



**Supplement to Testimony of
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Submitted for the Record

**United States Senate and United States House of Representatives
Joint Select Committee on Solvency of Multiemployer Pension Plans**

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Introduction

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

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

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

Historical Background

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

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

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

Macro Changes to Established U.S. Industries

Many multiemployer pension plans primarily cover participants in established industries that have significantly changed in the United States over the past 30 to 40 years. An example of one of these changes that has uniquely impacted a number of Teamster plans is the passage of the Motor Carrier Act of 1980, which deregulated the trucking industry and gave rise to a new breed of non-unionized trucking company with which many established trucking companies could no longer compete. Central States reported that out of its 50 largest contributing employers in 1980, only three remained contributing employers by 2015, and that over 600 of its contributing employers have gone bankrupt since 1980.¹ These pressures also impact non-Teamster funds. As an example, the Western States Office & Professional Employees Pension Fund was acutely impacted by the decline in contributions due to the 2002 bankruptcy of one of its largest contributing employers, Consolidated Freightways – an established trucking company.²

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

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

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

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

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

Economic Recessions

In the past 20 years, multiemployer pension plans have suffered from two significant economic recessions – first in 2002 with the burst of the dot-com bubble and then in 2008 with the burst of the housing bubble and the financial crisis that followed. These recessions resulted in significant, unprecedented investment losses for multiemployer pension plans. Central States experienced \$7.5 billion in investment losses in 2008 alone.⁴ However, the impact of these recessions were not limited to investment losses. The recessions also bankrupted many contributing employers and constrained the ability of other employers to bear significant increases in contribution rates.

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

Derivative Effects

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

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

Second, many plans have fewer contributing employers than ever before due not only to withdrawals by those seeking to limit their potential exposure but also due to the failure of contributing employers. Specifically, a number of contributing employers have simply proven unable to weather these macro changes and economic recessions. These employers have ceased

⁴ Government Accountability Office, GAO-18-106, Central States Pension Fund – Investment Policy Decisions and Challenges Facing the Plan, Page 36 (2018).

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

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

⁷ Jasmine Ye Han, “Retiree-Employee Ratios are Dooming the Multiemployer Pension,” Bloomberg BNA, May 9, 2017, available at <https://www.bna.com/retireeemployee-ratios-dooming-n73014450632>.

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

contributions to multiemployer pension plans altogether – often through bankruptcy – and often failed to fully satisfy their withdrawal liability obligations. As a recent example, when The Great Atlantic & Pacific Tea Company filed for bankruptcy in 2015, it was a contributing employer to 12 multiemployer pension plans.⁹ Each time a contributing employer to a multiemployer pension plan fails, it effectively leaves the plan’s remaining contributing employers, who may themselves already be damaged from various macro events, liable for the unfunded vested benefits of the failed employer’s participants.

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

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

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

Current Problem

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

If large plans like Central States and the Mineworkers Plan become insolvent and turn to the PBGC’s multiemployer insurance program, the PBGC will not be able to fully satisfy its already modest guarantee for the participants in *any* insolvent plans. As of 2016, the Congressional

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

Budget Office estimates that out of the \$35 billion in financial assistance claims from multiemployer plans that the PBGC is projected to receive from 2027 through 2036, the PBGC will only be able to pay \$5 billion.¹⁰ This should not be an acceptable result to Congress for retirees on fixed incomes who need every dollar of their pension benefits.

Finding a Solution

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

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

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

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

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

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

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

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

¹¹ For example, the “default” contribution schedule implemented by Central States after PPA required five years of compounded eight percent annual contribution rate increases, three years of six percent annual compounded increases, and then continuous four percent compounded annual increases (without factoring in any additional contribution increases for benefit improvements). *See, e.g.*, Central States MPRA Application, page 18.7. At this rate, an employer's contribution rate doubles within 12 years after the adoption of the schedule.

Loan Program

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

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

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

Conclusion

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

The consequences of the PBGC's failure will be extraordinary. At the very least, it is clear that failure will result in, among other things, participants receiving small fractions of their benefits,

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

lost tax revenue, higher demands on federal, state and local government safety nets, and a loss of confidence in our social institutions.

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

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