiations, the leadership staff of the committee, but also rank-and-file member staff.

And then Chairman Hatch and I will reconvene in September a bipartisan member meeting, and we hope to get close to real solutions in September as we move into the fall when we know elections come and members are all over the place.

Co-Chairman HATCH. I think that summarizes it.

Co-Chairman BROWN. So that is important.

Co-Chairman HATCH. I think that summarizes it pretty well.

We still have time for Mr. Schweikert and then Senator Smith.

Representative DINGELL. Could I say to both co-chairs before we go on, I will fly anyplace, anytime and be a member of this committee. You can count on me between now and November. I do not care about elections.

Co-Chairman BROWN. I know you well enough to know you will.

Co-Chairman HATCH. I know you very well, and I know you will do it. Thank you.

Representative SCOTT. Mr. Chairman, I think there are other members of the committee who would be willing to come back.

Co-Chairman HATCH. That is right.

Representative SCOTT. Including myself.

Representative DINGELL. We would. I mean, I do not want to speak for the Republicans, but we would come back to work with the Senate if we could get together, because I think it matters.

Co-Chairman HATCH. We are going to solve this problem. So we will have—

Representative DINGELL. I trust you. I know you. You are right: we have known each other a long time.

Co-Chairman HATCH. We are going to solve it. It is not going to be easy, and it probably is not going to please anybody, but we are going to solve it.

And let us go to Representative Schweikert, and then Senator Smith will be the last.

Representative SCHWEIKERT. Thank you, Mr. Chairman.

And I want to be harmonious with my brothers and sisters here on the committee and so many of the people we have met with. But I must tell you, being someone who has tried to read everything—it is the joy of having a 5-hour flight to get home—I have grown to believe that we almost need to consider a revolution of redesign, that the current model, the current statutes, and the multiemployer system functionally, do not work.

Even if we patch things up, there is going to be another wave. And I think we need to be honest, because there is a cascade effect in our society. As we are getting older very fast, our birth rates have collapsed. This is what the future looks like. Today it is multi-employer plans.

I mean, if we are having an intellectually honest conversation about underfunding, can we now talk about Social Security and Medicare? Can we now talk about so many other things? At some point, we need to be intellectually credible here about what is going on in our society.

Mr. Stribling, just a quick conversation.

When you are at the union hall and you are talking with some of the younger workers, do you think they are prepared to pay higher amounts into the pension system right now, partially to, shall we say, deal with the unfunded liabilities of their brothers and sisters who are moving into retirement or are in retirement?

Mr. STRIBLING. I would honestly say “yes.”

Representative SCHWEIKERT. Good. That is actually—because that may be what society is heading towards right now.

For my two actuaries here, if I wanted to actually fix this permanently and we open up the playbook, do we take those who are not receiving benefits and start to build a different model? Do we do what Boeing did years ago, take those and create a defined contribution or, as you have written about, almost a methodology of a built annuity system? What would create permanent stability for the future?

Because when our net-present value calculations are so radically different between individual plans and these multiemployer plans, we are always going to see a systematic underfunding, because it benefits that current negotiation but underfunds the future. What would you do?

Mr. NAUGHTON. Either approach is fine.

So whether it is a defined contribution plan or whether it is a plan that sort of dictates that the contributions are actuarially sound—an annuity-type model—what you are doing is, you are sort of fixing in place something that will ensure that the money will be there, okay? So the funding issues go away with both approaches.

An annuity-type model is, in most cases, better because it pools risk better. With defined contribution, sometimes individual participants invest poorly, sometimes individual participants outlive

their assets. Sometimes they sort of die before retirement and then their assets were not really needed in the first place.

And so, when you look at sort of pooling all of the risks——

Representative SCHWEIKERT. So a pooled annuity model with sort of layered entry——

Mr. NAUGHTON. Correct.

Representative SCHWEIKERT [continuing]. And then the blended benefit of mortality tables.

Mr. NAUGHTON. Correct. And that sort of is what we see from an economic efficiency standpoint. It ensures that everything is geared towards retirement security.

Representative SCHWEIKERT. Doctor?

Dr. RAUH. The multiemployer trustees have not acted in the interests of the beneficiaries as they should have. And furthermore, if the PBGC backstops them and if taxpayers are partially backing the PBGC, then to have any kind of defined benefit system, the rules must be very, very tight. And I wonder whether Congress has the desire to make them tight enough.

And so that is why I believe that Congress should be requiring systems that are not paying contributions to stop making new promises, meaning to freeze these plans. Frozen plans themselves should be required to stabilize their funding levels.

Representative SCHWEIKERT. That is a similar model we use right now with individual employer models, where it has to be a credible rate of return, because you just all saw the CalPERS, and those are recalculating for the future of a lower rate of return in the coming years. But also, if they are not meeting the actuarial soundness, they must shut the plan down.

Dr. RAUH. That is right. As you mentioned CalPERS, the other thing that CalPERS does, by the way, on this withdrawal liability point is that if a public agency, local government wants to withdraw from CalPERS, CalPERS charges them a rate based on the terminated annuity pool, which is a rate of around 3 percent. So they have a rule in place where the withdrawal liability must be calculated, the equivalent of the withdrawal liability must be calculated using rates that reflect the fact that these are promised benefits.

Representative SCHWEIKERT. Mr. Chairman, I know we are up against time.

Co-Chairman HATCH. We have one last questioner.

Representative SCHWEIKERT. But I believe, actually, we need to be prepared to do a long list of improvements and changes so we are never in this room again.

Co-Chairman HATCH. I agree.

Representative SCHWEIKERT. And with that, I yield back.

Co-Chairman HATCH. Thank you.

Senator Smith, you are the last one.

Senator SMITH. Thank you, Chairman Hatch.

And thank you, Senator Brown, for your leadership on this issue.

And here is what I am taking away from this. We started with the idea that there really are no provisions in law that are going to help this situation. Senator Brown made that point in the very beginning.

There maybe is one place where we have consensus here, and that is the longer we wait to solve this problem, the worse it gets, the more expensive it gets, that we might not—our panelists do not all agree on what the solution ought to be. I appreciate Senator Portman making this point.

Mr. Stribling, you know, you point out that all policy is personal. One way or another, it affects people in personal ways. And so I want to thank you for being here and drawing our attention to the personal impact of inaction in this situation. And I know that behind you are dozens of others who each have a personal story to tell. I have certainly heard many of them, so I really appreciate that.

It seems to me, clearly, my colleagues, that we need to use our imaginations and our brains to figure out this problem. If it were easy to figure out, somebody would have done it already. It is a hard problem to solve, as our panelists have pointed out.

But we have shown that we can do this before with other really difficult problems. We have also shown that we know how to come together in emergencies when we need to.

I think Representative Neal pointed out that we did that with the S&L crisis and we did that when the markets crashed in 2008; we did that with the auto industry.

So I just want to, after having all of my questions answered by these panelists, I want to just tell you, Senator Hatch and Senator Brown, how much I have faith in our ability to figure this out if we work together.

I am really grateful that we are going to have a coming together shortly with ourselves and our staffs to figure out how we can come up with some solutions. We have one solution on the table of a loan idea. I appreciate Mr. Lynch's comments on this. That is what I think is the best thing, but I really look forward to having that conversation with all of us so that we can come up with a bipartisan solution.

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

I want to thank you all for your attendance and participation today.

Did we get everybody? I think we did.

Co-Chairman BROWN. Yes. Could I have 20 seconds, Mr. Chairman?

Co-Chairman HATCH. Sure.

Co-Chairman BROWN. Yes.

Co-Chairman HATCH. Why don't you take some time?

Co-Chairman BROWN. I will just take less than half a minute.

Thank you, Senator Smith.

And I think what she said about the loan program—there are a lot of different views on this committee. I think we have seen from testimony from a whole lot of employers, including the U.S. Chamber representing employers and employers themselves, and experts like Mr. Lynch, that a loan program is certainly viable and can certainly work.

We are all open—I think we are all open to everything. It seems that we are going in that direction.

I wanted to say Congressman Schweikert's comments about never again, that we do not want to be here and do this 2 years, 5 years, 10 years from now, how important that is.

And I look forward to working with the staff, working in August with some House members coming back, and at least the eight Senators talking among themselves and working, but the staff driving this, and then in November we get really serious about putting finishing touches on this issue and absolutely figuring it out.

So thank you, Mr. Chairman.

Co-Chairman HATCH. Well, thank you, Senator Brown. I hope we can do it even before then.

But I want to thank everybody for their attendance today and, of course, the participation today. This is really a tragedy that we are faced with these problems, but we have to solve them.

And I ask that any member who wishes to submit questions for the record do so by the close of business on Friday, August 10th.

Now, I am grateful for the hard work of everybody on this committee. We are going to solve these problems one way or the other. And I hope that everybody who feels deeply about it will weigh in and help us to do it in the very best way we can, considering taxpayers, considering other organizations that have not had these problems as much. We are just going to have to face the music here and do the job.

So with that, we are learning a lot here from the testimonies, and we appreciate each one of you for coming today and giving us the benefit of your testimony.

With that, we will adjourn until further notice.

[Whereupon, at 12 p.m., the hearing was concluded.]

## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF HON. SHERROD BROWN,  
A U.S. SENATOR FROM OHIO

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.

Thank you, Senator Hatch, for your continued work on this committee. I also want to thank my colleagues Senator Baldwin and Senator Johnson for being here today to introduce one of our witnesses, Kenny Stribling.

I also want to thank all of the members of the committee who joined Rob and me 2 weeks ago in Ohio for our field hearing.

That hearing was particularly important for us to hear the perspectives of the workers and retirees and small business owners who have the most to lose if Congress doesn’t do its job.

Roberta Dell works at Spangler Candy Company in Bryan, OH, and I think she put it pretty succinctly. She said if nothing is done, quote, “a lot of us will go belly up, that’s the bottom line.”

We know the same could be true for small businesses. Bill Martin, the president of Spangler, explained that, quote, “In Central States, the vast majority of [the] 1,335 contributing employers are small businesses like us. This issue hinders the success and growth of our businesses that already struggle to be competitive.”

These businesses and their employees did everything right. They contributed to these pensions, in many cases over decades.

And they are the ones whose lives and livelihoods will be devastated if Congress doesn’t do its job.

When I think about the responsibility we have, I think about the words of Larry Ward at that hearing. He said, “I don’t understand how it is that Congress would even consider asking us to take a cut to my pension, or see it go away entirely, when it had no problem sending billions to the Wall Street crooks who caused this problem in the first place. They used that to pay themselves bonuses. We use our pensions to pay for medicine and food and heat. There is something wrong with this picture.”

If we do not find a way to compromise and come together on a bipartisan solution, he’s right, there will be something very wrong with this picture.

But I think we are going to be successful. I saw a lot of opportunity for bipartisan cooperation at that hearing. Rob and I both talked about how we are putting aside talking points, listening to all ideas, and working in good faith.

And I believe that’s true not just of the two of us, but of all of us on this committee.

The staffs of all 16 members have met for more than 30 hours of briefings by stakeholders and experts. We have met six times with five public hearings.

We know this is a complicated problem that won’t have easy answers. It’s really three related issues.

First and most importantly, we have the threat to participants and businesses in multiemployer plans that are currently on the path to insolvency. Current law doesn't contain a remedy for the largest of these plans.

Second, the looming failure of these plans means the imminent failure of the Pension Benefit Guaranty Corporation. The PBGC and the multiemployer system made a devil's bargain years ago, trading vastly inadequate premiums for a vastly inadequate benefits guarantee.

Now that bargain threatens to bring down the entire multiemployer system. We have heard over and over on this committee about the \$67 billion deficit at the PBGC. What that means is that the moment one of these large plans fails, it brings down not just that plan, but the entire multiemployer system.

Third and finally, these impending crises mean that it isn't enough just to fix the crisis today for these individual plans. We can't just put a Band-Aid over this, leaving the problems with the underlying system to fester and erupt into another crisis 5 or 10 years down the road.

We need prospective changes to make sure we never find ourselves in this situation again.

That's the jurisdiction of this committee. These are the three issues we have a mandate to solve for the workers like Roberta and the businesses like Spangler Candy and the retirees like Larry. Failing to address all three of these issues together would be abandoning the responsibility we have to our constituents and to this country.

Chairman Hatch and I met last week, and we are both committed to a bipartisan solution. And we must begin bipartisan meetings with all the members of the committee soon.

We're all aware of the challenges that still lie ahead. But I believe we are going to get there. Too much is at stake for us to retreat back into partisan corners, as we will hear today from our witnesses.

I look forward to hearing from them today, and to working with all of my colleagues toward solution.

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PREPARED STATEMENT OF HON. ORRIN G. HATCH,  
A U.S. SENATOR FROM UTAH

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 to consider how the multiemployer pension system affects stakeholders.

The committee has taken a rigorous approach to the issues before it—examining in public hearings the complex range of problems that have led to the dire financial condition of a significant number of multiemployer pension plans, as well as of the Pension Benefit Guaranty Corporation, or the PBGC.

According to the PBGC, here is where we stand with regard to funding. For 2015, the plans are underfunded by a total of \$638 billion. Almost 75 percent of multiemployer plan participants are in plans that are less than 50-percent funded. More than 95 percent are in plans that are less than 60-percent funded.

But if you look at them on an actuarial basis, using the plans' proclaimed discount rates, they are 80-percent funded, and only have a \$120 billion shortfall. The difference between these numbers should keep us up at night.

Everyone knows the plans are in dire straits, but by using unrealistic assumptions, the true extent of the problem is hidden until it's too late. Indeed, these numbers have kept this committee properly busy.

The committee and its staff have held dozens of meetings with stakeholders, and we are continuously bringing in experts to brief our team. This has been an intensive, time-consuming but worthwhile exercise.

And these briefings and discussions will continue, because I believe it is important that the committee leave no stone unturned in discussing how we may address the conditions of the multiemployer plans.



In addition to the great deal of work that has gone into understanding the system and its challenges, the committee staff has started to consider a range of policy ideas to address the challenges faced by the multiemployer system.

They have started to crunch numbers on these ideas, reviewing them, and looking at the complex interactions of the legal requirements of the current system and the proposals for change. This is complicated stuff—somewhat like playing three-dimensional chess.

A lot of work still needs to be put into this process. At this point, the committee is not taking anything off the table, nor necessarily putting anything on the table for consideration either. But it is necessary and prudent to begin conducting in-depth due diligence on these ideas.

During this morning's hearing, we continue to work on understanding the current system, by hearing more from stakeholders in the system.

We have brought in four witnesses today to help us. One is a retiree in an at-risk program, who will share his perspective as a participant.

We have also brought in two respected academics and a practitioner with years of experience in the system, who will review for us some fundamentals of these plans, and share their views on what does and does not work.

Their perspective is important, because clearly the system is, in certain aspects, flawed. Our witnesses today will help us delve into some key questions. What is at stake here for retirees? What is the appropriate measurement of plan funding? Are the plans generally healthy or not? What major structural reforms are needed? And one issue in which I am most interested: are Federal taxpayers responsible under current law for funding any PBGC shortfalls?

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PREPARED STATEMENT OF TIMOTHY P. LYNCH, SENIOR DIRECTOR,  
GOVERNMENT RELATIONS PRACTICE GROUP, MORGAN, LEWIS, AND BOCKIUS, LLP

Good morning. I'd like to begin by thanking the committee co-chairs, Senators Hatch and Brown, and all the members of the committee for the opportunity to participate in today's hearing on "How the Multiemployer Pension System Affects Stakeholders." My testimony and any answers I provide singularly reflect my own views and not the views of Morgan Lewis or any of its individual clients.

My name is Tim Lynch, and I am the senior director of Morgan Lewis's Government Relations Practice Group. Of more relevance to today's hearing, I am a member of our Multiemployer Pension Working Group, a group that includes attorneys who have experience counseling both contributing employers and multiemployer pension plans in a wide range of industries, including trucking, construction, bakery, maritime, and supermarkets (retail and wholesale). It is because of that depth of experience we were asked by the U.S. Chamber of Commerce to assist it in the preparation of two recent reports: "The Multiemployer Pension Plan Crisis: The History, Legislation, and What's Next" and "The Multiemployer Pension Plan Crisis: Businesses and Jobs at Risk." Hopefully I can provide a perspective on the impacts on stakeholders of the multiemployer pension system reflecting that experience.

I have been involved in the multiemployer pension plan issue since 1980. At that time, I was employed by one of the largest trucking companies in the United States, ANR Freight. ANR Freight was a Less-Than-Truckload (LTL) motor carrier that like all interstate trucking companies was heavily regulated by the Interstate Commerce Commission (ICC). That regulatory regime included deciding what trucking companies could charge, what customers they could serve, what routes they could travel and what services they could offer. In short, virtually every aspect of a trucking company's operations. That world was about to change dramatically by the passage of the Motor Carrier Act of 1980, the law that effectively deregulated the trucking industry. In 1980, the debate over the Motor Carrier Act was the all-consuming focus of the trucking industry.

ANR Freight was also a signatory company to the National Master Freight Agreement (NMFA), the collective bargaining agreement (CBA) between virtually the entire interstate trucking industry and the Teamsters Union. Because of that CBA, ANR Freight was also a contributing employer to all of the multiemployer pension plans under which it had operations. To this day, I vividly remember the phone call I received from the company's general counsel asking what I knew about the Multiemployer Pension Plan Amendment Act of 1980 (MPPAA) and something called

“withdrawal liability.” I believe my response was along the lines of, “nothing and why should I?”

If the Motor Carrier Act of 1980 transformed the entire trucking industry, MPPAA dramatically impacted the unionized portion of the industry. Prior to 1980, 94 of the 100 largest freight-hauling trucking companies in the United States were part of the NMFA. By the mid-1990s, that number was reduced to 6. For certain, some that reduction was due to consolidation but the overwhelming majority was as a result of bankruptcy. And since 1980, not a single mid- to large-size trucking company has entered the market with a CBA with the Teamsters Union to replace all those other trucking companies who exited the market. In other words, no new contributing employers to cover an ever-increasing number of beneficiaries.

In 1997 I went to work for the Motor Freight Carriers Association (MFCA) as president and CEO, where I oversaw the labor negotiations between those remaining unionized trucking companies and the Teamsters under the NMFA. I survived two national negotiations in 1998 and 2003. During that time, one of the three largest trucking companies—Consolidated Freightways—closed its doors leaving thousands of employees without jobs and millions in uncollectable liabilities to the various Teamster pension funds. In the end, funds like Central States received less than 5 cents on the dollar from the CF bankruptcy.

As president of MFCA I thought I understood labor negotiations; what I didn’t understand was the relationship between negotiating a wage and benefits package and the contribution rate to the various multiemployer pension funds. We did not simply pick a number and inform the funds, “this is what we’re paying.” The funds, primarily led by Central States, in essence became a third party to the negotiations—“this is what we need”—and we had to determine how to balance that with the wage and other benefits package. That situation is more pronounced today as funds move from green zone to yellow zone to red zone and into critical and declining status and the attendant need for rehabilitation plans.

Our firm was an active participant during the congressional debates over both the Pension Protection Act in 2006 and the Multiemployer Pension Reform Act of 2014. As the committee has been told, PPA was the first attempt by Congress to address the looming multiemployer pension crisis. If I could pick one word to describe that effort it would be “transparency.” Congress wanted more information on the financial status of the plans and introduced the concept of green, yellow, and red zones to differentiate the healthy plans from the not-so-healthy plans.

The Multiemployer Pension Reform Act of 2014 recognized that more concrete steps needed to be taken to assist plans that were facing significant financial challenges. Congress gave plan trustees some powerful tools to address the funding crisis: the ability to adjust benefits; the ability to seek a partitioning of beneficiaries; assistance for facilitating plan mergers; and financial support. I’ll refer to these collectively as MPRA applications.

MPRA was signed into law in December 2014 and plan trustees in critical and declining status immediately had to begin planning for how to utilize the new tools in the toolbox to address the funding crisis. I believe one of the great examples of a profile in courage is the action taken by 19 plan trustees—management and labor—voting to submit a MPRA application knowing that approval would result in a benefit cut that was desperately needed to save the plans. For union trustees, this meant a cut for family members, friends, and work colleagues. For management trustees, this meant walking back from a promise made to employees who contributed over the years to the success of the company.

The Treasury website for tracking applications for benefit suspensions identifies the Central States Plan as being the first MPRA application filed on September 25, 2015. Technically true. The first “application” filed was by the Road Carriers Local 707 Pension Fund on December 14, 2014 (the enactment date of MPRA). Throughout congressional consideration of the MPRA legislation, the Local 707 Fund—knowing it was facing insolvency within 3 years—was a strong supporter of all of the tools Congress was considering but particularly needed authorization to modify the benefit. The December Local 707 filing was in the form of a letter—I believe it was three sentences long—intended to dramatize the need for Treasury and PBGC to move expeditiously because time was not an ally. The fund formally filed on March 15, 2016 and eventually was denied, the principle reason being the fund could not demonstrate the proposed actions would allow the fund to avoid insolvency. Unfortunately, the Local 707 Fund went insolvent in February 2017.

In his testimony before this committee several weeks ago, PBGC Director Tom Reeder provided an explanation for why Treasury/PBGC rejected the Local 707 application. I'd like to add one additional point to Mr. Reeder's summary. The last request that Local 707 made to the PBGC was to seek help for what are referred to as the "protected classes." When Congress enacted MPRA and allowed for the benefit cuts, one of the stipulations was that there would be no benefit cuts for two categories of beneficiaries—those over 80 and those who were receiving a disability pension—and a third group of retirees between the ages of 75 and 80 who would have a sliding scale of reduced benefit. PBGC determined that relief was not possible under the provisions of MPRA and the retirees in those protected classes join all other Local 707 retirees at the PBGC guarantee. Or as Tom Reeder explained in his testimony, "(f)or nearly one-half of all 5,000 participants in the plan, the guarantee covers less than 50 percent of the benefits earned."

Central States filed its MPRA application on September 25, 2015 and received its rejection notification on May 6, 2016. A good argument can be made that MPRA was developed in large measure to assist Central States in avoiding insolvency. And without question, the language regarding "systemically important plans" (plans the PBGC projects would have payments exceeding \$1 billion) was clearly developed because of Central States. And yet, Treasury rejected the Central States application because the "suspension fails to satisfy the statutory criteria for approval of benefit suspensions." As the committee considers recommendations, it would be useful to understand exactly what "statutory criteria" the Central States application failed to meet. The Central States MPRA application used a 7.5 percent investment rate of return assumption. In rejecting the application Treasury deemed that assumption "not reasonable" and "significantly optimistic." It is worth noting that according to Central States filings, the 2016 rate of return was 8.52 percent and the 2017 rate of return was 12.74 percent. Unfortunately, the damage has been done: in 2016 and 2017 the fund withdrew \$2 million-plus in both years from investment assets to fund the cash operating deficit.

The New York State Teamsters Conference Pension and Retirement Fund has a better ending but the process to obtain approval is nonetheless instructive. The New York Fund withdrew its initial application and refiled. Among the issues that the New York Fund had to deal with was what mortality table was appropriate for the calculation of the benefit modification. The correspondence on this was time-consuming and potentially pushed the fund into a more precarious financial position. If the MPRA process is to work, the timeline needs to be addressed.

While each of these funds had unique circumstances, the one constant is time. A delay—or worse a denial—simply puts more plans and the benefits of plan beneficiaries at risk. That was history but it holds true today: action is necessary sooner rather than later.

This committee has received ample testimony on the financial position of the PBGC and its projected insolvency if several of the more financially distressed plans become insolvent. The only additional point I would like to make is that the PBGC is a Federal agency and is charged with guaranteeing the benefits of multiemployer plan failures. The Federal responsibility is already there; it's just a matter of time when the full impact of that responsibility kicks in. It's either later when the PBGC itself becomes insolvent or now, in the form of financial support. If it's later, the choices will be even more difficult and costly to the Federal Government.

These are hard decisions, but consider the hard decisions that workers, companies, and plan trustees are making today.

- A large contributing employer that is financially distressed informs all of the plans to which it contributes that it can no longer pay its contractual rate of contribution. It needs to significantly reduce its contribution in order to stay in business. The trustees can accept that knowing full well the lower contribution rate will negatively impact cash flow. Or they can reject the lower contribution, undoubtedly triggering a withdrawal and likely bankruptcy of the company. And thus no contributions coming from that company.
- A small contributing employer in the Central States Fund (9 out of 10 contributing employers to Central States are small businesses with fewer than 50 employees) knows there are factors beyond his/her control (see above) that could trigger significant increases in his/her contribution rate (to meet the terms of the rehabilitation plan). Those increases likely make the company non-competitive or he/she can consider a path out of the fund.
- Employees and their union are entering a new round of bargaining with their employer. They understand that any increases in the pension fund contribu-

tion likely will result in little or no pension benefit for them going forward. They would like to bargain for all new contributions going to a defined contribution fund. But they also know those contributions are needed to shore up the current defined benefit plan.

The current framework for evaluating the financial status of multiemployer plans utilizes five categories: (1) Not in Distress (green zone); (2) Endangered (yellow zone); (3) Seriously Endangered (orange zone); (4) Critical (red zone); and Critical and Declining (more extreme red zone). As the committee begins to consider a course of action, it might be useful to contemplate what it hopes to accomplish with each of these zones and the plans that are in them. The temptation for green zone plans undoubtedly is to simply leave them alone and that very well could be the prudent course of action. But are there changes that could be made to help ensure these plans remain healthy?

For yellow and orange zone plans, the goal should be to provide as many tools as possible to plan trustees to avoid falling into the red zone. This could include the additional tool of hybrid plans outlined in the GROW Act legislation. Conversely, the committee should be cautious about adopting procedural changes that while well intentioned, could have the adverse effect of pushing these plans into the red zone.

For the red zone plans (and most importantly those red zone plans deemed to be critical and declining) there is no avoiding the reality that they need an infusion of cash to remain solvent. As mentioned earlier, Central States achieved a 12.74-percent return in 2017 but it doesn't take a mathematician to calculate the benefit of a 12-percent return on \$15 billion in assets versus \$13 billion, or \$11 billion. I would also urge the committee to consult with Treasury and PBGC staff to review MPRA to determine what changes need to be made in the statute to make it more workable.

The Local 707 Plan needed a benefit cut, a merger partner, partitioning, and financial assistance—all of the tools provided under MPRA—in order to survive. It got none and is now insolvent. Only one MPRA application that included partitioning has been approved. And while there may have been informal discussions between Treasury/PBGC and plan applicants utilizing the MPRA provisions on facilitating mergers, that tool remains firmly in the bottom of the tool box.

The New York State Teamster Fund needed a benefit cut and while ultimately approved, it took almost 1 year to get that approval. Weeks, if not months, were spent debating issues like the appropriate mortality table to be used to calculate the benefit cut. One year may not seem like a long time but in the multiemployer world it's the difference between an asset base of \$100 million versus something significantly less. Or the difference between survival and insolvency.

Central States needed a benefit cut but its application was rejected because in the view of Treasury it failed “to satisfy the statutory criteria for approval of benefit suspensions” and its proposed benefit suspensions “not reasonably estimated to allow the plan to avoid insolvency.” With that rejection, Central States is now headed toward insolvency.

In conclusion, these are not easy decisions and the options very limited. But time is not an ally and the choices get more difficult.

Thank you for allowing me to testify, and I'm pleased to answer any questions the committee members may have.

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SUBMITTED BY HON. JOE MANCHIN III,  
A U.S. SENATOR FROM WEST VIRGINIA

### **United Mine Workers of America**

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July 24, 2018

Hon. Orrin Hatch  
Co-Chair

Hon. Sherrod Brown  
Co-Chair

Joint Select Committee on Solvency  
of Multiemployer Pension Plans  
104 Hart Senate Office Building  
Washington, DC 20510

Joint Select Committee on Solvency  
of Multiemployer Pension Plans  
713 Hart Senate Office Building  
Washington, DC 20510

Dear Co-Chairs Hatch and Brown:

I want to first thank you for your leadership of the Joint Select Committee on Solvency of Multiemployer Pension Plans. You have taken on an immense and difficult challenge, but one that must be confronted and solved. Millions of retired American workers are counting on you and the committee to arrive at a solution that preserves the pensions that they earned after decades of hard work. You must not fail them.

That is especially true of the retired members of the United Mine Workers of America who are covered by the UMWA 1974 Pension Plan. As you know, the 1974 Plan is projected to become insolvent in the 2022 Plan year. But that projection may prove to be optimistic, as any further shocks to the financial markets or another sudden downturn in the coal industry will accelerate insolvency.

In December 2007, before the Wall Street crash that drove the country into the Great Recession, the 1974 Plan was 94-percent funded and the actuaries projected that it would become fully funded over the coming decade. In April 2009, immediately after the Wall Street crash, the actuaries projected that instead of being fully funded, the 1974 Plan could become insolvent in the coming decade.

Bankruptcies in the coal industry have devastated the 1974 Plan's contribution base. In 2014 employers contributed over \$120 million to the Plan; by 2017 employer contributions had plummeted to about \$20 million because of bankruptcy court actions, and about 80 percent of that contribution now comes from just one employer group. The bankruptcies have also increased the ratio of inactive to active participants. In 2014 there were 10.6 inactive participants for each active participant. Because of the withdrawal of companies in recent bankruptcies that ratio is now about 33-1.

Adding insult to injury, bankruptcy courts also voided \$3.1 billion in withdrawal liabilities from former contributing companies.

The retirees did not create these problems. Yet here we are. Legislation is now the only option to prevent insolvency of the 1974 Plan. We can't invest our way out of the problem, nor cut our way out, nor contribute our way out.

Congress has had proposals before it since 2010 to bring the 1974 Plan into the Coal Act and allow it to access the same Federal financial support as Congress has provided to these very same retirees in the Coal Act health plans. The option to allow the 1974 Plan to participate in Abandoned Mine Land (AML) transfers is still available to Congress, although the AML transfers alone will no longer prevent insolvency but merely delay it.

I am aware that there are some advising the committee to do nothing to help pension plans, like the UMWA 1974 Plan, that are currently in critical and declining status. "Just let them fail," these advisors say. In addition to ignoring the cruel outcome for the retirees and their communities in this scenario, this advice will inevitably lead to increased costs for the government than if the committee simply solved the problem now through passing a low-interest, long-term loan program.

There are several proposals to provide low interest loans to critical and declining pension plans. All have their merits and flaws, but they will work, provided that Congress acts now. It is the job of the committee to sort through those proposals and find the best way forward.

Acting now will allow troubled plans to stop the bleeding and grow their core assets, which can be used later to repay the loans. You will not only preserve much needed benefits for retirees and surviving spouses throughout the coalfields, you will help prevent the collapse of the Pension Benefit Guaranty Corporation (PBGC), which will be a much more expensive problem to fix. If Congress delays action, the 1974 Plan will soon reach the point of no return.

Action by Congress now will benefit millions of retired American workers who will otherwise see their pension plans become insolvent. These workers live in every State in America, in thousands of communities large and small. The loss of pension income, especially in rural areas, will be devastating to already struggling local economies.

Retirees covered by the 1974 Plan do not live in luxury. They live in some of the most economically depressed areas of our Nation. Their average pension is \$582 per month. They earned every penny that they receive by years of hard, dangerous work in the Nation's coal mines.

They spend their pensions in their communities, providing the majority of whatever economic activity those communities are able to generate. Cutting or largely eliminating these pensions will not just devastate the retirees and widows, it will drive a stake through the heart of hundreds of struggling communities, especially in Appalachia and the Midwest.

It is easy to say, "Do nothing to help these distressed pension plans" from the marbled halls of Washington, DC. But go to Madison, West Virginia; Cadiz, Ohio; Price, Utah; Brookwood, Alabama; or Carmichaels, Pennsylvania and you will see what the impact of losing these pensions will be on real, living American senior citizens and their communities.

The retired coal miners worked hard, in often dangerous conditions, so that the rest of us could live in comfort. They are counting on you and your committee to provide a way for them to live out the rest of their lives in the dignity and security they were promised and have earned. Please do not let them down.

Sincerely,

Cecil E. Roberts

cc: Members of the Joint Select Committee on Solvency of Multiemployer Pension Plans  
 Senator Shelley Moore Capito  
 Representative David McKinley

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PREPARED STATEMENT OF JAMES P. NAUGHTON,<sup>1</sup> ASSISTANT PROFESSOR,  
 KELLOGG SCHOOL OF MANAGEMENT, NORTHWESTERN UNIVERSITY

I am very grateful for the opportunity to testify today and hope that my testimony contributes toward a workable solution to the crisis facing the multiemployer plan system.

A multiemployer plan is a pension plan maintained through a collective bargaining agreement between employers and a union. The typical plan has numerous contributing employers, and it is quite common for employers to participate in several different multiemployer plans. For a particular multiemployer plan, the employers are usually in the same or related industries. Today, there are approximately 1,400 multiemployer plans covering 10 million participants. From the participant's perspective, multiemployer plans provide pension portability, allowing them to accumulate benefits earned for service with different employers throughout their careers. In addition, because these plans offer annuity benefits, they represent an efficient source of retirement income due to risk pooling advantages. From the employer's perspective, the efficiencies of scale facilitates diversified investment opportunities and lessens the administrative and investment costs relative to the operation of numerous small single-employer plans.

Currently, the multiemployer system is chronically underfunded and the retirement benefits of many participants are at significant risk. I believe that the most important factor that informs the appropriate approach to addressing this crisis is an understanding as to whether the current predicament is primarily attributable to bad luck or is an inherent attribute of how plan trustees have run the plans.<sup>2</sup> While luck may play some part in which individual plans are in the most critical

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<sup>1</sup>Jim Naughton is an assistant professor at the Kellogg School of Management at Northwestern University. Jim worked as an actuary for 10 years after completing his undergraduate studies at Worcester Polytechnic Institute. For most of that time, he was a fellow of the Society of Actuaries, an enrolled actuary, and a member of the American Academy of Actuaries. He consulted with a variety of clients on all aspects of employee benefits, with a particular emphasis on defined benefit pension plans. He left the private sector to complete a concurrent degree program at Harvard University, whereby he earned a J.D. from Harvard Law School in 2010 and a doctorate in business administration from the Harvard Business School in 2011. He has been a member of the faculty at the Kellogg School of Management since 2011.

<sup>2</sup>In the case of multiemployer plans, the plan trustees are typically a board with equal representation from contributing employers and union officials.

condition, I firmly believe that the current crisis is a function of trustee choices. Even though these choices may not violate a clear numerical bright line test in the rules governing multiemployer plans, the rules, most of which were requested by the multiemployer plans themselves, were interpreted as leaving broad discretion over the making and funding of pension promises. In my testimony, I am going to explain how this broad discretion made the current crisis inevitable.

To begin, I'm going to state an obvious fact. If plans were required to collect actuarially sound contributions and purchase annuity contracts, there would be no crisis. Participants would be receiving or would be scheduled to receive the annuity benefits purchased with the contributions made on their behalf. In addition, the rules governing these plans would be far simpler. There would be little need for PBGC premiums, calculations of plan funding requirements, and certainly no need for withdrawal liability provisions.

Rather than follow this type of approach, multiemployer plans generally choose to invest in risky equity investments and to collect contributions that are inadequate relative to the promised benefits. In effect, the plans are hoping that growth in the number of active participants or superior investment returns will take care of the shortfall. The reasons trustees pursue such a strategy are relatively simple—assuming that the overall cost per employee was fixed, a relatively low pension contribution means that employees might be able to receive higher non-pension compensation from their employers through the collective bargaining process. In addition, it encourages employers to join a multiemployer system rather than sponsor their own plan as seemingly equivalent benefits can be promised through the multi-employer plan at a lower cost.

Congress enacted several rules to protect the solvency of the multiemployer system, most notably with the 1980 Multiemployer Pension Plan Amendments Act. Starting in 1980, there were four notable aspects of the framework governing multi-employer plans.

First, even though employer contributions are determined as part of the collective bargaining process, the starting point for identifying the aggregate contribution is typically the present value of benefits determined using a discount rate based on anticipated investment returns. Because the plans invest in equity securities, this means that the present value of benefits calculation does not reflect the economic value of pension promises.<sup>3</sup> If plans invest in annuities or in duration-matched bonds, there is no understatement of the plan's present value of benefits.

Second, because sufficient contributions are not required, it is possible for employers to withdraw from a multiemployer plan having not contributed adequate funds to cover the benefits promised to their own workers. This concern is addressed through "withdrawal liability," whereby employers exiting a multiemployer plan are required to contribute funds intended to cover their share of plan underfunding.

Third, because not all exiting employers pay the withdrawal liability (*e.g.*, due to bankruptcy) and because plans are free to invest in risky securities, it is possible that the plan could face a shortfall due to poor experience. This concern is addressed by requiring that all contributing employers be jointly and severally liable for all plan promises, including for so-called "orphan" participants whose employers left the plans without paying for their share of the plan's underfunding.<sup>4</sup>

Fourth, in the event that the assessment of withdrawal liability and the application of joint and several liability do not generate sufficient funds to cover promised

<sup>3</sup>Actuaries and standard-setters have long known that this approach understates the actual obligations of the plan. As an illustration, Statement of Financial Accounting Standards (SFAS) No. 87, Employers' Accounting for Pensions, which was adopted in 1985, requires that the reported pension liability for financial reporting purposes be calculated using a discount rate that reflects the rate at which the obligation to pay the pension benefits can be settled rather than the expected investment return on the pension assets. In seeking these rates, SFAS87 requires that employers look to "rates of return on high-quality fixed-income investments currently available and expected to be available during the period to maturity of the pension benefits." In practice, companies typically use zero-coupon duration-matched Aa corporate bond rates to determine their pension liability for financial reporting purposes to meet the requirements of SFAS87. Using an Aa rate provides an estimate of the cost of extinguishing the pension liability through the purchase of an annuity contract from a highly rated insurance company.

<sup>4</sup>The existence of orphan plan participants can result in a worsening funding situation for the multiemployer plan, because plan assets are commingled in a trust and are not assigned to a particular employer's contributions or participant's benefit. Thus, benefit payments for all participants draw down general plan assets.

benefits, the PBGC provides benefit guarantees.<sup>5</sup> Importantly, and at the request of the multiemployer plans themselves, PBGC coverage for multiemployer plans is separate from that for single employer plans, so that large shortfalls in multiemployer plans do not affect the PBGC's coverage of single employer plans (and vice versa).<sup>6</sup>

In short, rather than collecting contributions reflecting the value of promised benefits and investing those funds appropriately, the trustees used the discretion in the multiemployer plan rules to provide for insufficient contributions and to pursue risky investment choices, with the understanding that employers would be required to bail out insolvent plans. The rules further provided that if employers were unable to bail out insolvent plans, the PBGC would provide benefits (up to guaranteed levels) as long as it had the resources in its multiemployer program to do so.<sup>7</sup>

It is worth noting that the problem is not that the rules prohibit trustees from running the plans conservatively—trustees are free to purchase annuities to fund the pension benefits that the plan promises. Even short of purchasing annuities, the rules do not prevent trustees from accurately measuring plan promises and investing in a more conservative manner, concentrating on bonds matching the duration of the liabilities.

The trustees choose to take risk, and there is nothing necessarily wrong with this choice in other circumstances not presented by multiemployer pensions. In general, the assumption of risk is an appropriate course of action to the extent that one can respond to the inevitable volatility. Unfortunately, this is not the case with the multiemployer system, where there is a structural inability to respond to poor experience.

Over time, there has been an inevitable decline in the number of participants covered by these plans, driven in part by withdrawal liability requirements (which, again, exist because plans do not collect contributions commensurate with promised benefits).<sup>8</sup> This decline in participation has occurred, in part, because financially healthy employers are especially concerned with the possibility of withdrawal liability or the prospect that they fund the benefits of orphaned participants, and hence these employers are not interested in participating in multiemployer plans.

During my career as a consulting actuary, which started in the mid-1990s, I personally observed several clients who decided to sponsor their own defined benefit plan rather than participate in a multiemployer plan because of the withdrawal liability provisions and the requirement that they be joint and severally liable for plan underfunding. The choice to forgo membership in a multiemployer plan was not a difficult decision for these employers, even when the proposed cost of the multiemployer plan was only one-third of the cost of a single employer plan.

The withdrawal liability provisions not only discourage new employers from joining the multiemployer system, but also create incentives for the most financially healthy employers to withdraw. These incentives are especially strong when the withdrawal liability is less than the anticipated cost of remaining in the plan. In the past, this was often the case because the withdrawal liability rules were inconsistent and oftentimes too lenient. Employer withdrawal liability payments typically do not capture the employer's full economic obligation because plans have the option

<sup>5</sup> PBGC guarantees benefits up to a statutory maximum level. When a multiemployer DB pension plan becomes insolvent, the plan must reduce participants' benefit to the PBGC maximum amount before the plan receives assistance. The statutory maximum benefit in multiemployer plans that receive financial assistance from PBGC is the product of a participant's years of service multiplied by the sum of (1) 100 percent of the first \$11 of the monthly benefit accrual rate and (2) 75 percent of the next \$33 of the accrual rate. For a participant with 40 years of service, the statutory annual maximum benefit is \$17,160.

<sup>6</sup> The assets and income of PBGC's Multiemployer Program are currently only a small fraction of the amounts PBGC will need to support the guaranteed benefits of participants in plans expected to become insolvent during the next decade. In its FY 2017 Projections Report, PBGC indicated that the multiemployer insurance program has a 90-percent chance of becoming insolvent by the end of 2025.

<sup>7</sup> In extreme cases, participant benefits can be curtailed well below the stated guaranteed benefit levels, as these levels are only binding to the extent that the PBGC has the resources to pay these amounts. This isn't necessarily an event that requires that the PBGC run out of funds. ERISA 4022A(f) indicates that it is possible for benefits to be curtailed immediately to the extent that the PBGC does not have the resources necessary to meet its expected future obligations under the multiemployer system.

<sup>8</sup> The lack of new entrants is reflected in the increasing share of inactive members—over the past 30 years, the share of inactive participants has increased fourfold from around 17 percent to 61 percent of total participants across multiemployer plans.



to measure unfunded vested benefits using the plan's funding rate, typically 7.5 percent, which is too high for a termination liability because it doesn't reflect the settlement value of the promised benefits. In addition, the withdrawing employer's share of the unfunded vested benefits is further reduced based on past contributions, or based on special rules for certain industries.<sup>9</sup>

The inevitable consequence of inadequate contributions, risky investment choices, and the withdrawal liability provisions is a funding crisis. This crisis first manifested more than 10 years ago, and the statutory response at that time has made matters worse. While those statutory actions did marginally increase funding requirements, in most cases contributions still do not reflect the economic value of promised benefits. There were no changes in withdrawal liability, with the inevitable outcome that new employers are not joining the system and current employers continue to exit when it is advantageous to do so. In addition, the Pension Protection Act of 2006 ("PPA") response included provisions that waived required contributions for the most troubled plans, thus ensuring that the situation would almost certainly deteriorate as these plans are able to promise additional benefits without setting aside the funds needed to cover these benefits.

The system was around \$200 billion underfunded at the time of the PPA on a PBGC rate basis. For 2015, PBGC just reported that the system is \$638 billion underfunded on that basis. Almost 75 percent of participants are in plans that are less than 50-percent funded and more than 95 percent of participants are in plans that are less than 60-percent funded.

With a small base of active participants, it is cost prohibitive to increase contributions to a level that fully funds many of these plans. Moreover, with the exit of the most financially healthy employers, there is insufficient resources among the remaining employers to cover the shortfalls in many plans.

So what can be done? There are several steps that I believe should be adopted to set the system on the correct path going forward.

First and foremost, multiemployer plans need to have accurate measurement of liabilities and strong funding rules so that they can provide promised benefits.<sup>10</sup> It is not enough to simply adopt the single employer plan rules. Multiemployer plans need to have even stricter rules than single employer plan because there is an interconnectedness across plans and contributing employers (*i.e.*, most plans have several contributing employers, and most employers contribute to several different plans) that exacerbates the consequences of poor outcomes. Liabilities and contributions should reflect the cost of annuity products from highly rated insurance companies.

Second, the PBGC should have broad discretion to assume control of troubled plans and implement necessary changes, including reductions in accrued benefits. Currently, the PBGC is unable to intervene, even in those cases where the plan's condition is continuing to deteriorate and there is no expectation that the condition of the plan will improve. The PBGC has this authority with regard to single employer plans and exercises it when necessary, even sometimes where a plan is meeting the much more stringent funding rules applicable to single employer plans. Similarly, it would be reasonable to have certain automatic triggering events, such as a funding deficiency for 2 or 3 consecutive years, that would require that the PBGC take control of a troubled plan. It is also reasonable for there to be a termination premium, similar to what is required for single employer plans.

Third, amend the withdrawal liability provisions. One suggestion for the withdrawal liability would be to mirror what is done in a plan termination for single employers—that is, the withdrawing employer should be required to cover the cost of purchasing annuities from highly rated insurance companies for each of its par-

<sup>9</sup>There are also some special rules that allow employers in the construction and entertainment industries to avoid any withdrawal liability. For example, in the case of plans operating in the construction or entertainment industries, an employer is not required to pay a withdrawal liability if the employer is no longer obligated to contribute under the plan and ceases to operate within the jurisdiction of the collective bargaining agreement (or plan) or does not resume operations within 5 years without renewing its obligation to contribute.

<sup>10</sup>The difference between measuring the plan liability using anticipated investment returns versus settlement rates is startling. A recent report prepared by Horizon Actuarial Services LLC finds that based on current funding rules, over 60 percent of all multiemployer plans are in the green zone (*i.e.*, at least 80-percent funded and no projected funding deficiency for at least 7 years). In contrast, based solely on using corporate bond rates and assuming all other funding rules remain unchanged, the percentage of green zone plans would fall to just 7 percent. With corporate bond rates, 87 percent of all multiemployer plans are in critical or critical and declining status.

ticipants. This cost could be offset by prior contributions, with or without investment returns, and could be adjusted to incorporate some portion of the costs associated with orphaned participants. However, what is important is that the withdrawal liability reflect the actual economic cost of promised benefits. Congress should also consider a moratorium on withdrawals while it is deliberating on the legislative response to immediately end the opportunistic use of these provisions.<sup>11</sup>

While these suggestions should help set the multiemployer system on a sustainable path, they do not provide clear prescriptions for how past underfunding should be resolved. While the union and contributing employers almost certainly knew that contributions were insufficient relative to promised benefits, it seems clear that neither party has sufficient resources to address prior underfunding. Therefore, at least part of the resolution will involve concessions on the part of plan participants, who were unlikely to have known about the mismanagement of their promised pensions until the crisis began to materialize, or taxpayers.

My suggestions also focus on improving rather than replacing the current system, as I believe that the correct approach is to develop a sustainable defined benefit program rather than switching to a defined contribution plan. A conversion, by definition, will hurt those employees closest to retirement.<sup>12</sup> More importantly, a well-run defined benefit plan is far more effective at ensuring retirement security for the types of workers who participate in these plans.

No matter how prior underfunding is addressed, I strongly advocate for urgent changes to the rules governing multiemployer plans. I believe the rule changes I suggest can be implemented without a final framework for how to handle the allocation of past underfunding, and so delays, which will inevitably lead to larger deficits and choices that are more difficult, can and should be avoided at all costs.

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PREPARED STATEMENT OF JOSHUA D. RAUH, PH.D., SENIOR FELLOW AND DIRECTOR OF RESEARCH, HOOVER INSTITUTION, AND ORMOND FAMILY PROFESSOR OF FINANCE, STANFORD UNIVERSITY<sup>1</sup>

Chairman Hatch, Chairman Brown, and members of the committee, thank you for the opportunity to appear before you today on the topic of the solvency of multiemployer pension plans. I would like to begin with an executive summary of 8 points that I will make in my testimony.

- (1) The logic of financial economics is very clear that measuring the value of a pension promise requires using the yields on bonds that match the risk and duration of that promise. Therefore, to reflect the present value cost of actually delivering on a benefit promise requires the use of a default-free yield curve, such as the Treasury yield curve. Financial economists have spoken in near unison on this point. The fact that the stock market, whose performance drives that of most pension plan investments, has earned high historical returns does not justify the use of these historical returns as a discount rate for measuring pension liabilities.
- (2) Most of the justifications of a loan program to rescue the multiemployer system are built on the false logic that plans can get something for free if they receive low-cost subsidized government loans and invest the money in risky assets.
- (3) On an actuarial basis, which as of the 2016 plan year uses an average discount rate of 7.3 percent, there are \$155 billion of total unfunded liabilities in the multiemployer system. Measured properly using the appropriate Treas-

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<sup>11</sup>Even with the adjustment to withdrawal liability provisions, the number of active participants covered by multiemployer plans is unlikely to return to historical levels. Over the past 30 years, the U.S. economy has shifted fundamentally away from unionized industries. According to the Bureau of Labor Statistics, union workers made up only 12 percent of the workforce in 2009, down from 21 percent in 1983.

<sup>12</sup>The rate of benefit accruals vary by age across defined benefit and defined contribution plans, with accruals becoming much more valuable in defined benefit plans as participants age. As a result, the accumulation of benefits in a defined benefit plan accrue much more rapidly in later years (sometimes referred to as “golden handcuffs”). Therefore, if participants are switched mid-career, then over their full career they receive lower accumulations from the time before the plan change (when the DB accruals are worth less than DC accruals) and lower accumulations after the plan change (when the DC accruals are worth less than DB accruals), which combine to ensure that the participant has lower retirement income.

<sup>1</sup>I am very grateful to Yanqiu (Alice) Wang and Rohan Sonecha for outstanding research assistance in the preparation of this testimony.

ury yield curve, there are \$722 billion of unfunded liabilities in the multiemployer system.

- (4) I emphasize two standards for when a plan is making sufficient contributions. One standard, which I call “treading water,” is when the contributions at least meet the cost of new benefits (“normal cost”) plus interest on the unfunded liability. A more stringent standard would be contributing the cost of new benefits, plus progress towards paying down the unfunded liability. Under actuarial liability measurements, the latter is what the majority (71 percent as of 2016) of plans could claim they are doing. But under the correct risk-free standards, the picture looks quite different: less than 2 percent of plans are contributing service cost plus 30-year amortization, and only 17 percent are treading water.
- (5) Minimum funding requirements for multiemployer plans have not been sufficient to keep multiemployer plans in good health, as they depend heavily on expected rates of return. Rules for single-employer plans have been comparatively stringent, depending at least in part on high-grade corporate or Treasury bond yields since 1987. More generally, Congress has adhered in the single-employer program to the basic principle of imposing strict consequences including an excise tax and PBGC-induced termination if plans do not contribute the normal cost plus amortization of unfunded liabilities. In contrast, Congress relieved multiemployer red zone plans of their obligations to continue to pay normal costs plus amortization of unfunded liabilities in the Pension Protection Act of 2006. Furthermore, since the law treats insolvency as the insurable event, and as a practical matter there is nothing that requires a failing plan to terminate, the PBGC cannot under current law limit its exposure to unfunded liabilities.
- (6) Trustees had decades to undertake voluntary, remedial measures before resorting to trying to force participants to take cuts against promised benefits under the Multiemployer Pension Reform Act of 2014 (MPRA). Before reaching this point, they failed to use the many options that were at their disposal to ensure the solvency of plans. They have always had the right to gradually require greater contributions from employers, to make more realistic assumptions about investment returns, and to make more affordable benefit promises on a prospective basis. In fact, statute requires the plan trustees to use reasonable assumptions, and the trustees who budgeted to pay pensions using excessively high discount rates violated that statute by using unreasonable assumptions. Trustees have fiduciary obligations to plan participants, which many have broken by making unrealistic pension promises on which the plans had little chance of making good.
- (7) As of 2016, I estimate that there were between 960,000 and 990,00 individuals in multiemployer plans with less than 5 years of service. These individuals have accrued low levels of benefits, but their employers are paying in substantial contributions on their behalf and in many cases relying on their contributions to forestall insolvency of multiemployer plans.
- (8) To meet a rigorous funding standard, contributions would have to rise substantially. Incrementally over time, the multiemployer system must approach this standard to protect the interests of plan participants and taxpayers. Once phased in, all plans that do not follow funding rules should be subject to an excise tax, which was the rule before the Pension Protection Act of 2006; the employers and union would then be faced with the choice of funding the plan or terminating the plan in order to avoid the excise tax. In other words, if the plan does not meet required contributions, then termination should be automatic. To address the incentives that employer trustees might have to give up and terminate the plan, the rigorous funding standard should be phased in slowly, with near-term contributions initially limited to some measure of affordability for employers, such as by capping the growth in their contributions. Further, Congress should act immediately to change the withdrawal liability rules so that they reflect the true value of unfunded liabilities.

#### I. MEASURING PENSION OBLIGATIONS: LOGIC

The basic challenge in measuring a pension benefit is how to convert the promise of a pre-specified stream of payments in the future into one value today. For example, imagine a payment of \$50,000 that is to be made in 10 years. What is the present value of that payment today? This conversion, called discounting, is critical because it allows the consumers of financial statements, the trustees of pension plans, and other stakeholders to understand what the promise to pay a given pension is worth in today's dollars. That is, discounting allows for a measurement of

the cost of new benefit promises, and it allows for a measurement of the total value of promises that have been accrued to date. Along with information about the available resources to pay benefits, a measurement of the total value of pension promises is vital for establishing the financial condition of a pension plan.

When faced with this problem, there are a number of issues to be addressed. One must first specify the goal for the measurement. One clear goal would be to know how much money a pension plan would need today to be certain that the promised payment would be met. If a pension plan needs to meet a \$50,000 obligation in 10 years, it can buy a zero-coupon default-free bond, such as a 10-year Treasury STRIP. Such a security would yield around 3 percent in today's markets, meaning that the pension plan would need around \$37,200 today to be sure of meeting the promise, since \$37,200 growing at 3 percent for 10 years will result in a payoff of \$50,000 which could then be used to pay the pension. The Society of Actuaries (2006) Pension Actuary's Guide to Financial Economics calls this measurement a Solvency Liability. It is the value of a portfolio of bonds that would defease the promise.

While the Solvency Liability concept relies on the measurement of the cost of guaranteeing the pension payments, an alternative measure of interest is the so-called Market Liability, also described in Society of Actuaries (2006). The Market Liability can be thought of as what a rational and financially unconstrained individual who was expecting to receive the \$50,000 would accept today in exchange for giving up the promise of the \$50,000 in 10 years. Why might this differ from the \$37,200 calculated in the Solvency Liability? If the sponsor of the pension plan promising the liability were at high risk of insolvency over the next 10 years, the individual hoping to receive the \$50,000 might be willing to settle for a payment today of less than \$37,200, knowing that if they do not take the payment today, they might end up with less than \$50,000 in 10 years time due to a default by the sponsor. The Market Liability would use a discount rate higher than the 3 percent to reflect this risk of default.

The final concept, also described in Society of Actuaries (2006), is the Budget Liability. This is the "traditional actuarial accrued liability used to budget cash contributions over a period of years." The Budget Liability in the case of the \$50,000 payment guaranteed in 10 years would use a discount rate derived from an expected return on plan assets. If that expected return is, say, 7.3 percent, which is what I calculate as the weighted-average discount rate that U.S. multiemployer pension plans are using for their budgeting and planning purposes in the latest plan year, the liability would only be marked at around \$24,700.

There is much debate about the proper way to measure a pension obligation. Pension actuaries generally support the use of the Budget Liability on the grounds that if actuaries are prudent and accurate in their budgeting and forecasting, the plan will be fully funded when it needs to be. A large number of finance economists have criticized this approach on the grounds that the value of a pension promise should be measured independently of the assets used to fund the promise. In the above example, a discount rate of 10 percent would take the liability down to below \$20,000, and 12 percent would take it down to \$16,000. Giving the plan actuary or trustee discretion over the selection of the return they believe the portfolio will earn opens up the possibility of arbitrary selection of discount rates. In the worst case, actuaries might tell their clients what those clients want to hear, which might be that the cost of deferred promises is cheaper than it actually is. Or as the late Jeremy Gold wrote:

The pension actuarial model is broken. Excessive discounting and deferral of costs have often led to unaffordable promises. . . . The degree to which this overhang exists has been downplayed by vested interests, including, too often, actuaries who, arguably, should know better. (Gold (2015))

In contrast to the actuarial view, in which the expected return is supposed to be the actuary's best estimate of what a portfolio will earn, finance fundamentally conceives of the future as consisting of "states of the world."<sup>2</sup> The finance view recognizes that past performance is no guarantee of future performance. If past returns on the stock market were high, it is because those investments were risky, and not in ways that just smooth out over time. Specifically, if there is uncertainty about the underlying drivers of stock returns, or if there is some probability of a large stock market crash without recovery—one that we may not have observed in the

<sup>2</sup>This idea is originally attributed to Arrow and Debreu (1954).

U.S. in recent history—then the high returns we observed in recent decades were compensation for these risks, as opposed to a free lunch. Investors have been fortunate that good financial market outcomes (“states of the world”) occurred, as opposed to the bad ones that could have occurred instead.

By discounting a fixed, promised liability at a targeted return on a portfolio of risky assets, one is ignoring the risk that the assets will not earn that targeted return. A chief investment officer of an investment fund can assemble a portfolio of securities that has a targeted return of 7 percent, or 10 percent, or even 12 percent per year. The CIO will call that targeted return their “expected return.” However, the higher the targeted or “expected” return, the lower the probability that that target will be met. Discounting using an expected return ignores that probability. Furthermore, there is no sense in which just waiting long enough ensures good performance. Otherwise every investor with a “long horizon” and relatively low borrowing costs, should be willing to borrow as much money as they can and invest in the stock market.

Among economists, these issues are not controversial, and in fact the inappropriateness of the Budget Liability as a measurement standard is widely agreed. As a Vice-Chair of the U.S. Federal Reserve said in 2008 in speaking about public pensions:

[M]ost public pension funds calculate the present value of their liabilities using the projected rate of return on the portfolio of assets as the discount rate. This practice makes little sense from an economic perspective. If they shift their portfolio into even riskier assets, does the value of the liabilities [. . .] go down? Financial economists would say no, but the conventional approach to pension accounting says yes.<sup>3</sup>

Evidence of the views of a range of economists on pension discount rates came in 2012 from the IGM survey of economic experts conducted at the University of Chicago. This survey poses weekly questions to an invited panel of 40 senior faculty at top U.S. research universities. While the relevant question was about public sector pensions as opposed to multiemployer private sector pensions, the issues are very similar. Indeed, the liability-weighted average discount rate used in public pension plans has been around 7.5 percent during this time period, and the liability-weighted average actuarial rate used in multiemployer plans in 2016 was 7.3 percent. The panel was asked to express an opinion about the following statement:

By discounting pension liabilities at high interest rates under government accounting standards, many U.S. State and local governments understate their pension liabilities and the costs of providing pensions to public-sector workers. (University of Chicago (2012)) Strongly Agree | Agree | Uncertain | Disagree | No Opinion

In this survey, a full 49 percent of the respondents selected “Strongly Agree,” including Nobel Laureate and MIT professor Bengt Holmström, Nobel Laureate and University of Chicago professor Richard Thaler, and University of Chicago professor Austan Goolsbee, who served as the Chairman of the Council of Economic Advisors under President Obama from September 2010 to August 2011. A further 49 percent of respondents selected “Agree.” Two percent (one respondent) selected Uncertain, and none disagreed.

The university professors in the IGM panel have displayed a wide range of views in other IGM surveys on topics such as balanced budgets, deficits, and tax reform. As such, it seems likely that they would have heterogeneous views on how to pay for unfunded pension liabilities. But on this one point, that measuring liabilities using these kinds of rates understates pension liabilities and costs, the profession has been nearly unanimous.

The basic point that financial economists have long argued is that liabilities should be discounted at a rate that reflects the fundamental risk of the liabilities that one wants to build into the measurement. If a sponsor—whether a government or a corporation or the trustees of a multiemployer pension plan—wants to measure the cost of a guaranteed pension payment under the assumption that this payment will not be raised or lowered depending on future events (a “non-contingent” payment), the sponsor must discount the promised payment using the yield on a

<sup>3</sup> Kohn, Donald L. 2008. Remarks at the National Conference on Public Employee Retirement Systems Annual Conference, New Orleans, LA. May 20.

default-free fixed-income security (“Solvency Liability”).<sup>4</sup> Put simply: if from a policy perspective, one wants to value pension promises as though they will be kept, the Solvency Liability should be used.

In contrast, the Budget Liability does not reflect the true present value cost of delivering on pension promises. Furthermore, if used as a funding standard, it gives trustees and actuaries very substantial discretion over appropriate levels of funding. As I will detail below, one of the main reasons that the corporate single employer system is in better financial condition than both the State and local plan sector and the multiemployer sector is that legislation (beginning with OBRA ’87) laid a partial Solvency Liability standard on top of the Budget Liability standard selected by plan sponsors. While single-employer plans are still free to invest in risky assets and maintain a funding standard account based on actuarial valuations, they have also had to measure and remedy funding shortfalls on something closer to a solvency standard. Requiring single-employer plan sponsors to bear the costs of shortfalls leads to more prudent decisions about benefits and investment strategies.

An additional complication that often arises is whether a present-value liability is designed to measure only the pension that has been earned through service up to the present day, or whether it is designed to reflect some or even all of the pension that an employee expects to earn over their entire working career. For an employee who has only worked for an employer for several years, this could make quite a large difference. An employee who has worked for, say, 5 years, might be entitled to only a very small pension if he or she quit work today, yet the employer might be expecting that the employee will likely work for many more years and will ultimately receive a larger pension.

The selection of a so-called Actuarial Cost Method will impact how much of the expected future liability is reflected in today’s accrued liabilities. One of the more common methods, the Entry Age Normal standard, aims to calculate the cost of the pension as a fixed percent of salary over the worker’s lifetime. This then smoothes the earning of pension credits, which otherwise would be low when a worker is young and high when he or she is older. One implication of this smoothing is that an Entry Age Normal liability reflects some costs that have not yet been earned yet, and will only be made if some future contributions come into the plan. In contrast, economists have long recognized that if one considers only benefits that have been promised up to a certain date (the “accumulated benefit obligation” or ABO in actuarial language), the present value of liabilities can be directly compared to the value of a firm’s assets as a measure of funding (Bulow (1982), Brown and Wilcox (2009)).

## II. MEASURING MULTIEMPLOYER PENSION OBLIGATIONS

In this section, I provide estimates of the total multiemployer pension obligations, as well as their funding ratios. I examine the most recent plan year, as well as historical years, and I consider how these funding levels and ratios vary by plan code (green, yellow, red, and critical/declining). The main data source is the public IRS Form 5500 datasets available from the Department of Labor for 2009–2016. There are three main funding standards that I consider.

- (1) The Actuarial funding status, defined as the market value of plan assets minus actuarial liability from Schedule MB.<sup>5</sup> This measure uses the actuarial valuation rate to discount the benefit cash flows. The actuarial valuation rate had a liability-weighted average of 7.3 percent in 2016, and hence is conceptually equivalent to the Budget Liability described in Section I above. Most commonly, this liability measurement uses an Entry Age Normal standard.
- (2) The Current Liability funding status from Schedule MB, defined as the market value of plan assets minus the current liability from Schedule MB. The Current Liability must be calculated using a discount rate within a range of the 30-year Treasury rate averaged over the previous 4 years, and must reflect accumulated benefits only (and therefore it is close to the ABO as described in the previous section).<sup>6</sup> This rate had a liability-weighted average of

<sup>4</sup>The primary reason to use a higher discount rate would be if one wanted to mark down the liability to reflect a possible default (“Market Liability”), which could be useful to employees if they want to know the value of pension benefits being offered by different employers, but would be inappropriate as a funding standard. Novy-Marx and Rauh (2011) and Brown and Pennachi (2016) provide discussions of these issues.

<sup>5</sup>I use the Unit Credit statement where available, otherwise the Immediate Gain Method disclosure.

<sup>6</sup>Specifically, according to instructions, filers of the Schedule MB must report a current liability using a discount rate which “pursuant to the Pension Protection Act of 2006 (PPA), must

3.3 percent in 2016. The Current Liability moves in the direction of a Solvency Liability, but there is no specific economic reason to use a 30-year Treasury rate, which generally has a duration substantially longer than the duration of pension cash flows.

- (3) A funding status based on the Treasury yield curve, which is a true Solvency Liability. To calculate this measure, I collect zero-coupon Treasury yields from Bloomberg. According to the PBGC (2016), the average maturity of retiree obligations in the multiemployer system is 8 years, and the average maturity of active employee obligations is 14 years. So the reported retiree current liability is rediscounted using an 8-year zero-coupon yield, and the reported non-retiree liability is rediscounted using a 14-year zero-coupon yield. This corresponds to an effective liability-weighted average rate of 2.3 percent in 2016.

How have these rates evolved over time? Figure 1 shows the liability-weighted averages of these three rate series by year from 2009–2016. The actuarial rate (1) has fallen by 15 basis points or 0.15 percentage points, while the current liability rate (2) has fallen by ten times as much or 1.5 percentage points. The fact that the current liability discount rate is so much lower reflects that fact that providing annuitized streams of income for plan participants is much more expensive in the low interest rate environment that has taken hold in recent years—and yet there has been essentially no movement in the actuarial discount rate that plan sponsors are using for budgeting and planning purposes. The solvency liability discount rate based on the Treasury yield curve in (3) shows this decline even more starkly.

It is instructive to compare the actuarial discount rate to the actual return earned by multiemployer plans over the past two decades. This is possible with information on the IRS Form 5500 Schedule H and Schedule MB for 2009–2016, plus supplemental data on Schedule H and Schedule B for 1996–2008. I define the realized investment return for each year generally as Investment Income divided by Beginning of Year Assets at Market Value. However, practices may differ as to whether to include Other Income (Schedule MB Section II, line 2(c)) as income, and which expenses from Schedule MB Section II, line 2(i) to include as expenses.

On average, the closest calculation to plans' own disclosures seemed to be a broad definition of income which included line 2(c) "Other Income," but a narrow definition of expenses which included only investment management expenses. Assuming that is appropriate, Figure 2 shows realized returns on this measure, as well as arithmetic and geometric average returns. I focus on the geometric average, as the use of a discount rate requires the compound annualized return on assets to equal the discount rate for full funding. The geometric average return is the actual annualized return an investor earns over a multiple time periods, while the arithmetic average is not.<sup>7</sup>

Over 1996–2016, the geometric average returns were 6.2 percent, 6.6 percent, and 5.9 percent, for the equally weighted, asset-weighted, and median series respectively. Excluding Other Income, on the grounds that some of it might have only been earnable with the incursion of expenses other than investment management expenses, would lower the geometric average returns to 6.0 percent, 6.5 percent, and 5.8 percent for the equally weighted, asset-weighted, and median series respectively. The fact that the asset-weighted returns are higher reflects relatively better performance by larger plans.

In sum, I estimate that the average plan realized returns of 5.8–6.2 percent over the period 1996–2016, and that the multiemployer space overall realized returns of 6.5–6.6 percent over the period. Thus, my analysis of the returns in the Schedule MB filings reveals that over the past 2 decades, compound annualized returns have fallen short of the current average level of the actuarial discount rate (7.3 percent),

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not be more than 5 percent above and must not be more than 10 percent below the weighted average of the rates of interest, as set forth by the Treasury Department, on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the 2016 plan year." Furthermore, this current liability must be computed "taking into account only credited service through the end of the prior plan year. No salary scale projections should be used in these computations."

<sup>7</sup>To give a stark example, imagine that in period 1 the stock market fell by 50 percent and in period 2 it rose by 50 percent. The arithmetic average return would be 0 percent (break even). But an investor who invested, say, \$100 in the market through both periods would not break even—they would end up with \$75. The geometric average return reflects the annualized return (or loss) that the investor actually faces.

despite the fact that the period in question was part of a multi-decade bull market in stocks and other risky assets.

Unfunded liabilities are very different when measured on the different funding standards. Table 1 shows total unfunded liabilities for 2009–2016. Looking at the entire multiemployer space, on an actuarial basis there was \$155 billion of underfunding in 2016. On a current liability basis, this underfunding rises to \$582 billion, and on a solvency basis it rises to \$722 billion. It is notable that underfunding on the current liability and solvency liability standards have not improved since 2009, the near-trough of asset markets in the financial crisis; in fact the funding condition has deteriorated.

The overall 2016 actuarial funding ratio is 74 percent, the overall current liability funding ratio is 44 percent, and the overall solvency standard funding ratio is 38 percent. Figure 3 illustrates this funding ratio under the three standards, plus under an arbitrary 10 percent discount rate and 12 percent discount rate to illustrate that given discretion to choose the rate, funding ratios can be made arbitrarily high. If actuaries chose a 10 percent discount rate, the funding ratio would be 87 percent. If they chose a 12 percent discount rate, it would be 105 percent.<sup>8</sup>

Although plans on average achieved their targeted returns during the 2009–2016 period (one during which the S&P 500 index roughly doubled) funding ratios did not materially improve on any of the measures. Figure 4 shows in three separate graphs the evolution of funding ratios for plans in the different zones under the three different funding standards. This suggests that multiemployer plan funding may be quite vulnerable to a period in which markets do not continue the rapid increases seen over the sample period, and also that neither the minimum funding requirements followed by non-critical plans nor the funding improvement plans (FIPs) or rehabilitation plans (RPs) implemented by the endangered and critical plans have led to tangible progress in funding ratio improvement.

### III. FUNDING AND MINIMUM FUNDING REQUIREMENTS: MULTIEMPLOYER VERSUS SINGLE EMPLOYER

Both the single and multiemployer programs were initially under ERISA marked by requirements to maintain an annual funding standard account in which firms were charged with paying the present value cost of new benefits plus an amortization of unfunded liabilities. However, Congress strengthened implementation of this principle over time in the single-employer program (despite some recent funding relief measures), while essentially removing it for multiemployer plans in weaker condition in the Pension Protection Act of 2006.

The impacts of these divergent policies can be seen in the data. The PBGC also computes a funding ratio on the basis of “the cost to purchase an annuity at the beginning of the plan year” to cover vested benefits, a measure much closer to a solvency ratio. The top panel of Figure 5 compares the percent of employees in multiemployer versus single employer plans covered by defined benefit plans with different levels of this funding ratio.

As of 2015, 39 percent of employees in the multiemployer program are covered by plans with less than a 40-percent funding ratio, and 33 percent of employees are covered by plans with a funding ratio between 40 percent and 50 percent, so that 72 percent of participants in the multiemployer plan are covered by plans that have less than half of the liabilities necessary to meet the PBGC’s standard based on the PBGC rate (which is essentially a solvency standard).<sup>9</sup> In contrast, as of 2016, less than 1 percent of employees in single-employer DB plans are covered by plans with less than 50-percent funding ratios on the PBGC solvency basis and approximately three-quarters of employees in single-employer DB plans are covered by plans with funding ratios of over 70 percent.

By international standards, the single-employer DB pension system in the U.S. would not be considered well-funded (see Rauh (2018)), but the fact that it is in much better financial condition than either the multiemployer system or the public plan system is largely a function of contribution requirements, or at least the ones that existed historically when Deficit Reduction Contributions (DRCs) were linked

<sup>8</sup>In a sense, given the discrepancy between the realized and expected returns documented above and the fact that an expected return is simply the wrong statistic to use as a discount rate, the expected returns that plans are using as their chosen discount rate are just as arbitrary.

<sup>9</sup>Adding participants in plans that the PBGC has taken over or has booked but not yet taken over, this rises further to 74 percent.



to Treasury yields. Specifically, between 1987 and the early 2000s, firms with underfunded pension plans operating under the PBGC's single-employer pension program were required to make DRCs that would close the funding gap in the current liability, based on 30-year bond yields.

This standard was gradually relaxed over time for single-employer pension plans. The Pension Funding Equity Act of 2004 formally changed the required interest rate to a weighted average of yields on a composite of corporate bond rates for 2003–2006. The Pension Protection Act of 2006 extended that corporate interest rate for DRCs to 2006–2007, and then for years beginning with 2008 eliminated the dual funding standard (funding standard account and DRC) and replaced it with a “segment rate” corporate bond yield standard funding targets, with those segment rates based on a 24-month average of investment-grade corporate bonds. Further funding relief for single-employer plans came in the WRERA (2009), PRA (2010), and MAP-21 (2012), the last of which implemented 25-year smoothing of PPA segment rates.<sup>10</sup>

In addition, starting with MAP-21, Congress has significantly increased Variable Rate Premiums for single-employer plans. These premiums will be 4.2 percent of underfunding annually starting in 2019 and linked to inflation. This provides a further incentive for single-employer plans to remain well-funded.

Nonetheless, despite this relaxation of funding rules since OBRA '87, the legislation surrounding the single-employer program has adhered to a key principle: if a plan cannot or does not make required contributions, the sponsor must face an excise tax or terminate the plan. Furthermore, a firm participating in the single-employer DB program knows that it will bear the costs of unfunded liabilities unless the firm goes bankrupt. The multiemployer system began with that principle in place, at least under actuarial discount rates, but the principle was substantially eroded over time in several ways. In general, funding standards in the multiemployer program are much looser and the responsibility for paying down unfunded liabilities considerably more dispersed.

The single-employer system also has several additional built-in protective measures limiting system-wide damage and taxpayer exposure should plans become troubled. Notably, single employer plans are subject to an excise tax when they fail to meet required contributions, which forces plans that are digging themselves into a deeper hole to terminate. This was the rule for multiemployer plans before the Pension Protection Act legislation of 2006. The removal of this rule has led to a situation where there is no practical way to require a failing multiemployer plan to terminate. As such, multiemployer plans under current law can become insolvent, receive PBGC assistance, and continue to promise new benefits. Furthermore, the PBGC has additional protection through its authority to terminate single-employer plans that are meeting the normally applicable funding rules if PBGC believes such plans pose a threat to PBGC's finances.

In a single-employer plan, benefits are both frozen and statutorily cut to the PBGC level immediately upon termination. This was the case for multiemployer plans before the Multiemployer Pension Plan Amendments Act of 1980, but that legislation made insolvency (running out of money to pay benefits) the insurable event instead of the termination itself. So while a multiemployer plan that terminates is no longer allowed to promise new benefits, accrued benefits in multiemployer are not cut to the PBGC-insured level until the plan runs out of resources, creating additional taxpayer liability even for terminated plans.

The CBO has concluded the rules that govern how multiemployer plans are funded expose the PBGC to the risk of large losses (CBO (2016)).<sup>11</sup> The CBO specifically highlights three sources of risk factors in the multiemployer contribution requirements. First, the fact that starting with the PPA of 2006, employers participating in plans that were deemed critically underfunded were allowed to contribute less than the minimum required contribution, with RPs that are apparently inadequate replacements. The CBO's conclusion:

The effects of the exception to the rules governing minimum contributions can be seen in the contribution rates of plans with a funding ratio of less

<sup>10</sup> IRS-5500 Schedule SB Instructions: “Generally (except for certain plans under sections 104, 105, and 402 of the Pension Protection Act of 2006 and CSEC plans under section 414(y)), for funding purposes, single-employer plans are required to use the 24-month average segment rates determined under section 430(h)(2) of the code, as amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21), the Highway and Transportation Funding Act of 2014 (HATFA), and the Bipartisan Budget Act of 2015 (BBA).”

<sup>11</sup> See page 2 of that report.

than 65 percent, almost all of which are following rehabilitation plans. More than half of those pension plans (weighted by liabilities) will be unable to eliminate their underfunding if they do not increase contributions or negotiate cuts in benefits. CBO (2016)

It therefore seems clear that the rehabilitation plans are not sufficient to restore the funding to that extent that would have been possible had it been possible to continue minimum contribution levels.

The second aspect of funding rules identified by the CBO as leading to inadequate funding is the framework for employer withdrawals from multiemployer plans. Some employers have testified before the Joint Select Committee that the withdrawal liability may be quite large in comparison to the employer's total assets or income. However, the size of withdrawal liability for remaining employers is in part so large because of the terms under which prior employer participants were allowed to withdraw from the plans. The withdrawal rules are complex (see Wolf and Spangler (2015)), but there are many ways in which they usually underestimate the true cost of withdrawing from a plan. Specifically:

- Regardless of an employer's attributable share of plan underfunding (and except in cases of mass withdrawal) an employer's withdrawal liability is limited to 20 annual payments, each of which is capped by the highest contribution rate of the employer in the 10 years prior to withdrawal multiplied by the average contribution base of the employer in the three consecutive years with the highest contribution bases over those 10 years. The 20-year limit applies regardless of what percentage of the employer's attributable share of the underfunding is met by the 20 annual payments.
- There is no interest on these payments.
- The allowable withdrawal liability is generally based on the share of contributions an employer has made during a specified number of previous years, not its share of the unfunded vested liability. Employers choosing to withdraw are likely to be ones for whom this comparison (share of recent contributions versus share of liability) is likely to be favorable.
- The total unfunded liability for purposes of computing the employer's attributable share is calculated using a discount rate close to the actuarial rate, and the plan has no recourse to the employer if investment returns do not achieve their target.<sup>12</sup>

Regarding the last of these bullet points, the CBO explains:

Even if the withdrawing employer makes withdrawal liability payments to cover the entire liabilities of orphan participants, the fact of those participants' promised benefits raises the risk of future underfunding, because a withdrawing employer is not obligated to reimburse the plan for any investment losses on its withdrawal liability payments. CBO (2016)

The mismeasurement of the withdrawal liability is therefore another channel through which understatement of the liability through actuarial discount rates has had grave consequences for multiemployer funding. A further issue with regard to withdrawal liability is that the contribution rate increases as part of a funding improvement plan or funding rehabilitation plan are disregarded for purposes of calculating the contribution rate used in determining the 20 years of annual payments. Many plans who wish to raise rates to deal with underfunding must also consider whether rate increases will lead to employers withdrawing and locking in older, lower rates.

The third factor that the CBO argues has contributed to inadequate funding and risk of insolvency is what it deems "Industry and Demographic Factors," highlighting the decline of the manufacturing and construction sectors. As the CBO explains, the relevance of the industry declines for the solvency of plans is a cash flow issue.

That decline has reduced the ability of underfunded plans to forestall insolvency because, with fewer active participants, plans have less cash coming in from normal cost contributions that could be used to pay current benefits. CBO (2016)

<sup>12</sup>This is an issue being litigated. A recent case ruled that the plan in that case could not use a rate lower than the actuarial discount rate but left open room that plans might be allowed to use a somewhat lower rate in some circumstances. *The New York Times Co. v. Newspapers and Mail Deliverers'-Publishers' Pension Fund*, No. 1:17-cv-06178-RWS (S.D.N.Y. March 26, 2018)]

That is, the industry decline is primarily relevant only if one believes that a pension plan should be allowed to pay retirees using the contributions of current workers.

Despite the slowdown in these industries, there are nonetheless many active participants who have joined multiemployer plans in the past 5 years. This statement highlights the risks faced by these more recent hires, whose contributions are being used to pay retirement benefits of current retirees. I calculate that in the largest 20 multiemployer plans alone, there were 369,000 employees in 2016 with less than 5 years of accumulated service. Extrapolating this to the universe of multiemployer plans would imply 960,000–990,000 of these individuals in the universe. That is, there are 1 million individuals who have begun to participate in a multiemployer plan in the past 5 years, and on whose behalf employers are contributing to a system that on standardized measures is in grave danger of failure. By allowing plans at risk of insolvency—or even already insolvent plans—to continue to take contributions from new employees, without a correction of these funding rules, the system is placing younger plan members at even greater risk than more senior members of the plans.

In sum, the funding rules for multiemployer plans have long been inadequate. The sources of this inadequacy are mismeasured costs through the use of actuarial discount rates; the failure to lay solvency-based funding requirements on top of the actuarial standard as was done in the single-employer plans; and the withdrawal liability calculations which allowed employers to leave multiemployer plans without paying the true present value of unfunded vested benefits.

#### IV. STANDARDS FOR WHEN PLANS ARE MAKING SUFFICIENT CONTRIBUTIONS

When is a multiemployer plan making sufficient contributions? One standard would be when the contributions exceed the cost of new benefits plus interest on the unfunded liability. That's essentially a "treading water" standard—it means that the unfunded liability isn't getting larger. Another standard would be contributing the cost of new benefits, plus progress towards paying down (or "amortizing") the unfunded liability. Whether a plan is achieving either standard will depend on the chosen liability measurement. Plans that appear to be treading water or amortizing the unfunded liability under the actuarial liability measure may not be doing so under a solvency measure.

To what extent is the system as a whole meeting these standards? Figure 6 shows total multiemployer plan contributions relative to the cost of new benefits, the cost of new benefits plus interest on the unfunded liability, and the cost of new benefits plus amortization. The three panels show these comparisons under the three different measurements in Section II: the actuarial measurement, the current liability measurement, and the solvency liability measurement.<sup>13</sup> Contributions are the same in all three graphs—they totaled \$18.20 billion in 2009 and rose to \$27.41 billion in 2016. As shown in the top graph, these are more than both the treading water standard and the amortization standard based on actuarial measurement. The middle and bottom graphs show that contributions are substantially below both the treading water standard and the amortization standard on the current liability and solvency liability measurements. Specifically:

- To meet the treading water and amortization standards under the current liability, plans would respectively have had to contribute \$42.26 billion and \$43.98 billion in 2016, increases of 54 percent and 60 percent respectively.
- To meet the treading water and amortization standards under the current liability, plans would respectively have had to contribute \$42.23 billion and \$59.15 billion in 2016, increases of 54 percent and 216 percent respectively.

What percentage of plans are meeting these standards? Figure 7 shows for green zone, endangered, critical, and critical-declining plans respectively the percent of plans that are contributing at least the normal cost plus a 30-year amortization of the unfunded liability. As of 2016, 86 percent of green zone, 77 percent of yellow/orange zone, and 46 percent of non-declining red zone were meeting this standard on an actuarial liability basis. These figures drop to 7 percent, 11 percent and 2 percent on the current liability basis; and 1 percent, 4 percent, and 2 percent on the solvency liability basis. Unsurprisingly, very few plans that are critical and declin-

<sup>13</sup>Normal costs are presented in the Schedule MB of the 5,500 filings on an actuarial discounting basis. The current liability normal cost is also provided as the plan's expected increase in current liability during the plan year. The solvency liability normal cost is calculated under the assumption that the duration of the newly accrued pension promises is 17.5 years.

ing are meeting the standard of contributing at least the normal cost plus a 30-year amortization of the unfunded liability on any measure.

Figure 8 shows that somewhat more plans were meeting the “treading water” standard as of 2016. As of 2016, 89 percent of green zone, 88 percent of yellow/orange zone, and 55 percent of non-declining red zone were meeting this standard on an actuarial liability basis. These figures drop to 16 percent, 34 percent and 17 percent on the current liability basis; and they are 15 percent, 35 percent, and 15 percent on the solvency liability basis.

Overall as of 2016, 71 percent of all multiemployer plans are contributing at least the normal cost plus a 30-year amortization of the unfunded liability, and 75 percent are at least “treading water” under the actuarial measurement. But under the much more appropriate Treasury yield curve solvency basis, the picture looks quite different. Only 1.4 percent of multiemployer are contributing service cost plus 30-year amortization, and only 17 percent are treading water.

#### V. LOAN PROGRAMS AND PENSION MATH

Several proposals have been made to create loan programs for multiemployer plans. Notably, S. 2147 (Butch Lewis Act of 2017) would “amend the Internal Revenue Code of 1986 to create a Pension Rehabilitation Trust Fund, to establish a Pension Rehabilitation Administration within the Department of the Treasury to make loans to multiemployer defined benefit plans,” and S. 1911 (American Miners Pension Act of 2017) would “transfer certain funds [from the Abandoned Mine Reclamation Fund] and provide loans to the 1974 United Mine Workers of America (UMWA) Pension Plan in order to provide pension benefits for retired coal miners.”

The logic behind a loan program is generally based on the same fallacies that underlie the measurement of pension obligations using expected return on assets. The proposals are often sold as a win for taxpayers under the idea that the plan will pay a low fixed rate of interest to the Federal Government, and then invest the proceeds in its portfolio of risk assets which it hopes will earn the actuarial expected rate of return. But if this were clearly a good policy, then voters would want to urge the Federal Government to borrow far greater amounts of money and invest it in the stock market on its own behalf.

For example, consider the Federal Government’s projected budget deficit for the current fiscal year. The CBO has projected an \$804-billion budget deficit for fiscal year 2018. Federal budget deficits generally must be covered through additional borrowing. So an FY18 budget deficit of \$804 billion would add \$804 billion to the Federal debt until the time that it could be paid back. Without a plan to pay it back, that addition to the Federal debt would be assumed to be indefinite, and would certainly appear on the horizon of a standard 10-year budget window.

According to the same flawed logic behind the loan program, however, the Federal government could solve its problem of creating debt over a 10-year budget window in the following way. Instead of borrowing just \$804 billion today, it could borrow \$1.608 trillion today (twice the budget deficit) from taxpayers. Of the \$1.608 trillion it borrowed, half of that (\$804 billion) could go to pay for the unfunded expenditures this year, and the other half (\$804 billion) could be invested in a portfolio of assets similar to that of a pension fund.

If these funds are assumed to have a return of 7.2 percent per year, the entire \$1.608 trillion could be assumed to be paid off in 10 years, as the \$804 billion growing at 7.2 percent per year would double in 10 years, appearing to eliminate the debt. Of course, the Federal Government would have to pay around 3 percent annual interest on the borrowing, so this program would cost \$24.1 billion per year over each of the next 10 years—but that \$241 billion spread over 10 years would be a comparatively small price to pay for apparently “eliminating” an \$804 billion current budget deficit. The government would essentially be assuming that it could book as profit the spread between the 3 percent borrowing rate and the 7.2 percent investment return.

Furthermore, the problem of the interest costs could be “solved” by investing more aggressively. Many institutional investors have return targets of 8 percent or even more. If the government could assume an 8.9 percent rate of return, the \$804 billion portfolio would grow enough to pay off the \$1.608 trillion borrowing plus all accrued interest at the end of the 10 years. Assuming the 2.9 percent June 2018 year-on-year CPI-U inflation rate persists for 10 years, this assumption could be disclosed as a “real return assumption” of just 6 percent. By borrowing more than necessary to fund the deficit and investing the balance in risky assets that it assumes will

earn high enough returns to repay all the debt, the Federal Government could assume its budget deficit away.

The clear flaw in this logic is that it ignores the risk that the asset pool will not achieve the expected return. Loans to multiemployer plans, which those plans would then invest in portfolios of assets, are analogous. The fact that the Federal Government would not undertake such transactions on its own account reflects that fact that it would be concerned about the inherent risk in doing so. By loaning money to the multiemployer plans to invest in their portfolios, the Federal Government would be acting in a way similar to the buyers of pension obligation bonds (POBs) issued by some State and local governments. The Federal Government would thus be placing taxpayer money at risk if the loans were not able to be repaid in full due to investment returns that fall short of the target.

#### VI. CONCLUDING REMARKS AND POLICY PROPOSALS

To protect the interests of all stakeholders, it is critical in the management and regulation of pension plans to ensure proper measurement of costs and liabilities. While there is hardly any disagreement among financial economists as to the appropriate way to measure pension liabilities for the purposes of determining solvency, the pension actuarial community has largely rejected the financial economics view. One source of the disagreement seems to be the fact that disclosure requirements and funding requirements are often linked (Lucas (2017)). Simply reporting the appropriate solvency-based defeasement measure of a pension promise reveals its true cost in today's dollars. The mere disclosure of the number that the finance profession agrees is the right way to measure the solvency of a pension system should not be controversial. While multiemployer plans are required to disclose the "current liability," which is considerably closer to a true solvency standard than the actuarial rate, a true solvency number based on the Treasury yield curve, with very limited or preferably no smoothing, should be required for multiemployer plans.

The optimal approach to funding a pension plan, particularly one that is already as underwater as the typical multiemployer plan is on a solvency basis, is a more difficult challenge. In order to protect the interests of both plan participants and taxpayers in the multiemployer system, it is important to move (gradually) to a funding standard that ensures that underfunded plans take real steps to remediate unfunded liabilities as measured on an intellectually solid basis, as opposed to one based on wishful thinking. This is the logic that supported the introduction of deficit reduction contributions to the single-employer system in 1987, as well as the provisions of the Pension Protection Act of 2006 that required single-employer plan sponsors to use segment yield curves as a funding standard measure.

To address the incentive that employer might have to withdraw, the rigorous funding standard should be phased in slowly, with near-term contributions initially limited to some measure of affordability for employers, such as by capping the growth in employer contributions for a period of years. Further, Congress should act immediately to change the withdrawal liability to reflect the true value of unfunded liabilities.

In sum, the approach to fixing the multiemployer system has focused on funding relief for troubled plans and opening the door for trustee boards to cut benefits (MPRA 2014). This has been the wrong approach, and it hurts employees, retirees and taxpayers. The correct approach is to stop digging the hole.

Specifically, given the risk that plan participants face, Congress should require multiemployer systems not paying the normal cost plus long-term amortization to stop making new promises (freeze the plan). Frozen plans should be required to stabilize the funding level by contributing interest on unfunded liabilities plus any additional contributions that might be necessary to ensure that they do not run out of money in the next several decades. Plans that do not follow these rules should be subject to an excise tax in the amount of the missed contributions, which was the rule before the Pension Protection Act of 2006. Knowing that the consequences of not meeting required contributions is the excise tax, the employers and union would then decide on their own to either come up with the required contributions, or if they are unable or unwilling to do so they would choose to terminate the plan rather than pay the excise tax. Termination should be automatic rather than discretionary so that PBGC is not subject to political pressure not to terminate plans on a case-by-case basis.

The PBGC under current law is backed solely by the premiums paid by the plans, not by Federal taxpayers. It is therefore important that PBGC be shored up through

risk-based premiums, so that PBGC will be able to provide the statutory guarantee to retirees in any plans that should fail. It is equally important that the PBGC has the authority to protect its own financial condition by initiating terminations if plans are putting unreasonable risk on the insurance program, and by reducing benefits to the PBGC level upon termination. This was the rule for multiemployer plans before the Multiemployer Pension Plan Amendments Act of 1980, and is still the rule for single employer plans today. These principles remain the same even if Congress were to vote to extend funding for the PBGC, as they would be essential to protect the interest of taxpayers as well as plan participants.

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**Figure 1: Liability-Weighted Averages of Discount Rates for Multiemployer Plans by Year**

This figure illustrates the liability-weighted averages of Actuarial Valuation Rate, Current Liability Rate, and Duration Matched Treasury Rate by year from 2009–2016. Rates are as of the beginning of the plan year.



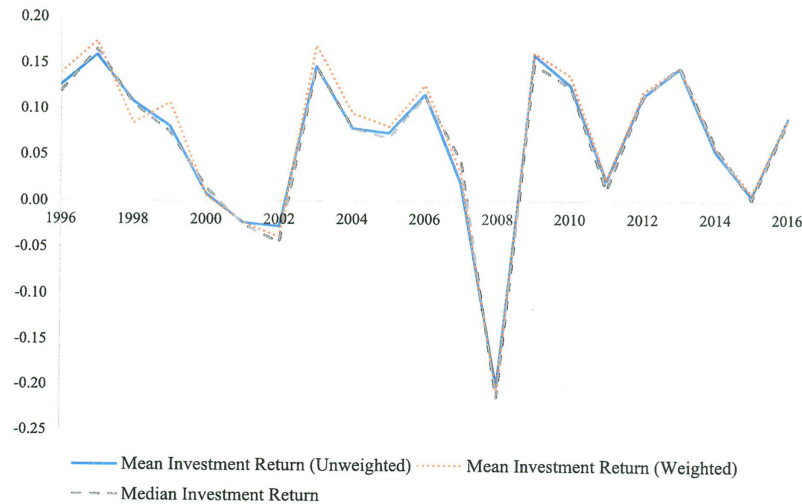
**Table 1: Total Unfunded Liabilities Under Different Standards (\$ billions)**

This table shows the total unfunded liabilities under three different standards—actuarial, current liability, and solvency—as of the beginning of the plan year, from 2009 to 2016. The actuarial and current liability measures are from the IRS 5500 Form MB datasets from the Department of Labor. The solvency liability is calculated using duration-matched points on the Treasury yield curve.

	(1)	(2)	(3)
	Actuarial	Current Liability	Solvency Liability
2009	(175.3)	(398.9)	(538.0)
2010	(154.1)	(405.0)	(490.6)
2011	(144.8)	(406.3)	(546.8)
2012	(170.0)	(474.2)	(719.0)
2013	(152.6)	(539.7)	(769.2)
2014	(129.6)	(525.5)	(627.0)
2015	(138.3)	(561.2)	(722.3)
2016	(154.6)	(581.9)	(721.7)

**Figure 2: Investment Returns in Multiemployer Plans**

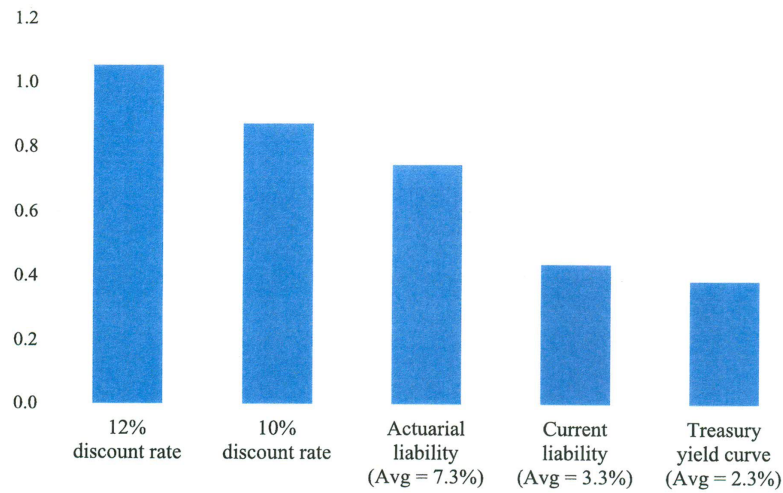
This figure shows the unweighted average, liability-weighted average, and median net investment returns between 1996 and 2016. The net investment return is found by calculating the ratio of net investment income to the total assets at the end of the fiscal year. The net investment income is calculated by subtracting total contributions and investment management fees from the plan's total income of that fiscal year.



	Mean Investment Return (Equally Weighted)	Mean Investment Return (Weighted)	Median Investment Return
<i>Baseline</i>			
Arithmetic Average	6.52%	7.00%	6.31%
Geometric Average	6.17%	6.61%	5.94%
<i>Excluding "Other Income"</i>			
Arithmetic Average	6.34%	6.86%	6.19%
Geometric Average	6.00%	6.47%	5.83%

**Figure 3: 2016 Multiemployer Weighted-Average Funding Ratios Under Different Discount Rates**

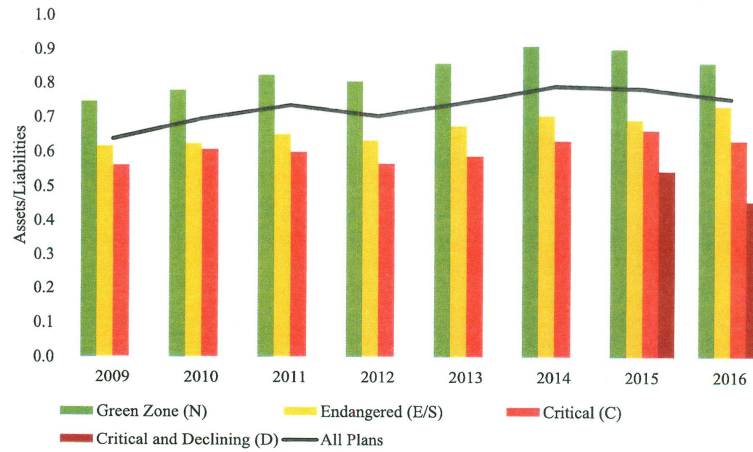
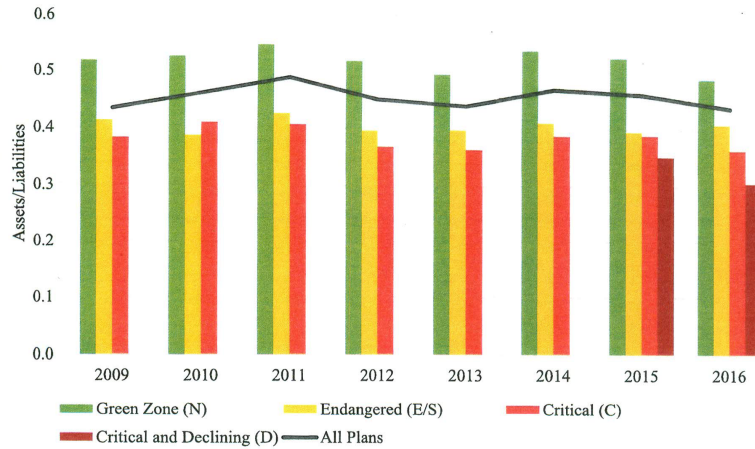
This figure shows the weighted-average 2016 funding ratios for multiemployer plans under five different standards: (i) the actuarial discount rate; (ii) the current liability rate; (iii) the solvency rate; (iv) an arbitrary discount rate of 10%; and (v) an arbitrary discount rate of 12%. (N = 1,170 plan observations for year 2016)

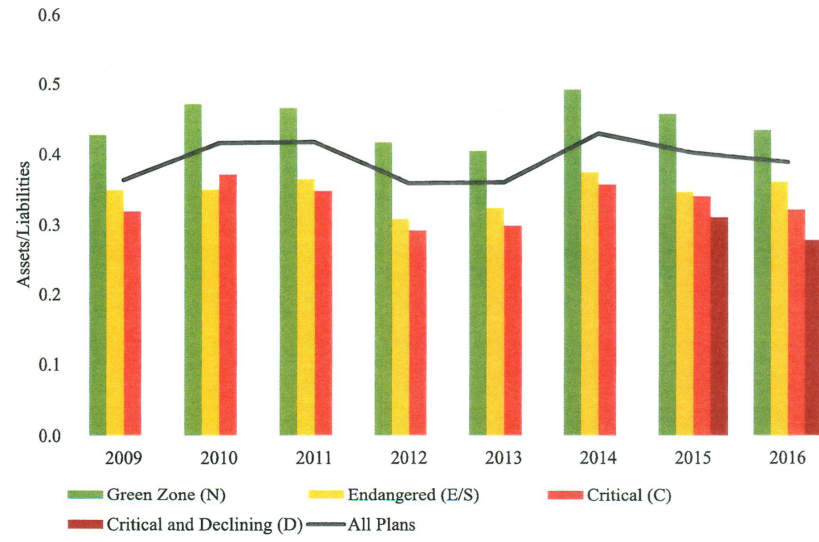




**Figure 4: Funding Ratios for Plans by Year and Status**

Each of the three figures shows the evolution of funding ratios from 2009 to 2016 for plans in the different zones (Green, Endangered, Critical, Critical and Declining) under the three different funding standards: actuarial discount rate (Panel A), current liability discount rate (Panel B), and solvency liability (Panel C).

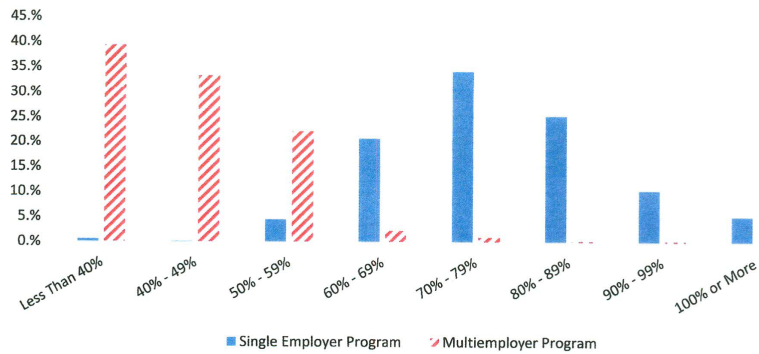
*Panel A: Actuarial Discount Rate**Panel B: Current Liability Discount Rate*

*Panel C: Solvency Liability Discount Rate*

**Figure 5: Comparisons of the Single-Employer and Multiemployer Systems**

Panel A of this figure shows the percent of participants in various funding ratio categories in both the single employer and multiemployer programs. Panel B depicts the change in the funding ratio of the single employer and multiemployer programs from 1980 to 2015.

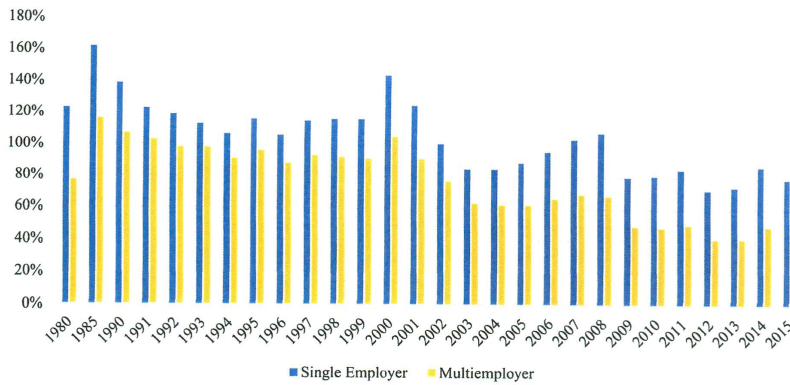
*Panel A: Percent of Participants in Funding Ratio Categories*



Source: 2016 PBGC Data Tables -

[https://www.pbgc.gov/sites/default/files/2016\\_pension\\_data\\_tables.pdf](https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf) (Tables M-13 and S-48)

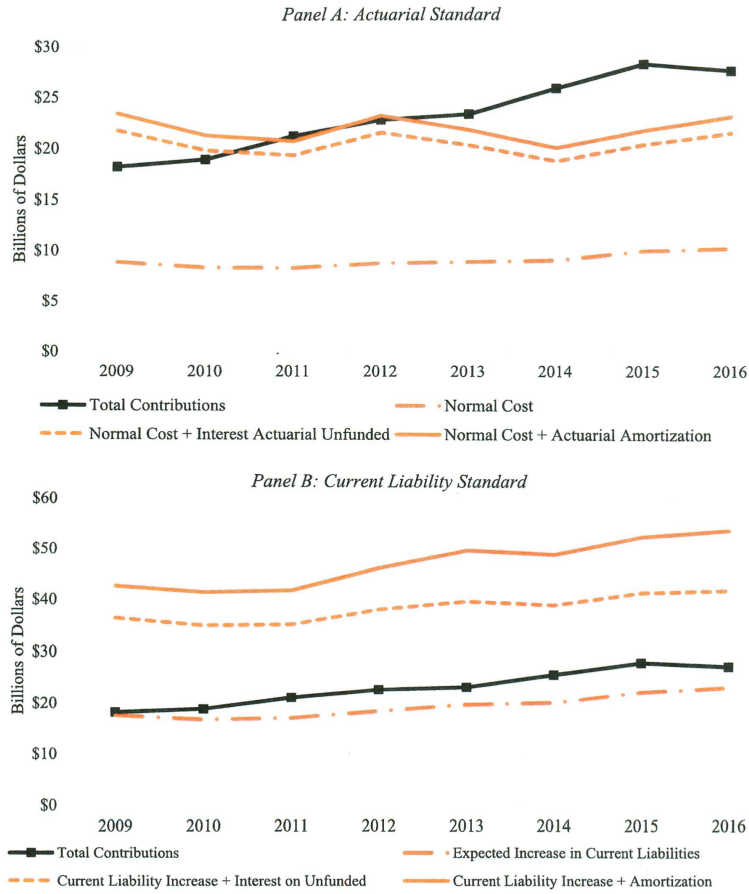
*Panel B: Funding Ratio by Year*



Source: 2016 PBGC Data Tables - [https://www.pbgc.gov/sites/default/files/2016\\_pension\\_data\\_tables.pdf](https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf) (Tables M-9 and S-44)

**Figure 6: Contributions and Cost Measures**

This figure shows total multiemployer plan contributions relative to the cost of new benefits, the cost of new benefits plus interest on the unfunded liability, and the cost of new benefits plus amortization. The three panels show these comparisons under the three different measurements described in Section II of the testimony: the actuarial measurement, the current liability measurement, and the solvency liability measurement.

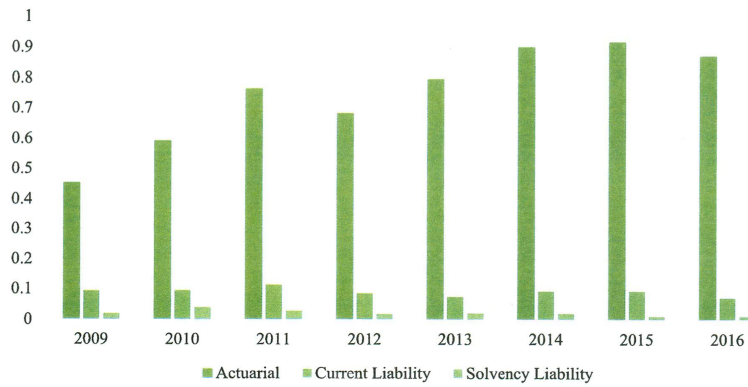


*Panel C: Solvency Liability Standard*

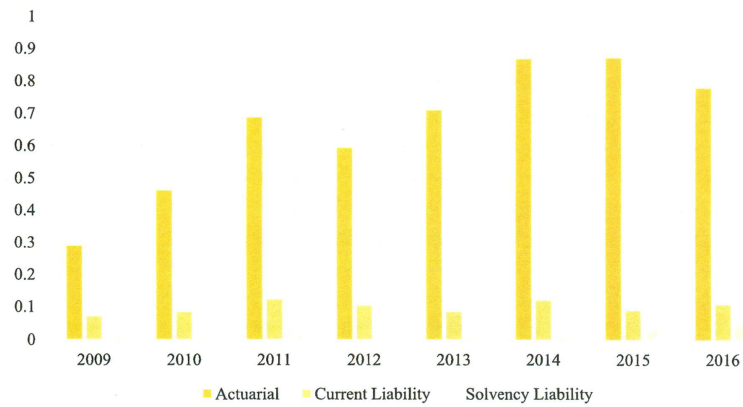
**Figure 7: Percentage of Plans Meeting Normal Cost Plus Amortization of Unfunded Liability by Zone and Standard**

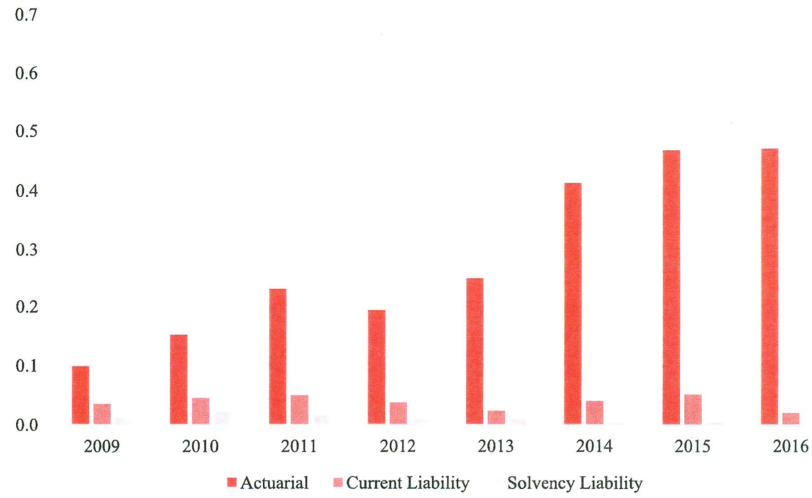
The four panels in this figure show the evolution of the percent of plans that are contributing at least the normal cost plus a 30-year amortization of the unfunded liability under three different standards - actuarial, current liability, and solvency liability - from 2009 to 2016. The plans are divided up by zones: Green Zone Plans (Panel A), Endangered Plans (Panel B), Red Zone Plans (Panel C), and Critical/Declining Plans (Panel D).

*Panel A: Green Zone Plans*



*Panel B: Endangered Plans*

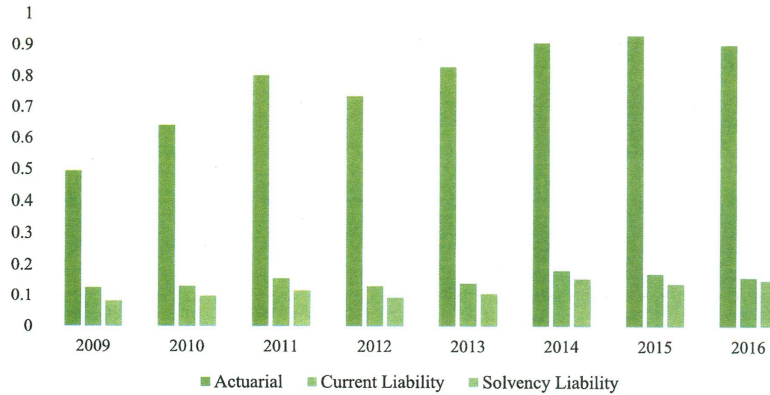


*Panel C: Red Zone**Panel D: Critical/Declining Plans*

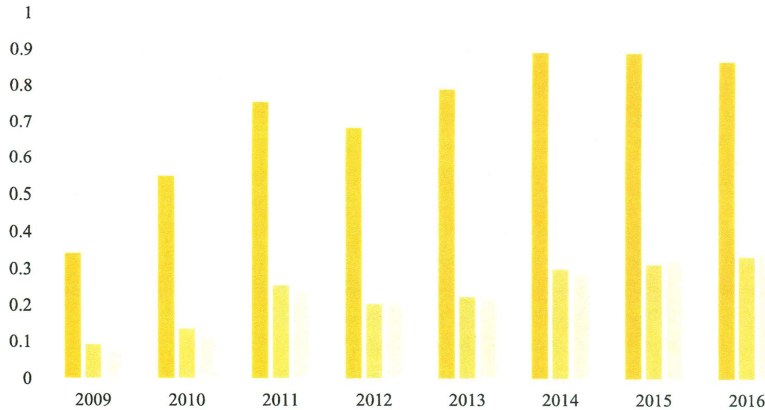
**Figure 8: Percentage of Plans Meeting Normal Cost Plus Interest on Unfunded Liability (“Treading Water”) by Zone and Standard**

The four panels in this figure show the evolution of the percent of plans that are contributing at least the normal cost plus interest on the unfunded liability under three different standards - actuarial, current liability, and solvency liability - from 2009 to 2016. The plans are divided up by zones: Green Zone Plans (Panel A), Endangered Plans (Panel B), Red Zone Plans (Panel C), and Critical/Declining Plans (Panel D).

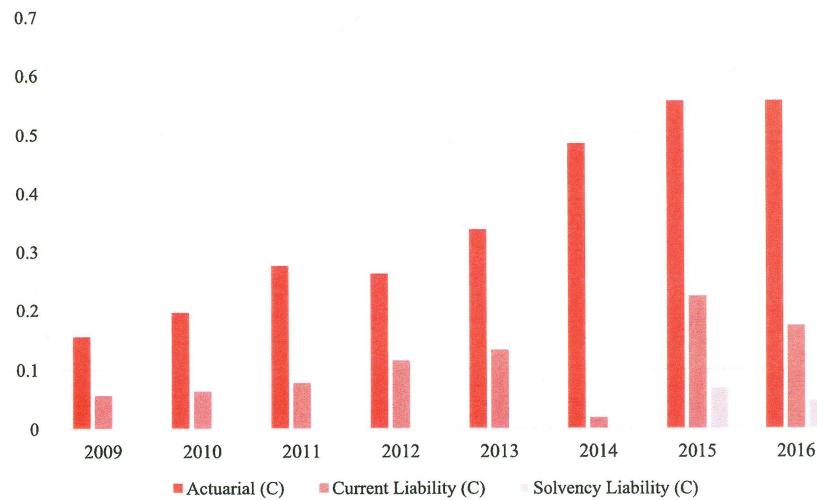
*Panel A: Green Zone Plans*



*Panel B: Endangered Plans*





*Panel C: Red Zone**Panel D: Critical/Declining Plans*


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QUESTIONS SUBMITTED FOR THE RECORD TO JOSHUA D. RAUH, PH.D.

QUESTION SUBMITTED BY HON. ORRIN G. HATCH

*Question.* How does the condition of the multiemployer pension system compare to the State and local pension systems? Do you believe that the way Congress handles the multiemployer pension crisis will set a precedent that will affect how challenges facing State and local pension systems will be dealt with? Please provide graphical and other data relevant to your response.

*Answer.* How Congress decides to address the multiemployer pension crisis may well set a precedent for how legislators will deal with the possibility that they will face similar calls for bailouts of State and local pension systems. In response to your

question, I present here an update of analysis in my paper “Hidden Debt, Hidden Deficits: 2017 Edition” (Rauh (2017)), which calculates stated and solvency-based measures of unfunded pension liabilities for State and local governments for plan year 2015. The methodology is based on Novy-Marx and Rauh (2011a). The update in this section presents statistics using the same methodology for plan year 2016.

The study is conducted in a sample of 269 State pension plans and 387 local pension plans, for a total of 656 plans. The State plans consist of all primary plans sponsored by U.S. States. The local plans consisted of all municipal plans in the top 170 cities by population according to the U.S. Census, and the top 100 counties by population. I estimate that this covers over 95 percent of the public plan universe by assets.

As of 2016, unfunded liabilities had reached \$1.74 trillion under recently implemented governmental accounting standards (GASB 67); however, they amount to \$3.78 trillion under solvency valuation techniques that use the Treasury yield curve as of December 2016 to value the liability. As I explained in my testimony, to measure the cost of a guaranteed pension payment under the assumption that this payment will not be raised or lowered depending on future events (a “non-contingent” payment), the sponsor must discount the promised payment using the yield on a default-free fixed-income security, as this solvency valuation technique does. This solvency valuation considers only a narrow definition of the liability as the present value of payments already promised based on current service and salary levels, and it assumes employees will not start taking benefits until their retirement date (as opposed to the earliest advantageous date). This calculation is known as an Accumulated Benefit Obligation (ABO). If there are legal restrictions on changes in benefits to current employees then the ABO understates the liability.

The GASB 67 standards first implemented for plan year 2014 preserved the basic flaw in governmental pension accounting: the fallacy that liabilities can be measured by choosing an expected return on plan assets. As with the multiemployer actuarial liability, this procedure uses as inputs the forecasts of investment returns on fundamentally risky assets and ignores the risk necessary to target hoped-for returns. The GASB 67 accounting standards tempered the effects of this assumption slightly by requiring some systems (58 plans or 8 percent of the sample) to use somewhat lower rates in their liability measurement for GASB 67 purposes.

The liability-weighted average discount rate that plans in my study chose as of 2016 for the purposes of their GASB 67 disclosures was 7.1 percent, in contrast to a weighted-average expected return of 7.5 percent. Funding decisions are still generally made with respect to the expected-return benchmark, not the GASB 67 rate. The solvency standard I calculate using the Treasury yield curve selects the point on the Treasury yield curve closest to the duration of the liabilities, which is implied by the GASB 67 disclosure on rate sensitivity. The average rate used for the solvency yield based on the December 2016 yield curve is 2.7 percent.

The table below summarizes further results. Panels (I) and (II) show assets, liabilities, and discount rates. Panel (III) shows cash flows into and out of State and local plans. Total State and local employer contributions were \$114.2 billion in 2016, plus supplemental State government contributions of \$14.7 billion. These plus the \$46.9 billion in member contributions total \$175.9 billion in total contributions against \$278.6 billion in payouts. For plan asset levels to remain stable, the difference must be made up for with investment returns.

A better measure of stability, however, is not whether contributions plus investment returns meet the level of payouts, but rather whether they meet the true level of costs, which as explained in the testimony is normal cost plus interest on the unfunded liability. The first line of Panel (IV) shows that under the expected return actuarial standard, State and local governments in total fell \$8.4 billion short of meeting the “treading water” standard of normal cost plus interest on the unfunded liability. Under the solvency standard, \$130.7 billion of additional contributions would be required to tread water and prevent negative amortization.

As with the measures of unfunded liabilities for multiemployer systems, the total unfunded liabilities of public systems have not improved substantially in the past 5 years. In response to my estimate in 2012 that public pension liabilities were approaching \$4 trillion, Robert Merton, an economics professor at MIT and Nobel Laureate was quoted in *The Financial Times*: “This \$4tn figure is a lower bound,” argues Robert Merton, economics professor at MIT.” This is relevant for the multiemployer private plan discussion for several reasons. First, many of the issues are parallel. Second, the stronger the belief by State and local governments that the Fed-

eral Government will bail them out, the less discipline they will choose to impose upon themselves to address the funding problems on their own.

**Table: State and Local Government Pension Funding (2016)**

This table shows the 2016 summary totals for all public pension plans in the United States, including assets, liabilities, discount rates, flows into and out of State and local plans, and the additional contributions necessary to meet normal cost plus interest on unfunded liability under the expected return actuarial standard and the solvency standard.

(Amounts in billions of dollars)

	State Pensions (N=269)	Local Pensions (N=387)	State & Local Pensions (N=656)
<b>I. Assets and Liabilities</b>			
<i>GASB 67 Standards</i>			
Total Pension Liability (TPL)	4,401	841	5,242
Assets	2,961	547	3,508
Net Pension Liability (NPL)	1,439	294	1,733
GASB 67 Funding Ratio	67.3%	65.1%	66.9%
<i>Solvency Standards</i>			
Solvency Liability*	6,073	1,211	7,284
Assets	2,953	547	3,508
Unfunded Solvency Liability	3,112	664	3,776
Solvency Funding Ratio	48.6%	45.2%	48.2%
<b>II. Discount Rates</b>			
<i>GASB 67 Standards</i>			
Average Discount Rate			
Liability Weighted	7.09%	7.05%	7.11%
Unweighted	7.01%	7.17%	7.11%
Expected Return			
Liability Weighted	7.47%	7.23%	7.45%
Unweighted	7.34%	7.24%	7.28%
<i>Market Value Standards</i>			
Average Discount Rate			
Liability Weighted	2.72%	2.73%	2.72%
Unweighted	2.70%	2.67%	2.68%
Average Duration			
Liability Weighted	10.28	11.18	10.42
Unweighted	11.33	10.60	10.91
<b>III. Flows</b>			
Benefits and Refunds	235.1	43.5	278.6
Employer Contributions	87.3	26.9	114.2
Member Contributions	40.5	6.4	46.9
State Contributions	14.4	0.3	14.7
Total Contributions	142.3	33.6	175.9
<b>IV. Accrual Basis: Necessary Additional Contributions†</b>			
Additional Necessary Contributions			
To prevent rise in unfunded actuarial liability	9.5	-1.1	8.4
To prevent rise in solvency liability	112.7	18.0	130.7

\* Accumulated Benefit Obligation using the December 2016 Treasury yield curve.

† Necessary Additional Contributions to meet normal cost plus interest on unfunded liability.

#### QUESTIONS SUBMITTED BY HON. SHERROD BROWN

*Question.* In your written testimony, you observe that plan trustees are required to use reasonable assumptions and that trustees who budgeted to pay pensions using excessively high discount rates violated that statute by using unreasonable assumptions. Please identify the specific rate threshold for each of the last 10 years above which a trustee would violate ERISA's fiduciary rules by using that rate to value pension liabilities for minimum funding purposes.

Answer. The fiduciary obligation is generally understood to require trustees to act using care and loyalty. These terms are open to interpretation, but in my opinion acting with care and loyalty has a few clear implications: trustees should only act in the best interests of plan participants, and they should make prudent choices with respect to contributions and investment selections. In addition, trustees must use assumptions, each of which must be reasonable under the tax code and ERISA, including the discount rates for liabilities.

In my view, fiduciary duties are not definable by one specific rate threshold that prevails for all plans. Actions that satisfy the requirements of care and loyalty may differ for a fully funded plan versus an underfunded plan. The more underfunded a plan, the higher the stakes are if not enough is contributed in any given year and investments or future contributions fall short of projections, as participants run the increasing risk of not receiving benefits.

It is indisputable that many plans are in poor financial condition. The reason these hearings are occurring is that large numbers of beneficiaries are at risk of not receiving their full pensions. There are only two possible explanations. The first is that trustees satisfied all fiduciary duties, acting with care and loyalty, but simply suffered several strokes of bad luck. The second is that trustees did not satisfy their fiduciary duties.

Those who favor the “bad luck” explanation often point to the impact of the Great Recession on the stock market. But this cannot be an explanation. The pre-crisis peak close of the S&P 500 index was 1,565 in October 2007. As of August 31, 2018, the S&P 500 closed above 2,901. So even an investor who had placed all their money in the stock market on the eve of the crisis would have approximately doubled their money between then and the present time. The investment performance of multiemployer plans is highly correlated with that of the stock market. As such, this period must be seen as primarily one of very good luck in markets, not very bad. Alternatively, those who favor the “bad luck” explanation point to declines in the industries in which firms that offered multiemployer plans were operating. But trustees had years to increase contribution rates gradually and to support sustainable benefit levels. Trustees evidently were not willing to recognize that the price of an annuity can change over time and that the contribution needed to provide a certain level of benefits in one year may be woefully insufficient in another year. Pensions must be funded as the pensions are earned. It is not reasonable to count on future workers to pay the benefits earned by today’s workers.

The discount rate used to measure liabilities must be linked to the market price of annuities. Furthermore, to the extent plan trustees believe that contributions cannot be significantly raised over a short period of time in response to investment losses or other events, they are under a fiduciary obligation to fund liabilities using a standard that is close to this one, and to invest conservatively so that dramatic increases in contributions are not needed to make good on the promises the trustees made. This need to fund and invest based on more conservative assumptions is even stronger when the plan has already reached poor funding levels, as the plan beneficiaries are increasingly at risk.

In sum, there is no specific rate threshold specified for each year that would be a cutoff for all plans and could be used as a litmus test for whether action was consistent with the care and loyalty standard. But I cannot see how—given the many tools available at the disposal of plan trustees—the current woeful condition of many multiemployer plans is consistent with the idea that plan trustees acted with care and loyalty as far as the protection of beneficiary interest is concerned.

*Question.* Your testimony is primarily focused on discount rates for present value determinations. Are there other assumptions that plans routinely make that you believe are problematic? Please explain fully.

Answer. Other key assumptions that plans routinely make include assumptions about plan participant retirement behavior, plan participant longevity, future employer withdrawal, and the future contribution base. I have not conducted a study of these factors and their effects on plan finances, but would argue that they should be investigated. In particular, the fact that many plans currently report that they are stressed by employer withdrawal indicates that their prior assumptions about which employers would remain with the plan and which would withdraw under conditions that left the plan short of necessary resources were too optimistic.

*Question.* You authored a paper in 2010 (“Are State Public Pension Plans Sustainable? Why the Federal Government Should Worry About State Pension Liabilities”). The paper includes projections on when public pensions might exhaust their funds,

with several States running out of funds in 2018–2020; specifically, Illinois in 2018, Connecticut, Indiana, and New Jersey in 2019, and Hawaii, Louisiana, and Oklahoma in 2020. Have actual events to date borne out the projections in the paper for these States? Are there particular assumptions made in the paper that have not proved to be true, and if so, why not? Please fully explain your answer.

Answer. A number of the States in question apparently heeded the warning that if nothing were done many pensions would be at risk of insolvency. State and local governments as a whole have increased contributions to pensions from their general fund budgets very substantially which has delayed the exhaustion of the funds.

According to Census Bureau figures, annual contributions to State and local government pension plans were \$119.6 billion in the year 2008, the latest year for which plan data was available at the time. In 2016, the latest year for which data are available, they were \$191.6 billion, or a 60-percent increase over those 8 years. Those individuals who are receiving fewer public services than they otherwise would, or paid increased taxes or contributions to fund public employee pensions, have paid the price of postponing the exhaustion of the pension funds.

The second factor was the stock market. In June 2010, the S&P 500 index ended the month at 1,031, while as noted above it is currently over 2,900, an almost three-fold increase. Despite this historic bull market, and burdensome contribution increases, the unfunded liabilities in State and local government pension systems are no smaller than they were in at the end of 2008 when the stock market was near a trough. The \$3.78 trillion cited above is in fact extremely close to the earliest post-crisis estimates I gave of unfunded pension liabilities.<sup>1</sup> Had the market not had the good fortune of generating this torrid pace of growth in equity market valuations, many systems would indeed have become insolvent.

*Question.* Your testimony notes that the average plan realized returns of 5.8 percent to 6.2 percent over the period 1996–2016. Please explain why 1996 was selected as the beginning year for this analysis of investment returns? How does the analysis change if the beginning year was 5, 10, or 20 years earlier?

Answer. It was selected as the beginning year for the analysis because those were the years for which the data were downloadable from the United States Department of Labor website: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500>.

I would be happy to consider further analyses of risk and return if more data were made available.

*Question.* The analysis also appears to exclude returns from “Other Income.”

Answer. That statement is incorrect. The estimates I emphasize (Baseline) include “Other Income.” Allow me to quote directly from my report and annotate it to be very clear:

Over 1996–2016, the geometric average returns were 6.2 percent, 6.6 percent, and 5.9 percent, for the equally weighted, asset-weighted, and median series respectively [NOTE: and these estimates include Other Income]. Excluding Other Income, on the grounds that some of it might have only been earnable with the incursion of expenses other than investment management expenses, would lower the geometric average returns to 6.0 percent, 6.5 percent, and 5.8 percent for the equally weighted, asset-weighted, and median series respectively.

So the first point to make is that the estimates I emphasized include “Other Income.” The second point is that inclusion or exclusion of “Other Income” doesn’t seem to matter very much in this aggregate analysis, as it has an effect of 10–20 basis points on the overall conclusions.

*Question.* Please fully explain what Other Income is and why it is appropriate to exclude it from the analysis.

Answer. It is arguable whether it is appropriate to include it or exclude it, and in situations where reasonable arguments can be made in both cases, the general best practice is to show the calculations both ways, which is what I do. And I also emphasize the results that include Other Income, not the results that exclude Other Income.

<sup>1</sup>Novy-Marx and Rauh (2009) found State unfunded liabilities of \$3.23 trillion, and Novy-Marx and Rauh (2011b) found \$0.68 trillion, for a total of \$3.91 trillion.

Other Income includes plan income that is not directly related to the investments but that may have an indirect link. For example, a fee rebate or restorative payments (money refunded to the trust because it was determined that a fee should not have been paid out of the trust) might fall into Other Income.

*Question.* Your testimony includes a quote from an official at the Federal Reserve who notes that “[calculating the present value of liabilities using the projected rate of return] makes little sense from an economic perspective. If they shift their portfolio into even riskier assets, does the value of the liabilities . . . go down?” Please explain whether trustees subject to ERISA have unfettered discretion in the selection of a plan’s investment strategy or any specific plan asset. Are there limits to the degree of risk that trustees may undertake when investing plan assets?

*Answer.* Trustees are subject to ERISA’s fiduciary rules. As stated above, the fiduciary obligation is generally understood to require trustees to act using care and loyalty. The duty of care is generally tied to the standard of prudence, or to quote from the law: “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.”

According to the principles of financial economics, the present value of a pension liability has nothing to do with the investment strategy implemented with the assets. This is true regardless of whether the trustees are meeting the fiduciary standard or not with their investment strategies.

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QUESTIONS SUBMITTED BY HON. VIRGINIA FOXX,  
A U.S. REPRESENTATIVE FROM NORTH CAROLINA

*Question.* For what reasons might the trustees of a multiemployer defined benefit pension plan decide to increase investment risks, and what consequences might these decisions have on plan participants? Do you believe a pension plan structure that relies on large investment returns to make up for insufficient contributions is sustainable?

*Answer.* Under the current law and governance of multiemployer pension systems, the more investment risk that a plan takes, the higher will be the actuarial discount rate and the lower will be current contributions. This reduces the contribution burden on currently participating employers and employees in the plan, but it increases the burden on whoever must pay or suffer if the targeted investment returns are not achieved. In the multiemployer context, the first ones who suffer are the employers who do not withdraw from the plan (to the benefit of employers who do), and the generation of employees who must pay higher contributions (to the benefit of current retirees who are relying more on current contributions of their younger colleagues). Once those sources are exhausted, the next group that suffers are the current and future retirees at risk of seeing their benefits cut, and the taxpayers if called on to bail out the program.

The more risk plans take, the greater their reliance on future investment returns to pay benefits. Thus, as risk increases, plan participants who expect to receive pensions in the future are increasingly at risk of not receiving their pensions. Any system that relies on increasing contributions of new entrants or employers remaining in the plan in order to meet promises to those already retired and/or not paid for by employers remaining in the plan is unsustainable.

*Question.* There has been discussion in this committee and in other forums about which parties would be affected by multiemployer plan insolvencies and similarly, which parties would be impacted by a loan program to support financially unstable multiemployer plans. How might taxpayers be affected if no action were taken by Congress to correct the inadequate funding of multiemployer pension plans? How might taxpayers be impacted if proposed Federal loan programs were enacted?

*Answer.* Without changes, funding of multiemployer plans will continue to deteriorate and I predict that ultimately taxpayers will find that the plans will request even larger bailouts from Congress to prevent benefit cuts. As such, Congress must take action that both protects Federal taxpayers against even greater liability and creates private-sector incentives to shore up the plans. The need to achieve these goals is the basis for the policy proposals in my written testimony. The enactment of a Federal loan program would also likely increase taxpayer liability over the long term, as without structural changes to the plans, I predict that they will continue

to accrue unfunded liabilities as they have in the past. An additional effect of a Federal loan program for multiemployer plans would likely be more reckless behavior by public pension plans in expectation that they would also be granted Federal loans if risky assets underperform expectations.

### References

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- Novy-Marx, Robert, and Joshua Rauh, 2011b, "The Crisis in Local Government Pensions in the United States," in *Growing Old: Paying for Retirement and Institutional Money Management After the Financial Crisis*, Robert Litan and Richard Herring, eds., Brookings Institution, Washington DC.
- Rauh, Joshua, 2017, "Hidden Debt, Hidden Deficits: 2017 Edition," Hoover Institution essay.

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### PREPARED STATEMENT OF KENNETH STRIBLING, RETIRED TEAMSTER

Thank you, Senator Johnson, for your kind words. I am humbled and appreciate your support.

Good morning. My name is Kenneth Stribling. I am a retired Teamster from Local 200 in Milwaukee, WI. I am also co-chair of the Milwaukee Committee to Protect Pensions, which is one of many committees across the country that are part of the National United Committee to Protect Pensions, the NUCPP.

First, I want to thank you, Senator Hatch and Senator Brown, Senator Portman, Congressman Neal, and the other members of the Joint Select Committee, for inviting me to be here today and being so supportive. Also, I am very honored that my Senator, Ron Johnson, introduced me. Thank you again, Senator, for those kind words. He and Senator Baldwin from the great State of Wisconsin have been very supportive of our efforts to save our pensions. They recognize, as you do, that fixing underfunded pension plans is a bipartisan issue.

Let me tell you my story. I worked for 30 years for four different trucking companies that paid into the Central States Pension Fund. I retired from USF Holland in 2010. My benefits moved with me because my employers paid into the same plan, ensuring that I'd have a secure pension for life.

I need this pension income more than ever. I am married with five adult children, seven grandchildren, and two more on the way. I love my family dearly, and thanks to my pension, I'm not a financial burden to them but instead my wife and I have been able to help out our kids and grandkids with child care and support when life's emergencies happen.

I will never forget the day I received my letter from the Central States Pension Fund with the news that they were applying to the Treasury Department to reduce my monthly pension benefit by 55 percent. Life changed that day. You have no idea what it's like to be retired on a fixed income and suddenly be told your monthly check would be cut in half. I was devastated and so was my family.

After receiving this shocking news, I felt something needed to be done. I joined with other retirees to stop cuts and find solutions, and we have been at it ever since. I felt compelled to become involved in the movement to find a solution to the pension crisis. Not only would a reduction radically change my retirement years but also affect countless households across the country. This involvement has also changed our lives.

I have been through contract negotiations when we have sacrificed wage increases to have better health and pension benefits. I believe we have done our part with shared sacrifice. In addition to giving up wage increases, we often endured tough work conditions, long shifts and cold nights on unheated docks, and manual labor.

Another day I will never forget is November 17, 2017, the day we learned my wife Beverly has terminal pancreatic cancer, stage 4 cancer that has spread to her liver. My wife is a fighter and plans on outliving her current diagnosis. She also is retired, after working nearly 30 years as a teacher. Fortunately we have a close and supportive family. Beverly's son and daughter-in-law put their careers on hold and moved back to Milwaukee to spend time with her and help with her care. Bev's sis-

ter retired and also moved home. And with the help of all our children and extended family I have been able to continue to remain active in this movement, which includes travel and meetings. My involvement has taken much of my time and energy, and at times I thought I couldn't continue. But my wife made me promise to stay committed until a solution was found.

I live with a very uncertain future. My wife is dying, we have mounting medical bills, and the stress is now impacting my health. I was recently diagnosed with an enlarged heart. This is due to high blood pressure and stress. My heart is working overtime just to keep up. My wife is worried I may end up like Butch Lewis, one of the co-founders of this movement, whose death inspired the legislation named after him.

Let me be clear: my story is unique, but I am like any other retiree impacted by the possibility of a benefit reduction. Life didn't stop when our letters arrived. We all endure life's storms: illness, deaths, and physical and mental health challenges. Now we all have the added burden of traveling through our golden years with an uncertain financial future: a future that had been promised to us throughout our working years.

I am supporting the Butch Lewis Act, which seems like the right solution. I am asking you today to think and pray on what is the right thing to do for thousands of faithful, hard-working actives and retirees, many of whom have served our country in the military.

My wife would have liked to be here today but she only has a few good days between chemo cycles. She is however my rock, she fully supports me in this work, and wants you to know how crucial your decision will be for millions of Americans. Her heart is here with me and will be forever.

In closing, I want to thank the Joint Select Committee members for agreeing to find a solution to this pension crisis. This is not a partisan issue. This is an issue of fairness, of keeping promises to working Americans who did everything right and are simply asking you to preserve what is due to us. Thank you. I will be happy to answer any questions you may have.



## COMMUNICATIONS

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### LETTER SUBMITTED BY ROBERT BOZEMAN

August 10, 2018

To the Committee,

I want to ask you all, please do what you can to save my pension. My pension is with the Central States Pension Fund, and they tell us that it will be insolvent in 8 years or less.

I have worked in the trucking industry for 41 years doing hard, physical work. Every day I go to work in pain. The pain in my hands, joints, and muscles is getting worse each week. I am going to try to work one more year, but I don't believe I can go any longer. My wife is unable to work because of her health, and the Central States Pension is the only pension that we have.

I know that my story is the same as thousands of other men and women. Our youth is gone. Because of our hard jobs, our bodies are broken down. Many of us who are still working can't go on much longer, and many of those who have retired aren't able to return to work. We have given our lives for these companies and to help keep America strong, prosperous, and free, especially those of us in the trucking industry. If trucks were to stop, in a very short time, store shelves would be empty. Because we are old now and less productive, will we be thrown aside? Will our hard work and sacrifice be forgotten?

I am not asking for something that is not mine. I only ask for what I was promised. I only ask for what I have worked for. This issue should not be about politics or some group over here against some group over there. It should be about real, live human beings, fellow American citizens, whose health is failing and in need of a pension that they can live on. This pension is all that we have. We have no other means of support.

Because of our age, because of mismanagement of our pension fund, because of things beyond our control, will we have to struggle to live on half of a pension at a time in our life when we can't do any better, especially when there is a solution?

I understand that there is a plan, the Butch Lewis Act, introduced by Senator Sherrod Brown and Representative Richard Neal, that has a solution to this pension crisis. It will save my fund, the Central States Fund, as well as other funds. I realize that you as a committee have to look at all sides of this issue, but if this Butch Lewis Act will work without an increase in taxes and will save the pensions of us real live American human beings, then why can't it be done? Please help us!

Thank you for taking the time to read this.

Robert Bozeman

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### LETTER SUBMITTED BY LLOYD I. HILER

Joint Select Committee on Solvency of Multiemployer Pension Plans  
219 Dirksen Senate Office Building  
Washington, DC 20510

July 23, 2018

RE: Southwest Ohio Regional Council of Carpenter's Pension Recovery Plan Submitted: June 29, 2018

Dear Sir or Madam:

In June 2005, I retired from the Southwest Ohio Regional Council of Carpenters Union. At that time your years of service and age had to equal 80 or above. I qualified for *unreduced early retirement benefits* that were figured at that time. I took the joint and survivors 50-percent benefit (see attached).

My problem is, 13 years later through the Recovery Plan, they have refigured my benefits to be 110 percent of the PBGC Guaranteed Benefits. At the age of 67, that is over a 57-percent cut. Being able to go back and refigure your benefit when you met what was offered at that time, I feel is wrong! Attached is my new proposed benefit under the recovery plan.

The only ones being cut this drastically are the 200-plus *early retirees*. Everyone else is being cut 8 percent or less. I realize we need to make some reductions to save the plan, but you need to make it less of a burden on the early retirees.

Another thing about the recovery plan is, if it passes the Treasury Department, it comes back to us for a vote. There are only 200-plus early retirees. All members are allowed to vote on the plan (active and retired). If someone doesn't cast a vote, it becomes an automatic "yes" for the plan.

With these kinds of rules, the early retirees don't have a chance of defeating the recovery plan proposed by the S.W.O.R.C.C. The early retirees should not be singled out, but only cut 8 percent, the same as all others.

I would appreciate any help anyone could give.

Sincerely,

Lloyd I. Hiler

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***Southwest Ohio Regional Council of Carpenters Pension Fund***

33 Fitch Boulevard  
Austintown, Ohio 44515  
Telephone: 1-800-435-2388  
Fax: (330) 270-0912

December 29, 2004

Dear Mr. Hiler:

Your application for unreduced early retirement benefits has been approved effective January 1, 2005, in the amount of \$2,670.29 per month. The enclosed check in the gross amount of \$2,670.29 represents payment for the month of January, 2005. Future payments in the amount of \$2,670.29 will be made on the first day of each month hereafter.

According to our records, you have selected the Joint and Survivor 50-percent benefit option. This benefit is payable to you monthly during your lifetime, and if your beneficiary is alive at the time of your death, 50 percent of your monthly benefit will continue to be paid to said beneficiary for her remaining lifetime. Our records indicate that you have designated Jacqueline Jean Hiler, your wife, as your beneficiary. Our records further indicate that her date of birth is November 19, 1954. You have 30 days from the date of this letter to change your benefit option.

Based upon this information, the benefit as stated above (\$2,670.29) is payable to you monthly during your lifetime, and a monthly benefit in the amount of \$1,335.15 will become payable to Jacqueline Hiler, upon your death, for her remaining lifetime.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Susan Cunningham  
Pension Department

Enclosure

This estimate of the effect of the proposed reduction of benefits has been prepared for:

Lloyd Hiler

**HOW YOUR MONTHLY PAYMENTS WILL BE AFFECTED—RETIRED MEMBERS—EARLY UNREDUCED**

Your current monthly benefit is \$2,599.71. Under the proposed reduction your monthly benefit will be reduced to \$1,101.10 beginning on March 31, 2019.

The proposed reduction is permanent.

**This estimate is based on the following information from Plan records:**

- You have 28.0 years of credited service under the Plan.
- You will be 67 years, 11 months as of April 30, 2019.
- The portion of your benefit that is based on disability is \$0.00.

**PBGC Guaranteed Benefits**

If the Plan does not have enough money to pay benefits, your monthly benefit would be no larger than the amount guaranteed by PBGC. The amount of your monthly benefit guaranteed by PBGC is estimated to be \$1,001.00.

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LETTER SUBMITTED BY LEON S. WROBLEWSKI, JR.

U.S. Senate  
U.S. House of Representatives  
Joint Select Committee on Solvency of Multiemployer Pension Plans  
219 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senators Orrin Hatch, Sherrod Brown, Lamar Alexander, Mike Crapo, Rob Portman, Heidi Heitkamp, Joe Manchin, and Tina Smith; and Representatives Virginia Foxx, Phil Roe, Vern Buchanan, David Schweikert, Richard E. Neal, Bobby Scott, Donald Norcross, and 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,

Leon S. Wroblewski, Jr.

