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REFORMING AND STRENGTHENING DEFINED BENEFIT PLANS: EXAMINING THE HEALTH OF THE MULTIEMPLOYER PENSION SYSTEM

HEARING

BEFORE THE

SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

OF THE

COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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REFORMING AND STRENGTHENING DEFINED BENEFIT PLANS: EXAMINING THE HEALTH OF THE MULTIEMPLOYER PENSION SYSTEM

Thursday, March 18, 2004

U.S. House of Representatives

Subcommittee on Employer-Employee Relations

Committee on Education and the Workforce

Washington, DC

The Committee met, pursuant to notice, at 10:30 a.m., in room 2175, Rayburn House Office Building, Hon. Sam Johnson [Chairman of the Subcommittee] presiding.

Present: Representatives Johnson, Boehner, McKeon, Wilson, Kline, Carter, Andrews, Payne, Kildee, Tierney, Wu, Holt, and McCollum.

Staff present: Stacey Dion, Professional Staff Member; Kevin Frank, Professional Staff Member; Ed Gilroy, Director of Workforce Policy; Chris Jacobs, Staff Assistant; Greg Maurer, Coalitions Director for Workforce Policy; Jim Paretti, Workforce Policy Counsel; Deborah L. Samantar, Committee Clerk/Intern Coordinator; Kevin Smith, Senior Communications Counselor; Jody Calemine, Minority Counsel, Employer-Employee Relations; Ann Owens, Minority Clerk; and Michele Varnhagen, Minority Labor Counsel/Coordinator.

Chairman JOHNSON. Thank you all for being here. I salute you for getting up this early. I mean it is 10:30. That's kind of early for most of us, isn't it?

A quorum being present, the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce will come to order.

We're holding a hearing today to hear testimony on reforming and strengthening defined benefit plans, examining the health of the multiemployer pension system. Under Committee Rule 12(b), opening statements are limited to the Chairman and Ranking Minority Member of the Subcommittee. Therefore, if other Members have statements, they will be included in the record to remain open 14 days to allow Members' statements and other extraneous material referred during the hearing to be submitted in the official hearing record. Without objection, so ordered.

STATEMENT OF HON. SAM JOHNSON, SUBCOMMITTEE ON EMPLOYEE-EMPLOYER RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

I want to welcome you here today to another hearing in our series on the defined benefit pension system. Roughly 1 year ago, Chairman Boehner and I requested two reports by the GAO regarding this system. We spent 2 years looking into the defined contribution retirement system and passed legislation dealing with that system, and now we've turned our attention to reforming and strengthening the defined benefit system.

The first report by the GAO was released last summer, coinciding with the declaration that the single employer retirement system insured by Pension Benefit Guaranty Corporation (PBGC) is a high risk program facing record deficits.

We held hearings to examine this system, and I expect us to propose solutions to address systemic problems that we have uncovered in the insurance system and with funding rules generally.

The GAO is back with us today to deliver the second of two reports we requested, this one on multiemployer programs. The last time that Congress passed comprehensive reforms to the multiemployer system was in 1980 with the enactment of the Multiemployer Pension Plan Amendments Act, in its Washington terminology, MPPAA. You understand that.

Believe it or not, except for the gentleman from Michigan, Mr. Kildee, who I hope will be here later, no one on this Subcommittee was even in the Congress when that law was enacted.

I think that the report prepared by the GAO is helpful for Members to begin to understand how differently the multiemployer system works from the single employer system. The multiemployer system has had a history of financial stability. Due to the fact that these plans pool their risks, retiree benefits are not generally dependent upon the economic viability of just one company. However, the multiemployer system faces some serious long-term structural issues. I know our witnesses today want to talk about short-term relief for market losses of 2000, 2001 and 2002. But the focus of this hearing is long-term problems and long-term solutions.

We must ensure the system is self-sustaining for the long term on behalf of the workers and employees, and I fear for the viability of a system that is funded by a sharply declining number of active workers but paying benefits to a huge and growing number of retirees. We are already seeing employers asking for relief from minimum funding rules.

This pension funding scheme was designed in our view for a 1940's era model of projected growth in the multiemployer labor base, when in reality this demographic has not been the case for the last 30 years. I want to ensure that taxpayers do not end up footing the bill for these promises in the same manner that we have seen the promises made for the coal miner retiree health plan.

Striking differences exist between single and multiemployer pension systems. In many cases, it is inappropriate to expect these systems to address problems in exactly the same manner. But reforms to both systems need to be made. And as we look at making both systems function better, we must not lose our focus on two stakeholders: The taxpayer, who ultimately backs up those promises, and the people who count on these benefits in their retirement.

Our witnesses today are Barbara Bovbjerg, the Director of Education, Workforce, and Income Security Issues at GAO, who will help us spotlight these two stakeholders and shed light on how this system works, hopefully; Mr. John McDevitt, Senior Vice President of UPS, who will provide us with insight into one particular company's views of how to reform the system long-term; Mr. Weicht—Weicht? I'm sorry. Mr. Weicht, to discuss reforms on behalf of the AGC with the perspective of small employers in multiemployer systems; Randy DeFrehn to discuss reforms from the perspective of the multiemployer plan trustees.

I hope we can find solutions together this morning maybe to strengthen the entire defined benefit plan and protect the retirement security of millions of Americans as well as our taxpayers, who we represent.

I now yield to the distinguished Ranking Member of the Subcommittee, Mr. Andrews, for whatever comments he wishes to make.

[The prepared statement of Chairman Johnson follows:]

Statement of Hon. Sam Johnson, Chairman, Subcommittee on Employer–Employee Relations, Committee on Education and the Workforce

Good morning, I want to welcome you here today to another hearing in our series on the defined benefit pension system. Roughly one year ago, Chairman Boehner and I requested two reports by the General Accounting Office regarding this system.

We spent two years looking into the defined contribution retirement system and passed legislation dealing with that system and now we've turned our attention to reforming and strengthening the defined benefit system.

The first report by the GAO was released last summer, coinciding with the declaration that the single employer retirement system insured by Pension Benefit Guaranty Corporation (PBGC) is a "High Risk" program facing record deficits. We held hearings to examine this system and I expect us to propose solutions to address systemic problems that we have uncovered in the insurance system and with funding rules generally.

The GAO is back with us today to deliver the second of the two reports we requested—this one on the multiemployer program.

The last time that Congress passed comprehensive reforms to the multiemployer system was in 1980, with the enactment of the Multiemployer Pension Plan Amendments Act (MPPAA). Believe it or not, except for the Gentleman from Michigan, Mr. Kildee, no one on this subcommittee today was even in Congress when this law was enacted!

I think that the report prepared by GAO is helpful for members to begin to understand how differently the multiemployer system works from the single employer system.

The multiemployer system has had a history of financial stability—due to the fact that these plans pool their risks. Retiree benefits are not generally dependent upon the economic viability of one company.

However, the multiemployer system faces some serious long-term structural issues. I know that our witnesses today want to talk about short-term relief for market losses of 2000, 2001 and 2002. But, the focus of this hearing is the long-term problems and long-term solutions.

We must ensure this system is self-sustaining for the long-term on behalf of workers and employers.

I fear for the viability of a system that is funded by a sharply declining number of active workers but is paying benefits to a huge and growing number of retirees. We are already seeing employers asking for relief from minimum funding rules.

This pension funding scheme was designed for a 1940's era model of projected growth in the multiemployer labor base, when in reality this demographic has not been the case for the last thirty years.

I want to ensure that taxpayers do not end up footing the bill for these promises in the same manner as we have seen with the promises made for coal miner retiree health benefits.

Striking differences exist between the single and multi-employer pension systems. In many cases, it is inappropriate to expect these systems to address problems in exactly the same manner, but reforms to both systems need to be made.

As we look at making both systems function better, we must not lose our focus on two stakeholders—the taxpayer who ultimately backs up these promises and the people who count on these benefits in their retirement.

Our witnesses today are:

Ms. Barbara Bovbjerg, the Director of Education, Workforce and Income Security Issues at GAO, who will help us spotlight these two stakeholders and shed light on how this system works.

Mr. John McDevitt, Senior Vice President of UPS, who will provide us with insight into one particular company's views of how to reform this system for the long-term.

Mr. Scott Weicht, to discuss reforms on behalf of the AGC with the perspective of small employers in multiemployer systems.

Mr. Randy DeFrehn, to discuss reforms from the perspective of multiemployer plan trustees.

I hope we can find solutions together to strengthen the entire defined benefit system and protect the retirement security of millions of Americans.

STATEMENT OF HON. ROBERT ANDREWS, RANKING MEMBER, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Mr. ANDREWS. Thank you. Good morning, Mr. Chairman. Good morning, ladies and gentlemen. Thank you for your participation. I want to say to my friend Mr. Kildee that before he came in, the Chairman pointed out that the only member of the Subcommittee who was present in the Congress in 1980 when this law was last reformed was Mr. Kildee. And I interpret the Chairman's remarks as meaning that any suggestions Mr. Kildee has to reform the law further will be adopted by unanimous consent.

[Laughter.]

Mr. ANDREWS. So congratulations, Mr. Kildee. That may be an interpretation the Chairman may want to differ with. But what we don't differ with is the importance of having this hearing and our appreciation for the witnesses that are here today.

There are two dynamics, I believe, happening with defined benefit plans, and it's important that we separate them analytically as we respond to those dynamics. The first mirrors the macro problem we have in our country of more retirees and fewer workers. It really mirrors the Social Security problem and Medicare problem the country is going to be facing over the next couple of decades. That's indisputable, and it's a serious issue.

But the second dynamic also needs to be looked at, and I believe it is an anomalous dynamic that has not occurred at any other time in the history of the ERISA statute, and that is a series of unfortunate circumstances adversely affecting the financial health of these plans.

The circumstances are the significant drop in equity values that we've experienced over the last couple of years. We've seen some modest recovery recently, but certainly the recovery has not brought us up to where we were three or 4 years ago.

The second dynamic are historically how interest rates so that investments in debt instruments that yield income from interest rates are the lowest they've ever been.

The third dynamic is softening, weakening of the economy—layoffs of workers, which meaning fewer people paying in, fewer profits to pay from, and other conditions.

I think it's important that we recognize this circumstance, that we recognize that it's an anomalous circumstance, and that we not exaggerate the long-term problem by associating these anomalous circumstances with the long-term problem on a permanent basis. I hope that the anomalous circumstances are soon going to evaporate. There is some evidence that the market has come back. I think inevitably interest rates are going to rise, which is a mixed blessing but one that's going to have some positive impact on earnings for these plans.

So I believe that it's very important to look at the long-term issues of defined benefit plans, but it's equally important not to exaggerate those long-term problems by importing present anomalous negative circumstances and assuming that they'll always be true.

I think that the present problems of the plan result from some serious consequences that have not been seen before and I hope will not be seen again.

Having said that, it is also important that we understand that the anomalous circumstances that we see today are having a profoundly negative effect on multiemployer defined benefit plans. It's one of the reasons why I support in the present conference negotiations the Senate provisions which would provide relief for the multiemployer plans from the short-term problems that we face.

The Congress has debated over the last number of years any number of measures for economic stimulus to reduce unemployment. One of the worst things we could do in the area of economic stimulus is to require employers, both single employer plans and multiemployer plans, to overcontribute to their defined benefit plans and drain money from wages and benefits and purchases that would otherwise stimulate the economy.

You know, we don't want to kill the goose that lays the golden egg. In the name of pension sanctity, it would be a huge mistake to require overcontributions that would cripple the employer that we need to make those pension contributions on into the future.

So I think we have to be surgical, careful in what we're doing. We have to recognize that we are presently living under some anomalous problems that need to be addressed in the short run, which is why I do support the Senate provisions on the multiemployer plans.

In the long run, there are clearly issues to be dealt with given the pending imbalance between workers and retirees, and we have to take a long look at that. But to exaggerate the scope of that problem by assuming that the present anomalous circumstances will continue indefinitely I think is a mistake. And it would be a mistake to make a law based upon that flawed assumption.

So, Mr. Chairman, I'm very interested in hearing from our panel of witnesses this morning, and I appreciate the chance to ask them questions. Thank you.

Chairman JOHNSON. Thank you for your comments, Mr. Andrews. I appreciate them. We may not agree totally, but that's what this Congress is all about.

Mr. ANDREWS. That's what this country is all about.

Chairman JOHNSON. Sir?

Mr. ANDREWS. That's what this country is all about.

Chairman JOHNSON. You got it. That's what makes America a great place to live in. We can agree to disagree and still be good friends.

And with that, I would like to explain the lights. We've got a set of lights down there. You all may be aware of them. When they come on, you'll get a green. They're good for 5 minutes. We'd like to have you limit your remarks to that if you can. A yellow light will come on when there's 1 minute left, and we appreciate you closing it off when the red light comes on.

And I'd now like to recognize Ms. Bovbjerg for her comments. You may begin.

STATEMENT OF BARBARA BOVBJERG, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, GENERAL ACCOUNTING OFFICE, WASHINGTON, DC

Ms. BOVBJERG. Thank you, Mr. Chairman, Congressman Andrews, Members of the Subcommittee. I appreciate your inviting me here today to discuss multiemployer pension plans and the challenges they face.

Multiemployer pensions are defined benefit plans created by collective bargaining agreements covering more than one employer. These plans provide coverage for almost 10 million American workers and retirees, and they represent an important part of the nation's private pension system.

The recent collapse of several large single employer plans has prompted questions about the health of multiemployer plans as well. In seeking to clarify some of these issues today, my testimony will focus on three points. First, how multiemployer plans differ from single employer plans. Second, trends in funding and worker participation in multiemployer plans. And finally, the potential challenges to such plans.

My testimony is based on work we are completing for this Committee that will be released next week.

First, the differences between single and multiemployer plans. Multiemployer plans are all collectively bargained by employee unions and several employers and are administered jointly by labor and management. Although single employer plans may be collectively bargained, they are not always, and are administered by a single sponsoring employer. Although ERISA funding rules apply to both types of plans, sponsors of multis negotiate contributions through collective bargaining and may not alter contributions levels in response to changing circumstances. In contrast, single plan sponsors may alter contributions annually as business conditions change, as long as they remain within the limit set by ERISA.

Rules for employers seeking to end their sponsorship are less flexible for multis than for single. Multiemployer plan sponsors who wish to withdraw from the plan must pay their share of the plan's unfunded vested benefits. This is called the withdrawal liability. Further, if an employer in such a plan goes bankrupt, the other sponsors must assume responsibility for paying benefits to the bankrupt sponsor's participants. In contrast, a single employer plan sponsor is liable only for the unfunded portion of his own plan.

These structural differences between multi and single employer plans result in differences in PBGC's role. PBGC premiums for multiemployers are significantly lower than those for single employers, and so are premium revenues. So too are PBGC benefit guarantees. PBGC guarantees benefits up to $44,000 a year for single employer plans but only $13,000 for multis. Further, single employer plans are insured at termination, and PBGC may assume responsibility for the plan and pay benefits directly to retirees. Multiemployer plans are ensured as well, but PBGC does not take over these plans. It instead provides financial assistance in the form of loans.

The net effect of these differences is the redistribution of risk. Most of the risk of plan underfunding is borne first by the company sponsoring the multiemployer plan, then by the participants whose benefit guarantees are relatively low.

PBGC is unlikely to have to provide benefits at guaranteed levels, and even then, those levels are less costly to the agency than the guaranteed benefits in a single employer program.

Let me turn now to trends in multiemployer plans. While multiemployer funding has been fairly stable in the 1980's and '90's, plan funding levels have deteriorated in the last several years. As with single employer plans, stock market declines coupled with low interest rates have reduced the assets and increased the liabilities of many multiemployer plans. While most plans continue to pay promised benefits, PBGC predicts the need for more financial assistance in the future. Meanwhile, the numbers of plans and plan participants have fallen steadily over the years and continue to do so.

Finally, as to the long-term prospects for multiemployer plans, the future holds challenges for this system. Employers perceive these plans as financially risky and less flexible than others. Hence, they're not likely to join multiemployer plans or to remain in them if withdrawals become financially feasible.

Furthermore collective bargaining itself, a necessary aspect of the multiemployer plan model, is in long-term decline and will offer fewer future opportunities for new plans to be created or existing ones to expand. This means the ratio of active workers to retirees will continue to fall.

Finally, multiemployer plans are defined benefit plans and as such exist in a world where employers increasingly are choosing defined benefit plans. Taken together, these trends suggest a future of fewer, smaller and older multiemployer plans.

In conclusion, although multis are not now experiencing the magnitude of problems plaguing single employer plans, there is cause for concern. Multis' financial health is deteriorating, and these plans cannot look to future growth for help. Fortunately, shared governance and the distribution of risk among sponsors and participants creates strong incentives for these parties to resolve financial situations before they result in plan insolvency and PBGC intervention.

However, over time, multiemployer plans could become less financially viable as the unionized workforce shrinks and ages. Public policy will be challenged to balance the needs of increasingly stressed plans with those of workers, retirees and the public.

And that concludes my statement, Mr. Chairman. I welcome your questions.

[The prepared statement of Ms. Bovbjerg follows:]

Statement of Barbara Bovbjerg, Director, Education, Workforce, and Income Security Issues, U.S. General Accounting Office, Washington, DC

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Employer-Employee Relations, Committee on Education and the Workforce, House of Representatives

For Release on Delivery
Expected at 10:30 a.m.
Thursday, March 18, 2004

PRIVATE PENSIONS

Multiemployer Pensions Face Key Challenges to Their Long-Term Prospects

Statement of Barbara D. Bovbjerg, Director
Education, Workforce, and Income Security Issues

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GAO-04-542T

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Highlights

Highlights of GAO-04-542T, a report to House Subcommittee on Employer-Employee Relations, Committee on Education and the Workforce, House of Representatives

Why GAO Did This Study

Multiemployer defined benefit pension plans, which are created by collective bargaining agreements covering more than one employer and generally operated under the joint trusteeship of labor and management, provide coverage to over 9.7 million of the 44 million participants insured by the Pension Benefit Guaranty Corporation (PBGC). The recent termination of several large single-employer plans—plans sponsored by individual firms—has led to millions of dollars in benefit losses for thousands of workers and left PBGC, their public insurer, an $11.2 billion deficit as of September 30, 2003. The serious difficulties experienced by these single-employer plans have prompted questions about the health of multiemployer plans.

This testimony provides information on differences between single employer and multiemployer pension plans, recent trends in the funding of multiemployer pension plans and worker participation in those plans, and factors that may pose challenges to the future prospects of multiemployer plans. GAO will soon release a separate report on multiemployer pension issues.

www.gao.gov/cgi-bin/getrpt?GAO-04-542T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Barbara Bovbjerg at (202)512-7215 or bovbjergb@gao.gov.

March 18, 2004

PRIVATE PENSIONS

Multiemployer Pensions Fact Key Challenges to Their Long-Term Prospects

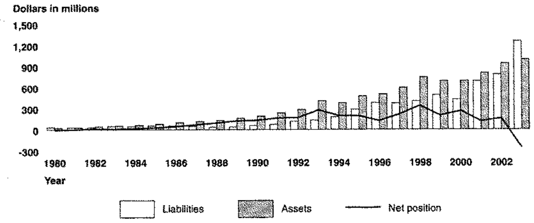
What GAO Found

The framework governing multiemployer plans generally places greater financial risk on employers and participants and less on PBGC than does PBGC's single-employer program. For example, in the event of employer bankruptcy, the remaining employers in the multiemployer plan assume additional funding responsibility. Further, PBGC's guaranteed participant benefit is much lower for multiemployer participants, and PBGC does not provide financial assistance until the multiemployer plan is insolvent.

Following two decades of relative financial stability, many multiemployer plans appear to have suffered recent funding losses, while long-term declines in participation and plan formation continue. At the close of the 1990s, the majority of multiemployer plans reported assets exceeding 90 percent of total liabilities. Since then, stock market declines, coupled with low interest rates and poor economic conditions, have reduced assets and increased liabilities for many plans. In its 2003 annual report, PBGC estimated that underfunded multiemployer plans now face an aggregate unfunded liability of $100 billion, up from $21 billion in 2000. PBGC also reported an accumulated net deficit of $261 million for its multiemployer program in 2003, the first since 1981. Meanwhile, since 1980, there has been a steady decline in the number of plans, from over 2,200 plans to fewer than 1,700, and a 1.4 million decline in the number of active workers in plans.

The long-term prospects of the multiemployer system face a number of challenges. Some are inherent in the multiemployer design and regulatory framework, such as the greater perceived financial risk and reduced flexibility for employers, compared with other plan types. The long-term decline of collective bargaining also results in fewer participants and employers available to expand or create new plans. Other factors that pose challenges include the growing trend among employers to choose defined contribution plans; the increasing life expectancy of workers, which raises the cost of defined benefit plans; and continuing increases in employer health insurance costs, which compete with pensions for employer funding.

PBGC Multiemployer Program Assets, Liabilities, and Net Position, 1980 – 2003



Source: GAO analysis of PBGC data

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the health of the multiemployer pension system and the challenges it faces. Multiemployer plans are plans created by collective bargaining agreements covering more than one employer. They are generally operated under the joint trusteeship of labor and management and constitute an important segment of the nation's private employer pension system. These defined benefit (DB)[1] pension plans cover over 9.7 million participants, representing about 22 percent of all workers and retirees insured by Pension Benefit Guaranty Corporation (PBGC).[2]

The recent collapse and termination of several large single-employer plans—where individual employers are responsible for funding and administering the plan—have resulted in millions of dollars in benefit losses for thousands of workers and left PBGC, their public insurer, an $11.2 billion deficit as of September 30, 2003.[3] The serious difficulties

[1]Defined benefit (DB) plans promise a benefit that is generally based on years of service and employee's salary for single-employer plans or a flat dollar amount for multiemployer plans. In a single-employer DB plan the employer is generally responsible for funding the benefit, investing and managing plan assets, and bearing the investment risk. For a multiemployer plan the employer generally makes contributions based on the collective bargaining agreement and plan trustees are responsible for investment decisions. In contrast, under a defined contribution plan, benefits are based on the contributions to and investment returns on individual accounts, and the employee bears the investment risk. An example of a defined contribution plan is a 401 (k) plan, which operates as a salary reduction arrangement under section 401(k) of the Internal Revenue Code. The United States employer-sponsored pension system has historically been an important component of total retirement income, providing roughly 18 percent of aggregate retirement income in 2000. However, the percentage of the workforce with pension coverage has been near 50 percent since the1970s.

[2]Since its enactment in 1974, multiemployer defined benefit pensions have been regulated by the Employee Retirement Income Security Act (ERISA), which Congress passed to protect the interests of participants and beneficiaries covered by private sector employee benefit plans. Title IV of ERISA created PBGC as a United States Government corporation to insure the pensions of participants and beneficiaries in private sector-defined benefit plans.

[3]Because of its accumulated deficit, the significant risk that other large underfunded plans might terminate and other structural factors, we designated PBGC's single-employer pension insurance program as a high-risk program and added it to the list of agencies and major programs that we believe need urgent attention. See U.S. General Accounting Office, *Pension Benefit Guaranty Corporation Single-Employer Program: Long-Term Vulnerabilities Warrant Program's Assignment to GAO High Risk Designation*, GAO-03-1050SP, (Washington, D.C.: July 23, 2003). Congress is currently considering legislation that would provide funding relief to certain multiemployer pension funds.

experienced by these single-employer plans have prompted questions about the health of the nation's multiemployer defined benefit plans.

The financial strength of the multiemployer system has crucial consequences, not only for the both the employers and the millions of workers and retirees participating in multiemployer pension plans, but for the elements and structure of current national pension policy. We will soon release a report addressing multiemployer issues that we undertook at the joint request of the Committee on Education and Workforce and this subcommittee. In seeking to clarify some of these issues today, my testimony will focus on (1) how multiemployer defined benefit plans differ from single-employer defined benefit plans, (2) recent and current trends in funding and worker participation in these plans; and (3) potential challenges to their long-term prospects.

To determine the trends in the funded status of multiemployer defined benefit plans, we analyzed Form 5500 disclosure statements and PBGC data. The Form 5500, which plans must file with the Department of Labor, is the only comprehensive source of financial and other plan information on private pension plans collected on a regular basis.[4] Form 5500 provides important pension information, such as the number of plan participants and data on the financial condition of plans. However, the most complete Form 5500 data is from 2001, making it difficult to accurately discern recent trends. Although some data obtained from PBGC may be more recent, much of it is based on the Form 5500. This lack of comprehensive data makes it difficult to depict recent developments, particularly with regard to plan funding. To identify the major challenges to the future prospects of multiemployer plans, we reviewed pension literature and interviewed representatives in government, industry, and labor involved with such plans. We conducted our work from April 2003 through January 2004 in accordance with generally accepted government auditing standards.

In summary, after two decades of financial stability, many multiemployer plans appear to have suffered recent and significant funding losses; meanwhile, long-term declines continue in terms of new plan formation and worker participation. At the close of the 1990s, the majority of

[4]U.S. General Accounting Office, *Pension and Welfare Benefit Administration: Opportunities Exist for Improving Management of the Enforcement Program*, GAO-02-232 (Washington, D.C.: Mar. 3, 2002).

multiemployer plans had reported assets exceeding 90 percent of total liabilities, with average funding rising to 105 percent in 2000. However, subsequent stock market declines, coupled with low interest rates and poor economic conditions, have likely reduced the assets and increased liabilities for many multiemployer plans. Comprehensive funding data are not available to depict recent developments, but significant signs of funding weakness exist. In its 2003 annual report, PBGC estimated that underfunded multiemployer plans now face an aggregate unfunded liability of $100 billion, up from $21 billion in 2000. While most multiemployer plans continue to provide benefits to retirees at unreduced levels, the agency has increased its forecast of the number of plans that will likely need financial assistance from 56 plans in 2001 to 62 in 2003. PBGC also reported that its multiemployer program had an accumulated net deficit of $261 million at the end of 2003, the program's first deficit since 1981. Meanwhile, multiemployer plans have continued their steady long-term decline in numbers and worker participation. The number of plans has dropped by a quarter since 1980 to fewer than 1,700, and only 5 new plans have been formed since 1992. The number of workers covered by multiemployer plans has also fallen by 1.4 million since 1980, with the percentage of the private sector labor force covered by multiemployer plans declining from 7.7 percent in 1980 to 4.1 percent in 2001.

A number of factors pose challenges to the multiemployer plan system over the long term. Some are inherent to multiemployer plan design and regulatory framework, which employers may perceive as financially riskier and less flexible than other types of pension plans. For example, compared with those sponsoring single-employer plans, an employer participating in a multiemployer plan cannot as easily adjust plan contributions in response to the firm's own financial circumstances. This is because contribution rates are often fixed for periods of time by the provisions of the collective bargaining agreement. Also, multiemployer sponsors may face the risk of additional costs if one or more sponsors are unable to fund their share of the plan's vested benefits. The long-term decline of collective bargaining is another factor adversely affecting multiemployer plan growth, in that fewer employers and workers are available to provide opportunities for new plans to be created or existing ones to expand. As of 2003, union membership, a proxy for collective bargaining coverage, accounted for less than 9 percent of the private sector labor force and has been steadily declining since 1953. Finally, experts have identified other factors challenging the future prospects for defined benefit plans generally, including multiemployer plans. These factors include the growing trend among employers to choose defined contribution (DC) plans; the increasing life expectancy of American workers, which will increase plan costs; and continuing increases in health insurance costs, which will affect overall compensation costs, including pensions, for employers.

Multiemployer Plans Differ from Single-Employer Plans

It would be useful at this point to describe several differences between multiemployer and single-employer plans. Multiemployer plans are established pursuant to collectively bargained agreements negotiated between labor unions representing employees and two or more employers and are generally jointly administered by trustees from both labor and management.[5] Single-employer plans are administered by one employer and may or may not be collectively bargained. Multiemployer plans typically cover groups of workers in such industries as construction, retail food sales, and trucking, with construction representing 38 percent of all participants. In contrast, 47 percent of single-employer plan participants are in manufacturing. Multiemployer plans provide participants limited benefit portability in that they allow workers the continued accrual of defined benefit pension rights when they change jobs, if their new employer is also a sponsor of the same plan. This arrangement can be particularly advantageous in industries like construction, where job change within a single occupation is frequent over the course of a career. Single-employer plans are established and maintained by only one employer and do not normally offer benefit portability. Multiemployer plans also differ from so called multiple-employer plans that are not generally established through collective bargaining agreements and where many plans maintain separate accounts for each employer.[6] The Teachers

[5]The National Labor Relations Act (NLRA) provides the basic framework governing private sector labor-management relations. NLRA provides employees the right to form unions and bargain collectively and requires employers to recognize employee unions that demonstrate support from a majority of employees and to bargain in good faith. NLRA also specifies the structure, rights, and responsibilities for union and employer trustees of multiemployer pension plans. Since its enactment in 1935, collective bargaining has been the primary means by which workers can negotiate, through unions, the terms of their pension plan. The Taft Hartley Act amended NLRA to establish terms for negotiating such employee benefits and placed certain restrictions on the operation of any plan resulting from those negotiations. For example, employer contributions cannot be made to a union or its representative but must be made to a trust that is jointly and equally administered by union and employer representatives. Taft Hartley also established a formal set of conditions under which these plans must be operated and provided a legal framework for their management. See 9CFR186(c)(5).

[6]Multiemployer plans as used throughout this testimony refer to defined benefit pension plans. Note that there are other, sometimes separate, multiemployer agreements that cover programs such as health and other welfare benefits and defined contribution pension plans.

Insurance Annuity Association and College Retirement Equities fund (TIAA-CREF) is an example of a large multiple-employer plan organized around the education and research professions. TIAA-CREF offers a defined benefit contribution plan, in which contributions are accumulated over a career and paid out at retirement, often as an annuity.

Below are some features that illustrate some key differences between single-employer and multiemployer plans:

- *Contributions*· In general, the same ERISA funding rules apply to both single- and multiemployer defined benefit pension plans. While ERISA and IRC minimum funding standards permit plan sponsors some flexibility in the timing of pension contributions, individual employers in multiemployer plans cannot as easily adjust their plan contributions. For multiemployer plans, contribution levels are usually negotiated through the collective bargaining process and are fixed for the term of the collective bargaining agreement, typically 2 to 3 years. Employer contributions to many multiemployer plans are typically made on a set dollar amount per hour of covered work, and thus to the number of active plan participants. With other things being equal, the reduced employment of active participants will result in lower contributions and reduced plan funding.[7]

- *Withdrawal liability*· Congress enacted the Multiemployer Pension Plan Amendments Act (MPPAA) of 1980 to protect the pensions of participants in multiemployer plans by establishing a separate PBGC multiemployer plan insurance program and by requiring any employer wanting to withdraw from a multiemployer plan to be liable for its share of the plan's unfunded liability.[8] The law contains a formula for determining the amount an employer withdrawing from a multiemployer plan is required to contribute, known as "withdrawal liability." This amount is based upon a proportional share of the plans' unfunded vested benefits.[9] Furthermore, if a participating employer becomes bankrupt, MPPAA requires that the

[7]Benefit levels are generally also fixed by the contract or by the plan trustee, based on the agreed level of contributions.

[8]Congress is currently considering a proposal that would revise the current requirements concerning withdrawal liability, shifting some of those liabilities to PBGC.

[9]Vested benefits are benefits that are no longer subject to risk of forfeiture. Unfunded vested benefits are the excess, if any, of the present value of a plan's vested benefits over the value of plan assets, determined in accordance with ERISA, including claims of the plan for unpaid initial withdrawal liability and redetermination liability.

remaining employers in the plan assume the additional funding responsibility for the benefits of the bankrupt employer's plan participants. For single-employer plans, the sponsoring employer is liable only for the unfunded portion of its own plan or its current liability in a bankruptcy (distress termination).

- *Different premiums and benefit guarantee levels.* PBGC operates two distinct insurance programs, one for multiemployer plans and one for single-employer plans, which have separate insurance funds, different benefit guarantee rules, and different insurance coverage rules. The two insurance programs and PBGC's operations are financed through premiums paid annually by plan sponsors, investment returns on PBGC assets, assets acquired from terminated single employer plans, and recoveries from employers responsible for underfunded terminated single employer plans. Premium revenue totaled about $973 million in 2003, of which $948 million was paid into the single-employer program and $25 million paid to the multiemployer program. Single-employer plans pay PBGC an annual flat-rate premium of $19 per participant per year for pension insurance coverage. Plans that are underfunded generally also have to pay PBGC an additional annual variable rate premium of $9 per $1,000 of underfunding for the additional exposure they create for the insurance program. In contrast, the only premium for multiemployer plans is a flat $2.60 per participant per year. PBGC guarantees benefits for multiemployer pensioners at a much lower dollar amount than for single-employer pensioners: about $13,000 for 30 years of service for the former compared with about $44,000 annually per retiree at age 65 for the latter.[10]

- *Financial assistance and the insurable event.* PBGC's "insurable event" for its multiemployer program is plan insolvency. A multiemployer plan is insolvent when its available resources are not sufficient to pay the level of benefits at PBGC's multiemployer guaranteed level for 1 year. In contrast, the insurable event for the single-employer program is generally the termination of the plan. In addition, unlike its role in the single-employer program where PBGC trustees weak plans and pays benefits directly to participants, PBGC does not take over the administration of

[10]Under the single-employer program, the maximum guarantee in 2004 is $44,386.32 annually ($3,698.86 monthly) for a single life annuity beginning at age 65. The maximum is adjusted downward for retirees younger than age 65. Under the multiemployer program, PBGC guarantees the first $11 of monthly accrual and 75 percent of the next $33 of monthly accrual, for a maximum monthly accrual of $35.75 per month times the years of credited service. For a participant with 30 years of service under the plan, the maximum annual PBGC guaranteed benefit would be $12,870. Workers with less than 30 years service would receive a lower maximum guaranteed benefit.

multiemployer plans but instead, provides financial assistance in the form of loans when plans become insolvent. A multiemployer plan need not be terminated to qualify for PBGC loans, but it must be insolvent and is allowed to reduce or suspend payment of that portion of the benefit that exceeds the PBGC guarantee level. If the plan recovers from insolvency, it must begin repaying the loan on reasonable terms in accordance with regulations. Such financial assistance is infrequent; for example, PBGC has made loans totaling $167 million to 33 multiemployer plans since 1980[11] compared with 296 trusteed terminations of single-employer plans and PBGC benefit payments of over $4 billion in 2002-2003 alone.[12]

The net effect of these different features is that there is a different distribution of financial risk among, employers, participants and PBGC under the multiemployer program, compared with PBGC's single-employer program. Multiemployer member employers and participants bear far more financial risk, and PBGC, and implicitly the taxpayer, bear far less risk, under the multiemployer program. In addition, PBGC officials explained that the features of the multiemployer regulatory framework have also led to a lower frequency of financial assistance. They note that greater financial risks faced by employers and the lower guaranteed benefits assured participants create incentives for employers, participants, and their collective bargaining representatives to avoid insolvency and to collaborate in trying to find solutions to a plan's financial difficulties.

[11]Of the 33 plans that have received financial assistance (loans) to pay insured benefits, 24 received assistance in 2003, 4 merged with other healthier plans and 1 purchased an annuity from a private sector insurance company and terminated, transferring benefit obligations to the insurance company. Only 1 plan has repaid any of its financial assistance and that plan repaid only the principal amount of its financial assistance.

[12] The number of trusteed terminated plans is based on the fiscal year that PBGC trusteed the plans, rather than the fiscal year of the plan termination.

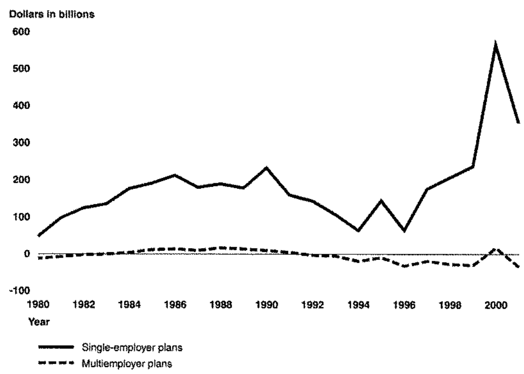
The Financial Stability of Multiemployer Plans Has Likely Weakened Recently, while Long-Term Declines in the Number of Plans and Participants Continue

While multiemployer plan funding has exhibited considerable stability over the past two decades, available data suggest that many plans have recently experienced significant funding declines. Since 1980, aggregate multiemployer plan funding has been stable, with the majority of plans funded above 90 percent of total liabilities and average funding at 105 percent in 2000. Recently, however, it appears that a combination of stock market declines coupled with low interest rates and poor economic conditions has reduced the assets and increased the liabilities of many multiemployer plans. In PBGC's 2003 annual report, the agency estimated that total underfunding of underfunded multiemployer plans reached $100 billion by year-end, from $21 billion in 2000, and that its multiemployer program had recorded a year-end 2003 net deficit of $261 million, the first deficit in more than 20 years. While most multiemployer plans continue to provide benefits at unreduced levels, the agency has also increased its forecast of the number of plans that will likely need financial assistance, from 56 plans in 2001 to 62 plans in 2003. Private survey data are consistent with this trend, with one survey by an actuarial consulting firm showing the percentage of fully funded client plans declining from 83 percent in 2001 to 67 percent in 2002. In addition, long-standing declines in the number of plans and worker participation continue. The number of insured multiemployer plans has dropped by a quarter since 1980 to fewer than 1,700 plans in 2003, according to the latest data available. Although in 2001, multiemployer plans in the aggregate covered 4.7 million active participants, representing about a fifth of all active defined benefit plan participants, this number has dropped by 1.4 million since 1980.

Multiemployer Plan Funding Remained Stable during the 1980s and 1990s

Aggregate funding for multiemployer pension plans remained stable during the 1980s and 1990s. By 2000, the majority of multiemployer plans reported assets exceeding 90 percent of total liabilities, with the average plan funded at 105 percent of liabilities. As shown in figure 1, the aggregate net funding of multiemployer plans grew from a deficit of about $12 billion in 1980 to a surplus of nearly $17 billion in 2000. From 1980 to 2000, multiemployer plan assets grew at an annual average rate of 11.7 percent, to about $330 billion, exceeding the average 10.5 percent annual percentage growth rate of single-employer plan assets. During the same time period, liabilities for multiemployer and single-employer pensions grew at an average annual rate of about 10.2 percent and 9.9 percent respectively.

Figure 1: Aggregate Net Funding Position of PBGC-Insured DB Pension Plans, 1980-2001



Source: GAO analysis of PBGC data.

A number of factors appear to have contributed to the funding stability of multiemployer plans, including:

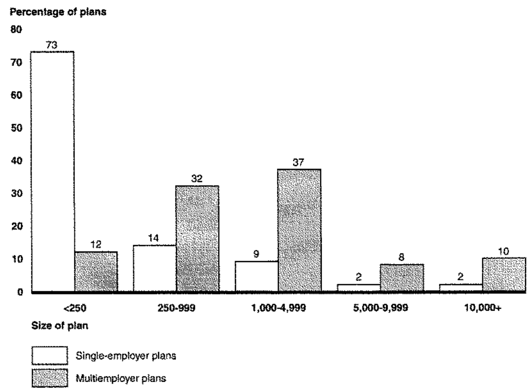
Investment strategy · Historically, multiemployer plans appear to have invested more conservatively than their single-employer counterparts. Although comprehensive data are not available, some pension experts have suggested that defined benefit plans in the aggregate are more than 60 percent invested in equities, which are associated with greater risk and volatility than many fixed-income securities. Experts have stated that, in contrast, equity holdings generally constitute 55 percent or less of the assets of most multiemployer plans.

Contribution rates · Unlike funds for single-employer plans, multiemployer plan funds receive steady contributions from employers because those amounts generally have been set through multiyear collective bargaining contracts. Participating employers, therefore, have less flexibility to vary their contributions in response to changes in firm performance, economic conditions, and other factors. This regular contribution income is in addition to any investment return and helps multiemployer plans offset any declines in investment returns.

Risk pooling · The pooling of risk inherent in multiemployer pension plans may also have buffered them against financial shocks and recessions, since the gains and losses of the plans are less immediately affected by the economic performance of individual employer plan sponsors. Multiemployer pension plans typically continue to operate long after any individual employer goes out of business because the remaining employers in the plan are jointly liable for funding the benefits of all vested participants.

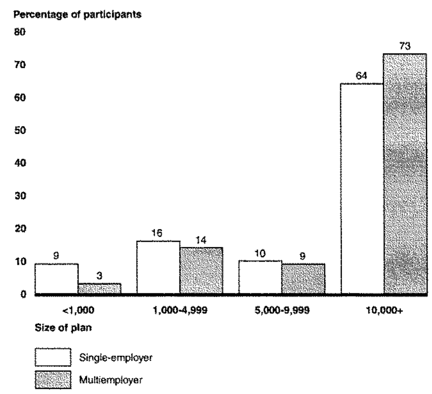
Greater average plan size · The stability of multiemployer plans may also partly reflect their size. Large plans (1,000 or more participants) constitute a greater proportion of multiemployer plans than of single-employer plans. (See figs. 2 and 3.) While 55 percent of multiemployer plans are large, only 13 percent of single-employer plans are large and 73 percent of single-employer plans have had fewer than 250 participants, as shown in figure 2. However, distribution of participants by plan size for multiemployer and single-employer plans is more comparable, with over 90 percent of both multiemployer and single-employer participants in large plans, as shown in figure 3.

Figure 2: Distribution of PBGC-Insured DB Pension Plans by Number of Plan Participants, 2003



Source: GAO analysis of PBGC data.

Figure 3: Distribution of Participants of PBGC-Insured DB Pension Plans by Plan Size, 2003



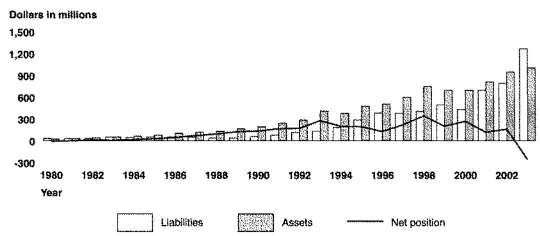
Source: GAO analysis of PBGC data.

Data Suggest the Funded Status of Multiemployer Plans Has Declined Since 2000

Although data limitations preclude any comprehensive assessment, available evidence suggests that since 2000, many multiemployer plans have experienced significant reductions in their funded status. PBGC estimated in its 2003 annual report that aggregate deficit of underfunded multiemployer plans had reached $100 billion by year-end, up from a $21 billion deficit at the start of 2000. In addition, PBGC reported a net accumulated deficit for its own multiemployer program of $261 million for fiscal year 2003, the first deficit since 1981 and its largest ever. (See fig. 4.) While most multiemployer plans continue to provide benefits at unreduced levels, PBGC has also reported that the deficit was primarily caused by new and substantial "probable losses," increasing the number of plans it classifies as likely requiring financial assistance in the near future from 58 plans with expected liabilities of $775 million in 2002 to 62 plans with expected liabilities of $1.25 billion in 2003.

Private survey data and anecdotal evidence are consistent with this assessment of multiemployer funding losses. One survey by an actuarial consulting firm showed that the percentage of its multiemployer client plans that were fully funded declined from 83 percent in 2001 to 67 percent in 2002.[13] Other, more anecdotal evidence suggests increased difficulties for multiemployer plans. For example, discussions with plan administrators have indicated that there has been an increase in the number of plans with financial difficulties in recent years, with some plans reducing or temporarily freezing the future accruals of participants. In addition, IRS officials recently reported an increase in the number of multiemployer plans (less than 1 percent of all multiemployer plans) requesting tax-specific waivers that would provide plans relief from current funding shortfall requirements.

Figure 4: PBGC Multiemployer Program, 1980-2003



Source: GAO analysis of PBGC data.

As with single-employer plans, falling interest rates coincident with stock market declines and generally weak economic conditions have contributed to the funding difficulties of multiemployer plans. The decline in interest rates in recent years has increased the present value of pension plan liabilities for DB plans in general, because the cost of providing future promised benefits increases when computed using a lower interest rate. At the same time, declining stock markets decreased the value of any equities held in multiemployer plan portfolios to meet those obligations. Finally,

[13]Segal Benefits, Compensation and HR Consulting, SEGAL Survey, *Effects of "The Perfect Storm" Begin to Emerge: Erosion of the Funded Position of Multiemployer Pension Plans*, Spring 2003.

because multiemployer plan contributions are usually based on the number of hours worked by active participants, any reduction in their participant employment will reduce employer contributions to the plan.

Multiemployer Plans Experiencing Long-Term Declines in Plan Formation and Worker Participation

Despite their relative financial stability, the multiemployer system has experienced a steady decline in the number of plans and in the number of active participants over the past 2 decades. In 1980, there were 2,244 plans, and by 2003 the number had fallen to 1,623, a decline of about 27 percent. While a portion of the decline in the number of plans can be explained by consolidations through mergers, few new plans have been formed - only 5, in fact, since 1992. Meanwhile, the number of active multiemployer plan participants has declined in both relative and absolute terms. By 2001, only about 4.1 percent of the private sector workforce was composed of active participants in multiemployer pension plans, down from 7.7 percent in 1980 (see fig. 5), with the total number of active participants decreasing from about 6.1 million to about 4.7 million. [14]

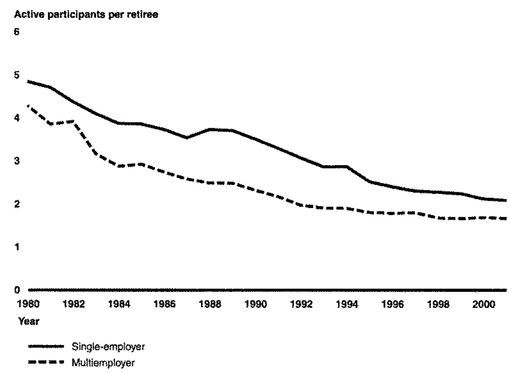
[14] A similar decline was observed for active participants of single-employer plans, with the total falling from 27.3 percent of the private sector labor force in 1980 to 15.5 by 2001.

Figure 5: PBGC-Insured Active Participants as a Percentage of Private Sector Wage and Salary Workers, 1980-2001

Source: GAO analysis of PBGC data.

Finally, as the number of active participants has declined, the number of retirees increased – from about 1.4 million to 2.8 million, and this increase had led to a decline in the ratio of active (working) participants to retirees in multiemployer plans. By 2001, there were about 1.7 active participants for every retiree, compared with 4.3 in 1980. (See fig. 6.) While the trend is also evident among single-employer plans, the decline in the ratio of active workers to retirees affects multiemployer funding more directly because employer contributions are tied to active employment. The higher benefit payouts required for greater numbers of retirees, living longer, and the reduced employer contributions resulting from fewer active workers combines to put pressure on the funding of multiemployer plans.

Figure 6: Number of Active Participants per Retiree, 1980-2001



Source: GAO analysis of PBGC data.

A Number of Factors Challenge the Long-Term Prospects of the Multiemployer Defined Benefit System

A number of factors pose challenges to the long-term prospects of the multiemployer pension plan system. Some of these factors are specific to the features and nature of multiemployer plans, including a regulatory framework that some employers may perceive as financially riskier and less flexible than those covering other types of pension plans. For example, compared with a single-employer plan, an employer covered by a multiemployer plan cannot easily adjust annual plan contributions in response to the firm's own financial circumstances. This is because contribution rates are often fixed for periods of time by the provisions of the collective bargaining agreement. Collective bargaining itself, a necessary aspect of the multiemployer plan model and another factor affecting plans' prospects, has also been in long-term decline, suggesting fewer future opportunities for new plans to be created or existing ones to expand. As of 2003, union membership, a proxy for collective bargaining coverage, accounted for less than 9 percent of the private sector labor force and has been steadily declining since 1953. Experts have identified other challenges to the future prospects of defined benefit plans generally, including multiemployer plans. These include the growing trend among employers to choose defined contribution plans over DB plans, including multiemployer plans; the continued growing life expectancy of American workers, resulting in participants spending more years in retirement, thus increasing pension benefit costs; and increases in employer-provided health insurance costs, which are increasing employers' compensation costs generally, including pensions.

Certain Features of the Current Regulatory Framework and the Decline of Collective Bargaining May Discourage Future Plan Growth

Some factors raise questions about the long-term viability of multiemployer plans are specific to certain features of multiemployer plans themselves, including features of the regulatory framework that some employers may well perceive as less flexible and financially riskier than the features of other types of pension plans. For example, an employer covered by a multiemployer pension plan typically does not have the funding flexibility of a comparable employer sponsoring a single-employer plan. In many instances, the employer covered by the multiemployer plan cannot as easily adjust annual plan contributions in response to the firm's own financial circumstances. Employers that value such flexibility might be less inclined to participate in a multiemployer plan. Employers in multiemployer plans may also face greater financial risks than those in other forms of pension plans. For example, an employer sponsor of a multiemployer plan that wishes to withdraw from the plan is liable for its share of pension plan benefits not covered by plan assets upon withdrawal from the plan, rather than when the plan terminates, as with a single-employer plan. Employers in plans with unfunded vested benefits face an immediate withdrawal liability that can be costly. In addition, employers in fully funded plans also face the potential of costly withdrawal liability if the plan becomes underfunded in the future through the actions of other sponsors participating in the multiemployer plan. Thus, an employer's pension liabilities become a function not only of the employer's own performance but also the financial health of other plan sponsors in the multiemployer plan. These additional sources of potential liability can be difficult to predict, increasing employers' level of uncertainty and risk. Some employers may hesitate to accept such risks if they can sponsor other plans that do not have them, such as 401(k)-type defined contribution plans.

The future growth of multiemployer plans is also predicated on the future of collective bargaining. Collective bargaining is an inherent feature of the multiemployer plan model. Collective bargaining, however, has been declining in the United States since the early 1950s. Currently, union membership, a proxy for collective bargaining coverage, accounts for less than 9 percent of the private sector labor force. In 1980, union membership accounted for about 19 percent of the entire national workforce and about 27 percent of the civilian workforce in 1953.

Multiemployer Plans Are Limited by the Same Factors Affecting All Defined Benefit Plans

Pension experts have suggested a variety of challenges faced by today's defined benefit pension plans, including multiemployer plans.[15] These include the continued general shift away from DB plans to defined contribution (DC) plans, and the increased longevity of the U.S. population, which translates into a lengthier and more costly retirement. In addition, the continued escalation of employer health insurance costs has placed pressure on the compensation costs of employers, including pensions.

Employers have tended to move away from DB plans and toward DC plans since the mid-1980s. The total number of PBGC-insured defined benefit plans, including single employer plans, declined from 97,683 in 1980 to 31,135 in 2002. (See fig. 7.) The number of DC plans sponsored by private employers nearly doubled from 340,805 in 1980 to 673,626 in 1998.[16] Along with this continuing trend toward sponsoring DC plans, there has also been a shift in the mix of plans that private sector workers participate in. Labor reports that the percentage of private sector workers who participated in a primary DB plan has decreased from 38 percent in 1980 to 21 percent by 1998, while the percentage of such workers who participated in a primary DC plan has increased from 8 percent to 27 percent during this same period. Moreover, these same data show that by 1998, the majority of active participants (workers participating in their employer's plan) were in DC plans, whereas nearly 20 years earlier the majority of participants had been in DB plans.[17] Experts have suggested a variety of explanations for this shift, including the greater risk borne by employers with DB plans, greater administrative costs and more onerous regulatory requirements, and that employees more easily understand and favor DC plans. These experts have also noted considerable employee demand for plans that state benefits in the form of an account balance and

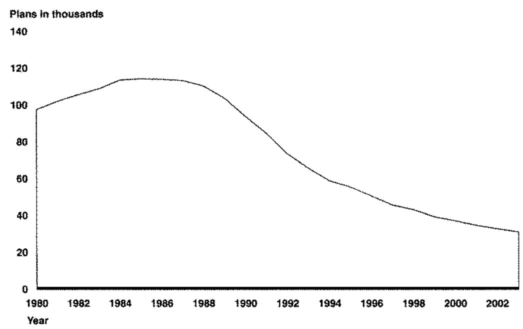
[15]"Strengthening Pension Security: Examining the Health and Future of Defined Benefit Pension Plans" Hearing before the Subcommittee on Employer-Employee Relations of the House Committee on Education and Workforce, (Washington D.C.: June 4, 2003).

[16]1998 is the most recent year for which the Department of Labor has issued its *Private Pension Plan Bulletin: Abstract of Form 5500 Annual Reports.*

[17]U.S. General Accounting Office, *Private Pensions: Participants Need Information on Risks They Face in Managing Pension Assets at and during Retirement,* GAO-03-810 (Washington, D.C.: July 2003).

emphasize portability of benefits, such as is offered by 401(k)-type defined contribution pension plans.

Figure 7: Number of PBGC-Insured DB Pension Plans, 1986-2003



Source: GAO analysis of PBGC data.

The increased life expectancy of workers also has important implications for defined benefit plan funding, including multiemployer plans. The average life expectancy of males at birth has increased from 66.6 in 1960 to 74.3 in 2000, with females at birth experiencing a rise of 6.6 years from 73.1 to 79.7 over the same period. As general life expectancy has increased in the United States, there has also been an increase in the number of years spent in retirement. PBGC has noted that improvements in life expectancy have extended the average amount of time spent by workers in retirement from 11.5 years in 1950 to 18 years for the average male worker as of 2002. This increased duration of retirement has required employers with defined benefit plans to increase their contributions to match this increase in benefit liabilities. This problem is exacerbated for those multiemployer plans with a shrinking pool of active workers because plan contributions are generally paid on a per work-hour basis, contributing to the funding strain we discussed earlier.

Increasing health insurance costs are another factor affecting the long-term prospects of pensions, including multiemployer pensions. Recent increases in employer-provided health insurance costs are accounting for a rising share of total compensation, increasing pressure on employers' ability to maintain wages and other benefits, including pensions. Bureau of Labor Statistics data show that the cost of employer-provided health insurance has risen steadily in recent years, growing from 5.4 percent of total compensation in 1999 to 6.5 percent as of the third quarter of 2003. A private survey of employers found that employer-sponsored health insurance costs rose about 14 percent between the spring of 2002 and the spring of 2003, the third consecutive year of double-digit acceleration and the highest premium increase since 1990.[18] Plan administrators and employer and union representatives that we talked with identified the rising costs of employer-provided health insurance as a key problem facing plans, as employers are increasingly forced to choose between maintaining current levels of pension and medical benefits.

Conclusions

Although available evidence suggests that multiemployer plans are not experiencing anywhere near the magnitude of the problems that have recently afflicted the single-employer plans, there is cause for concern. The declines in interest rates and equities markets, and weak economic conditions in the early 2000s, have increased the financial stress on both individual multiemployer plans and the multiemployer framework generally. Most significant is PBGC's estimate of $100 billion in unfunded multiemployer plan liabilities that are being borne collectively by employers and plan participants.

At this time, PBGC and, potentially, the taxpayer do not face the same level of exposure from this liability with multiemployer plans that they do with single-employer plans. This is because, as PBGC officials have noted, the current regulatory framework governing multiemployer plans redistributes financial risk toward employers and workers and away from the government. Employers face withdrawal and other liabilities that can be significant. In addition, should a multiemployer plan become insolvent, workers face the prospect of receiving far lower guaranteed benefits than workers receive under PBGC's single-employer program guaranteed limits. Together, not only do these features limit the exposure for PBGC, they create important incentives for all interested parties to resolve difficult financial situations that could otherwise result in plan insolvency.

[18] *Employer Health Benefits 2003 Annual Survey,* The Kaiser Family Foundation and Health Research and Education Trust.

Because the multiemployer plans' structure balances risk in a manner that fosters constructive collaboration among interested parties, proposals to address multiemployer plans' funding stress should be carefully designed and considered for their long-term consequences. For example, proposals to shift plan liabilities to PBGC by making it easier for employers to exit multiemployer plans could help a few employers or participants but erode the existing incentives that encourage interested parties to independently face up to their financial challenges. In particular, placing additional liabilities on PBGC could ultimately have serious consequences for the taxpayer, given that with only about $25 million in annual income, a trust fund of less than $1 billion, and a current deficit of $261 million, PBGC's multiemployer program has very limited resources to handle a major plan insolvency that could run into billions of dollars.

The current congressional efforts to provide funding relief are at least in part in response to the difficult conditions experienced by many plans in recent years. However, these efforts are also occurring in the context of the broader long-term decline in private sector defined benefit plans, including multiemployer plans, and the attendant rise of defined contribution plans, with their emphasis on greater individual responsibility for providing for a secure retirement. Such a transition could lead to greater individual control and reward for prudent investment and planning. However, if managed poorly, it could lead to adverse distributional effects for some workers and retirees, including a greater risk of a poverty-level income in retirement. Under this transition view, the more fundamental issues concern how to minimize the potentially serious, negative effects of the transition while balancing risks and costs for employers, workers, and retirees, and for the public as a whole. These important policy concerns make Congress's current focus on pension reform both timely and appropriate.

This concludes my prepared statement. I am happy to answer any questions that the subcommittee may have.

GAO Contact and Staff Acknowledgments

For further questions on this testimony, please contact me at (202) 512-7215. Individuals making key contributions to this testimony include Joseph Applebaum, Tim Fairbanks, Charles Jeszeck, Gene Kuehneman, Raun Lazier, and Roger J. Thomas.

Chairman JOHNSON. Thank you, ma'am.

Mr. McDevitt, you may begin your testimony.

STATEMENT OF JOHN McDEVITT, SENIOR VICE PRESIDENT, UNITED PARCEL SERVICE, WASHINGTON, DC

Mr. MCDEVITT. Thank you, Mr. Chairman, Congressman Andrews, and Committee Members. My name is John McDevitt. I have been with UPS for 28 years and I started as a Teamster working as a loader in New Jersey.

A majority of UPS's management Committee began their UPS careers as Teamsters as well. We know that our people work hard each and every day. And it has caused us great concern when the rewards of their efforts are jeopardized by factors outside their control or the company's control. For our employees in multiemployer pension plans, UPS pays into the plan an average of $8,000 a year for each employee. Stated another way, each year we contribute on the average nearly 12 percent of their wages as a retirement contribution to the multiemployer pension plans. Those contributions should accumulate to permit an employee to have a nest egg of $827,000 after 30 years, assuming a conservative 7.5 percent rate of return. If these funds were placed in a simple interest bearing account rather than in a multiemployer plan such as Central States, this would produce $70,000 annually for that employee over the next 30 years of retirement.

But that is not today's reality. The Central States benefit would only provide such a driver about $36,000 a year. We believe the contributions we make on behalf of our employees to be as much theirs as their 401(k) plan or their hard earned wages. That these employees are not going to see the full value of what's being paid by the company on their behalf is upsetting to me and to UPS as a whole.

It is important to understand that the underlying problems are not simply caused by swings in the stock markets which could be cured by waiting out the downturn. Central States, for example, pays approximately $1 billion annually to about 100,000 retirees who no longer have a contributing employer because those companies are out of business. These factors were in place before the market downturn. And a reversal of Wall Street will not solve the underlying problem.

Many of these plans were in tenuous condition during the market highs. Short-term fixes dependent upon market changes will not correct the financial solvency problems of multiemployer pension plans. Therefore, real multiemployer pension plan reform is urgently needed. Doing nothing is not an option.

We support the proposed Multiemployer Pension Security Act of 2003 introduced by Congressman Tiberi as H.R. 2910. That legislation proposes real reforms in multiemployer pension plans to truly protect the long-term interest of UPS employees and others in multiemployer plans.

The bill is a good beginning and would for the first time provide a 90 percent funding standard so the plans do not make promises they can't keep and the plans keep the promises they have already made.

All of UPS's efforts begin and end with our people's best interests in mind. So we stand ready to help you, Mr. Chairman and Members of this Committee in any way we can to ensure that meaningful, long-term multiemployer pension plan reforms becomes a reality. For that is what our people truly deserve.

Thank you for allowing UPS to testify and for your willingness to face this serious issue.

[The prepared statement of Mr. McDevitt follows:]

Statement of John McDevitt, Senior Vice President, United Parcel Service, Washington, DC

Mr. Chairman, I appreciate the opportunity to talk with the Subcommittee about UPS employees' multi-employer pension plans. The success or failure of our company is dependent upon our employees. After 97 years in business, it is the skill, energy and loyalty of our employees that have made UPS what it is today. Our people work hard each and every day for their wages and benefits, and it has caused us great concern when the rewards for their effort are jeopardized by factors outside of their control or their company's.

For our employees in multi-employer pension plans, UPS pays into the plan an average of $8,000 a year for each employee. Stated another way, each year we contribute, on average, nearly 12% of their wages as a retirement contribution to their multi-employer pension plan. Those contributions should accumulate to permit an employee to have a nest egg of $827,000 after 30 years assuming a conservative 7.5% rate of return. If these funds were placed in a simple interest bearing account rather than a multi-employer plan such as the Central States, this would produce $70,000 annually for that employee over their next thirty years of retirement. But that's not today's reality.

As a result of structural problems and significant shortfalls in multi-employer pensions, trustees in many plans have been forced to make cuts in benefit levels. The point needs to be made that a change of facts and circumstances has resulted in a perversion of the intent behind the design of multi-employer plans. Rather than creating an environment where inter-reliance among participating employers provided increased participant security, the result has been decreasing and potentially non-existent security for plan participants. After those benefit reductions were made, the gap between dollars contributed and benefits paid to our people widened.

Let me give you three practical examples of what these reductions mean for UPSers. Today, a 50 year old UPS driver who will retire in six years after thirty years of service will lose $3,216 annually from the $36,000 he was planning on as a Central States retirement benefit. The second example is a 31 year old driver who also plans to retire after thirty years of service; this driver will lose $17,000 annually. And our third employee is a 21 year old driver hired today. This new driver will have to work 42 years in order to get to today's benefit levels; again not even half of what a simple interest bearing account would have generated. These examples highlight the unfair impact borne by younger workers, and does not even consider the impact of inflation going forward.

We believe the contributions we make on behalf of our employees to be as much theirs, as their 401K plan or their hard earned wages. That these employees are not going to see the full value of what's been paid by the company on their behalf is upsetting to me and to UPS as a whole.

According to a report from the Congressional Research Service released last week,[1] the dire financial condition of many multi-employer plans illustrates the need for meaningful reform. All seven transportation industry plans referenced in that report would fail to meet a minimum 90% funding standard if they were subjected to the same funding standards that apply to single-employer company plans today. The two worst plans barely cover half of their liabilities (54% and 48% funded, respectively). UPS has 42,000 employees in those two plans alone.

It is important to understand that the underlying problems are not simply caused by economic swings in the stock markets, which could be cured by "waiting out" the downturn. The problems are structural to the trucking industry, to the labor market in general, and to the past management of multiemployer pension plans. Central States, for example, pays approximately $1 billion annually to about 100,000 retirees who no longer have a contributing employer because those employers are out of business. The former employees continue to receive their benefits, but become a burden on the remaining employers in the plan and impact overall employee benefits.

These forces were in place before the market downturn, and a reversal of Wall Street will not solve the underlying problems. Many of these plans were in a tenuous condition during the market highs. Short-term fixes dependent on market changes will not correct the financial solvency problems of multiemployer pension plans; therefore a need for real multi-employer pension plan reform is urgently needed. Doing nothing is not an option.

We support the proposed Multi-employer Pension Security Act of 2003 (introduced by Congressman Tiberi as H.R. 2910). That legislation makes real reforms in multi-employer pension plans to truly protect the long term interests of UPS employees and others in the multi-employer pension plans. The bill would, for the first time—

1) give employees and beneficiaries of multi-employer pension plans the same 90% funding standard and discipline that single-employer plans must meet; thus, ensuring that reasonable funding levels exist before a multi-employer pension plan could promise benefit increases; and

[1] Trucking: Structure of the Less-than–Truckload (LTL) Industry and Legislative Issues, Congressional Research Service Report RL32257, March 5, 2004.

2) increase the role of the Pension Benefit Guaranty Corporation so that the PBGC provides the same protection for employees who are in multi-employer pension plans as they currently do for single employer plans.

This issue is not new to UPS. We identified multi-employer pension plan underfunding as a problem in the early 1990s and have attempted to address this issue in collective bargaining negotiations, as well as legislatively. We hope this subcommittee will give serious consideration to H.R. 2910 or any other measure that will create real reform for multi-employer pension plans.

While we are convinced that the multi-employer pension plan underfunding problem requires long-term reform, we see value in the short-term relief provisions contained in H.R. 3108 to allow us to continue working towards long-term reform.

As we see it, there are three simple and achievable objectives of reform:

- Viability—in order to ensure our employees get what they should reasonably expect;
- Fairness—in order that employees of a company see the benefits of their own labor; and
- Transparency—in order that employees and their companies know the true status of the funds that have been deposited in the multi-employer pension plans on their behalf.

Today this is not the case and is the basic reason that supports the need for reform.

All of UPS's efforts begin and end with our people's best interests in mind. So we stand ready to help you, Mr. Chairman, in any way we can to assure that meaningful, long-term multiemployer pension plan reform becomes a reality. Thank you Mr. Chairman for allowing UPS to testify and for your willingness to face the serious multi-employer pension plan issue.

Chairman JOHNSON. Thank you, sir. You've got some time left. Don't you want to talk some more? Did UPS stifle you?

[Laughter.]

Mr. ANDREWS. See, it's part of the UPS culture. You just get the job done and stop. You don't have to keep going to run out the clock, right? You just get the job done.

Chairman JOHNSON. I thought you would have said it was the Teamsters.

Mr. ANDREWS. Absolutely. I have a UPS hub in my district. Where did you work in New Jersey, Mr. McDevitt?

Mr. MCDEVITT. Edison, New Jersey.

Mr. ANDREWS. We're a little south of there, but you guys do get things done quickly. We appreciate that.

Mr. MCDEVITT. Thank you very much.

Chairman JOHNSON. Thank you very much.

Mr. Weicht, you may begin.

STATEMENT OF SCOTT A. WEICHT, EXECUTIVE VICE PRESIDENT, ADOLFSON AND PETERSON CONSTRUCTION, MINNEAPOLIS, MN, ON BEHALF OF THE ASSOCIATED GENERAL CONTRACTORS

Mr. WEICHT. Thank you, Members of the House Committee and Chairman Johnson. I represent the Associated General Contractors of America. Also I am an employer based out of Minnesota, and we have about 450 workers. Of that, we have 300 workers that pay into multiemployer pension plans. We paid about $3 million in last year.

I sit as the Chair and have been involved as a trustee for many years with the Iron Workers pension plan in the state of Minnesota, have about $170 million in assets, about 1,300 employee members, and represent about 188 companies that are participating or contributing employers.

We have eight trustees, four union and four management, and we meet once every 8 weeks. We review all the administrative things that come up. We review our investment performance, fund review and how we're handling the compliance issues that we're dealing with, funding status. And this plan here now we've actually from 1999 when we were 88 percent funded, we're now down to 68 percent funded in 2003. We assume that we have a long-term rate of return of 7.75 percent in this plan. That's used for all of our calculations with benefits, future liabilities.

We deal with the collective bargaining process where every three to 5 years we determine the wage package, and in our region, what takes place then is that, the union in this case, meets with the trustees, and the trustees and union work together to determine what will be contributed out of that wage package paid annually by the employers to the pension fund. And the trustees are part of the negotiations and they're well aware of what they're looking at as far as what benefit contributions are needed.

The issues that we're dealing with that we see is certainly what's been discussed already by Members of the Committee and the folks here. We're seeing demographics, the aging workforce. It's interesting that in the years 1996 to 1999, our plan did not—and many plans I'm aware of—did not increase benefits. They were actually going in and adjusting and changing their assumptions of what was taking place with the workforce that was living longer and aging faster in the last final years before they retire here now, so we were dealing with those and not looking at benefit increases.

We certainly are seeing in the last few years the decrease in the hours worked, and that directly affects these plans nationwide as well as ours locally where we're just not seeing the contribution hours come in.

We have many mature plans throughout the country, and I am on a mature plan as well, meaning that we rely on these contributions to pay the current benefits that are being paid out, and the investment returns then are what is there being prepared for these future workers that are retiring.

Two issues that we see that could really help us is that back in the late '90's, the deductibility issue was large. We were concerned as we were getting close to that 100 percent funded level that the employers would no longer be able to deduct the contributions that they were putting in. So it would help if that had more flexibility for us.

The other issue that we have seen is that now after 3 years of losses, we're looking at the minimum funding threshold, and there's a risk that we would have an excise tax that we'd paying if we were underfunded. And instead of paying this excise tax in, it would be much more beneficial for us to be able to pay these dollars in as contributions so the employers could actually work hard to get the funding ratios back up to that mid-'90's, you know, 100 percent range that we want to be at.

So that's what we're looking at. And that's, in summary, what I would have. Open for questions. Thank you.

[The prepared statement of Mr. Weicht follows:]

Statement of Scott A. Weicht, Executive Vice President, Adolfson and Peterson Construction, Minneapolis, MN, on behalf of the Associated General Contractors

I am Scott A. Weicht, Executive Vice President, Chief Financial Officer, and a third-generation owner of Adolfson and Peterson Construction, a general contracting firm based in Minneapolis, Minnesota. I am testifying on behalf of the Associated General Contractors of America (AGC), a national trade association representing more than 33,000 companies, including 7,200 of America's leading general contractors and 12,000 specialty contractors. AGC is the voice of the construction industry.

AGC represents both union and open-shop contractors in a network of 100 chapters across the country, including at least one chapter in every state and Puerto Rico. Over half of those chapters represent contractors that contribute to Taft–Hartley multiemployer pension plans. Nearly half of AGC chapters serve as the collective bargaining representative of one or more multiemployer bargaining units that negotiate collective bargaining agreements with a construction trade union, such as local affiliates of the International Union of Operating Engineers, the Laborers' International Union of North America, the United Carpenters and Joiners of America, the International Association of Bridge, Structural, and Ornamental Reinforcing Iron Workers, the International Union of Bricklayers and Allied Craftworkers, International Brotherhood of Teamsters, and the Operative Plasterers' and Cement Masons' International Association. Those chapters typically sponsor multiemployer pension plans with each union that they bargain with and have responsibility for appointing management trustees to the jointly-trusteed plans.

Adolfson and Peterson Construction is a member of AGC's AGC of Minnesota chapter. The company performs about $400 million of construction work per year and employs about 300 union workers. On behalf of those employees and in accordance with our collective bargaining agreements, we contribute about $2.5 to $3 million annually to six different multiemployer pension funds.

I currently serve as the chairman of the Twin City Iron Workers Pension Fund, which is sponsored by AGC of Minnesota and Iron Workers Local 512. This fund covers workers in Minnesota, North Dakota, and western Wisconsin. I have been a management trustee for the fund since appointed by AGC of Minnesota in 1992, and have served as the fund's chairman since appointed by the trustees in 2001. In addition, I have served on various AGC of Minnesota collective bargaining committees since 1984, and presently serve on the committee that negotiates with the Lakes and Plains Regional Council of the United Brotherhood of Carpenters and Joiners. These committees are responsible for negotiating collective bargaining agreements with particular construction trade unions on behalf of member employers.

A key term of these agreements, of course, is the amount of compensation increase (including pension fund contributions) that covered workers will receive in each year of a multi-year collective bargaining agreement. AGC of Minnesota committees typically negotiate a total wage-and-fringe benefit package and leave up to the union the designation of how that total increase will be allocated among wages, pension fund contributions, health-and-welfare fund contributions, training fund contributions, and any other agreed-upon benefits. Some AGC chapters negotiate specific increases to be allocated in specific ways. In either case, the amount of an employer's pension fund contributions is determined by the collective bargaining process and is normally set on a dollars-per-hour-worked basis.

The Twin City Iron Workers Pension Fund has seen its funded ratio deteriorate from 89% on January 1, 2000, to an estimated 68% on December 31, 2003. The deterioration resulted from the decline in stock investment earnings, in interest rates, and in the average hours worked per member. The Fund provides pension benefits to 1,264 members employed by 188 companies. Average annual employment contribution hours per employee have declined from 1,897 in 1999 to an estimated 1,490 in 2003. Currently, employers are paying into this fund $5.35 per hour worked.

I would like to thank Chairman Johnson and the other members of this distinguished subcommittee for the opportunity to discuss both role as a signatory employer, collective bargaining negotiator, and management trustee on a multiemployer pension plan, as well as to suggest changes to improve the long-term outlook of these important plans.

Let me say from the outset that I believe that these plans are a secure and viable way for construction companies like Adolfson and Peterson Construction to provide pension benefits to workers. In the construction arena, workers follow the job, not necessarily the company, and these plans provide the proverbial third leg of the retirement stool for people who would otherwise be left with only Social Security and whatever savings that they could muster. I know that Congress is extremely interested in retirement security, and I believe that these plans are an essential part of that discussion. At the end of this statement, I will suggest that one simple and immediate change to the system is to eliminate, or at least raise, the maximum deductibility limits. This limit forces plan trustees to raise benefits unwisely rather than allowing the plan to develop a cushion to use in the future.

My duties as the Chair of the Board of Trustees for the Twin City Iron Workers Pension Fund are many. I review information with the fund consultant, review data with the actuary, perform periodic reviews with the investment managers, build the agenda for each board meeting, review the minutes after each meeting, and approve applications for retirement benefits. My time commitment is approximately five hours per week.

I participate at each board meeting along with the other trustees. Like all Taft–Hartley plans, the fund has an equal number of management trustees and union trustees. In this case, there are eight trustees in total. We meet every other month for about three hours. In between those meetings, we also hold subcommittee meetings as needed.

Before each board meeting, trustees receive a packet of information. Documents include investment guidelines, monthly financial statements, disbursements, applications for retirement benefits, reviews of both the investment manager and the financial performance of the investments, benefit and funding options, plan changes, audits of signatory employers, collections information, and requests for information from participants. We have access to all information about the plan, and we base our benefit determinations on the data.

In general, benefit changes are made once a year on May 1. By May of each year, we have the preliminary actuarial data from the prior year. In May of 2004, we will receive the last of the plan data from 2003, some having been sent in prior to that. We will make any plan changes based on this information, and, in accordance with the law, will notify participants of all changes 30 days ahead of time. Benefit changes begin in June.

Benefit changes are made based on margin, if we have a positive or negative margin. Trustees watch the incoming data for one year and project out the next year's revenue stream. We assume a conservative rate of return on investments of 7.75%, participating in both fixed-income securities and stocks. Union trustees often push for increased benefits when future benefit liabilities are 90% funded or more, while management trustees often prefer keeping benefits the same until plans are funded in the high 90 percentages. This natural tension ultimately benefits the employee, as both sides try to maintain a balance of funding in the plan to ensure plan continuation, as well as looking out for the needs of the employees.

Most multiemployer collective bargaining agreements are negotiated to last for multiple years. In the construction industry, three-year to five-year agreements are most common. As mentioned earlier, the multiemployer bargaining agent (such as an AGC of Minnesota committee) will negotiate either (a) a total compensation increase that covers wages plus all fringe benefit contributions in a non-allocated package, or (b) a total compensation increase with specific amounts allocated to wages and to each benefit plan. In our case, we negotiate a non-allocated package. For example, the parties will agree to a total wage-and-fringe benefit increase of $1.10 an hour per year for each of the three years covered by the contract. The union then decides how much of that $1.10 will go to wages (in the paycheck) and how much will go to each benefit fund to which the employers have agreed to contribute. Each year, the union works with the various trustees to decide which benefit is increased and by how much. This method prevents the union from being locked into a specific rate increase in one plan when a shortfall may arise in a different plan. Meanwhile, employers are locked into the total increase amount. In areas where specifically-allocated amounts are negotiated by the employers, the parties may have decided that $0.50 of the $1.10 total increase should go into the pension fund in each year. If the plan should hit a shortfall or an overage, it is very difficult (although not impossible) to increase or decrease the negotiated contribution rate until the next bargaining cycle is up. On the other hand, this system gives management more authority to determine where their increase payments will go. Regardless, negotiators in both situations receive information from the relevant plans beforehand, so that they are informed about the plans' fiscal status before locking in contribution rates.

AGC of Minnesota normally negotiates with the union trades every three years. In fact, negotiations for a new contract are taking place this month. Once the compensation increase is decided on, the pension fund trustees communicate what changes to pension benefits are needed. Collective bargaining negotiators do not determine these changes; they determine only the pool of contributions available. Only plan trustees can make benefit changes. Even then, they change only the benefits that will be provided to future retirees; the Employee Retirement Income Security Act generally prohibits changes to the amount of benefits provided to retirees who are already receiving benefit payments.

With that background, the plan on which I am chairman entered the late 1990s in a fiscally healthy situation. In 1999, like many construction-industry multiemployer pension funds, an issue we were aware of was the maximum deductibility level allowed. This means that contributions made into the plan by the employers would no longer be tax deductible. Section 404(a)(1) of the Internal Revenue Code (IRC) sets limits on the dollar amount of pension contributions that can be deducted by an employer on its income tax return. From Congress' perspective, this limit is important because each dollar of additional tax deduction represents lost revenue of up to $.38 for the government. This well-intentioned law generally produces the intended result, which is to limit the ability of employers to use their single-employer pension plans as tax shelters. However, it has had unintended consequences for multiemployer plans.

As discussed, employer contributions to multiemployer pension plans are bargained based on number of hours worked. Neither unions nor contractors are generally desirous of re-opening a collective bargaining in order to reduce contributions because the plan is doing "too well." Furthermore, the completion of actuarial valuations following the close of a plan year would usually be too late to allow contribution reductions to be used as a method of ensuring deductibility in any event.

Full deductibility of employer contributions under Section 404 is crucial to both contributing employers and to unions, and most trust agreements require it. However, in a multiemployer pension plan, if expected contributions initially exceed the deductible limit, the only practical way to fix the problem and obtain full deductibility is to improve benefits for participants. Thus, instead of reducing employer contributions to meet the deductible limit as Congress likely intended, multiemployer plans raise benefit levels, thereby raising the limit and making employers' bargained contributions deductible.

The Section 404 maximum deductibility rules have also had the effect of limiting the amount of money multiemployer pension funds can put away for a rainy day. Actuarial techniques, such as asset "smoothing," can allow a certain amount of plan assets to be held in reserve; but the level of these reserves have, in many cases, proven to be insufficient. Furthermore, while many boards of trustees improved benefits in excess of the bare minimum required to ensure deductibility, the window of acceptable plan designs that ensure both deductibility and long-term financial viability is narrow. In comparison to the magnitude of recent market losses, the difference between a deductible plan design and a viable plan design is often de minimis.

Thus, much of the asset gains experienced in the late 1990's have, necessarily, been "spent" on benefit improvements and were unavailable to help plans ride out the "perfect storm" of the early 2000's. As mentioned, benefit improvements, once given, cannot typically be revoked retroactive.

In our case, we made a increase in 2000 and 2001, funded by a combination of employer contributions and use of investment returns. In 2000, the fund was at 83% because of the stock market downturn. In 2001, the increased benefit was halted. Due to the great stock market decline, however, additional contributions from the total amount were still required in order to keep the fund healthy. In 2002, the union increased the allocation from the wage settlement, but did not get any benefit for it. Under our current funding formulas, the plan could hit the minimum funding level within four years, unless the plan is increased by an additional $1.58 per hour. This can be done either at the bargaining table by increasing contributions or through decreased future benefit plan changes. Nevertheless, we went from being 88% funded to projecting a possible funding deficiency over the course of few years. This is unprecedented.

I understand Congress is considering a short-term relief proposal that would aid multiemployer pension plans facing a similar situation. AGC encourages passage of this legislation in order to give the plans more time to deal with and absorb the unprecedented investment losses of recent years. The negotiated contributions mandated by current collective bargaining agreements would continue to be made, and all guaranteed benefits would be provided. While the plans I work with will have the ability to make contribution increases or change plan benefits relatively quickly, many plans will not negotiate contracts for several more years and could reach the minimum funding requirement threshold, unless significant plan changes are made. In that case, employers are assessed additional contributions by the plan—outside of collective bargaining agreement—as well as fines by the Internal Revenue Service. Incredibly, the fines will not even go to the plans for the benefit of the pension; they will go to the federal government instead.

As employers, under the current economic climate, we are working at the bargaining table to maintain a reasonable compensation package with pension benefits. Employers—especially small businesses such as ours—can only afford to pay so much. We face slim profit margins, especially with the current steel crisis, and every part of the economy is trying to achieve more with less. We also must compete against nonunion companies and risk pricing ourselves out of the market. Furthermore, the well-known and widespread increase in health care costs creates an additional drain on the amount available for other uses. There are many moving parts to this arrangement.

Because of these complexities, legislative action is needed. In particular, for the long-term betterment of the multiemployer pension plan system, AGC urges Congress remove, or at least raise, the maximum deductible contribution rules. Revision of the maximum deductible rules would help prevent a recurrence of the current situation in the future. While much-needed changes to IRC Section 404(a)(1)(D) effective in 2002 allowed multiemployer plans to deduct their full, unfunded current liability, further action in this regard is needed. Specifically, contributions made to a multiemployer pension fund pursuant to a bona fide collective bargaining agreement should be exempted from the maximum deductible rules.

In short, the maximum deductibility rules are ill-suited for the less flexible world of collectively-bargained multiemployer pension plans. By amending IRC Section 404(a)(1)(D) to exempt contributions to such plans, boards of trustees could strengthen funding during times of favorable investment returns without being forced to improve benefits unwisely. This would allow the development of a greater "cushion" that could be used to weather market downturns.

In conclusion, I would like to thank you for the chance to testify today, and your willingness to listen to and hopefully address our concerns. AGC hopes that Congress can help strengthen multiemployer pension plans like the one that I chair. We recommend amending the IRC to allow trustees to create a cushion to face the downtimes will help ensure that these plans continue to operate in a fiscally healthy and financially responsible way. We also recognize that this is only one of many possible solutions and are very interested in considering other options. AGC and I look forward to assisting Congress in any way possible as those options are further developed and examined.

I thank you and will gladly answer any questions you might have.

Chairman JOHNSON. Thank you, sir. We appreciate your testimony as well.

Mr. DeFrehn, you may begin.

STATEMENT OF RANDY G. DeFREHN, EXECUTIVE DIRECTOR, NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

Mr. DEFREHN. Thank you, Chairman Johnson. Mr. Chairman and Members of the Committee, I thank you for this opportunity to be here and discuss with you the future of the defined benefit pension system and particularly the multiemployer defined benefit system.

As you may know, multiemployer plans cover virtually ever segment of the economy, although they're best known in perhaps the building and construction trades, and because of some recent discussions, in the transportation industry.

Multiemployer plans have been a major force in the delivery of employee benefits for over a half a century. Although they've been known sometimes mistakenly as union plans, since 1947, the law has stipulated that these plans be managed jointly by management and labor under equal representation, and that the plans be managed for the sole and exclusive benefit of the participants.

For industries characterized by large numbers of medium and small employers, this is perhaps the best and sometimes the only way for employers to provide competitive, comprehensive pension and health benefits. There are approximately 60,000 employers who contribute to such plans across the country, many of which are small to medium-sized employers, approximately 90 percent of whom are employers of 100 or fewer employees. And while by definition a multiemployer plan does require contributions pursuant to a collective bargaining agreement between at least one union and more than one employer, the union membership is not a condition of either participation, eligibility or receipt of benefits.

The multiemployer system has been an unqualified success. In over 50 years of existence, these plans have never been a problem for the government or the PBGC and is the only segment of the defined benefit system that has expanded coverage in recent years. Although the number of plans has declined since 1980 from 2,244 to 1,661, the number of participants in those plans has grown from 8 to 9.5 million people.

A hallmark of the multiemployer plans which causes them to be inherently more stable than single employer plans is something which several of our speakers have already addressed. That's the interrelationships between the employers. There is, however, a hook, and that is withdrawal liability in the event that an employer seeks to leave a plan after participating for many years and perhaps reaping the fruits of additional benefits for their employees, but at the same time having unfunded vested benefits. This withdrawal liability, which has been described previously, and it was implemented pursuant to MPPAA.

In his opening remarks to the conference currently considering 3108, Chairman Boehner made the observation that the multiemployer pension system is basically sound and financially healthy. We agree with that conclusion. The average funded position of multiemployer plans in 2002 was 87 percent. While it was down from 95 percent in 2001, it still reflects a favorable funding position looking forward to the fund's ability to meet its short and long-term benefit obligations.

In fact, as recently as the 1990's, multiemployer plans were so well funded that more than 75 percent of all such plans hit the maximum funding—maximum deductible limits. That required employers to make benefit improvements in order—not the employers. Excuse me—the trustees to make benefit improvements in order to maintain the current deductibility of contributions made by employers and to avoid excise taxes for contributing to a plan that was over-funded.

While the Congress did ultimately take action to correct that somewhat in 2001, the corrections came too late to avoid these plans from having to make those additional benefit improvements, raising the cost of the participants of the benefits to a level where they can no longer be cut back under ERISA's anti-cutback provisions.

Of a more immediate nature is the legislation pending under consideration by the conference, 3108. We strongly urge the passage of that legislation, including especially the short-term, limited multiemployer relief contained in this version. It's estimated that approximately 30 percent of all multiemployer plans may experience a technical funding deficiency before the end of the decade due to the 3-year, unprecedented 3-year decline in the equity markets.

By taking timely action, Congress has an opportunity to protect the thousands of small businesses from potential bankruptcy resulting from the imposition of taxes, excise taxes, and additional contributions over and above those required by their collective bargaining agreements, that would arise when a plan experiences a funding deficiency. Failing to do so, however, carries substantial risk that the system would be destabilized, therefore increasing the risk to the Pension Benefit Guaranty Corporation.

Thank you very much. I welcome your questions.

[The prepared statement of Mr. DeFrehn follows:]

Statement of Randy G. DeFrehn, Executive Director, National Coordinating Committee for Multiemployer Plans, Washington, DC

Mr. Chairman and members of the Committee, thank you for this opportunity to meet with you and discuss one of the most important domestic policy issues facing our nation: the long-term financial viability of the defined benefit pension system and specifically, the multiemployer defined benefit pension system. I represent the National Coordinating Committee for Multiemployer Plans. As you might expect with a name like that, it will come as no surprise that we are known more simply by our initials: the NCCMP.

I. Background

The NCCMP is a non-partisan membership organization comprised of multiemployer plans and their sponsoring employee and employer organizations. It is the only national organization devoted exclusively to protecting the interests of the plans and the approximately ten million workers, retirees, and their families who rely on multiemployer plans for retirement, health and other benefits. Our purpose is to assure an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women. The NCCMP is a nonprofit organization, with members, plans and plan sponsors in every major segment of the economy, including, among others, those in the building and construction, retail food, trucking, service, textile, health care, communications, printing, steel, mining and entertainment industries.

We commend the Subcommittee on its work in this matter as well as the Committee on Education and the Workforce. In his opening statement upon convening the current Conference considering HR 3108, Education and the Workforce Chairman Boehner stated that his overriding goal "...is simple: to protect the pension benefits of American workers." We find that goal to be commendable and completely consistent with the objectives of the NCCMP and the multiemployer funds we serve.

II. Multiemployer Plans: Often Misunderstood

Multiemployer plans have been a major force in the delivery of employee benefits to active and retired American workers and their dependents for over half a century. Although they are often mistakenly referred to as "Union" plans, these plans have operated under a statutory mandate since the passage of the Labor—Management Relations Act of 1947 (also known as the "Taft–Hartley Act"), under a structure that requires equal representation by labor and management in the operation and management of the funds. Furthermore, the fiduciaries who control the assets of the benefit plans are obligated under the Act to manage the plans for the sole and exclusive benefit of the fund participants. While this statutory requirement provides sufficient incentive for plan trustees (most of whom serve without compensation) to take these responsibilities seriously, ERISA's fiduciary responsibility provisions place their personal assets at risk in the event they violate these obligations.

For industries characterized by large numbers of small to medium sized employers and / or a mobile workforce, the multiemployer structure is the only way that many employers are able to offer competitive health and pension benefits to their employees, by enabling them to take advantage of the economies of scale and shared administrative costs. It is estimated that approximately 60,000 to 70,000 employers contribute to multiemployer plans and that upwards of 90% of such contributing employers are small to medium sized businesses, employing fewer than 100 employees. Similarly, the portability features of multiemployer plans enable employees in such industries to carry credited service in defined benefit pension and other benefit plans with them as they move among contributing employers within a given industry. While by definition, a multiemployer plan requires contributions pursuant to a written agreement between at least one union and more than one employer, union membership is not a condition of participation, eligibility, or receipt of benefits from multiemployer plans.

Operationally, contributions to multiemployer plans are usually a function of the hours worked by covered participants, although other structures permit contributions on other bases such as weekly, monthly or by some other measure of productivity.[1] The amount of such contributions is determined by the bargaining parties or "settlors" through the collective bargaining process and is fixed for the term of the bargaining agreement (usually three, but five year terms are not unusual). There is an explicit trade-off between wages and benefits, as the funds from which contributions are made would otherwise be part of the wage package. Based on assets available and on the advice of plan professionals, including the enrolled actuary, the plan trustees then determine the level of benefits to be provided. It is important to note that in most situations (especially those involving national plans), the individuals who bargain the contribution levels (usually at the local level) are not the same as those who serve as trustees. A national plan could receive contributions pursuant to literally hundreds of distinct, local bargaining agreements.

Benefits provided under these plans are not typically related to salary, but are based on a unit value. This could be expressed as a flat dollar per month per year of service or by a percentage of contributions. Depending on the industry and the plan, the value of past service may or may not be increased over time. Unlike most single-employer plans, but consistent with their statutory obligation to administer these plans for the sole and exclusive benefit of plan participants, the majority of multiemployer plans provide periodic increases for retired participants.

Under the current funding rules, plan fiduciaries must ensure that the required contributions are collected as owed and in a timely manner. To facilitate this process, most have well defined collection procedures, including procedures to collect interest, collection fees and liquidated damages, from delinquent employers. These contributions are held in trust for the payment of benefits, reasonable administrative costs and to fund future benefits when they are due. As these are generally mature plans, over time the contributions held for future benefits have evolved into the primary source of income for the trust. They are managed by qualified professional asset managers (know as QPAMs under ERISA) who are also plan fiduciaries. Under asset diversification policies encouraged by the Department of Labor, trust assets have been held in a broad variety of asset classes, including equities and fixed income, real estate and more recently and to a much lesser extent, other types of asset categories (hedge funds, international funds, venture capital). Multiemployer plans are typically more conservative than their single-employer counterparts with equity allocations generally averaging 50% to 55%. These allocations are established by the trustees in consultation with their professional advisors, including investment consultants, investment advisors and managers and actuaries.

By design, multiemployer plans feature an interrelationship among contributing employers that is not found in the single-employer community, causing them to be inherently more stable. Because of the mobility and portability features, employers fund a portion of an employee's benefit with the remainder paid by other contributing employers for whom that individual may have worked during his career. Because they are contributing to a pooled benefit plan for a pool of employees, the departure or demise of a given member of the pool has certain consequences, both for the departing employer and for those who remain. Although the rules governing those consequences vary by industry, the general rules require that if an employer ceases to participate (either voluntarily, through bankruptcy, or retirement) in a fund that has no unfunded vested benefits, there are no consequences for that employer or the other employers and the employees can move on to a different contributing employer to continue to accrue additional vesting and benefit credits. If an employer voluntarily ceases to participate in a fund that has unfunded vested benefits it is assessed its proportionate share of those unfunded vested benefits, based on a formula that tracks its contributions over a period prior to its departure. This is a requirement that was added in the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) and is known as "withdrawal liability[2]." The trustees would file a claim, and then proceed to collect the amounts due in a manner similar to its delinquent contribution procedures.

If the withdrawing employer has insufficient assets to pay its withdrawal liability, or if that liability is capped under certain provisions of MPPAA, the remaining li-

[1] Early plans in the mining industry called for contributions per ton of coal produced.

[2] Before the enactment of the withdrawal liability provisions of MPPAA, a withdrawing employer could abandon its accumulated liabilities and effectively shift the responsibility for funding them to the remaining employers, many of whom were their competitors. The competitive edge to be gained by doing so actually provided an incentive to employers to do so.

ability is left with the remaining contributing employers, to be funded over time similar to an investment loss. While there are certain notable exceptions, withdrawal liability has proven over time to be an additional motivating factor to the parties to ensure that the plans' funding levels are sufficient to fully fund the present value of vested benefits. Although there are withdrawal liability methods utilized by some plans that more directly attribute an employer's withdrawal liability to that employer's contributions (with interest) offset by benefit payments and accrued liabilities of his own workforce, for the most part the pooled methods have been little more than a footnote for the vast majority of plans during most of the last 25 years. This has changed recently and mainly as a direct result of the three consecutive years of negative performance in the equity markets, unprecedented since the decades before the adoption of ERISA's funding rules in 1974.

The concept of interconnectedness of contributing employers is an important element in understanding how they differ from single-employer plans and why these plans have posed an insignificant risk to the Pension Benefit Guaranty Corporation (PBGC) since the multiemployer fund was initiated in 1980. According to PBGC, there were 1661 multiemployer defined benefit pension plans in 2002, down from 2,244 in 1980, while at the same time the number of participants grew from approximately 8 million in 1980 to slightly more than 9.5 million in 2002. Much of the contraction in the number of plans was related to significant merger activity during the 1990s. Almost none of the plans became the wards of the PBGC, with only 31 plans ever having received any financial assistance since the creation of the multiemployer guaranty fund in 1980. This is contrasted with the single-employer guaranty fund which has taken over approximately 3,100 such plans through the end of 2002.[3]

More than any other testament, this record speaks well for the long-term structure of this private sector system as it is currently constituted.

III. Historically and Still Well Funded

In addition to commenting on the Committee on Education and the Workforce's objective to protect the benefits of the American worker, Chairman Boehner made the observation that "the multi-employer pension system is basically sound and financially healthy." We concur with that conclusion. In fact, according to a recently issued survey, the average funded position of multiemployer pension plans in 2003 (based on plan years that ended in 2002) was 87%[4]. While that represented a decline from 95% in 2002, it still reflects a favorable funded position looking to the funds' ability to meet their long and short- term benefit payment obligations. By industry, the funded positions ranged from a high of 91% for retail trade and food, to a low of 85% for transportation. According to the latest PBGC data the funding ratio for multiemployer plans was 104% as of 2000. The average funding ratio of PBGC insured plans for the 20 year period from 1980 through 2000 dropped below 90% only one year (1996 when it was 88%). For eight of those years the ratio exceeded 100% with the remainder ranging from 91% in 1999 to 98% in 1992 and 1993[5].

Although the latest PBGC annual report showed a deficit in the multiemployer fund for the first time in 20 years, when one looks behind the conclusion it is clear that the primary reason for this shift is related to the historically low long-term interest rates used in determining the funding levels. We are confident that the plans covered by the multiemployer guaranty fund present no substantial long-term risk to the PBGC or, more importantly, to the participants of those plans and when the rates return to more normal levels the perceived deficit will disappear.

Part of the reason why multiemployer plans have traditionally been so well funded is that the contributions to the funds are negotiated and mandated in a collective bargaining or other agreement that requires contributions to the plan, regardless of the performance of the investment markets. Unlike single-employer plan sponsors which tend to fund defined benefit plans at the minimum funding requirement (a policy that resulted in the absence of any contributions for a number of years to such plans when the investment markets significantly outperformed the assumed rates of return), multiemployer plan sponsors continued to make contractually mandated contributions throughout that period. Since they also benefited from the bull markets in the 1990s, however, multiemployer plans encountered a different type of problem—the full funding limitations.

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[3] See PBGC Data Trends 2002

[4] See the Survey of the Funded Positions of Multiemployer Plans 2003 issued by The Segal Company, an international actuarial and benefits consulting firm.

[5] See PBGC Data Trends 2002

It is estimated that upwards of 75% of all multiemployer defined benefit plans encountered funding limitations during the 1990s that would have resulted in the employers' inability to take tax deductions for contributions to these trusts and accompanying excise taxes. Because the plan trustees were generally not the same parties as the settlors who set contribution rates in the collective bargaining agreements, the trustees were forced to increase benefits to protect the deductibility of the employer contributions. This prevented the funds from accumulating a contingency reserve to offset the unanticipated steep and prolonged declines in the investment markets such as those encountered from 2000 through and including 2002. Although this problem was partially addressed legislatively in 2001, a permanent exclusion to the maximum deductible limits for multiemployer plans seems indicated in any comprehensive reform measure.

IV.Principles of Reform

The preceding background describes a system that has largely evolved into a well conceived, self-correcting system in which private sector employers and employee representatives have negotiated contributions that have been wisely invested to provide secure retirement income to tens of millions of plan participants.

In evaluating the issues that might be the subject of a reform initiative, we would do well to borrow a line from Hippocrates who, in reference to disease is reported as having said "...make a habit of two things—to help, or at least, do no harm." The following recommendations for guidelines to observe when considering any reform proposal are offered in that vein.

First, multiemployer plans are fundamentally different from single-employer plans. Therefore, solutions for single-employer plans cannot be applied to multiemployer plans without thought, study and adaptation to multiemployer situations. For example, funding tests that are based on employers' individual business hardship are not reasonably adaptable to multiemployer plans, because, among other things, each employer's financial information must be kept confidential vis-a-vis the other contributing employers (including the employer trustees) who are competitors, and the union.

A second tenet is that the funding requirements must be level and predictable, so that the trustees can set benefit levels with some confidence that the fund's probable investment and contribution income will be able to meet the statutory standards. This includes rejecting any proposal that would cause the fund to be subject to greater volatility, such as the elimination or reduction in the ability of a plan to use sound actuarial smoothing methods. The recent experience with our unprecedented declines in U. S. equity markets, compounded by historically low fixed income rates presents the best case for not making sweeping policy changes at either extreme lows or extreme highs.

A third point to consider is that multiemployer funding requirements must be adaptable to the realities of the collective bargaining process from which the contributions arise. This underscores the need for level, predictable funding requirements, including the need to phase-in funding increases to avoid sudden demands for dramatic contribution increases that could disrupt the bargaining process. An essential element of this concept is an assurance that the bargaining parties will have an opportunity to address new funding demands in bargaining so that neither the employers nor the participants are penalized because contribution levels cannot be changed during the term of the collective bargaining agreement.

Forth, given the wide variety of circumstances and issues affecting bargaining, trustees and the bargaining parties need flexibility to meet the funding standards using whatever approaches best match the economics of their industry. Therefore, the law should specify the funding goal, but give the parties and trustees substantial leeway in setting the path to reach it. Furthermore, the funding rules should allow for benefit designs that participants will regard as fair: to retirees, to those nearing retirement, and to the population of active employees who generate the contributions.

Fifth, the multiemployer funding regime should aim for benefit security and participant satisfaction—not "PBGC protection" or "100% funding at all costs." Such a concept is somewhat perverse—that the very agency that was established to provide a safety net for plan participants would contribute to funding policies that would discourage employers from continuing them. Full funding, as a goal, and for setting funding targets for PBGC purposes, should be measured on a going-concern rather than termination basis for plans that are in fact going concerns.

Sixth, the funding and tax rules should not inhibit responsible funding through the imposition of deduction limits and penalties that make it impossible for plans to build up strong reserves in the good years as a buffer against future bad years. It should also be noted that "bad years" in the context of multiemployer plans include periods in which there is little work for the active participants that generate the contributions, as well as those in which there are investment market reverses.

Seventh, funding rules need to respect intergenerational equity—do not ask for too much sacrifice from current actives or retirees during a funding crisis, but ask enough from each generation of actives so that its costs are not knowingly being passed on to the next group.

Eighth, do not force multiemployer plans, even mature multiemployer plans, into a uniform investment mode in order to minimize financial risk. Recognize that defined benefit plans inherently incorporate a balance between promised benefits and the risk that the plan's assets could fall short, regardless of how sizeable the funding reserves appear to be at any given point. A defined benefit plan remains alive only to the extent its assets (invested and contributed) can grow to meet the growing benefit needs and expectations of its participants. Striving for full funding, on a mark-to-market basis, at any time would not only be futile, it could also end the defined benefit plan's ability to serve its participants as they expect and deserve.

Finally, withdrawal liability is almost universally disliked within the multiemployer world by employers and unions alike, but some hedge is needed to prevent strong employers from abandoning plans and leaving liabilities to roll over onto the weaker employers or to the guarantee system. Even in declining industries, the withdrawal liability system has worked to protect the participants without shifting obligations to the PBGC.

V. Conclusion

In the earlier joint hearing held with the Committee on Education and the Workforce, you heard a number of experts comment on the administrative and regulatory compliance complexities that accompany the sponsorship of defined benefit plans. Multiemployer plans suffer from many of the same problems and concerns and we urge you to continue your work to eliminate such obstacles to the long term health and survival of these plans.

As we look forward to the coming decades in which the baby-boomers retire and the coming generations face an uncertain future, wondering how they will cope with the costs of Social Security and Medicare, all the while being convinced that neither of these programs will be there for them, we would do an even greater disservice to them by failing to salvage the defined benefit system that has provided those who have gone before us–our fathers and mothers–with a dignified retirement. The continued decline of the defined benefit system in favor of the empty promises of a defined contribution retirement system that too few low to moderate income workers can afford to utilize and those who do vastly underestimate the amount they will need in their lifetime, will only serve to foist ever more of a financial burden on those future generations.

As future retirees outlive their money, the costs of their care, even at a subsistence level, will be shifted to the taxpayer.

If the volatile market performance of the past three years has taught us nothing else, we should have learned that only a defined benefit pension will keep us from returning to the days of the County poor house to house our indigent elderly.

As the Committee proceeds with its work to strengthen the defined benefit system, we hope that you will consider ways that some of the features of the multiemployer system, such as portability of service, could be adapted to the single-employer system to encourage greater participation in defined benefit plans. We are eager to assist the Committee in its work in any way you choose to do so.

Thank you very much. I welcome any questions you may have.

Chairman JOHNSON. Thank you, sir. Appreciate the testimony of all of you and hope that you can help us solve some of the problems of the day, which as you point out, don't exist just in this part of the pension system but all across it, and I think GAO would confirm that.

Mr. Weicht, in your testimony, you say that employers can only afford to pay so much for labor, and then continue by saying that you must compete against nonunion companies and risk pricing yourselves out of the market; yet the only thing you asked for is to be allowed to contribute more to the plan when they are at a well-funded or over-funded status. So I wonder if you can explain how that makes sense.

Mr. WEICHT. Sure. What we're seeing is, is that there's—when you're looking at a situation that we were in, we were hitting the 90-plus percent funded level, what happens is, is that the contributions are based on hours worked.

So we can sit where we're at now with $5.35 going in per hour. In a robust economy in the late '90's, we actually could be exceeding that 100 percent level by just the hours—the monies being contributed by the hours worked. For example, back at that time we were working an average of about 1,800 hours per employee that was in the plan. Now, this year, we're down to about 1,490 hours per worker. So what happens is, is that we almost hit like a technical overpayment going in in these years when we've got full employment. In our industry you'd call it full employment, the 1,800 hours. So that's what takes place.

Does that respond to the question?

Chairman JOHNSON. Yeah, I guess so. It seems to me instead of putting the money in, the extra money in, you might want to put it into something that benefits your company. Why is that not true?

Mr. WEICHT. Say it again?

Chairman JOHNSON. Because you're putting it into an over-funded plan.

Mr. WEICHT. Well, we weren't at that position, but the risk was there. We were within about a dollar per hour where we would have been over-funded. And so then we would have either increased benefits, or we could have met with the union and said, you know what? Let's only put in $5 an hour. Let's take 35 cents and put it back out to the employees on their check.

Chairman JOHNSON. Right. And the unions didn't want to do that?

Mr. WEICHT. Well, we didn't hit that point. They would say yes.

Chairman JOHNSON. OK. Thank you. GAO, you mentioned that more information might be helpful in more accurately assessing the true funding state of the multiemployer system. Can you list what type of information you would specifically like to see?

Ms. BOVBJERG. As you know, Mr. Chairman, GAO is always in favor of more information.

Chairman JOHNSON. You like paperwork, don't you?

[Laughter.]

Ms. BOVBJERG. We like more disclosure, too, and we talked about that at some length when we met before on the single employer program and PBGC. There is nearly always room to disclose more to participants in the pension world. I think that they should know what the funding for their plan looks like. They should know what their guarantees are.

I would urge, though, that the disclosure be meaningful. It's not always true that when someone receives something from their plan that discloses something in accordance with ERISA and it complies, they necessarily understand what that disclosure is telling them. So I would say meaningful disclosure would be important.

Chairman JOHNSON. By the company or the union or both?

Ms. BOVBJERG. I'm not ready to pick. But I think that it would be good to have something come from the plan that talks about plan funding, and anything that employers or the union wanted to provide in addition, I'm sure that they would be welcome to do so.

Chairman JOHNSON. Well, my understanding is the unions pretty well run the plans after an agreement is made with the company. Is that true?

Ms. BOVBJERG. We've heard that they work together jointly to run the plans, the employers and the unions.

Chairman JOHNSON. Theoretically, but the union determines how much money goes to the retirement system, don't they? As part of the agreement?

Ms. BOVBJERG. This was not something that we looked at specifically in plans. We were looking at general plan structure and the macro funding levels for plans.

Chairman JOHNSON. OK. Well—

Ms. BOVBJERG. So we wouldn't have found something like that.

Chairman JOHNSON. So all you're recommending is that the workers be advised with more information. Is that what you're saying?

Ms. BOVBJERG. I think more information is nearly always helpful. It would of course have to balance the cost of providing that information.

Chairman JOHNSON. Well, I'd bet that they all know what that pension plan is. Would you guys confirm that? Don't your workers know what they're getting into?

Mr. WEICHT. Well, yes. The benefits that they receive, they certainly know. The summary plan document discloses it, and you can ask any employee or employer and they'll know.

Chairman JOHNSON. OK.

Mr. DEFREHN. Chairman Johnson, if I could comment on your question?

Chairman JOHNSON. Please do, yes.

Mr. DEFREHN. It's been my experience in 30 years of working with these plans that the boards of trustees actually do work together, and it's not simply that the union runs these things, but the management and union trustees work together, as was intended in ERISA and Taft-Hartley, to make those decisions on behalf of the participants. So I think it's a misunderstanding that the unions run these plans.

And with respect to the communications, it's always much simpler for the plan itself, which has access to the information, to provide that information than either of the two bargaining parties who wouldn't have that kind of information.

Chairman JOHNSON. Thank you for that comment. Mr. Andrews, do you care to comment?

Mr. ANDREWS. Thank you. I do. I'd like to thank the witnesses for excellent presentations. Mr. DeFrehn, I heard you say that with respect to the short-term relief legislation that's before the conference that you support extension of the short-term relief to the multiemployer plans. Is that correct?

Mr. DEFREHN. Yes, that's correct.

Mr. ANDREWS. And Mr. Weicht, did you also say that you support that?

Mr. WEICHT. The short term? Yes. But once again, that's short term.

Mr. ANDREWS. OK. But I think I hear that each of these two witnesses support the Senate approach to this problem by including the multiemployer people.

Mr. McDevitt, what is UPS's position on that?

Mr. MCDEVITT. UPS sees value in the short-term reform, but we are currently stringent that we do need long-term reform for these plans.

Mr. ANDREWS. When you say you see value, do you want to see us adopt the short-term reform or not?

Mr. MCDEVITT. We think if it gives us an opportunity to get into an area where we can work toward long term, we certainly would be behind that.

Mr. ANDREWS. Well, of course, we're either going to work or not work toward long term, depending upon what the Chairman and others decide. But we have to take a position on what's in front of us right now. Do you want to see the conference report out the Senate approach to including the multiemployer plans or not?

Mr. MCDEVITT. Well, basically, I would have to say that if in fact it gets us to where we can address long-term reform, we would see value in that, yes sir.

Mr. ANDREWS. I understand. Turning to the long term—you should run for office. That was pretty good.

[Laughter.]

Mr. ANDREWS. With respect to the long-term problem, Ms. Bovbjerg, thank you for the excellent work that the GAO has done on this. I read on page 8 of you testimony the section that says, "Aggregate funding for multiemployer pension plans remained stable during the 1980's and 1990's. By 2000, the majority of multiemployer plans reported assets exceeding 90 percent of total liabilities, with the average plan funded at 105 percent of liabilities."

Would you characterize the financial position of multiemployer plans as of 2000 as generally healthy or generally unhealthy?

Ms. BOVBJERG. We thought they looked pretty healthy in 2000. It's difficult to tell, by the way, just what's happened since then because of the way our data come in.

Mr. ANDREWS. Right.

Ms. BOVBJERG. And we're relying nearly entirely on PBGC's recent reports on funding levels.

Mr. ANDREWS. It's my understanding that during the period that you did look at, the average annual growth in assets for multiemployer plans was 11.7 percent, and the average annual growth in liabilities as 10.2 percent. If that spread were to continue over the next 10 years—first of all, how realistic is it to expect that that spread will continue over the next 10 years?

Ms. BOVBJERG. Sitting here today, it doesn't look that realistic, but—

Mr. ANDREWS. And why doesn't it look that realistic? What are the factors that make it unrealistic?

Ms. BOVBJERG. That's pretty high growth.

Mr. ANDREWS. High growth?

Ms. BOVBJERG. On both ends. It's higher than what we see in single employers. I don't remember the exact figures.

Mr. ANDREWS. High growth in assets?

Ms. BOVBJERG. And in liabilities both, higher than singles.

Mr. ANDREWS. Do you anticipate—to what extent do you think that the problems that we've encountered since 2000 are attributable to decline in equity values, decline in interest rates, to what extent is it attributable to some other factor?

Ms. BOVBJERG. We didn't evaluate exactly to what it's attributable in part because we don't really have data that are completely consistent with what we had through 2000. Certainly the interest rate and the equity prices made a huge difference, that we know.

Mr. ANDREWS. Is it within the purview of what you've been asked to do to forecast what might happen if we gave you certain assumptions about rises in equity values and rises in interest rates? If the Committee were to say to you, assuming this level of stock market performance and this level of interest rate performance, what would happen, is that something you could do?

Ms. BOVBJERG. It might be. If the Committee asked us, we would find a way to try to do it.

Mr. ANDREWS. The questions are not hypothetical. They're really, as I said in my opening statement designed to parse out the analytical differences between problems in multiemployer plans that are inherent in the aging of the population, the demographic tidal wave that is coming, and problems that are unique to the present circumstances that we faced in the last couple of years.

I think it's indisputable that the demographics are moving in a direction where there will be fewer workers and more retirees, and that's a fact. The question is, is how bad that problem will be and what kind of changes it requires. You know, I know my Chairman is a conservative, and I share with him the view that the first principle of government should be the Hippocratic Oath, that we should first do no harm. And I agree with what Mr. DeFrehn said that defined benefit plans are a success story, and I would be very leery of making changes that might disrupt that success story on the basis of some anomalous circumstances.

Thank you.

Chairman JOHNSON. Thank you, Mr. Andrews. Recognize the Chairman of the Full Committee, Mr. Boehner for questions.

Mr. BOEHNER. Well, thank you, Mr. Johnson. Let me congratulate you and Mr. Andrews for having this next in a long series of hearings looking at defined benefit plans, and today specifically, multiemployer plans. I think that it's helpful and certainly useful considering that we have a pension bill that we're in conference on. And I've just got to say, I'm confused. And I think I'm going to follow up with the words of Mr. Andrews when he suggests that making changes to multiemployer pension rules at this time without having more information, you're somewhat reluctant to do. I'm damn reluctant to do, let me say that.

As I understand the testimony, 2 years ago, 95 percent was the average funding level of multiemployer plans. Today it's 87. Down, but certainly not the end of the world. And in the 87 percent figure average, Ms. Bovbjerg, was from what year? What plan year? The calendar year 2002?

Mr. DEFREHN. Mr. Boehner, I believe I was the one who commented on that.

Mr. BOEHNER. Oh.

Mr. DEFREHN. It was from actuarial valuations completed in 2002.

Mr. BOEHNER. 2002. So we've had in round numbers about 15 months since those numbers were calculated, and over the last 15 months, we've seen the market increase, last year over 20 percent, and we've seen an improvement—an increase in interest rates, while not substantial, but we've seen an increase in interest rates. And between the two, those figures alone, those two indicators alone, should make the actuarial value of these plans better today than they were at the end of 2002. Would you agree to that?

Mr. DEFREHN. I wouldn't agree with that completely. First of all, if you look at some of the interest rates used by PBGC in valuing long-term liabilities, they've actually, as reflected in their most recent report, they are lower than they were in the prior year.

Secondly, the market decline, the compounding effect of the market declines over the last 3 years, although they have, in 2003 there was a recovery, the actuarial procedures used generally involve a level of smoothing that recognizes gains and losses over a period of years.

Mr. BOEHNER. Fifteen, I might add.

Mr. DEFREHN. Well, in most cases—that has to do with the amortization of the losses it's 15. But in most cases from a funding standpoint, they use a 5-year smoothing method where they recognize a portion of the gains and losses recognized over—that were experienced over a period of 5 years. So over the next couple of years, our plans for funding purposes, we'll be seeing those three bad years stay with them, for funding purposes, for a period longer than you would have seen had the gains in 2003 been recognized immediately.

Mr. BOEHNER. Ms. Bovbjerg, how would you answer that hypothetical question that I pointed out?

Ms. BOVBJERG. About whether they're better off today than?

Mr. BOEHNER. Than they were at the end of 2002.

Ms. BOVBJERG. I don't know the answer to that question. I do know that in the PBGC 2003 Annual Report, they reported that their insurance program was in deficit for the first time in 20 years. So—and I think that that may also relate to some of the things that Mr. DeFrehn was mentioning just now. So there will be some period of time to recover.

Mr. BOEHNER. All right. Let's use the 2002 number, then, that on average, there's an 87 percent funding level in multiemployer plans. Now there's a provision in the Senate passed bill, the 3108, that provides an additional 2 years to amortize losses for all plans. That's what the provision says, all plans, all multiemployer plans.

It seems to me that's overly broad, considering we're not doing anything like that for single employer defined benefit plans. And I'm trying to understand why anyone would think that it's fair to provide broad relief, that broad of relief for multiemployer plans when nobody's made the case. We don't have the numbers at the PBGC. We don't have the numbers at the GAO because the plans don't disclose enough information for us to even make judgments about where there's a need and where there may not be a need. And I'm trying to get at how could we determine where the need is, if there's a need, and how you could look at this issue in a narrower context than all multiemployer plans.

I'll start with you, Ms. Bovbjerg.

Ms. BOVBJERG. Generally, if you wanted to not have it be so broad, you could consider targeting in some way. I believe that that's the approach that is being considered with the DRC provision in the same bill. It's targeted in some way. You have narrowed it already at some level by simply deferring rather than forgiving the amortization.

As for knowing, you know, which companies or which plans would benefit or need the relief and trying to target it, that's not something that's knowable with the information we have now. You're right.

Mr. BOEHNER. We can go down the list of whoever would like to speak up.

Mr. WEICHT. If I may, I would like to share that as a trustee, the way we can adjust this of course is to reduce benefits with another side of what you were asking for, Representative Boehner, as well, is that the smoothing, 5-year smoothing, just to share on a practical side of our plan, is that we have to have a 15 percent per year return for the next 5 years to get back to our 90-plus percent funding level with what's taken place in the last three. So that sheds a little practice light on just how one plan is working.

And what I have seen with the plans in the Midwest is that a majority of plans have reduced benefits as well. So they're not relying on just the returns to bail them out, so to speak.

Mr. BOEHNER. Mr. DeFrehn?

Mr. DEFREHN. Mr. Boehner, well, you know, with respect to the question of allowing all plans to participate in that deferral of the amortization of the losses, there are some self-limiting provisions in there in that a plan that accepts that relief under the Senate provision would be required to have restrictions on the ability to make benefit improvements during the next—during the period of the hiatus. So plans that normally would not want to have those restrictions wouldn't adopt that.

Similarly, I believe that there is a mechanism for trying to identify which plans would need the relief by having perhaps an actuarial certification or projection that the plan would experience a funding deficiency within the next 7 or 8 years. That would also allow the number of plans that would be affected by this to be narrowed significantly, and it would target those plans—we had approximately 30 percent of the plans out there would need some portion of this relief—that it would help narrow that down to the plans that do need the relief.

Mr. BOEHNER. Mr. McDevitt, do you have anything to add here?

Mr. MCDEVITT. Yes, Congressman. I did not have an opportunity to see those numbers that were reported earlier, but I can tell you from UPS's perspective, we track 21 plans, and less than half of them would meet the 75 percent level currently.

UPS, as you know, is a forward-looking company. We do not look at the next quarter or the next year. This has been our radar screen since the late '80's and early '90's, and we think there is structural change required here because of some of the other factors, such as the demographics which was referred to in the GAO report that I heard here. But there is definitely a need for some restructuring and some long-term reform.

Mr. BOEHNER. Well, there's no question that we're heading down a path of long-term—a project to look at the long-term changes that are needed both in single employer plans and multiemployer plans. But we've got this little 2-year, small pension relief bill that is being expected to carry mountains of other issues, and for the life of me, I'm trying to understand how we're going to be able to determine fairly who really needs help and how much help they need, because it's only a 2-year window that we're dealing with in this small bill.

So with that, Mr. Chairman, I thank you for your indulgence.

Chairman JOHNSON. Thank you, Mr. Chairman. I appreciate those comments. I think everybody knows that the PBGC, your multiemployer plans really are only about 3 percent of their commitment total. So it's something we need to look at, but it's not going to break the bank, if you will, if your system starts to default.

I think you can increase contributions. I'm told you can increase contributions under the Senate plan, but the problem you've got is, if you increase contributions, your union agreement is probably going to want some more increases in benefits as well.

Mr. ANDREWS. If the Chairman will yield, the other fact that I think does need to be pointed out, though, is the potential of a chain reaction within multiemployer plans where a failure of one employer triggers substantial increase in burdens on the rest of the employers, which could push others over the edge, and it could proceed like an epidemic where one person is sick at the beginning and a few more get sick the next wave, and everybody gets sick at the end.

The explosive potential for this chain reaction within multiemployer plans needs to be carefully assessed.

Chairman JOHNSON. Well, there's no doubt we need to look at it carefully. Mr. Kildee, you're recognized.

Mr. KILDEE. Thank you, Mr. Chairman.

Chairman JOHNSON. And I want to thank you for being here when this thing first started.

Mr. KILDEE. Well, we tried anyway. That was 24 years ago. I've been here 28 years, so I had 4 years' experience before I got involved in this. But I appreciate all of you being here today.

Mr. McDevitt, about twice a year I go out to the UPS center in Flint, Michigan and have coffee and doughnuts with the drivers as they peel off. Mark LeHay invites me out thee. And as a matter of fact, about a year ago I went up to Saginaw, Michigan in my district and donned the brown uniform and delivered packages for a morning and enjoyed that very much. And I have good relations with both UPS and the union.

As I understand your testimony, Central States is currently paying nearly a billion dollars annually in benefits to some 100,000 retirees whose employers have gone out of business. You're not suggesting that these retirees be cutoff without pensions after their years of having their employers contribute on their behalf?

Mr. MCDEVITT. No, Congressman, I am not saying that. I'm just pointing out that that is a structural flaw in the program moving forward. These plans were healthy in the '80's to some degree. They've quickly, because of the demographics and the change, quite frankly, right now they are .62 active to retiree termed in that plan, and right now I believe they have a built in percent of 2 percent less members coming in on an annual basis going outward. So there are going to become even less contributions in the front door, and as we approach the baby boomer retirement, we're going to have more retirees. That is just going to make that plan that much worse.

Mr. KILDEE. I was told by some of the employees at the Flint facility, Flint, Michigan, that Central States had informed them that because of some of the problems in the plan, that they would have to work 32 or 33 years before they would qualify for the full retirement. Is that correct?

Mr. MCDEVITT. Yes sir. Under, as was mentioned before from one of the colleagues here on the panel, there have been many plans that have not increased. Unfortunately, we have been in a case where we've seen plans have to decrease the benefits. And, yes, that is in fact the case with Central States.

As a matter of fact, we have an example that we now have to deal with which we never had to deal with before, in Michigan, as a matter of fact. We have a driver who retired in January and has since come back to us and asked us to unretire, because he did not understand how much he was willing to get or about to get based on the plan changes. It's a very sad state of affairs. He's a 30-year driver with UPS. He has cancer, and he has now come back and asked to unretire after being retired for only 3 months.

We are still trying to find ways to address that, and more and more of these situations—I would have to disagree with one of the earlier comments that our employees understand what their benefits are going forward. That's why I think we certainly need transparency. We need education, and we need our folks to clearly understand the impact going forward.

And that's just one. We understand there's another similar situation proceeding as well, sir.

Mr. KILDEE. And I know that the Teamsters and UPS both want to address those problems. I work closely with both groups in Flint, and I know that they are concerned about addressing that, and both of you have a voice in that Central plan and a vote in that Central plan.

And you certainly aren't proposing that the problems be transferred to the Federal Government to take care of that shortfall?

Mr. MCDEVITT. No. What we are saying is, I think the crux of the matter comes down to how we differentiate a multiemployer defined benefit plan and a single employer defined benefit plan. And I think in our best interest of what we think would work is just look at a plan that's defined benefit and could take the best of both worlds and put some structural changes in there to, No. 1, shore up the plans as they exist right now and give them the opportunity to get back on better footing going forward, and hopefully keeping the government out of it.

But clearly, down the road, the PBGC one way or the other will have to step up in some of these plans if we do not take a look at some long-term structural reform inside of these plans.

Mr. KILDEE. In response to Mr. Andrews' statement, you would be willing to take the short-term relief while waiting for a more long-term relief?

Mr. MCDEVITT. Yes. As I said earlier, right now we see value in any short-term relief that will allow us the opportunity to continue to work toward long-term reform. But long-term reform is certainly a must have.

Mr. KILDEE. Appreciate your testimony. Thank you very much.

Mr. MCDEVITT. Thank you, sir.

Chairman JOHNSON. Thank you, sir. Appreciate your insights and your experience. Mr. Kline, do you care to comment?

Mr. KLINE. Yes, Mr. Chairman, thank you very much, and thanks to all the panelists for being here. I'm always delighted when somebody is here from Minnesota, by the way, Mr. Weicht. Great to see you. We're still in that time of year when Minnesotans are not reluctant to travel out of the state.

And it's always a delight to have UPS. Like Mr. Kildee, I had the pleasure of putting on a brown suit and riding around delivering packages, and I was horrified to learn that I was slowing down the whole process by about 50 percent when I thought I was helping.

This subject is of particular concern to me because I've had Minnesota employers in the trucking business, for example, come to me and say that they are in fact in real trouble; that the reason that the pension funds are funded even to 87 percent is because some of them are really eating into operating capital at an enormous rate to keep that done.

So I'm, like all of us here, I think, looking for a way to make sure that these defined benefits plans, whether they're single employer or multiemployer, are solvent and providing the benefits that they're supposed to provide.

I think in your—let's see here. I believe I've got it underlined properly, Mr. McDevitt. In your testimony, you said, "As a result of structural problems and significant shortfalls in multiemployer pensions," there are problems. And you've talked about some of those structural problems, but I wonder if you could just in sort of one encapsulated approach tell us what you think those structural problems are that we need to be addressing.

Mr. MCDEVITT. Well, Congressman, the first would be, as I mentioned before, the clear demographics of those plans currently. We do not see new workers coming in the front door to support those folks who are approaching retirement.

The other is we believe there's a flaw because there are no funding guidelines. The 21 plans that I mentioned earlier that we address and look after, it's safe to say that those that had any type of a funding guideline are in much better shape than those that did not, regardless of how they received those funding guidelines, whether they were imposed upon them or the trustees enacted on their own.

Transparency, as we talked about, and the timeliness of information makes it hard for us and for our employees and the participants in these plans to clearly get an idea of where they stand inside of these plans. And, therefore, when they go to retire and they think they're going to get one thing, quite frankly, in the long term, the may not be able to get that. An example is recently right here in the Central States where there was a cut, and now we have to deal with some folks who have to reevaluate their retirement plans.

And then certainly those that have been left behind, where the burden is spread out on those employers that are left to pick up the pieces of people who have exited the plans. And we understand that there is a percent that they go back after assets to try to recoup the liabilities that are required on those ones that exit, but it's right around 10 percent. So the 90 cents on each dollar that these folks leave behind are spread throughout those companies that are left in those plans themselves. We think that there are some structural problems with that.

Mr. KLINE. Thank you very much. And thank you, Mr. Chairman. I yield back.

Chairman JOHNSON. Thank you. Mr. Tierney, do you care to question?

Mr. TIERNEY. I do. Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, sir. You're recognized.

Mr. TIERNEY. It's been a while, and I was wondering why a package from Michigan showed up on my doorstep in Massachusetts, and now I know that Dale was messing up deliveries, and I figured that one out.

[Laughter.]

Mr. TIERNEY. I'm almost tempted, Mr. McDevitt, to ask you again the same question Mr. Andrews and Mr. Kildee asked you to see if you can again repeat exactly the same, but I trust you would.

Let me ask—and I'm going to have trouble pronouncing your name. Would you help me, please, Barbara?

Ms. BOVBJERG. Bovbjerg.

Mr. TIERNEY. Bovbjerg. If we had an answer to our health care system in this country, if we were able to deal with the rising premiums in health care that employers face, would that not have a positive effect on the ability of those companies to better maintain their contribution levels?

Ms. BOVBJERG. That was what we were told in talking to various companies in multiemployer plans is that there's a certain amount they feel that's on the table, and one of the things competing, one of the priorities competing with pension benefits, is the rising cost of health care benefits.

Mr. TIERNEY. I say that because I think, you know, sometimes we can't take these issues, as important as they are, in a vacuum. And we were looking at so many retirees now being dumped out of their health plans, over 5 million in this country after they retire, being either decreased in their benefits or tossed off; employers facing incredible increases in premiums, and I think that we ought to perhaps sometimes look at these issues together to see if we can't resolve some of our health care issues to help in turn address this problem.

Mr. DeFrehn, give us, if you would, a thumbnail sketch of—because I see many good aspects of this multiemployer pension system. In fact, I see some serious areas where it's better than the single system by far, not the least of which are the ability of the employees and employers to work together as trustees to make it work. As tough as it is, they make decisions sometimes, even if it means decreasing some benefits or increasing them, and people understand that it's made in good faith, that are accepted. The portability aspects obviously. What would be a good way for us to look forward to short-term and long-term strengthening of this system as opposed to dismantling it?

Mr. DEFREHN. Well, certainly on the short-term basis, consideration of the Senate version of 3108 would allow the plans to get through, as Mr. Andrews describe, an anomalous situation. Never since the beginning of the funding rules under ERISA have we encountered three consecutive years of negative performance in the markets. Therefore, it's a time—and also a time when the interest rates are at historical lows.

So our plans are facing a period where they have changes of experiencing a technical violation in the funding rules, those funding rules which had never been tested under similar circumstances, that could result in having employers who have been good supporters of these plans and paid on a regular basis their required contributions pursuant to the bargaining agreements, those same employers would be subject to additional contributions, were the plans to trigger the funding deficiencies.

So that would result in some of them being bankrupt, and a fundamental destabilization of the system.

On a longer-term basis, we believe that the system has worked very well. And contrary to what Mr. McDevitt has said, I think that if you look at it in a broader context, that you would find that the system has worked very well. The funding levels have been very good, and rather than looking in isolation at the last 3 years, it's better to take a broader look at how the funding of the plans broadly has played out.

Even the example that he has cited on a number of occasions here, the Central States Pension Fund, their plan was funded at almost 96 percent for the vested—present value of vested benefits as recently as 1999. And they, because of the leveraged nature of that plan, were severely impacted by the reduction in the economy here and the reduction in the markets. It drove their assets base down to about $14 billion from a high of about $26 billion. They've recovered in the last year to a little over $18 billion, but again, it shows that these mature plans are highly dependent upon investment return.

And if you think about the way ERISA was set up, it was structured in a way to put many of these plans, or the mature plans, in a position where the benefits would ultimately be paid from investment earnings. I think that's an important concept to remember here. Unlike the Social Security system where we set nothing aside but operate on a pay-as-you-go basis, these plans have had to set money aside since 1974 to fund those future benefits. And in fact, while the withdrawal liability system is flawed and nobody likes it, the unions hate it, the employers hate it for a variety of different reasons, you have a choice to make here.

When the government sought to guarantee defined benefit plans, and those guarantees were put into place both in the single and multiemployer side of things, there were some guarantees made to those participants. On the multiemployer side, it was a very small, modest guarantee. After 30 years of employment at age 65, you would get about $12,700, compared with $44,000 on the single employer side. Unfortunately, someone has to pay for those benefits. It's either going to be the employer or the government or the participant who loses those benefits. Since we've guaranteed them in the code, then the choices are either the employer picks it up through withdrawal liability, or the government picks it up through the PBGC.

I would also like to just make one observation here in listening to Mr. McDevitt's comments about long-term reform. I'm reminded of the fable of the seven blind men trying to describe an elephant. And while UPS is one employer involved in one industry, which has admittedly had significant problems for a variety of reasons, including deregulation, over the years, it is one segment of the economy and one plan.

When we talk about the bill that has been set forth, the Multiemployer Pension Security Act of 2003, actually if the issue weren't so serious, you could get the humor in the tongue-in-cheek name here. In fact, the multiemployer security act that they're talking about doesn't provide changes to the multiemployer system; it dismantles the multiemployer system in the trucking industry. It converts those plans from multiemployer plans to multiple employer plans.

And I'd like to make it very clear that that shifts the risk from the pooled employers to the single employer guaranty plans under PBGC, because multiple employer plans are a collection of single employer plans and not multiemployer plans.

So there is a significant change that's being proposed here that I believe does have some significant policy implications beyond simply talking about long-term reform. Long-term reform, there may be some reason to discuss some of these issues, but, you know, you don't fix what ain't broken. And while some minor tinkering might be in order here, I'm not sure that comprehensive reform on the multiemployer side is anywhere near as needed as it is on the single employer side.

I hope that addresses your question.

Mr. TIERNEY. It does. I want to thank all the witnesses. Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you for your comments. Appreciate that. Mr. Holt, do you care to comment? You're recognized.

Mr. HOLT. Thank you, Mr. Chairman. And I'm wondering if photos exist of Mr. Kildee and Mr. Kline in brown shorts.

[Laughter.]

Mr. KLINE. I had them burn the negatives.

Chairman JOHNSON. He talked about elephants, too, you know.

Mr. HOLT. When I did it, I chose not to wear the shorts. I thank you for coming today. Mr. McDevitt, let me start with you. You've mentioned some of the long-term reforms that you feel are essential. I guess I'm wondering whether in your company's case—and you're such a big company, it makes a difference—whether you've already made the decision, whether, you know, any reforms will be beside the point, that you've made the decision to pull out of the multi—of the plan. Do you maintain a commitment over the long term if certain reforms are made? I guess is really the question.

Mr. MCDEVITT. Yes. We have not made any commitment to that degree, Congressman. I was referring to the Central States earlier. We think that there are some structural flaws in the Central States, but they are not limited to the Central States.

We have agreement with folks on both sides that reform is in fact needed, and needed desperately, for the Central States Fund. The actuaries have told us that they need returns of better than 80 percent for several years to get back on solid funding.

Now I might add, there's another plan out there, so it's not just to the Central States plan. We have a New England pension plan as well. And the fact of the matter is, the New England pension plan is in as bad as, if not worse, shape than the Central States plan. And we can throw around these percentage funding, what it is, what it isn't, whether it's including all vested benefits, whether it's taking into consideration the people who have termed in there, which means they've accrued some sort of a benefit but they have not begun to draw on it yet, when we look at that, that plan currently is right at 61 percent funded.

I just saw these numbers right here, these numbers that came from the GAO showing Central States at 54 is worse than what we had seen before. So, obviously, the transparency issue we spoke to earlier, we need to look at these very closely, because we had Central States in the ballpark of 61 to 62 percent.

It's problems like that that I think we have to address, and I believe that if we do not leave with some long-term reform, there are a lot of employees, our employees and the employees of man other companies, who are going to pay the burden. And we just do not think that is fair.

Mr. HOLT. And if those are addressed, then you have a commitment to stay with the system?

Mr. MCDEVITT. We have made a commitment to look at any and all options to fix these plans, absolutely.

Mr. HOLT. OK. Thanks. In the—Ms. Bovbjerg, please—some proposals that are floating around call for a portion of the unfunded liabilities to each employer, in other words, turning a contingent withdrawal liability into an actual liability, or eliminating the withdrawal liability. Would eliminating the withdrawal liability rule change the entire concept of the multiemployer plans? Wouldn't that be the undoing of the very nature of these plans?

Ms. BOVBJERG. It would certainly alter the way that the plans work now. The Act of 1980 that Chairman Johnson referred to initially was the legislation that set up the multiemployer program at PBGC, the insurance program, and also the withdrawal liability.

If an employer withdraws and is not required to compensate the plan for their share of an unfunded liability, then who will bear that? Is it left for the other employers? Is it left for participants to bear that, you know, in benefit cuts? Is it pushed over to the PBGC, which I did want to remove a misconception there might be about this insurance program.

This is not like the single employer insurance program. This is a much smaller commitment on PBGC's part. You see it in the difference in the premiums that are charged. Nineteen dollars per participant for the single employer plan plus a variable premium for unfunded liability. With multis, it's $2.60 per participant. And a reason for that difference is the difference in the guaranty, the difference in the commitment.

The way that these plans are structured certainly puts much less risk on the government's insurance program. So you would certainly, if you were to think about removing withdrawal liability, you would have to think about what the impact could be on all these other players, and most particularly the PBGC.

Mr. HOLT. OK. Thank you, Mr. Chairman, and thank you.

Chairman JOHNSON. Thank you. Mr. Wu, do you care to comment?

[No response.]

Chairman JOHNSON. Thank you very much. Let me ask a quick question before we close, for Mr. McDevitt. I, you know, I appreciate your comments, but I wonder if you think it's prudent to provide all multiemployer plans with funding relief even though there is just a limited amount of financial data available for any comprehensive assessment of actual funding status, and why would you want relief without proof of that data?

Mr. MCDEVITT. Mr. Chairman, I think that relief, if it is coupled with other structural changes that can basically provide us with an opportunity of working toward long-term reform, could be beneficial. Certainly the plans, it would be upon their own discretion whether or not they elect to take upon that relief. But we are clearly, the short-term relief is not the answer; it is the long term. And certainly the short-term relief can come in various types and levels, and we think that if it's tied to some good levels as far as providing the opportunity to get long-term, we do see value in that.

Chairman JOHNSON. OK. Thank you. Ms. Bovbjerg, could you tell me what types—you know, we talked about the information that you were trying to make more inclusive, and I wonder if you could tell us specifically what you might want and which government agency is going to be the one to collect the information from the people out there?

Ms. BOVBJERG. The funding information. We do get funding information in the Department of Labor in the 5500's. It's very slow. It takes a very long time. So we only have funding information through 2001 right now. You can get it on individual plans, but it lags tremendously. One of the things that we are thinking about now at GAO is what are the things that could be done to ensure that this information is made available more quickly and it comes in more timely, because if you're trying to make policy in response to recent events, that information isn't going to be current enough to really help you.

Chairman JOHNSON. OK.

Ms. BOVBJERG. So we're looking at that.

Chairman JOHNSON. OK. With Labor? You're working with Labor on that?

Ms. BOVBJERG. Pardon me?

Chairman JOHNSON. Are you working with the Department of Labor on that?

Ms. BOVBJERG. We have just initiated a look at it on our own. We'd be happy to do it for you, Mr. Chairman, if that would meet your needs.

Chairman JOHNSON. Yeah. Well, maybe we just need to talk to them and see how we can fix the system so it's more responsive. A couple of years behind is not the answer, I agree.

Ms. McCollum, do you care to comment?

Ms. MCCOLLUM. Thank you, Mr. Chair. Mr. Chair, I have some questions that deal with UPS. And what I would like to do is I probably can't get to all of them, but I'd like to start out with one if I may, Mr. Chair.

Chairman JOHNSON. Well, do you want to submit them for the record? And I'm sure they'd be willing to answer us.

Ms. MCCOLLUM. I want to submit them for the record, but I would like to start off with one. I'm trying to understand some of the issues around UPS. Now it's my understanding when pensions were first provided through multiemployer funds, that its employees were given permission to have pension credits for the years that they had worked for the companies prior to becoming participants in the fund. Is that correct?

Mr. MCDEVITT. I believe you're referring to they do accrue time in each fund. Yes, Congresswoman.

Ms. MCCOLLUM. OK. And did UPS not have to pay the full cost to the fund?

Mr. MCDEVITT. No.

Ms. MCCOLLUM. No?

Mr. MCDEVITT. That is incorrect.

Ms. MCCOLLUM. Was it able to provide employees with instant retirement benefits that had not been previously paid for?

Mr. MCDEVITT. Instant retirement benefits? Past service credits?

Ms. MCCOLLUM. Mm-hmm.

Mr. MCDEVITT. I don't quite honestly know. I'd have to get back to you on it.

Ms. MCCOLLUM. So, Mr. Chair, I think what I need to do is I need to submit these questions for the record. And with that caveat, Mr. Chair, I have submitted other questions on the record to get responses back and gosh darn it, I don't seem to be getting much mail coming back in my mailbox. So, Mr. Chair, what is the timeframe in which I should expect?

Chairman JOHNSON. I would bet that if we submit questions to you, you'd be willing to respond to us, would you not?

Mr. MCDEVITT. Yes sir, Mr. Chairman. Absolutely.

Chairman JOHNSON. Thank you.

Ms. MCCOLLUM. So, you know, 2 weeks, a month, I should expect a letter in the mail?

Chairman JOHNSON. Well, I don't know. If we go back to the Labor Department it might be three or 4 years.

[Laughter.]

Chairman JOHNSON. I think UPS can respond faster than that. Would you agree to do that?

Mr. ANDREWS. Will you give her a tracking number for her letter?

[Laughter.]

Mr. MCDEVITT. Absolutely.

Ms. MCCOLLUM. Then it's a done deal, because I know that tracking works great.

Chairman JOHNSON. Thank you very much. I want to thank the witnesses for your valuable time and testimony, and the Members for your participation. If there's no further business, the Subcommittee stands adjourned.

[Whereupon, at 11:53 a.m., the Subcommittee was adjourned.]

[Additional material supplied for the record follows:]

Questions Submitted for the Record from Hon. Betty McCollum to John McDevitt

Questions for Mr. John McDevitt
Senior Vice President
United Parcel Service
Washington, DC

1a. When UPS first provided pension coverage through multi-employer pension funds, were its employees given pension credits for years they had worked for the company prior to becoming participants in the fund? Was UPS able to do this without having to pay the full cost to the funds, thus providing its employees with an instant retirement benefit that it had not previously paid for?

1b. Were other employers bearing the burden of supporting those early UPS retirees?

2a. UPS established a Thrift Plan for its employees. Was this plan a multiemployer plan, and if not, were there any union trustees involved?

2b. Did UPS make all of the investment decisions for this plan?

2c. Did the Thrift Plan that UPS established for its employees lose money during the 1999–2002 period? Did UPS discontinue the Thrift Plan rather than continue to make contributions to subsidize the rate of return that was promised to employees who participated?

BETTY MCCOLLUM
4TH DISTRICT, MINNESOTA

Response of John McDevitt to Questions Submitted for the Record from Hon. Betty McCollum

Stacey Dion
Professional Staff Member
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515–6100

Dear Stacey,

On behalf of UPS, I would like to thank the Committee for the opportunity to testify at the hearing on "Reforming and Strengthening Defined Benefit Plans: Examining the Health of the Multiemployer Pension System." We appreciate the Committee's ongoing work on this very important issue.

Listed below are the answers to the questions the Committee submitted to me on April 21st.

Answer 1: UPS employees did not become participants in the multiemployer plans at one single point in time; rather, as UPS acquired operating rights in the various states and expanded its operations eastward, the company recognized the Teamsters as the bargaining representative of the employees, and ultimately in the course of negotiations, the employees became covered by multiemployer plans. UPS does not have any active employees or any records that would indicate whether these funds gave new UPS participants service credit for years that they were not covered by these plans, as the transition to these plans took place between 30 and 50 years ago.

Today, there is no question but that UPS' contributions to the multiemployer pension plans are subsidizing participants from other contributing employers and from participants whose companies have long since gone out of business. The Central States Pension Fund provides a representative example of this subsidization. In 2003, UPS had over 41,000 active employees in the plan and only 6,300 retirees, a stark contrast to the non–UPS portion of the plan (136,000 actives and 195,000 retirees). In 2003, UPS contributed $350 million to the Central States Pension Fund while the fund paid only $161 million in benefits to retired UPSers.

Answer 2: The UPS Thrift Plan was a voluntary single employer plan that began in 1961. All aspects of the plan were determined by four UPS trustees. The fund included management, non-management, and bargaining unit employees. From 1999–2002, the fund had an annual average rate of return of 17.4%. The Thrift Plan did not contain any promised rate of return.

If I can be of further assistance to you or the Committee, please do not hesitate to contact me.

Sincerely,

John McDevitt
Senior Vice President
United Parcel Service