

**PENSIONS IN PERIL: HELPING WORKERS  
PRESERVE RETIREMENT SECURITY THROUGH  
A RECESSION**

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**HEARING**  
OF THE  
**COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS**  
**UNITED STATES SENATE**  
**ONE HUNDRED ELEVENTH CONGRESS**

FIRST SESSION

ON

EXAMINING HELPING WORKERS PRESERVE RETIREMENT THROUGH A  
RECESSION, FOCUSING ON THE PENSION BENEFIT GUARANTY COR-  
PORATION'S PROCESS FOR DETERMINING THE AMOUNT OF BENEFITS  
TO BE PAID, AND PBGC'S RECOUPMENT PROCESS WHEN THE ESTI-  
MATED BENEFIT PROVIDED IS TOO HIGH AND A RETIREE RECEIVES  
AN OVERPAYMENT THAT MUST BE REPAID

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OCTOBER 29, 2009

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## **PENSIONS IN PERIL: HELPING WORKERS PRESERVE RETIREMENT SECURITY THROUGH A RECESSION**

**THURSDAY, OCTOBER 29, 2009**

U.S. SENATE,  
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,  
*Washington, DC.*

The committee met pursuant to notice at 10:05 a.m., in room SD-430, Dirksen Senate Office Building, Hon. Tom Harkin, chairman of the committee, presiding.

Present: Senators Harkin, Mikulski, Reed, Brown, Casey, Hagan, Franken, Enzi, Burr, Isakson, and Murkowski.

Also present: Congressman Ryan.

### **OPENING STATEMENT OF SENATOR HARKIN**

The CHAIRMAN. The Committee on Health, Education, Labor, and Pensions will come to order. I want to welcome everyone to this very timely and important hearing on retirement security. In these troubled economic times, working families face unprecedented challenges. Millions of Americans have lost their jobs. And those who have jobs are often working harder and longer but still cannot meet the rising costs of basic everyday needs like health care, education, and housing, let alone save enough to provide for security in their old age.

The harsh reality is that the retirement security of millions of American workers and retirees is in jeopardy. It is not a new problem. It is the culmination of a trend that has played out over the past couple of decades. Today, about one-half of all U.S. workers have no pension or savings plan at all. Let me repeat that. Today, about one-half of all U.S. workers have absolutely no pension, no savings plan whatsoever. Most others, in that other 50 percent, have only a 401(k) account where workers shoulder all the risk and see much of their hard-earned savings siphoned off by hefty fees. Not surprisingly, many people have saved very little in these accounts. And, of course, most have seen their nest eggs decimated by the big decline in the stock market.

All of these problems make traditional pensions more critical than ever. There are still 40 million Americans who rely on a secure defined benefit pension to provide a guaranteed income in their retirement years. Unfortunately, these secure pensions are under attack too. More and more companies are telling workers they cannot afford to pay for pensions, despite the fact that the executives are getting salaries and benefits that would make King

Midas blush. In other cases, companies use the bankruptcy process to shed pensions. The company lives on but workers lose the hard-earned retirement income they were counting on.

Congress has taken some important steps to help shore up Americans' retirement security. In 2006, we passed the bipartisan Pension Protection Act to require employers to do a better job of funding their pension plans and to make it more difficult for companies to default on what they owe.

I hope and expect that we can continue to address pension issues in a bipartisan manner, as we did under the leadership of both Senator Enzi and Senator Kennedy, along with Senator Mikulski and Senator Burr and our colleagues on the Finance Committee. As we investigate the challenges that workers and employers face when pension plans get into financial trouble, I look forward to moving forward in this same spirit to develop both short- and long-term solutions.

Our first panel of witnesses today will focus on the many losses that workers and retirees face when pensions fail. Although we have a pension insurance system, the Pension Benefit Guaranty Corporation, it provides only a partial safety net.

In particular, we will hear about the plight of workers and retirees at Delphi Corporation, the auto parts manufacturer. The case of Delphi is unique since General Motors, quite frankly, did the right thing by many tens of thousands of workers under union contracts and topped up their pensions.

But there are still some other union workers—electrical workers, operating engineers, and machinists—who labored right alongside their brothers and sisters where they are not being made whole on their pensions. And in addition—we will hear more about this from Mr. Gump, an engineer who spent 33 years working at Delphi—there are some 15,000 salaried workers who are losing their pension benefits.

These stories demonstrate why we must do everything we can to ease the toll that pension failures take on working families.

Our second panel will discuss precisely that question, how we can help. We all agree that requiring more employer responsibility for the financial health of pensions has been an important step. Unfortunately, the tougher requirements of our new laws are kicking in just at the time when many employers are facing the pressures of a bad stock market and a weak economy.

I understand this predicament and I am willing to look at solutions. But we must remember that it is precisely in such tough economic times that the role of the Federal Government in safeguarding Americans' retirement is more important than ever, and we must strike a careful balance.

No question today's hearing could not be more important for tens of millions of American workers and retirees. We face big challenges in shoring up the retirement security of the American people. I look forward to the hearing today and to our witnesses, and I look forward to working with our colleagues on a bipartisan basis to find some solutions.

With that, I will yield to my Ranking Member, Senator Enzi.

## OPENING STATEMENT OF SENATOR ENZI

Senator ENZI. Thank you, Mr. Chairman.

Just over a year ago, you and I held our first retirement savings hearing together and we looked into how to provide a greater transparency and understanding of the 401(k) disclosure statements to workers and retirees. So today, I am very glad that we are expanding our review of our Nation's retirement saving system by looking into the traditional defined benefit plan.

With the significant turndown in the stock market last year, individuals and families with 401(k)'s and IRA's immediately felt the impact. However, with respect to the longer-term investing traditional benefit plans, the effect of the market turndown was not as readily apparent.

Thankfully, we were able to provide some relief to workers, retirees, and their families who have 401(k)'s, IRA's, and defined benefit plans as we passed the Worker, Retiree and Employer Recovery Act last December. While this was a very temporary measure to help get over the initial shock of the economy, we all agreed that we would come back and address this problem again later this year.

When the Senate overwhelmingly passed the Pension Protection Act in 2006, we all voted to shore up our defined benefit system to ensure that retirees' pensions were there when they retired. In fact, the stronger funding rules that we implemented led to more companies funding their pension plans. At the beginning of 2008, many plans were well on their way to being 100 percent funded.

However, all of that has changed. If we could have foreseen in 2006 the steep stock market decline coming around the bend, then there is little doubt that we would have incorporated greater flexibility in the funding rules.

I would like to thank all the panelists today for traveling across the country to be with us today. We have a very good cross section of workers, retirees, and employers, and I hope they will give us great insight into what we can do.

However, I must single out the issue to be discussed on our first panel, the issue of what happens to pension plans when companies enter into bankruptcy. I am very disturbed by the materials provided by Mr. Gump on behalf of the Delphi Salaried Retiree Association. This type of deal negotiated behind closed doors out of the public view is exactly the type of deal-making that we have long criticized the PBGC for undertaking in years past. However, this time, the behind-the-closed-door deal was undertaken by the Administration's Auto Czar, the Auto Task Force, and the Secretary of the Treasury.

Everyone needs to know and understand what promises were made, who was negotiating this deal, and how this Administration also pre-packaged the GM bankruptcy arrangement. Taxpayers deserve to know how the Delphi situation is tied to the larger Federal bailout of GM and how it impacts all of our future. The deals that go on behind closed doors should be viewed with sunshine and made transparent to the workers of Delphi and the American people. If transparency is to be one of the hallmarks of this Adminis-

tration, as it was advertised, then allowing sunshine on these dealings should not be objectionable.

Mr. Chairman, this afternoon I will be sending a letter to the Secretary of the Treasury and the Auto Czar insisting that all documentation relating to this inside-the-Beltway agreement be made public immediately. Mr. Gump's testimony indicates that this deal was not in the best interest of the workers or the taxpayers.

Mr. Chairman, thank you again for holding this hearing on our Nation's traditional retirement plans.

The CHAIRMAN. Thank you very much, Senator Enzi.

Departing a little bit from the normal procedure where just the Chairman and the Ranking Member make opening statements, because of the particular interest that this has to the State of Ohio and our Senator from the State of Ohio, I am going to recognize Senator Brown for a statement. Then I will turn to Representative Ryan for purposes of introduction before we start our panel. Senator Brown?

#### STATEMENT OF SENATOR BROWN

Senator BROWN. Thank you very much, Mr. Chairman. Senator Enzi, thank you for your role in raising these critical pension issues before the committee today.

I would like to welcome particularly Bruce Gump from Warren, OH and Congressman Tim Ryan from Niles representing the Mahoning Valley. Both live in the Youngstown area. Each has fought tirelessly for Delphi workers. I thank you both.

Just earlier today I met with probably a dozen Delphi retirees. Every one of them had been with that company for 30 years. For every one of them, their situation is not what was promised to them during their work lives. That is why we are here today.

The chairman laid out what has happened to our pension system, not just what has happened with Delphi workers and what can happen to workers, but he laid out so well what has happened to our whole pension system and how so many people have fallen through the cracks particularly in the social contract that we are all part of, you know, whether it is Medicare or whether it is a private pension that you have been promised through your whole career and it lies in tatters. That is why this hearing is so important and what we have to do.

I will be brief, but I want to share a few examples from what has happened in Ohio with the committee.

Richard was working for Republic Technologies. He was told he would get a monthly pension benefit of \$2,400. When PBGC assumed trusteeship of the plan, he was told his benefit would be \$1,088. Later after PBGC calculated his final benefit, he was told he had been overpaid and he owed back to PBGC \$53,000. His actual benefit would be \$325 minus a recoupment deduction of 10 percent, yielding literally \$292.67.

Dorothea worked as a Packard GM Delphi hourly employee, as many did here, for 34 years in Trumbull County. In her letter to our office asking for assistance, she wrote: "To sum up my feelings, I was afraid to die. Now I am afraid to live. No pension. No health care. No Social Security. No job. Please help."

John, a 55-year-old Delphi salaried retiree wrote:



“Thirty-one years of effort to secure a pension are being ruined. In the bankruptcy court, creditors who have only several years of revenue at risk are being given higher priority. I have been looking for a job for 10 months without any success. If my pension goes to PBGC, my family may be living below the poverty level.”

In the case of Delphi hourly employees under certain collective bargaining agreements, GM agreed to make up the difference between the PBGC benefit and what the retiree had earned.

The Delphi salaried employees and a few hourly employees, I believe about 100—those represented by the Union of Operating Engineers, the IBEW, Brotherhood of Electrical Workers, and machinist unions—had no such agreement. They, like the salaried workers, are facing drastic reductions to their benefits.

Other Delphi retirees are facing the loss of their health benefits, which is why Congressman Ryan and I introduced legislation in our respective houses to fund a voluntary employees’ beneficiary association, a VEBA, to help them with the cost of health care. They too are looking for fair treatment.

Mr. Chairman, again to emphasize what Senator Enzi said and what you said, these are people that worked hard all their lives. As I said, I met with many of them again this morning for probably the fourth or fifth time. My office has been working with them. Tim Ryan has so faithfully worked with them and advocated for them. They are simply not being treated fairly. The social contract is frayed. We need to deal with that.

I thank the chairman.

[The prepared statement of Senator Brown follows:]

#### PREPARED STATEMENT OF SENATOR BROWN

Good Morning.

I would like to thank Chairman Harkin, Ranking Member Enzi, and all of the members of the committee for holding this hearing.

I appreciate the opportunity to join my colleagues in the Senate and the representatives of the Delphi retirees to speak out on behalf of the tens of thousands of Ohioans who are paying the price of the Delphi bankruptcy in lost health care and reduced pensions.

For many workers and retirees in Ohio and across the Nation, there is a crisis of confidence in our social contract. Pension benefits earned over a lifetime of service are dramatically reduced in the wake of bankruptcy.

When PBGC assumes trusteeship of a pension plan, it can only pay benefits up to what is guaranteed in law. Final benefits can sometimes take months or years to calculate, with the retiree responsible for any overpayment.

Early retirement, supplemental benefits, and health benefits are not guaranteed. Retirees are in no position to make up for these losses when their pension is assigned to the PBGC. They feel betrayed by the system that was supposed to protect them.

The Federal Government stepped in to bail out the auto industry. TARP financing has enabled General Motors to quickly move through bankruptcy. TARP financing enabled GM to address its pension obligations. TARP saved thousands of jobs in a key sector

of our economy. However, some workers, many of whom spent most of their careers as GM employees, were left out.

Tom Rose, a Delphi retiree who started his career with General Motors in 1969, summarized the sentiment of many Delphi retirees when he told the Dayton Daily News: "Our defined pension depended on a trust that was broken."

In the case of Delphi hourly employees under certain collective bargaining agreements, GM agreed to make up the difference between the PBGC benefit and what the retiree had earned. The Delphi salaried employees and some of the hourly employees such as those represented by the International Union of Operating Engineers, the International Brotherhood of Electrical Workers (IBEW), and the Machinists unions had no such agreement and are facing drastic reductions in their pension benefits. They are looking for fair treatment.

Other Delphi retirees are facing the loss of their health benefits, which is why Congressman Ryan and I introduced legislation with Representatives Fudge, Kucinich, Turner, and other members of the Ohio delegation to fund a Voluntary Employees' Beneficiary Association to help them with the cost of health care. They, too, are looking for fair treatment.

At our Senate HELP Committee hearing last month, we heard testimony about how Delphi pushed many workers into early retirement with the assurance that their pension benefits would be safe. That was not true. Now these retirees face the greatest losses in income.

John, a 55-year old Delphi Salaried retiree wrote my office,

"Thirty-one years of effort to secure a pension are being ruined. In the bankruptcy court, creditors who only have several years of revenue at risk are being given higher priority. I have been looking for a job for 10 months without any success. If my pension goes to the PBGC, my family will probably be living below the poverty level."

The loss of pension and health care benefits will add to the economic devastation of an area already reeling from job losses. A Youngstown State University study estimated an annual fiscal impact of nearly \$58 million, resulting in over 1,700 employment losses.

Protecting the pensions supports economic recovery.

Protecting retirement security was one of the purposes of the bailout of our financial system.

We cannot bail out an industry while leaving thousands of retirees who have loyally served it out in the cold.

We should be able to resolve this.

Thank you for inviting me to testify.

The CHAIRMAN. Thank you very much, Senator Brown.

I will turn first to Representative Ryan for an introduction. Then I will yield to Senator Casey for purposes of an introduction. And then we will move ahead.

Representative Ryan, a fourth term Congressman from the 17th District of Ohio. Welcome, Tim, and please proceed for your introduction.

**STATEMENT OF HON. TIM RYAN, U.S. CONGRESSMAN FROM  
THE STATE OF OHIO**

Mr. RYAN. Thank you, Mr. Chairman, and congratulations on your new assignment. Ranking Member Enzi, members of the committee, thank you for the privilege to appear before this committee and to introduce my constituent and friend, Bruce Gump.

I would also like to give a special thank you to Senator Brown. As you can see, he has been working very hard on behalf of these Delphi retirees for a long, long time, not only Delphi retirees, but as he stated, other pensioners across the State of Ohio and the country.

After a brief period of success following their 1999 spinoff from General Motors, Delphi Corporation was soon in trouble. Languishing in bankruptcy for 4 years, Delphi canceled pensions and health care benefits for retirees as GM's bankruptcy sharply reduced both their revenues, curtailed continuing payments, and jeopardized existing agreements.

Thanks to the Obama administration, many GM workers and retirees will receive their full pensions and assistance with their health care. Many Delphi retirees will also receive assistance for their pensions.

However, many other Delphi retirees will see major cuts to their pensions and almost all Delphi retirees will see substantial cuts to their much-needed health care benefits. These cuts will directly affect over 70,000 retirees across the Nation and over 5,000 in my congressional district alone. Not only will this have a devastating effect on these workers and their families, but the secondary economic effects in communities in Ohio will be enormous.

Mr. Bruce Gump of Warren, OH is one of the many Delphi retirees in my district who lost both his health care benefits and will see a reduction in his pension. Bruce retired after 32 years as an engineer in the automotive industry: almost 23 of those years for GM prior to the spinoff and 10 years at Delphi. At age 58, the PBGC will reduce his pension by a substantial amount.

And his situation, unfortunately, is not unique. Delphi forced many of its employees into early retirements. So the pension reductions from the PBGC will be more severe than they should be for people who have worked more than 30 years.

It is a problem when anyone in this country loses their pension, no matter how, and today we have a chance to better understand the situation and, more importantly, address the problem.

So, again, I would like to say thank you. This is a critical issue for those of us in northeast Ohio. We are having tremendous, devastating job losses in Ohio, and to have this compounding economic problem to pull all of this money out of our communities truly is devastating. So, again, thank you. Thank you, Senator Brown, for your leadership, and I appreciate the opportunity for Bruce to be here.

The CHAIRMAN. Thank you very much, Congressman Ryan. I know you have duties on the House side. So you can excuse yourself whenever you feel that you have to get back to your House duties.

Now I will recognize Senator Casey for purposes of introduction for Mr. Jury.

## STATEMENT OF SENATOR CASEY

Senator CASEY. Mr. Chairman, thank you very much, and I appreciate your convening of this hearing.

There are a lot of ways to describe the challenge that the country faces, but maybe one of the headlines on this says it all, that we have pension funds in America underfunded by over \$400 billion. That alone speaks volumes about why we are here today.

Mr. Chairman, I want to thank you for having this hearing.

I am going to be very brief. I want to introduce David Jury who is the Associate General Counsel of the United Steelworkers of America. It will not be a long introduction, but we want to thank him for being here, as well as the other members of the panel.

You know I am a big fan of the steel workers. They have been so helpful to so many Pennsylvanians. They share our history and our heritage in our State of hard work and sacrifice. But they are also a union—I think David could speak to this directly—focused on the future. We are grateful for what they do in terms of developing a high-skilled workforce and increasingly a diverse workforce, not just those who are involved in making steel, but other parts of our economy as well.

And on our second panel, I know that Randy DeFrehn of the National Coordinating Committee for Multiemployer Plans is a Johnstown, PA native. Of course, I will ask him to move back there some day. We will talk about that later.

And Ron Gebhardtshauer, who represents the Actuarial Science Program from Penn State. I will not get into Penn State football today, but they are doing pretty well. And I wanted to make sure that I mentioned them.

Other than that, that is the only Pennsylvania representatives that I know of here today.

[Laughter.]

If someone else wants to come up, I will introduce you as well. Thank you, Mr. Chairman.

[Laughter.]

The CHAIRMAN. I did not realize we had so many Pennsylvanians here today.

Let me just then introduce also the remainder of the panel. Barbara Bovbjerg is the Director for Education, Workforce, and Income Security Issues at the U.S. Government Accountability Office, GAO. In that capacity, she oversees evaluative studies on aging and retirement income policy issues, including Social Security and private pension programs, operations and management at the Social Security Administration, the Pension Benefit Guaranty Corporation, and the Employee Benefits Security Administration at the Department of Labor. Ms. Bovbjerg holds a master's degree from Cornell University and a B.A. from Oberlin College.

Also, Richard Jones, a principal and Chief Actuary in Hewitt's Retirement and Financial Management Practice based in Lincolnshire, IL, a fellow of the Society of Actuaries, an enrolled actuary, and a member of the American Academy of Actuaries. In his capacity as Chief Actuary, he is responsible for U.S. actuarial practices, standards, and processes. As I said, 22 years he has been with Hewitt, has consulted on a broad range of retirement plan financial

strategy and design issues for their clients. He has made presentations to both the Senate Finance Committee and the House Ways and Means Committee. We are glad to have you here before the HELP Committee.

We welcome our first panel. All of your statements will be made a part of the record in their entirety. Your clock has a 5-minute timer. We ask if you could kind of sum it up in 5 minutes. I do not bang the gavel at 5. If you go over for 1 or 2, that is fine, but try to keep it around that so we can engage in a conversation with you.

We will start with you, Mr. Gump. Again, welcome and please proceed.

**STATEMENT OF BRUCE GUMP, CHAIRMAN, DELPHI SALARIED RETIREES ASSOCIATION, WARREN, OH**

Mr. GUMP. Thank you, Senator. If you do not mind, before I start, I wanted to introduce the folks that came with me. Marianne Hudick is the Vice Chair of the Warren Legislative Group. Tony Flary, Alan Ryan, Cath Licasco, and Donna Vogel. Larry Hartman is a member of my committee. He is not able to be here today. Also with us are Dan Black and Paul Dubose, Elaine Hofias, and Al Ryan. They all traveled here at their own expense in order to participate in these proceedings. We very much appreciate the opportunity.

I will start with my testimony.

Good morning, Chairman Harkin, Ranking Member Enzi, and members of the committee. My name is Bruce Gump, and I appreciate the opportunity to participate and give testimony on behalf of the Delphi Salaried Retirees Association.

I would also like to thank my Senator, Sherrod Brown, for the interest and concerns and efforts he has put forward on our behalf.

The inequity in the treatment of our pensions affects more than 20,000 salaried automotive workers. There are about 15,000 that are currently retired and another 5,000 still working for the company. Active and retired people were secretaries and technicians, engineers, sales people, accountants, customer contract professionals, production supervisors, and mid-level managers who were just out there trying to earn a living, send their kids to college, and contribute to their communities. These are highly educated people, many of whom worked for General Motors for up to 4 decades before they were spun off to Delphi. This issue also severely impacts their families and their communities.

The expedited bankruptcies of General Motors and Chrysler and the related bankruptcy of Delphi have resulted in unprecedented Federal Government intervention by the executive branch. Ironically, this intervention has resulted in a severe economic impact on the salaried retirees of the former Delphi Corporation while minimizing the losses for other worker groups in the industry. We will see the pensions that we have earned reduced by up to 70 percent by the PBGC. This will result in many being at or even below the edge of poverty. No other group in the auto industry faces this threat.

We heard this morning that some of the other smaller unions—I had thought they had been topped off also, but apparently that

is not the case. I would be happy to include them in this testimony. Fairness in all of this is what we are for.

Honest, hard-working, play-by-the-rules American citizens are paying a terrible price as a result of this unfair and possibly illegal treatment of the Delphi salaried retirees.

Here is what happened.

After nearly 4 years in bankruptcy, the disposition of Delphi's defined benefit pension plans was the only major unresolved issue remaining at the time of the General Motors bankruptcy. The PBGC had filed a lien on Delphi's valuable foreign assets intending to protect the value of Delphi's pension plans, but because of this lien, Delphi was unable to sell its U.S.-based manufacturing assets to General Motors and the remainder of the enterprise, which is mostly offshore now, to the debtor-in-possession lenders.

Under pressure from the Treasury Department and the Auto Task Force, the PBGC reached an unprecedented agreement with both General Motors and Delphi to surrender their liens valued at up to \$3.4 billion for a mere \$70 million from General Motors and a \$3 billion unsecured bankruptcy claim from Delphi that the PBGC had to realize at the time would ultimately pay nothing. They took this action knowing that they would have to assume billions of dollars in unfunded pension liabilities and drastically reduce the pensions of Delphi retirees.

We believe that this surrender of liens violated ERISA. These illegal actions then cost the Delphi retirees, both hourly and salaried, billions of dollars in lost pension annuities.

This happened because the Administration chose to follow what Dr. Edward Montgomery of the Department of Labor called a "commercial model." Since the Delphi retirees had no commercial value to General Motors or Delphi, we also received no protection or benefit from the Auto Task Force. Because we had no commercial value and so no protection or support from the Administration, we lost our pensions to the PBGC.

At the time of the Delphi separation in 1999, labor unions representing Delphi's hourly workers had received agreements with General Motors to protect their pensions in the event Delphi entered bankruptcy. I have been told this type of obligation is normally modified or even canceled in bankruptcy, but again, Treasury and Auto Task Force intervention in the expedited GM bankruptcy produced an unprecedented offer from GM to top up the pensions of Delphi's hourly workers represented by the UAW.

Although identical agreements existed with other unions representing smaller numbers of retirees, a similar offer was not extended to them until the Federal Government, which was now the majority owner of General Motors, again became involved in the discussions several weeks later.

While we are pleased that General Motors has agreed to top up Delphi's discarded pension obligations for all hourly retirees, with the exceptions I just noted, we believe that the principle of equal protection under the law dictates that the salaried retirees receive comparable treatment from the now federally owned enterprise.

Before concluding, I would like to draw your attention to several points that quantify the impact of these events.

The average Delphi salaried retiree will lose over \$300,000 in pension payments over his or her lifetime due to the PBGC surrender of the liens on Delphi's overseas assets. In other words, a large number of Delphi salaried retirees are now at or near the poverty level due to the actions of the PBGC, the Treasury, and the Auto Task Force.

No other group of employees, again with the exceptions I just noted, or retirees in any of the federally supervised automotive bankruptcies has sacrificed to the extent of the Delphi salaried retirees. So the concept of shared sacrifice was not applied equally. All other worker groups will receive 100 percent of the pensions they were promised. I want to repeat that. All the other worker groups in the automotive industry, with the exceptions of the smaller unions you mentioned and us, will receive 100 percent of their guaranteed pensions that they earned and worked for decades except us.

A study by Dr. Frank Akpadock at Ohio's Youngstown State University found that the economic impact to the already fragile local Mahoning Valley economy will exceed \$161 million per year. This is an economy that employs about 100,000 people and because the \$161 million a year is coming out of it, it will result in the loss of about 5,000 jobs out of that economy. That will drive the unemployment rate in that area to about or even over 20 percent all because a commercial model indicated that there was no need to treat the citizens in various worker groups fairly or equally.

Extrapolating that YSU study predicts the loss of 85,000 jobs on a national level in places like Dayton, OH; Kokomo, IN; Lockport, NY; El Paso, TX; Clinton, MI; and other places where Delphi has a significant presence.

It is unfortunate, indeed, that the economic state of a major American industry was so bad that the Administration had to choose to become involved. However, we do not believe that the Federal Government has the right to throw off the mantle of Government and put on the cloak of business in order to justify their treatment of any citizen based on his perceived commercial value. Citizens do have the right to expect fair treatment and access to due process from their Government.

What we are asking for is fair and equitable treatment. We believe the U.S. Treasury set the standard of fairness in the GM and Delphi bankruptcies when they provided funds for full pensions and reduced health care insurance to the unionized workers. The fact is, Senators, the U.S. Treasury and the Auto Task Force have discriminated against us.

Chairman Harkin, Ranking Member Enzi, and members of the committee, we hope you share the outrage of the unfair, inequitable treatment and possibly illegal treatment that the Delphi salaried retirees are receiving with respect to our pensions. We ask that you as a committee and individually call on President Obama, Treasury Secretary Geithner, Ron Bloom of the Auto Task Force General Motors, and Delphi to reconsider that decision to exclude the Delphi salaried retirees from the pension treatment that was provided in the GM bankruptcy and remedy this injustice.

Thank you for your attention, and I would be pleased to answer any questions.

The CHAIRMAN. Thank you very much, Mr. Gump.

And now we will turn to Ms. Bovbjerg. Ms. Bovbjerg, again, keep in mind all your statements will be made a part of the record in their entirety. If you could sum it up, I would appreciate it.

**STATEMENT OF BARBARA D. BOVBJERG, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC**

Ms. BOVBJERG. Thank you very much, Mr. Chairman. Good morning, Senators. I am very pleased to be here. Thank you so much for inviting me to speak about a slightly different topic, which is PBGC's final benefit determination processes.

Since PBGC's inception in 1974, they have trustee almost 4,000 defined benefit plans covering more than a million workers and retirees. Participants in such plans rely on PBGC to determine what benefits they are owed under statutory guarantees. Since 2008, though, the economic downturn has brought a new influx of plan terminations, including Delphi, and with them increased anxiety about what the PBGC guarantees mean for worker benefits.

My testimony today describes how PBGC determines benefits and how it recoups overpayments. My statement is based on a recent report to this committee.

First, I will address the benefit determination.

The determination process requires many steps to complete, and it involves gathering extensive data on plans, as well as on each individual's work history and identifying who is eligible for benefits under the plan. This can be particularly complicated if the plan or the company has a history of mergers, an elaborate structure, or missing data.

Most participants of terminated plans are entitled to receive the full amount of benefits they earned under the plans, but some will have their benefits reduced to comply with legal limits. For example, PBGC generally does not guarantee more than a certain amount, about \$54,000 this year, to any retiree in a trustee plan. Higher earners in underfunded plans may find their benefits exceed that cap and must be reduced unless there are plan assets that would make up the difference.

Also, because PBGC's guarantees are based on retirement at age 65, early retirees may face actuarial reductions.

PBGC has conducted studies about the impact of these limits in large plans and the first from 1999 showed the limits affected only about 5 percent of participants, but the more recent study from 2008 found the number was that almost 16 percent were affected.

But until these calculations are made and benefit termination is complete, participants receive estimated benefits. Although participants generally give PBGC high marks for its initial information sessions when a plan is newly terminated, PBGC generally does not communicate with participants during the benefit determination period, a time that can extend for years, throughout which retirees are still receiving their estimated benefits. Though PBGC completes most participant benefit determinations in less than 3 years, some participants have waited almost 9 years for final determinations.



The long delays and resultant uncertainty regarding final benefit amounts make it difficult for workers to plan for retirement and, for those already retired, to feel very secure. Indeed, some are unpleasantly surprised when they are notified that their final benefits will be lower than what they have been already receiving for many years.

PBGC has taken steps to shorten the benefit determination process, and although their initiatives previously have focused on ways to speed processing of the straightforward cases instead of the more complex ones that are prone to delay, PBGC is responding to recommendations we made in our report last summer and is looking at ways to improve its processes for addressing the most complex plans.

Let me now turn to the very difficult issue of overpayments.

The vast majority of participants in terminated plans are not affected by overpayments or by PBGC's process to reclaim them. It is only about 2 percent of participants that are subject to the recoupment process. But still, for these participants, it can be quite a shock when PBGC notifies them that their final benefit will be less, in some cases substantially less, than the estimated benefits they have been receiving and that, in addition, their new benefit amount will be reduced by up to 10 percent until the overpayment is recouped.

Overpayment sizes varied widely. There were some that were less than \$1, others more than \$150,000. Most are under \$3,000. But even small inaccuracies in the estimated benefits add up if they are continued for many years, over the course of 9 years. Then the final benefit determination will be lower—it can make a very high over payment.

PBGC does warn participants at the beginning of the process that their benefits may be reduced due to legal limits, but these general warnings are not well understood, nor are they clearly remembered months or years later when reductions actually occur and most beneficiaries are taken by complete surprise. Hence, we have recommended that PBGC improve the frequency and clarity of its communications with participants in trustee plans.

In conclusion, big, complex plans are the ones that cause PBGC the greatest difficulties in benefit determination and some very large ones are either in PBGC trusteeship now or could be in the future. The Delphi plans recently taken by PBGC have almost 70,000 participants and are about \$7 billion underfunded. Participants in these plans and others that will surely follow will be better served by PBGC if the agency gives greater attention not only to more efficient benefit determination but to better and more frequent communication with participants.

Losing your job and the ability to accrue future benefits is bad enough. Let us not make a process that should be reassuring and helpful to workers unnecessarily confusing, surprising, or lengthy.

That concludes my statement, Mr. Chairman.

[The prepared statement of Ms. Bovbjerg follows:]

## PREPARED STATEMENT OF BARBARA D. BOVBJERG

## WHY GAO DID THIS STUDY

Under the single-employer insurance program, the Pension Benefit Guaranty Corporation (PBGC) may become the trustee of underfunded plans that are terminated and assume responsibility for paying benefits to participants as they become due, up to certain legal limits. From its inception in 1974 through the end of fiscal year 2008, PBGC has terminated and trusteeed a total of 3,860 single-employer plans covering some 1.2 million workers and retirees. Since 2008, the economic downturn has brought a new influx of pension plan terminations to PBGC, and more are expected to follow.

The committee asked GAO to discuss our recent work on PBGC. Specifically, this testimony describes: (1) PBGC's process for determining the amount of benefits to be paid; and (2) PBGC's recoupment process when the estimated benefit provided is too high and a retiree receives an overpayment that must be repaid.

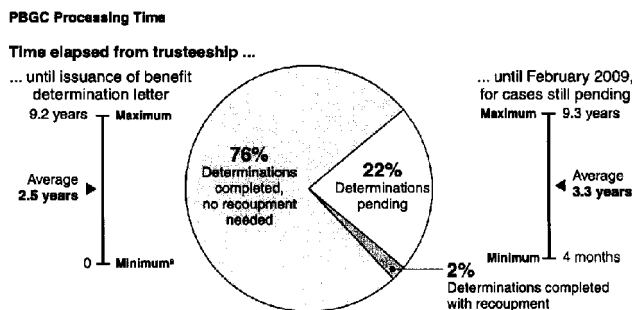
To address these objectives, GAO relied primarily on a recent report titled *Pension Benefit Guaranty Corporation: More Strategic Approach Needed for Processing Complex Plans Prone to Delays and Overpayments* (GAO-09-716, Aug. 2009). In that report, GAO made numerous recommendations. PBGC generally agreed and is taking steps to address the concerns raised. No new recommendations are being made in this testimony.

## PENSION BENEFIT GUARANTY CORPORATION

## WORKERS AND RETIREES EXPERIENCE DELAYS AND UNCERTAINTY WHEN UNDERFUNDED PLANS ARE TERMINATED

## WHAT GAO FOUND

Most participants must wait about 3 years for PBGC to complete the benefit determination process and provide their finalized benefit amounts, but the vast majority are not affected by overpayments or the recoupment process (see figure). Nevertheless, long delays and uncertainty over final benefit amounts make it difficult for workers to plan for retirement, and for retirees who may have come to depend on a certain level of monthly income.



Source: GAO analysis of PBGC data on the participants in plans terminated and trusteeed, fiscal years 2000 through 2008.  
\*In two atypical cases, PBGC made benefit determinations prior to trusteeship.

During the benefit determination process, key points of contact with workers and retirees include:

- **Initial notification:** PBGC's first communication with participants is generally a letter informing them that their pension plan has been terminated and that PBGC has become the plan trustee.
- **Estimated benefits:** For retirees, PBGC continues payments after plan termination, but adjusts the amounts to reflect limits set by law. These payments are based on estimates, so overpayments can occur.
- **Finalized benefit amounts:** Once the benefit determination process is complete, PBGC notifies each participant of the final benefit amount through a "benefit determination letter."

A small percentage of participants have incurred overpayments to be repaid through the recoupment process. But for those affected, the news can still come as a shock, especially when several years have elapsed since their benefits were re-

duced to comply with legal limits. Their frustration may be compounded if they cannot understand the explanations provided by PBGC. As the influx of large, complex plan terminations continues, improvements in PBGC's processes are urgently needed.

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Mr. Chairman and members of the committee, I am pleased to be here today to present information about what happens when underfunded pension plans are terminated and trustee by the Pension Benefit Guaranty Corporation (PBGC). Under PBGC's single-employer insurance program,<sup>1</sup> if a company's defined benefit pension plan has inadequate assets to pay all promised benefits, plan sponsors meeting certain criteria may voluntarily terminate the plan through a "distress" termination, or PBGC may decide to terminate the plan involuntarily to protect the plan's assets. If the plan's assets are insufficient to pay benefits currently due, then PBGC must terminate the plan. In all these situations, PBGC generally becomes the trustee of the plan and assumes responsibility for paying benefits to the participants, up to certain legal limits.<sup>2</sup> From its inception in 1974 through the end of fiscal year 2008, PBGC terminated and trustee a total of 3,860 single-employer plans covering some 1.2 million workers and retirees. Since 2008, the economic downturn has brought a new influx of pension plan terminations to PBGC, and more are expected to follow.

Today I will provide a description, from the workers' and retirees' perspective, of what happens when a plan is terminated and trustee by PBGC. Specifically, I will describe (1) PBGC's process for determining the amount of benefits to be paid, and (2) PBGC's recoupment process when the estimated benefit provided is too high and a retiree receives an overpayment that must be repaid. This testimony is based primarily on a report we issued on August 17, 2009, titled *Pension Benefit Guaranty Corporation: More Strategic Approach Needed for Processing Complex Plans Prone to Delays and Overpayments*.<sup>3</sup> In developing that report, we reviewed PBGC policies and procedures, analyzed automated data, and interviewed PBGC officials knowledgeable about various stages of the benefit determination process. We focused our study on participants of plans terminated and trustee during fiscal years 2000 through 2008, and spoke with personnel from employee associations and advocacy groups involved in some of these plan terminations. We conducted this work between October 2008 and August 2009, in accordance with generally accepted government auditing standards.<sup>4</sup>

#### BACKGROUND

PBGC was created as a government corporation by the Employee Retirement Income Security Act of 1974 (ERISA)<sup>5</sup> to help protect the retirement income of U.S. workers with private-sector defined benefit plans by guaranteeing their benefits up to certain legal limits. PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums set by Congress and paid by sponsors of defined benefit plans, recoveries from the companies formerly responsible for the plans, and investment income of assets from pension plans that PBGC trustees. Under current law, other than statutory authority to borrow up to \$100 million from the Treasury Department,<sup>6</sup> no substantial source of funds is available to PBGC if it runs out of money. In the event that PBGC were to exhaust all of its holdings,

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<sup>1</sup> PBGC administers two separate insurance programs for private-sector defined benefit plans: a single-employer program and a multiemployer program. The single-employer program covers about 34 million participants in about 28,000 defined benefit plans. 29 U.S.C. §§ 1322 and 1322a. The multiemployer program covers about 10 million participants in about 1,500 collectively bargained defined benefit plans that are maintained by two or more unrelated employers.

<sup>2</sup> The termination of a fully funded plan is called a standard termination. Plan sponsors typically purchase a group annuity contract from an insurance company to pay benefits to the participants, and PBGC does not become the trustee. 29 U.S.C. § 1341(b).

<sup>3</sup> GAO-09-716 (Washington, DC: August 2009).

<sup>4</sup> Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. For further details on our methodology, see GAO, *Pension Benefit Guaranty Corporation: More Strategic Approach Needed for Processing Complex Plans Prone to Delays and Overpayments* GAO-09-716 (Washington, DC: August 2009), p. 7 and appendixes I and II.

<sup>5</sup> Pub. L. No. 93-406, tit. IV, 88 Stat. 829, 1003-1035 (codified as amended at 29 U.S.C. §§ 1301-1461).

<sup>6</sup> 29 U.S.C. § 1305(c).

benefit payments would have to be drastically cut unless Congress were to take action to provide support.<sup>7</sup>

In 2003, GAO designated PBGC's single-employer program as high-risk, and PBGC has remained high-risk with each subsequent update, including our most recent update in 2009. This means that the program still needs urgent congressional attention and agency action. We specifically noted PBGC's prior-year net deficit, as well as the risk of the termination among large, underfunded pension plans, as reasons for the program's high-risk designation. Over the last 6 years or so, the assets and liabilities that PBGC accumulated from trusteeing plans have increased rapidly. This is largely due to the termination, typically through bankruptcies, of a number of very large, underfunded plan sponsors. Last May, PBGC reported that unaudited financial results through the second quarter of fiscal year 2009 showed its deficit tripling since the end of fiscal year 2008, from about \$11 billion to about \$33.5 billion. Since then, the influx of large plan terminations has continued. For example, in August 2009, PBGC assumed responsibility for six Delphi pension plans, covering about 70,000 workers and retirees, and underfunded by a total of about \$7 billion. PBGC estimated that it would be liable for about \$6.7 billion of this underfunding.

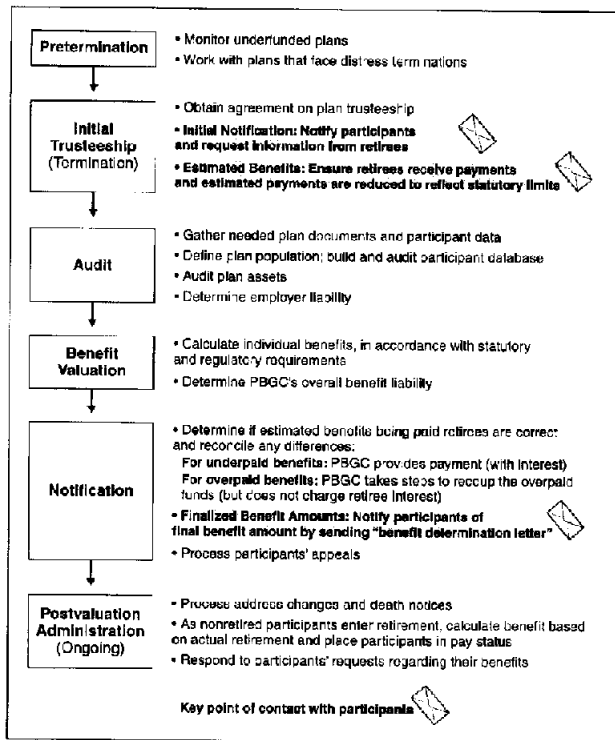
PBGC'S BENEFIT DETERMINATION PROCESS GENERALLY TAKES ABOUT 3 YEARS  
TO COMPLETE

Our review of plans terminated and trusteeed between fiscal years 2000 and 2008 found that PBGC completed most participants' benefit determinations in less than 3 years, but required more time—up to 9 years—to process determinations for complex plans, plans with missing data, and plans with large numbers of participants. As some pension advocacy groups and union representatives have noted, long delays and uncertainty over final benefit amounts make it difficult for workers to plan for retirement, and especially for retirees who have come to depend on a certain level of monthly income. At the same time, the benefit determination process requires many steps to be complete. It requires gathering extensive data on plans and each individual's work and personnel history, and identifying who is eligible for benefits under the plan. This can be particularly complicated if the company or plan has a history of mergers, an elaborate structure, or missing data. It requires calculating each participant's benefit amount based on provisions that vary from plan to plan, applying the legal limits on guaranteed benefit amounts in each case, and valuing plan assets and liabilities to determine if some or all of the nonguaranteed benefit amount can still be paid. Also, the larger the plan, the heavier the workload for PBGC. While the average number of participants per plan is slightly fewer than 1,000, we found that some plans have many more—nearly 93,000 in the case of Bethlehem Steel. PBGC's benefit determination process is illustrated in Figure 1. The key points of contact with workers and retirees that occur during this process are described in detail below.

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<sup>7</sup> 29 U.S.C. § 1302(g)(2).

Figure 1: PBGC's Benefit Determination Process



Source: GAO analysis of PBGC documents.

## INITIAL NOTIFICATION

PBGC's first communication with participants is generally a letter informing them that their pension plan has been terminated and that PBGC has become the plan trustee.<sup>8</sup> Shortly thereafter, this letter is generally followed by a more detailed letter with a packet of materials, including a DVD with an introduction to PBGC and answers to frequently asked questions about how the benefit determination process works. PBGC officials refer to this as a "welcome" package. Additionally, for large plans likely to have many participants affected by the legal limits on guaranteed benefits, PBGC will hold on-site information sessions shortly after plan termination. PBGC also operates a customer service center with a toll-free number that participants can call if they have questions, provides a Web site for workers and retirees with detailed information about plans and benefits, and sends participants a newsletter with information about PBGC once or twice per year.<sup>9</sup>

Nearly all pension advocacy groups and union representatives with whom we spoke<sup>10</sup> praised PBGC's efforts to hold information sessions with the larger plans. One union representative commended PBGC staff for going out into the field to talk with participants and answer questions even though participants are likely to be angry. Other union representatives commented that they have been impressed by PBGC's staff for staying at these sessions until they have answered every participant's questions. While these sessions are generally viewed as helpful, some pension rights advocates noted that the information presented is difficult for participants to understand and apply to their own situations. Comments about PBGC's customer service center and Web site were also mixed.

*Estimated Benefits*

If the participant is already retired, or retires before the benefit determination process is complete, PBGC makes payments to the retiree based on an estimate of what the final benefit amount will be. According to PBGC, most participants of terminated plans are entitled to receive the full amount of benefits they earned under their plans. In such cases, the calculation of an estimated benefit is straightforward. However, some participants may have their benefits reduced to comply with certain limits, specified under ERISA and related regulations. These limits include the phase-in limit, the "accrued-at-normal" limit, and the maximum limit (see Fig. 2). In these cases, the calculation of an estimated benefit is more complicated. PBGC does not systematically track the number of participants affected by the limits on guaranteed benefits or how much these limits affect benefit amounts; however, PBGC has conducted two studies on the impact of these limits in a sample of large plans. The first study, issued in 1999, found 5.5 percent of participants were affected by the limits; and the second study, issued in 2008, found that 15.9 percent were affected.<sup>11</sup>

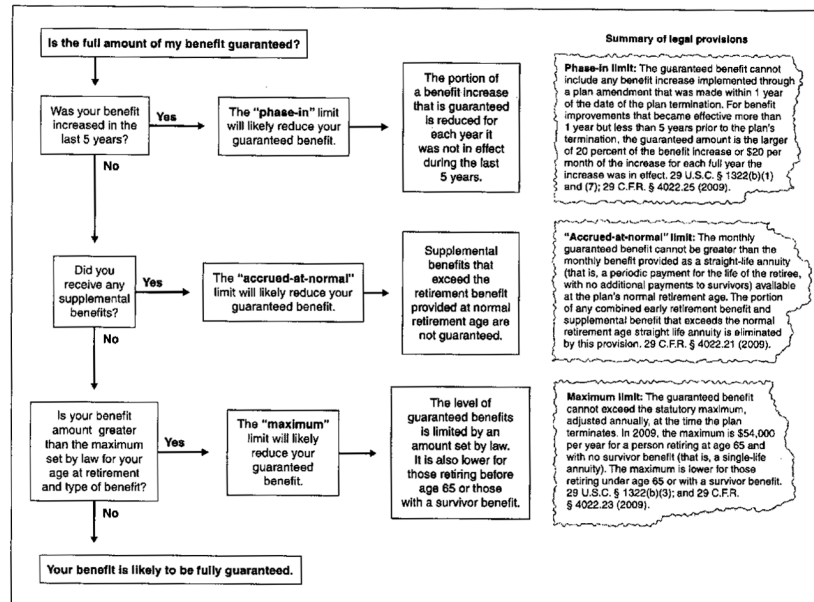
<sup>8</sup>Prior to termination, plan sponsors are required to notify participants if the plan is significantly underfunded and warn them that if the plan is terminated, their benefits must be cut back based on the guarantee limits as of the plan termination date. 29 U.S.C. § 1021(f).

<sup>9</sup>PBGC produces an annual newsletter for retirees and a biannual newsletter for future retirees.

<sup>10</sup>For a list of the organizations contacted, see GAO-09-716, appendix II.

<sup>11</sup>PBGC, *PBGC's Guarantee Limits—an Update* (Washington, DC: September 2008). This document summarizes the results from both the 1999 and 2008 studies.

Figure 2: Determining if a Participant's Guaranteed Benefit Is Subject to Legal Limits



Source: GAO analysis of ERISA, PBGC's implementing regulations and related documents.

Following the termination of their plans, those who are already retired may continue to receive their same plan benefit amount as an estimated benefit for several months—or even years—before the estimate is adjusted to reflect the legal limits on guaranteed benefits. When plans are terminated at the sponsor's request as distress terminations, the sponsors are required to impose these limits themselves so that participants' benefits are reduced as of the date of termination. However, when plans are terminated involuntarily, there can sometimes be lengthy delays before PBGC reduces estimated benefits to reflect these limits. Not only must PBGC estimate the possible impact of applying the guarantee limits to the participant's benefit, PBGC must also estimate whether there might be sufficient plan assets or recoveries of company assets to pay all or part of the nonguaranteed portion of the participant's benefit.<sup>12</sup> According to PBGC officials, when it is unclear how much a plan's assets or recoveries will be able to contribute toward the nonguaranteed portion of a retiree's benefit, it can be difficult to calculate an accurate benefit amount until the benefit determination process is complete. We found cases where estimated benefits were adjusted within 9 months of termination, while in other cases, more than 6 years elapsed before estimated benefits were adjusted.

#### Finalized Benefit Amounts

Once the benefit determination process is complete, PBGC notifies each participant of the final benefit amount with a "benefit determination letter." From the time of its initial contact with plan participants until the benefit determination process is complete, PBGC generally does not communicate with participants. In some cases, this period can stretch into years.<sup>13</sup> Some of the pension advocacy groups and union representatives we spoke with said that these long periods without communication are problematic for participants for several reasons. For example, retirees whose benefits are subject to the guarantee limits but who continue to receive their higher plan-level benefits for long periods of time may come to depend on these higher amounts and believe that this payment level is permanent. They

<sup>12</sup>The process for determining how the plan's assets are distributed among the plan's participants is specified in ERISA. 29 U.S.C. §§ 1322(c) and 1344. For a description of the allocation process, see our recent report, GAO-09-716, appendix III.

<sup>13</sup>However, if a participant applies to start benefit payments during this time, communications would be exchanged between PBGC and the participant about the participant's current status, eligibility, and benefit amount, based on the requested retirement date.

are surprised when—years later—their benefits are suddenly reduced. Even for participants who are not yet receiving benefits, the lack of communication about the likely amount of their final benefits makes it difficult to plan for retirement.

In addition, PBGC's benefit determination letters generally provide only limited explanations for why the amount may be different from the amount provided under their plan. In complex plans, when benefit calculations are complicated, the letters often do not adequately explain why benefits are being reduced. Although benefit statements are generally attached, the logic and math involved can be difficult even for pension experts. Some pension advocates and union representatives we spoke with said that they found the explanations in these letters to be too vague and generic, and that the letters did not provide enough information specific to the individual's circumstances to be helpful. At the same time, they were generally sympathetic to the difficulty of communicating such complicated information. As one advocate acknowledged, for the letters to be accurate, they have to be complicated; this may just be "the nature of the beast."

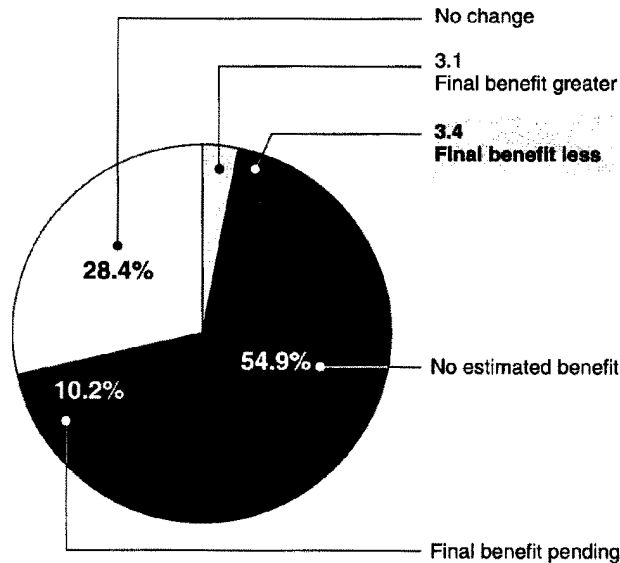
PBGC officials have taken steps to shorten the benefit determination process, although their initiatives have focused on ways to expedite processing of straightforward cases instead of the more difficult cases prone to delays. PBGC has also developed more than 500 letter formats—in both English and Spanish—to address the myriad of situations that may arise in the benefit determination process. Nevertheless, PBGC officials acknowledged that their standard letter formats may not always meet the needs of participants, especially those with complex plans and complicated benefit calculations. PBGC recently undertook a project to review and update their letters to try to better meet participant needs.

#### PBGC'S RECOUPMENT PROCESS AFFECTS ONLY A SMALL PERCENTAGE OF TERMINATED PLAN PARTICIPANTS

The vast majority of participants in terminated plans are not affected by overpayments or PBGC's recoupment process. Overpayments generally occur when a retiree receives estimated benefits while PBGC is in the process of making benefit determinations and the final benefit amount is less than the estimated benefit amount. However, we found that of the 1,057,272 participants in plans terminated and trusted during fiscal years 2000 through 2008, more than half were not yet retired and, therefore, did not receive estimated benefits before the benefit determination process was complete. Moreover, for most who were retired, the estimated benefit amount received did not change when finalized. As shown in Figure 3, of the 6.5 percent with benefits that did change when finalized, about half received a benefit amount that was greater, and half received a benefit amount that was less (about 3 percent of total participants in these plans, overall). In cases with a final benefit greater than the estimated amount, retirees are likely due a backpayment for having been underpaid, which PBGC repays in a lump sum, with interest. In cases with a final benefit that is less, the retirees are likely to have received an overpayment, which they then must repay to PBGC, with no added interest.



**Figure 3: Proportion of Participants with Estimated Benefits that Differ from Final Benefits**



Source: GAO analysis of PBGC data on participants of plans terminated and trusteed during fiscal years 2000 through 2008 (1,057,272 cases total).

Overpayments can occur for two basic reasons: (1) there is a period of time when the retiree's estimated benefit has not yet been reduced to reflect applicable limits; and (2) the retiree's estimated benefit is adjusted to reflect applicable limits, but the estimate is still greater than the benefit amount that is ultimately determined to be correct. In general, the longer the delay before a retiree's estimated benefit is adjusted to reflect the correct amount, the larger the overpayment, and the greater the amount that will need to be recouped from future monthly benefit payments.

When an overpayment occurs, retirees typically repay the amount owed by having their monthly benefits reduced by some fraction until the debt is repaid. According to PBGC data, 22,623 participants in plans terminated and trusteed during fiscal years 2000 through 2008 (2.1 percent of the total) were subject to such recoupment.<sup>14</sup> The total overpayment amounts varied widely—from less than \$1 to more than \$150,000—but our analysis of PBGC data suggests that most owed less than \$3,000.<sup>15</sup> Since in most cases PBGC recoups overpayments by reducing a participant's final benefit by no more than 10 percent each month,<sup>16</sup> recoupment is amortized over many years and the impact on the participant's benefit is limited. Per

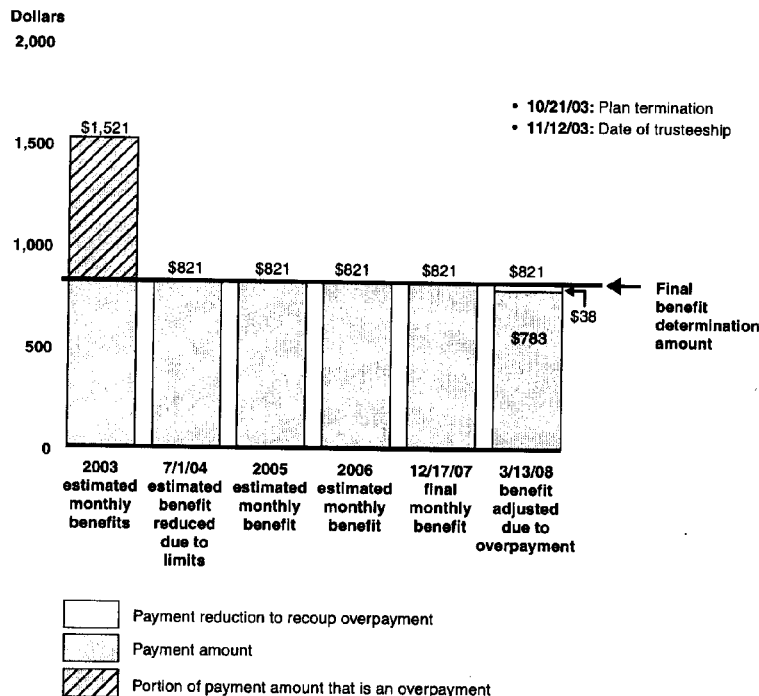
<sup>14</sup> Retirees who receive a final benefit that is less than their estimated benefit do not always end up with an overpayment that is recouped through monthly benefit reductions. For example, estimated benefit amounts may fluctuate over time, so that an overpayment may be offset by an underpayment resulting in no amount due. Alternatively, in some cases, it may be determined that the retiree is not eligible to receive an ongoing benefit payment, so there is no payment to be reduced for recoupment. PBGC refers to these as recovery cases rather than recoupment cases.

<sup>15</sup> Data reliability issues prevented us from conducting a more definitive analysis of total overpayment amounts. For a more detailed discussion of these data limitations, see our recent report, GAO-09-716, appendix I. We were, however, able to verify that the person with the largest amount to be recouped was an LTV plan participant who owed a total of \$152,194, and was to have \$181 deducted each month from his payment of \$1,812 until 2/1/2078 (at which point he would be over 138 years of age). In general, we found that large overpayments tended to occur in cases where there were lengthy delays before estimated benefits were adjusted to reflect the guarantee benefit limits, but that in some cases, they occurred due to disputes regarding claims from ex-spouses (referred to as "qualified domestic relations orders").

<sup>16</sup> PBGC regulations generally limit benefit reductions to the greater of (a) 10 percent of the participant's monthly benefit, or (b) the amount in excess of the participant's "maximum guaranteeable benefit." 29 CFR § 4022.82(a)(2) (2009).

individual, we found that the median benefit reduction due to recoupment was about \$16 a month, or about 3 percent of the monthly payment amount, on average. The effect of receiving an overpayment of estimated benefits on one retiree's monthly payment is illustrated in Figure 4. The total amount of this retiree's overpayment was \$5,600. His monthly payment was ultimately reduced by nearly one-half, but this was primarily due to the application of the guarantee limits. The amount of the benefit reduction for recoupment of the overpayment is \$38 per month, to be paid until 6/1/2020.

**Figure 4: The Effect of Plan Termination and Recoupment on One Retiree's Monthly Payment**



Source: GAO analysis of PBGC data.

Participants are warned at the beginning of the process that their benefits may be reduced due to the legal limits on guaranteed benefits, and retirees are notified of possible overpayments when they begin to receive estimated payments. However, these warnings may not have the same meaning for participants when talked about in generalities as when they later receive notices concerning their specific benefit amounts. It can still come as a shock when—perhaps years later—they receive a final benefit determination letter with this news. Their frustration may be compounded if they fail to understand the explanations provided in the benefit determination letters. Some pension advocates and union representatives we spoke with said that this is often the case in complex cases involving large benefit reductions. They noted that they did not think most participants would be able to understand the accompanying benefit statements without additional information and assistance. In the participant files we reviewed, the benefit statements that accompanied the letters ranged in length from 2 to 8 pages. In some cases, there were as many as 20 to 30 different line items that required making comparisons between the items to understand the logic of the calculations.<sup>17</sup>

<sup>17</sup>For an example of a benefit determination letter and benefit statement, see GAO-09-716, appendix VII.

Participants may appeal the results of the benefit determination process within 45 days of receiving a final benefit determination.<sup>18</sup> Appeals are accepted if they raise a question about how the plan was interpreted, how the law was interpreted, or the practices of the plan's sponsor, but not if they are based only on hardship. Although some appellants have successfully used the appeals process to increase their benefits, less than 20 percent of appeals docketed since fiscal year 2003 have resulted in appellants receiving higher benefit amounts. We found that a lack of understanding on the part of participants about how their benefits are calculated may engender unnecessary appeals, and that PBGC is not readily providing key information that would be helpful to participants in deciding whether or not to pursue an appeal.

Participants may request hardship waivers for overpayments, but only in cases that do not involve an ongoing payment. PBGC policy stipulates that in cases with an ongoing payment, recoupment of an overpayment may not be waived unless the monthly reduction would be less than \$5.<sup>19</sup> By comparison, Federal agencies such as the Social Security Administration and the Office of Personnel Management generally pursue repayment at a faster rate with larger reductions to benefits when recouping overpayments, but their policies also give greater prominence to waivers.

#### CONCLUSIONS AND RECOMMENDATIONS

To address the concerns of workers and retirees in terminated plans who stand to lose as much as one-half or more of their long-anticipated retirement income, and who will likely have to make painful financial adjustments, PBGC needs a more strategic approach for processing complex plans prone to delays and overpayments. The failure to communicate more often and clearly with participants awaiting a final determination can be disconcerting—especially when participants receive the news that their final determination is “surprisingly” less than they anticipated, or when retirees learn that the estimated interim benefit they had been receiving was too high and that they owe money. More frequent and clearer communication with plan participants, including more timely adjustments to estimated benefits, more information about how their benefits are calculated, and where to find help if they wish to appeal, would better manage expectations, help people plan for their future, avoid unnecessary appeals, and earn good will during a trying time for all.

In our recently issued report, we recommended that PBGC develop a better strategy for processing complex plans in order to reduce delays, minimize overpayments, improve communication with participants, and make the appeals process more accessible. After reviewing the draft report, PBGC generally agreed with our recommendations, noting the steps it would take to address GAO's concerns. For example, PBGC said that it had started to track and monitor tasks associated with processing large, complex plans, and would continue to look for other ways to improve its processes. A complete discussion of our recommendations, PBGC's comments, and our evaluation are provided in our recently issued report. As PBGC's financial challenges continue to mount and dramatic increases to PBGC's workload appear imminent, improvements to PBGC's processes are urgently needed.

Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions you or other members of the committee may have.

The CHAIRMAN. Well, thank you very much, Ms. Bovbjerg. That is very timely.

Now we turn to Mr. Jury. Welcome, Mr. Jury, and please proceed.

#### STATEMENT OF DAVID R. JURY, ASSOCIATE GENERAL COUNSEL, UNITED STEELWORKERS OF AMERICA, PITTSBURGH, PA

Mr. JURY. Good morning. I am David Jury, Associate General Counsel for the United Steelworkers. On behalf of International President Leo Gerard and our 1.2 million active and retired members, I thank the committee for the ability to appear this morning

<sup>18</sup> 29 CFR §§ 4003.1(b)(7) and 4003.52 (2009).

<sup>19</sup> In addition, in the last month that benefits are to be reduced to repay an overpayment, PBGC policy allows the final monthly reduction amount to be waived if the remaining balance due is less than the normal monthly reduction amount. 29 CFR § 4022.82(a)(5) (2009).

to address the acute need for relief in order to preserve the defined benefit pension system for all American workers and retirees.

Defined benefit pension plans are the cornerstone of retirement security for millions of Americans. The Pension Benefit Guaranty Corporation serves a critical function in the social safety net by insuring the pensions of 44 million Americans. These pension guarantees sit at the intersection of numerous forces affecting American workers: deregulation, globalization, trade policy, and the decline of the manufacturing sector.

United Steelworkers is familiar with this intersection of forces through its representation of workers throughout American manufacturing, but particularly in the domestic steel industry. Between 1998 and 2003, the domestic steel industry experienced a crisis brought on by a tide of imports, which flooded the market and drove steel prices down to 20-year lows. The result was 44 bankruptcies, 18 liquidations, and the loss of 55,000 jobs.

During this period, the pension plans of 16 steel companies were terminated, involving over 250,000 participants and \$7 billion in unfunded guaranteed pension liabilities.

The termination of a pension plan is extraordinarily disruptive for any worker regardless of status. While the pension benefits of most retirees are not reduced following a plan termination, there are limitations as to both the amount and form of benefit that PBGC will guarantee. Among other things, as Ms. Bovbjerg noted, the PBGC does not guarantee monthly benefits above an established maximum level. Further, PBGC does not guarantee early retirement supplements that provide a retiree with additional income until he or she becomes eligible for Social Security, and as a result of the Pension Protection Act of 2006, PBGC does not guarantee benefits earned either after an employer files bankruptcy or after the pension plan's funding target falls below 60 percent.

According to a 2008 PBGC study of terminated steel industry pension plans and applying these limitations, PBGC determined that 21 percent of participants in the steel industry plans suffered reduced benefits with an average cutback of 26 percent.

These plan terminations and benefit cutbacks are even more painful because these same workers or retirees often at the same time experience a loss of jobs or a termination or a reduction in retiree health insurance benefits or both. After working years in difficult and often dirty and dangerous jobs, these workers rightfully feel both shocked and angry at this convergence of events.

The source of the current problems in the defined benefit pension system is not the PBGC, but instead the existing legislative framework. Rather than encouraging employers to maintain defined benefit pension plans and elevating the interests of workers and retirees, aspects of the current law undermine these policy goals.

In 2006, Congress responded to the mounting number of pension plan terminations and a growing PBGC deficit by passing the Pension Protection Act. While the stated goal of the act was to strengthen the retirement system and improve plan funding, the PPA has, in our experience, produced quite the opposite result. We have observed an increase in the number of employers seeking at the bargaining table to freeze or terminate their defined benefit

pension plans, often citing directly the accelerated funding obligations imposed by law.

The PPA has made pension funding more onerous, inflexible, and volatile by effectively requiring pension plans to be fully funded at all times, a requirement premised in our view erroneously upon the assumption that all benefits are payable immediately. During an economic downturn, the combination of these new funding rules has ratcheted up funding obligations at the very moment when plan sponsors can least afford it in light of conditions in both the general economy and in the credit markets. Without prompt action, these funding obligations may generate additional bankruptcies and pension terminations which will only further burden the PBGC and erode retirement security for American workers.

Congress can do several things to address the more harmful aspects of the current law, and in the interest of time, I refer you to our written testimony with respect to several funding-related and other changes that Congress should consider.

If I may—and this is beyond our written testimony—I would like to address just briefly the circumstances at Delphi and in particular the provenance of the agreement of GM to “top up” the pension benefits of steel worker retirees in Dayton, OH, IUE retirees elsewhere.

These agreements were negotiated in 1999 at the time of the spin-off.

In 2007, in the Delphi bankruptcy case, at a point in time when Delphi saw light at the end of the tunnel and saw a possible emergence from bankruptcy, the steel workers union and the IUE and the United Auto Workers negotiated agreements with Delphi and General Motors in which GM agreed to stand behind the 1999 benefit commitments. These agreements were approved by the bankruptcy court in Delaware and, among other things, provided for a plan-to-plan transfer of assets from the Delphi pension plan to the General Motors pension plan.

In the context of the current General Motors bankruptcy, General Motors stood behind these commitments 10 years in provenance, and I will be happy to address this and other matters at the time of questions.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Jury follows:]

PREPARED STATEMENT OF DAVID R. JURY

I am David Jury, and I am an Associate General Counsel of the United Steelworkers International Union (USW).

The USW represents 1.2 million active and retired members found in nearly every manufacturing industry, not only steel, but paper, forestry, rubber, energy, mining, automotive parts, and chemicals, as well as healthcare, service and public employment. On behalf of the USW and International President Leo Gerard, I thank the committee for the invitation to appear today to address the impact of pension plan terminations on workers and retirees and the urgent need for pension funding and other related relief, a need that has become even more acute during this recession.

Defined benefit pension plans are the cornerstone of retirement security for millions of Americans. The Pension Benefit Guaranty Corporation (PBGC) serves a critical function in the Nation's economy and social safety net by insuring the pensions of 44 million current or former workers covered under private sector defined benefit plans. PBGC operates to protect the economic security of American workers and sits at the intersection of numerous forces affecting American workers—deregulation, globalization, trade policy, and the decline of the manufacturing sector.

Among the USW's traditional core jurisdictions is the steel industry. Between 1998 and 2003, the steel industry experienced a crisis brought on by a rising tide of imports which flooded the market and drove steel prices down to 20-year lows. The result was \$11 billion in net losses, 44 bankruptcies, 18 liquidations and the loss of 55,000 jobs.

During this period, the PBGC initiated terminations of the defined benefit pension plans of 16 steel companies, involving over 250,000 participants and over \$7.0 billion in unfunded guaranteed pension benefits.

A distress or involuntary termination of a defined benefit pension plan is extraordinarily disruptive for workers and retirees. While the pension benefits of most retirees are unaffected, pensioners who retired during the last 5 years prior to the termination or who were forced out of their jobs by plant shutdowns or disabilities often suffer substantial reductions in their pension benefits. Indeed, according to a study by the PBGC of trustee plans published in September 2008, over 25,000 or 21 percent of participants in terminated steel industry plans had their benefits reduced, with an average cutback of 26 percent.

When a sponsoring employer is unable to fund the promised benefits and an underfunded plan is terminated or abandoned, the PBGC takes over the plan and pays benefits, subject to certain limits under the law.

Pursuant to existing law, the PBGC does not guarantee:

- non-vested pension benefits;
- basic monthly pension benefits in excess of the monthly maximum guarantee level in effect at the time of plan termination;
- early retirement supplements or "bridge" benefits that are typically designed to provide a retiree with additional income until he or she becomes eligible for Social Security;
- severance or lump sum death benefits;
- disability benefits when disability occurs after plan termination; and
- as a result of the Pension Protection Act of 2006, benefits earned after the employer's date of bankruptcy filing or benefits earned after a Plan's funding target falls below 60 percent.

Further, plan participants who have not qualified for a service or event-based benefit as of the termination date (such as a 30-year or shutdown pension) are forever unable to qualify, even if he or she continues to work for the employer beyond the date of plan termination. This is a harsh outcome for an employee who, in the example of a 30-year benefit, falls just short of the mark at the time of plan termination and is told that he or she can never qualify for the 30-year pension that he or she expected.

Plan terminations and PBGC benefit cutbacks are even more painful because they often affect employees who are, at the same time, losing their jobs and/or retiree health care benefits. After working years in difficult, and often dirty and dangerous jobs, affected workers rightly feel shocked and angry by this convergence of events.

Unfortunately, it has been the USW's experience that workers often do not learn the full extent of PBGC benefit cuts until years after the plan is terminated and the PBGC assumes responsibility. When the PBGC takes over a plan, it continues making benefit payments based upon an initial calculation of the guarantee level. If the estimated benefit exceeds the PBGC guarantee, the pension is reduced. However, the PBGC continues paying this "estimated benefit" level until it completes the final benefit determination.

According to the PBGC's own data, the average amount of time required by the PBGC to complete final benefit determinations was 3.3 years in fiscal year 2008. In complicated cases, it is often much longer. While the PBGC has responded commendably to the increase in its workload caused by the large steel and airline terminations, the delay in completing final benefit determinations is deeply unsettling for the retirees involved.

One such example is the Republic Technologies International pension plan. RTI employed USW members in Ohio, New York, Pennsylvania, Illinois, and Indiana. The pension plan was relatively complex as it featured a number of supplemental benefits and offset provisions. RTI filed for bankruptcy in 2001 as a result of the financial crisis that swept the American steel industry. On June 14, 2002, PBGC terminated the RTI Plan. The USW therefore joined in an action in Federal court against PBGC regarding the payment of shutdown benefits. The litigation concluded in 2004, with the Court of Appeals for the Sixth Circuit finding in PBGC's favor with respect to the shutdown benefit issue.

PBGC did not issue final benefit determinations until May 2008. Consequently, for nearly 6 years, the RTI plan participants received benefits from PBGC based upon *estimated* benefit determinations. It was only after PBGC issued final benefit

determination in May 2008 that many participants learned that they had received benefit payments in excess of the benefits guaranteed by PBGC, and that (1) their monthly benefits would be reduced on a prospective basis to comply with the plan's terms and the PBGC's limits, and (2) they owed large sums of money to PBGC as a result of the overpayments they had received. Some retirees owed PBGC a few thousand dollars, while many others owed \$60,000 or more. Similar stories are prevalent in the other steel industry cases, though the period between the date of plan termination and the issuance of final benefit determinations was not as great.

In order to prevent undue hardship, PBGC does not require participants to pay back the overpayments all at once, nor does it charge interest on the debts; instead, PBGC deducts 10 percent from the participant's monthly benefit until the full amount is recouped. While the PBGC's repayment policy is not unreasonable, for many retirees the benefit cutback and overpayment notice of tens of thousands of dollars causes great financial and emotional distress.

Stories such as these beg the question: what can be done to address the problem? The source of the problem is not PBGC, but rather is the legislative framework that governs single employer defined benefit pension plans. Rather than promoting the maintenance of defined benefit pension plans and elevating the interests of workers and retirees, aspects of the current law undermine the vital role played by defined benefit pensions in the U.S. retirement system.

In 2006, Congress responded to pension plan terminations in the airline and steel industries and the growing PBGC deficit by passing the Pension Protection Act (PPA). While the stated goal of the PPA's supporters was to strengthen the retirement system and fortify plan funding, it has, in the USW's experience, produced quite the opposite result.

The limited time available does not allow me to describe the USW's concerns regarding pension funding and the need for reform. We would welcome the opportunity to express our views more fully at a later date.

Nevertheless, there is also growing evidence that the PPA has encouraged employers to freeze benefit accruals under existing single employer defined benefit plans and has further accelerated the shift to defined contribution pension plans. During the current economic crisis, our Union has observed an increase in the number of employers (whether inside or outside of bankruptcy) seeking to freeze or terminate their defined benefit pension plans, often specifically citing the accelerated funding obligations of PPA.

PPA has made pension funding more onerous, inflexible and volatile by effectively requiring pension plans to be fully funded at all times, a requirement that is based upon the erroneous assumption that all funds can be withdrawn at any time. The consequences of these new funding rules on employers during an economic downturn were predictable as plummeting investment returns ratcheted up an employer's funding obligation. But, in the shadow of the worst economic crisis since the Great Depression, the PPA threatens to require employers to contribute massive amounts to their defined benefit plans when they can afford it the least and when credit and product markets have not yet recovered. Without action, these funding obligations may cause additional bankruptcies and distress terminations, which only will further burden the PBGC and erode the retirement security of American workers.

It must be noted that The Worker, Retiree and Employer Recovery Act of 2008 and IRS technical changes have provided some *breathing room*. However, the relief was only temporary and additional relief for 2010 and 2011 is urgently needed.

For these reasons, in the interest of preserving the defined benefit pension system and fulfilling employee and retiree expectations, the USW urges Congress to provide immediate funding relief to single employer defined benefit plans, including:

1. extending the 7-year period to amortize unfunded liabilities, which will allow plans to pay off their funding shortfalls at a slower, more reasonable rate;
2. allowing additional asset "smoothing," which will reduce shortfall payments for plans that experienced dramatic losses in the stock market. Such a move recognizes that pension obligations are long-term obligations best measured over time rather than as a single snapshot;
3. delaying the PPA benefit limitations and "at-risk" accelerated funding requirements for the duration of the relief period. The limitation on benefit improvements disproportionately penalize Union-represented hourly employees covered by flat dollar benefit formulas, which require periodic adjustment to keep pace with earnings and inflation, whereas most salaried employees enjoy earnings-based formulas which increase automatically and are specifically excluded from these restrictions;
4. repealing the PPA-mandated freeze on benefit accruals for plans that are less than 60 percent funded. As stated before, these provisions penalize workers who are responsible for neither their employer's pension funding decisions nor the macro-economic conditions that have increased pension underfunding; and

5. repealing PPA section 404, which calculates PBGC guarantees based upon the date the plan sponsor filed for bankruptcy rather than the date the plan is actually terminated. Again, this is another example of current law penalizing workers for circumstances entirely beyond their control.

Further, in the interest of fostering the important public policy encouraging companies to maintain existing single employer defined benefit pension plans, this relief should be provided only to plans which have not frozen benefit accruals. Employers should not be rewarded for actions which undermine worker and retirement security.

The need for pension funding relief is urgent because the effects of the current economic crisis continue to place increasing pension funding demands on industrial employers. These demands, ultimately, impair the retirement security of workers and retirees throughout the United States. On behalf of the USW, we encourage Congress to act quickly and provide necessary and appropriate relief for the defined benefit pension system.

Thank you again for the opportunity to appear before you today.

The CHAIRMAN. Thank you, Mr. Jury.

And now, Mr. Jones, please proceed.

**STATEMENT OF RICHARD JONES, CHIEF ACTUARY, RETIREMENT CONSULTING, HEWITT ASSOCIATES, LINCOLNSHIRE, IL**

Mr. JONES. Chairman Harkin, Ranking Member Enzi, and members of the committee, my name is Richard Jones, and I serve as Chief Retirement Actuary at Hewitt Associates. Among other things, Hewitt has expertise and leadership in the design, financial management, and administration of pension plans for mid- to large-sized employers.

We are grateful for the opportunity to get together with you today to discuss how to best ensure American workers can preserve retirement security through harsh economic times.

My testimony today really focuses on three things. First, how the current pension funding requirements in this economic environment are hurting American workers, as well as their retirement security. Second, we would like to offer suggestions for short-term solutions to the issues that are currently being faced in pension funding. And third, we would like to offer a few introductory thoughts on concepts for the future to make sure that tomorrow's retirement plans can preserve retirement security for Americans.

The issue at hand, as we have been discussing, is the impact of the current economic crisis on pension funding. This has greatly increased the pension funding obligations far in excess of what plan sponsors were anticipating just a couple short years ago. We see it producing less spending on job creation. We see it producing less spending on capital investments, and we see it furthering the risk of bankruptcy for many organizations. We also see retirement benefit cutbacks, as well as broader benefit cutbacks and pay cuts, and all of these impacts are hurting retirement security for American workers today.

To its credit, the Federal Government has already offered some short-term relief that was referenced earlier to address the current pension funding crisis and that was well received and greatly appreciated by plan sponsors, but more is needed and more is needed now to address the situations.

In terms of a short-term solution, we believe that further temporary relief is necessary to ease the burden of the accelerated pension funding requirements brought about by the Pension Protection



Act. When the Pension Protection Act was passed, it was based on sound objectives, which is to strengthen pension security and protect participants, but Senator Enzi, you acknowledged that nobody could foresee necessarily the steep downturn in the economy that was right around the corner and the impact that that could have on pension funding. In my 22 years as a practicing pension actuary, I have never seen a more challenging pension financing environment for plan sponsors.

So recognizing the unique nature of pension financing in this particular environment, on a short-term basis, we would like to suggest two things, and really they are pretty simple. No. 1 is expanding the asset-smoothing corridor that is allowed for pension funding calculations from the 90 to 110 percent mark to something wider and, secondarily, allowing the amortization of 2008 pension asset losses over a period of time significantly longer than the 7 years currently called for by the Pension Protection Act.

We believe the need for this is evidenced by the many organizations that are struggling to meet their pension funding obligations but yet want to and need to continue to provide secure pensions for their workers.

This is particularly evident in bankruptcy situations, and in my experience, bankruptcy contributes to participants losing twice.

They lose the first time when the PBGC limits are imposed, as our other panelists have described in great detail.

They lose secondarily because the replacement plans that are put in place when organizations exit bankruptcy, or if somebody finds another job, those are typically less generous than the plans that they had pre-bankruptcy, and they tend to not be of a defined benefit nature. They tend to be of a defined contribution nature. And that is the second way that retirement security is hurt during the bankruptcy process.

Hewitt has also been spending a lot of time thinking about better long-term designs for pension benefits so that we can learn from the lessons of this recession, as well as previous downturns in the economy. We believe those designs need to be flexible. They need to provide better risk management characteristics and reduce volatility for both employees and plan sponsors, and most importantly, they need to be secure for participants.

More information on our concepts for the future are included in my written testimony that was previously submitted.

Thank you very much for the chance to join you today, and I look forward to fielding any questions you may have.

[The prepared statement of Mr. Jones follows:]

#### PREPARED STATEMENT OF RICHARD JONES

##### SUMMARY

##### THE PROBLEM

The last 15 years have brought monumental changes to the pension landscape. Retirement plan designs and mix have shifted in response to economic and regulatory changes and employee needs. In this economic turmoil, many companies are feeling financially forced to take actions today that will create a retirement income gap that will be very difficult for many American workers to fill unless policymakers take steps to assist with pension funding needs aggravated by the current recession. In the United States, approximately 25 percent of the Fortune 500 plans are frozen and some studies show that this could increase to 60–70 percent by 2012. While the

Federal Government has taken significant steps to lessen the near-term cash contribution requirements associated with the current recessionary environment, many companies still need greater short-term relief in response to the recession. Meeting the current pension funding requirements is forcing many employers to curtail their investment in new jobs, cut back on capital expenditures and implement further retirement plan cutbacks, which in turn is slowing the economic recovery. The time to fix this problem is now.

The need for this government relief is evidenced by the many companies struggling to meet their obligations. It is particularly significant in cases that we are here to discuss today—bankruptcy. The essential retirement income problem with company reorganizations or Chapter 11 bankruptcies is that once the defined benefit plan is frozen and terminated, a participant's future retirement benefits are significantly reduced. We need funding relief as a solution to help maintain ongoing defined benefits, provide a level of protection for mid-career workers, preserve jobs and avoid slowing down the economic recovery.

#### SHORT-TERM FIXES

We recommend action to provide temporary relief to ease the burden of the accelerated funding requirements of the Pension Protection Act of 2006 (PPA). The original intent of PPA—to ensure sound funding for defined benefit plans—is sound, but when it was enacted, no one foresaw the deep recession ahead. Recognizing the unique nature of those events in financial history, we recommend changes to provide great flexibility for defined benefit pension plan funding:

- We suggest either temporarily or permanently widening the asset “smoothing” corridor for pension funding calculations from 90 percent to 110 percent of market value, to 80 percent to 120 percent of market value, **and**
- Allowing amortization of 2008 asset losses over a period of time significantly longer than the 7 years currently required by PPA.

#### LONG-TERM SOLUTION

We must learn from the lessons of this recession and create a new, modern, 21st Century pension program that guards against these problems. Hewitt has called for the reinvention of pension plans to create risk sharing mechanisms with third parties. Hewitt's conceptual models for the future include:

- Participant accounts managed on a plan-wide basis to ensure prudent investment approaches;
- Life cycle-based account earnings that put in place appropriate risk/return characteristics;
- Flexibility in employer, employee, and third party funding;
- Flexibility in sponsorship; and
- Annuity options during retirement years.

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Chairman Harkin, Ranking Member Enzi, and members of the committee, I am extremely grateful for the opportunity to appear before you today to provide testimony to the committee as it examines how best to ensure that American workers can preserve their retirement security in harsh economic times. Pension funding is one of the most critical challenges currently facing employers, and the eventual solutions will have a significant impact on the continued prosperity of millions of American workers.

My name is Richard Jones and I serve as the Chief Actuary for Hewitt's Retirement Consulting Practice. Hewitt Associates is a global human resources outsourcing and consulting company providing services to major employers in more than 30 countries. We employ 23,000 associates worldwide. Headquartered in Lincolnshire, IL, we serve more than 2,000 U.S. employers from offices in 18 States, including many of the States represented by the members of this distinguished committee.

As a global leader in integrated retirement solutions, Hewitt Associates has extensive experience supporting clients in pension plan design, finance, and administration for mid- to large-sized employers. We advise more than 2,500 clients on more than 3,500 pension plans and administer defined benefit plans for more than 385 clients. In total, our clients represent more than 10 million plan participants.

To avoid some of the perils that the committee is addressing today, my testimony will focus on the public policy need for greater flexibility in defined benefit financing and management. Our experience and data show that defined benefit plans, coupled with defined contribution plans, have generally been effective at producing reliable retirement security for covered Americans. However, many defined benefit plans are

now in jeopardy due to a struggling economy and to regulatory changes that limit the flexibility of how and when companies fund their plans. The imminent need is for temporary relief to help employers solve the funding problems exacerbated by the recession. Longer term, we believe that future pension plans will have to be designed differently so as to incorporate third-party risk sharing, which would give participants more security while allowing employers and workers to assume a manageable amount of risk.

The need for this risk-sharing model is evidenced by the recent examples of employees losing significant portions of their pension savings after their employer had to file for bankruptcy. Future models must guard against this possibility on the front end, because we cannot afford limitless bankruptcy protection. The future of retirement income in corporate America requires employers to offer both defined benefit and defined contribution plans. To do this, we need to reinvent defined benefit plans so that they are more flexible and allow both companies and employees to better manage and diversify risks.

#### I. PERILS IN THE CURRENT ENVIRONMENT

The last 15 years have brought monumental changes to the pension landscape. Retirement plan designs and mix have shifted in response to economic and regulatory changes and to employee needs. As the risks to employers have grown, companies have increasingly chosen to close or freeze their plans. Unless additional support is provided to assist with pension funding needs aggravated by the current recession, this trend is expected to continue. In the United States, approximately 25 percent of the *Fortune 500* plans are frozen, and some studies show that this could increase to 60 percent or 70 percent by 2012.<sup>1</sup> We believe the “survival” actions being taken by companies today—pension plan freezes and cutbacks, and similar actions in 401(k) and other defined contribution plans—are contributing to a retirement savings gap that is already very difficult for many American workers to replace. But policymakers and employers can take steps now to improve the outlook for retirement plans as we await a full-blown economic recovery.

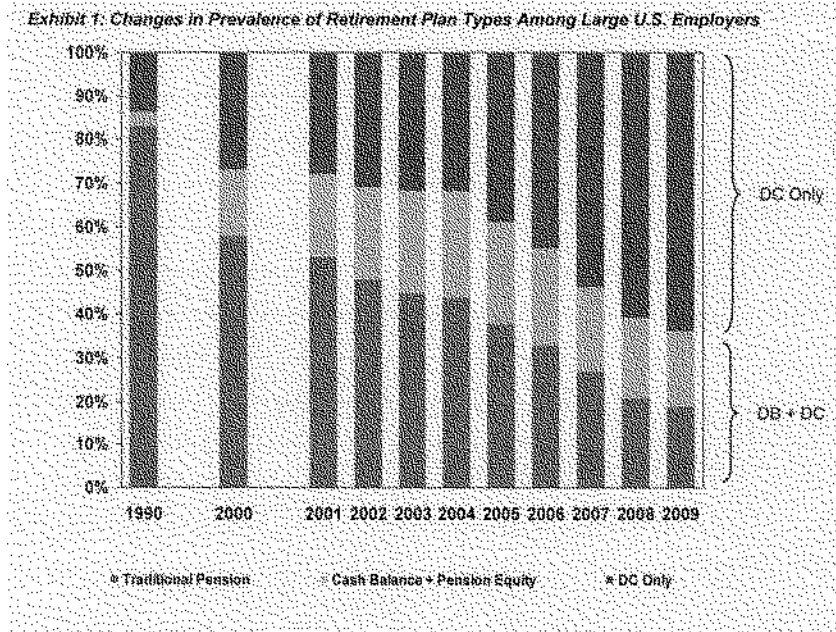
##### *Retirement Plan Design*

As pension issues have become more complex, employers have increasingly shifted from defined benefit pension plans to defined contribution plans. This move partly reflects workforce needs and preferences, as well as the huge financial exposure created by defined benefit plans. But our experience also tells us that another key driver has been increasing regulatory requirements and the recognition of the financial exposure created by defined benefit pension plans. Recent regulatory changes, including more stringent FASB/SEC requirements, as well as adoption of the Pension Protection Act of 2006 (PPA), have advanced the “mark-to-market” requirements of retirement plan financing and unfortunately have intensified the shift away from defined benefit pensions.

Exhibit 1 illustrates the movement away from defined benefit pensions among large U.S. employers in the last 20 years.<sup>2</sup> Whereas defined benefit plans were the predominant form of retirement plans in 1990, the tables have now turned, with defined contribution plans becoming the prevailing plan. This trend will continue unless steps are taken to dampen the volatility or otherwise soften the blow of defined benefit financing.

<sup>1</sup>McKinsey & Company, “The Coming Shakeout in the Defined Benefit Marke,” (2007).

<sup>2</sup>Hewitt Associates, SpecSummary™ database (2009).

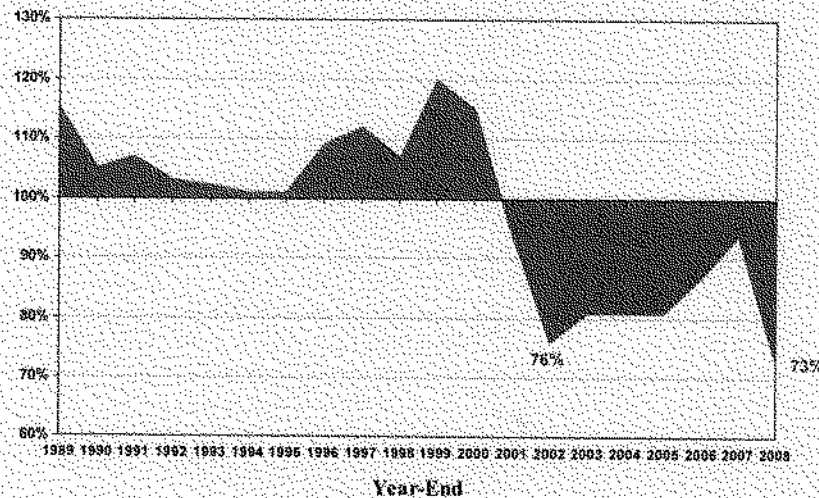


With more Americans now relying on defined contribution plans for all or part of their retirement income, these plans must now deliver more. Automatic enrollment and automatic escalation practices and policies in 401(k) plans are helping increase both participation and the rate of savings. Unfortunately, approximately 7 percent of *Fortune 500* organizations suspended their 401(k) matches for 2009 in response to the dire economic conditions. We believe around half of these organizations will reinstate the matching contributions in 2010, but this practice is troubling because it can reduce the cyclical benefits to employees of dollar cost averaging in investments.

#### *Financial Requirements*

The funded status of the Nation's pension funds has varied dramatically over the past 20 years. Significant swings in interest rates, coupled with two challenging equity environments in the last decade, have created this volatility. Exhibit 2 illustrates the average pension accounting funded status among the S&P 500—as measured by the FAS 87 projected benefit obligation calculations used to drive income statement and balance sheet calculations.<sup>3</sup> This data documents the fact that defined benefit pension plans have historically been reasonably well funded. However, as shown below, the two equity market crises of this decade have battered pension plan funded status.

<sup>3</sup> Hewitt Associates, "Study Findings: Benefit Plan Disclosure Under FASB Statements No. 87 and 106," (2009).

**Exhibit 2: Volatility in Pension-Funded Status Over Last 20 Years**

Congress, the IRS, and the Treasury Department have taken steps to lessen the near-term cash contribution requirements associated with the current recessionary environment, ranging from passage of the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) to more recent guidance from the IRS and Treasury regarding flexibility when selecting discount rates and asset smoothing techniques. These steps have been widely embraced and have been beneficial to the funding by defined benefit plan sponsors, though additional funding relief is badly needed on a temporary basis.

Despite the significance of some of these measures, many companies need greater short-term relief in response to the recession. Meeting the current pension funding requirements is forcing many employers to curtail their investment in new jobs, cut back on capital expenditures (also typically tied to jobs), and implement further retirement plan cutbacks. In the most extreme cases, the near-term requirements are adding to financial distress and could contribute to potential bankruptcy.

Another financial option and strategy for pensions, partly enabled by methodology employed in the PPA, includes "liability-driven investing" (often referred to as "LDI"). Many pension plan sponsors were anticipating adoption of LDI investment techniques to preserve pension-funded status and protect funded status levels. However, the swift onset of the market downturns in 2008 and 2009 required many organizations to put those plans on "hold," pending recovery in the financial markets. Full adoption of LDI techniques following the market downturns would be the equivalent of "selling low and buying high." Many pension plan sponsors are planning to adopt dynamic investment approaches to help secure funded status gains as the market improves. A continued orderly transition back to financial health for America's pension plans will enable this.

#### *Regulatory Requirements*

Many companies, though fully supportive of sound financing of defined benefit pension plans, are becoming increasingly concerned with the staggering number of requirements for defined benefit pension plan sponsors following the passage of the PPA. The original intent of the act—to ensure funding for defined benefit plans—is sound. But when the legislation was enacted, no one foresaw the deep recession ahead. Unfortunately, significant flexibility in how plans are managed has been lost, and the stringent requirements are commanding the attention of chief financial officers, treasurers, and other business leaders. In particular, the loss of flexibility in funding/credit balances and associated funded status reporting requirements have become challenging.

Although management oversight of pension issues is important and appropriate, understanding and complying with PPA requirements has become so onerous that it is taking the attention of business leaders when they need to place full focus on managing their core businesses during this critical economic period. Now is the time

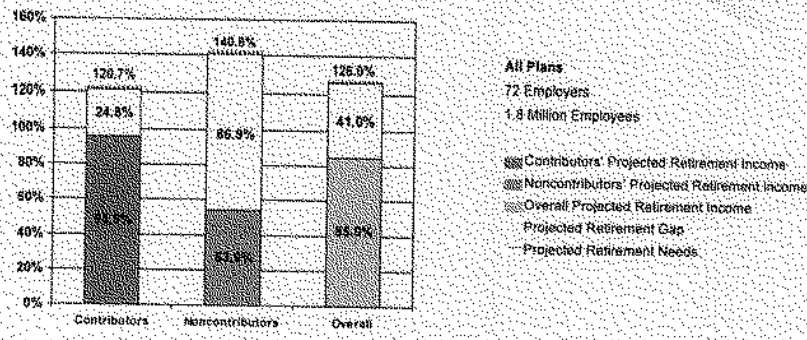
to create more flexibility within the system, without undermining the PPA and the long-term strength of defined benefit plan funding, to allow as many employers as possible to continue offering retirement plans through the recession and to create a bridge to next-generation retirement plans.

## II. IMPACT OF THE CURRENT ENVIRONMENT ON PARTICIPANTS

The current retirement income plan environment as it translates to participant benefit levels is well documented in Hewitt's 2008 study titled "Total Retirement Income at Large Companies: The Real Deal." This study looks at anticipated retirement income needs and sources for nearly 2 million current employees at 72 large U.S. employers. The sources of income include projected defined benefit pension, defined contribution, and social security benefits. The results of our analysis suggest that many American workers—particularly those who are not contributing to an employer-sponsored plan—are not well positioned to reproduce pre-retirement living standards during their retirement years. And these conclusions were reached even before factoring in the effect of the economic crises of 2008 and 2009.

Exhibit 3 summarizes the high-level results of our analysis. The study found that employees contributing to 401(k) and other employer-sponsored plans are projected to produce, on average, a respectable 95.9 percent income replacement at retirement age 65, while those not currently contributing will produce only 53.9 percent.

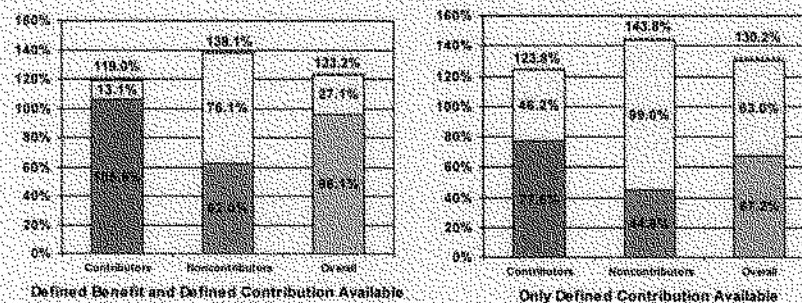
**Exhibit 3: Projected Retirement Income Replacement Compared to Retirement Needs**



### Pension Plan Availability

Retirement income challenges are further exacerbated when defined benefit pension benefits are not available. The average projected age 65 income replacement for those employees eligible for defined benefit pension benefits is 105.9 percent (assuming they are contributing to 401(k) and other employer-sponsored programs). However, that figure drops by 28 percentage points, to 77.6 percent, for employees who are only eligible for defined contribution plan benefits. Exhibit 4 depicts this drop along with the associated retirement needs.

**Exhibit 4: Projected Retirement Income Replacement by Plan Availability**



### *2008 and 2009 Economic Crisis*

The findings summarized above are calculated based on participants' account balances before the significant economic downturn experienced in 2008 and early 2009. A Hewitt study this year estimated the impact of recent market experience on anticipated retirement income replacement. Those calculations suggest that retirees will experience a further reduction in retirement income replacement expectations of approximately 4 percent. An economic recovery and better employee savings behaviors could reverse some of this downward pressure for properly invested participants. However, the potential reductions resulting from both movements away from defined benefit pensions and the current economic crisis are significant, and it is unlikely that, in the short term, most employees will be able to fully recover what they've lost.

### III. IMPACT OF PENSIONS ON FINANCIALLY DISTRESSED AND BANKRUPT ORGANIZATIONS—AND ON THEIR EMPLOYEES

When companies are in dire financial straits, the defined benefit plan is a common area to look to for cost cutting. Frequently, the defined benefit plan is frozen—never to return—and lower-valued benefits are typically provided in its place. In a company reorganization or Chapter 11 bankruptcy, benefits are protected by the PBGC, but only to a point.

While some workers and retirees see little or no cutback in benefits upon plan freeze and bankruptcy, others, depending on the plan, can see significant reductions. And, while benefits for many existing retirees may not decrease, retirees close to retirement age may suffer the greatest loss. These mid- to late-career workers need to adjust their retirement savings to make up for the lost retirement benefits in a very short period of time. This group of workers is vulnerable not only with respect to their diminished retirement benefits, but also in their ability to locate a higher-paying job which, of course, hurts their ability to save for retirement. In addition, these workers have less ability to take long-term risks with any savings or 401(k) plans, which limits their upside potential. A solution is needed to help maintain ongoing defined benefits to provide a level of protection needed for this group.

This section discusses how financial distress and bankruptcy can affect benefit value through plan design changes, organization change and restructurings, and distress termination and PBGC takeover of the plan.

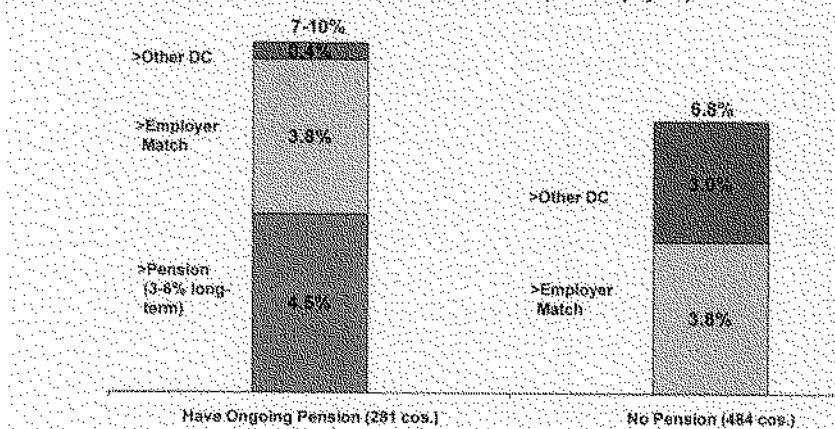
#### *Plan Design Changes*

Despite reports that the recession has “ended,” we continue to meet with employers on a daily basis who understandably ask for additional ways to cut costs in these tough economic times. In many cases, those efforts are necessary to create resources to fund the current pension obligations. Assets have been reduced by the recent financial turmoil, and the PPA regulations mean that funding obligations are now due much sooner. In some cases, these discussions lead to planning for the eventual termination of the pension plan to avoid further volatility. And even plan sponsors who wish to maintain an ongoing defined benefit plan, despite financial challenges, are required by the PPA to freeze participant accruals when a plan's funding deteriorates.

Organizations continuing to sponsor defined benefit pension plans provide retirement income benefit value equal to 7 percent to 10 percent of pay per year, while those providing defined contribution benefits provide maximum benefit value equal to 6.8 percent of pay on average.<sup>4</sup> Exhibit 5 illustrates the various components of this benefit value.

<sup>4</sup>Hewitt Associates, SpecSummary™ database (2009).

Exhibit 5: Employer-Provided Retirement Benefits Value (as % of payroll)



This shift from higher benefit value, including defined benefit pension plans, to lower-value defined contribution plans, is accompanied by the shift in the relative safety of the programs to participants. Under defined contribution plans, participants are responsible for managing both investment and longevity risks, although employers recognize that most participants need increased education and advice to give them the knowledge and experience to do this effectively.

#### *Organizational Change and Restructurings*

We also see evidence of organizations moving away from defined benefit plan sponsorship in company reorganizations. In financially troubled situations where an asset sale occurs, the sale rarely includes the pension plan. This has been the case for dozens of pension plans in 2008 and 2009 and illustrates why it is vital that future defined benefit plans diversify risk. Risk sharing with third parties would have helped ensure corporate willingness to continue pension plan sponsorship.

#### *"Distress" Pension Termination and Pension Benefit Guaranty Corporation (PBGC) Takeover*

Participant losses are not limited to employer actions before bankruptcy. Upon bankruptcy and PBGC takeover, participants stand to lose benefit value. Any benefits an employee earned in excess of the PBGC maximum guarantee are generally lost. The current PBGC maximum guarantee is \$4,500 per month in 2009—generally affecting longer-service and higher-paid workers. Also, in many cases, pension plans provide subsidies for employees retiring early. Upon a PBGC takeover, employees not already meeting the requirements for a subsidy can never grow into it in the future. Based on PBGC rules, this includes any participants who actually recently met the eligibility for a subsidy. These participants may have anticipated this subsidy when making other retirement plans and can suffer a significant reduction in expected retirement pay. They may have, in fact, already retired and begun to receive benefits, having just met the eligibility. And, while perhaps less significant, any employees who have not met minimum vesting standards, such as 5 years of service, will lose their entire benefit.

Hewitt's conceptual models for the future would address this shortfall. They include fully funded accounts, which leverage professional asset management as well as pooling for risks during retirement years—greatly mitigating the potential for loss.

#### IV. REINVENTING RETIREMENT SECURITY IN AMERICA

Providing adequate retirement income for working Americans presents major challenges for us as a nation. As the baby boomers age, our failures to prepare adequately for retirement will become increasingly apparent. Many Americans already find that their retirement savings are not sufficient to reproduce preretirement living standards. This situation has worsened with the current recession and resulting employer and employee actions regarding pensions and other retirement plans.



*We don't believe that Congress should expect employers will return to defined benefit pension plans in their current form, although there may be continued interest in alternative plan designs if Congress can provide additional flexibility and supportive underlying policies.* Otherwise, the risks and exposure to corporate balance sheets is just too large for many employers to begin “jumping back in the ring” in any meaningful way.

At the same time, *defined contribution and 401(k) plans* cannot be the sole long-term vehicle for individual and employer-provided retirement savings. In other testimony, Hewitt has suggested steps that might be taken to strengthen defined contribution plans in the future.<sup>5</sup>

We believe the future of retirement income should include both defined benefit and defined contribution plans. This necessitates the reinvention of defined benefit plans structured to better manage risks. Effective third-party and participant risk-sharing mechanisms need to be better developed. Employees and retirees need to understand their risks, and they also need to understand when it is appropriate to involve others in the management of those risks. Investment and longevity risks are too challenging for retirees with little or no marginal resources to manage. Said differently, retirees with only enough savings to “get by” shouldn't be taking on the full risks of managing their savings over their life expectancies or being overly cautious for fear of running out of assets.

Hewitt has compiled a number of potential models that incorporate increased flexibility and risk sharing in pension plans that could better serve employers and retirees in the future. These models will create increased security on the front end, which would better inoculate employees from the risks associated with bankruptcies and reorganizations.

Our conceptual models incorporate:

- Participant accounts managed on a plan-wide basis to ensure prudent investment approaches and professional asset management and techniques;
- “Life cycle”-based account earnings—so the appropriate risk/return characteristics are in place during all phases of employment and retirement;
- Flexibility in employer and employee funding—allowing different organizations and industries to participate at the appropriate level, fostering global competitiveness;
- Flexibility in plan sponsorship—allowing different levels of risk taking at the employer level, or alternatively shifting sponsorship to third-party organizations; and
- Annuity requirements and options—to ensure adequate long-term investment and longevity protection for workers, retirees, and their families.

#### V. HOW CONGRESS CAN HELP

Throughout this testimony, we have noted situations where participants are in peril because of the loss of retirement income benefits due to both the recession and the changes in employer-sponsored retirement plans. In the short term, we encourage Congress to take actions that preserve, as much as possible, the funding and other flexibility necessary for employers to provide ongoing and meaningful pension benefits in the current environment. This will lead to continued and ongoing benefits for as many participants as possible, and will help ensure that we exit the recession without digging an even deeper hole for the current and future generations' retirement income prospects.

Specifically, we recommend urgent action to provide temporary relief at least to ease the burden of the accelerated funding requirements of the PPA. In enacting the PPA, no one foresaw the occurrence of this recession, which has been described by many commentators as the worst since the Great Depression. For that reason, the following changes are needed with respect to defined benefit pension plan funding:

- Widening—either temporarily or permanently—the asset “smoothing” corridor for pension funding calculations from 90 percent to 110 percent of market value, to 80 percent to 120 percent of market value (80 percent to 120 percent was allowed under pre-PPA rules); and

<sup>5</sup>Alison Borland. Hearing before the ERISA Advisory Council to the Department of Labor. “Approaches for Retirement Security in the U.S.” (Date: September 17, 2009)

Alison Borland. U.S. Congress. Hearing of the House Subcommittee on Health, Employment, Labor and Pensions. “401(k) Fair Disclosure for Retirement Security Act of 2009.” (Date: April 22, 2009)

- Allowing amortization of 2008 asset losses over a period of time significantly longer than 7 years, recognizing the unique nature of those events in financial history.

These provisions have been recommended and proposed by Hewitt and other groups in the past 12 months and are necessary to create sufficient smoothing in pension funding requirements in light of current economic times.

We need to exit the current recession with a workforce prepared for retirement and the resources necessary to continue fueling the economy. As a nation, we cannot afford to plan for unlimited protections in bankruptcy. Structures must be put in place that will allow companies to thrive in the post-recession environment, rather than “hunkering down” to prevent losses in bankruptcy and other situations.

This plan sponsor flexibility is also necessary to bridge to the next generation of retirement plan design and management in the United States. Congress needs to work with all stakeholders to develop this next generation of tax-favored retirement income structures to support effective third-party and participant risk-sharing mechanisms.

The CHAIRMAN. Thank you very much, Mr. Jones, and thank you all for your excellent testimony.

We will begin our first round of questioning for 5 minutes each, and I will start. Again, I will start with you, Mr. Jones.

You suggest that we should expand the asset-smoothing from 90 to 110, and you did not say it verbally, but in your written testimony, you say 80 to 120 percent of market value. Can you just give me a little bit of the background? Why was 90 to 110 picked in the first place?

Mr. JONES. You know, I am not familiar with that. I know that that was written into the Pension Protection Act, which as I understand, the intent of that was to get more toward a mark-to-market mentality of pension financing so there is more of a real-time measure of how well the plan is funded at any particular point in time. And narrowing that band—80 to 120 was allowed under pre-Pension Protection Act law. You could smooth your assets within that 80 to 120 band. The Pension Protection Act narrowed that to 90 to 110, and I believe that was all of the intent of getting closer to the mark-to-market.

The CHAIRMAN. Inform us. What would be the dangers, the downside of expanding that to 80 to 120?

Mr. JONES. The danger is if you have got 80 cents on the dollar of the assets, you are measuring costs based on the dollar, but you have really got 80 cents in the trust. So to the extent that you are under-contributing in the lean years, on the flip side of that, during the strong years, you may have \$1.20 in the bank, but you are measuring the costs and producing further contribution requirements into the trust, assuming that there is only \$1 in it.

It is intended to balance itself out over time, and if you look at pension-funded ratios historically, they have tended to be fairly strong because the smoothing mechanisms have allowed that strength to continue during good times and bad with the smoothing techniques.

The CHAIRMAN. Thank you for that.

Now, last you say in your written statement that the asset amortization should be significantly longer than 7 years. You do not say how long. Do you believe in the 2 plus 7 concept that has been floated out there, or are you in favor of just a straight line, giving it more than 7 years?

Mr. JONES. The 2 plus 7 certainly is a step in the right direction where it would be interest only for 2 years and then amortization

for 7 years. Fifteen years has also been floated in proposals, and I think that is also a rational approach to handling those 2008 losses.

The CHAIRMAN. Ms. Bovbjerg, I want to ask you again about the 3 years you said it takes to calculate final benefits and the problems that engenders. You said sometimes it takes even longer than 3 years, up to 9 years. Is there any way that the process for calculating their final pensions could be streamlined or sped up some way so that retirees would not have to make these big paybacks? They are just a little bit uncertain. They may have gone ahead and set up their retirement accounts and bought another place to live or whatever, and then all of a sudden, they find they cannot afford whatever they have set up.

Ms. BOVBJERG. Absolutely. And once you are already retired—it, of course, depends on your age, but you may not be in a position where you could go out and adjust to a much lower benefit by getting another job. If you have seen the press lately, it can be very hard for an older worker to find a new job.

We think that there are ways to make this process a little more streamlined, more friendly to participants. PBGC does a good job initially going out and talking to participants in companies where they are on the verge of bankruptcy. PBGC is about to take the plan. We talked to a number of workers who gave them very high marks for the things they do initially.

But they need to do more to focus particularly on the participants in very complex plans where it is likely that some of the guaranteed benefits will be lower than what people were expecting so that they can get those estimated benefits to be more accurate, they can get final benefit determinations to people more quickly. And they need to talk to people while they are doing this so that people understand what is going on.

But the benefits are set in law. There is not too much you can do to change that unless you wanted to change the guarantees in the law.

The CHAIRMAN. I have 12 seconds to ask Mr. Jury a question. Do you believe funding relief should come with strings that require companies to keep their plans for some period of time or maybe limit executive compensation?

Mr. JURY. Yes, Senator, particularly as it relates to funding relief that is tied to employers maintaining their plans. We do not believe that employers should receive a benefit for having frozen plans and thus receive the funding benefit relief.

We have not advocated at this point tying it to executive compensation, but as you know, we at the Steelworkers and within the labor movement have watched executive compensation closely on many levels and many issues.

The CHAIRMAN. Thank you.

I would just state that I had supported the Pension Protection Act in its final version as it went through. I happen to be one who believes strongly in the defined benefit pension program, and you state that basically has contributed to making the shift from defined benefit to defined contribution.

I recently read a book within the last year called The Great Risk Shift and how more and more risk is being shifted to individuals.

And individuals just, obviously, cannot cope with that kind of risk during their lifetime. We need to spread it more broadly.

I am dismayed to find now that after 3 years, that the bill we passed actually has propelled us more toward the defined contribution plan rather than defined benefit plan. Yes, there is my book. And I am hopeful that we can find a way to start returning back to more defined benefit plans. But that is just my view. I am not asking a question on that.

Senator Enzi.

Senator ENZI. Thank you, Mr. Chairman.

I will begin with Ms. Bovbjerg with GAO. This situation of Delphi's pension plan poses some unique questions for the future of our Nation's defined benefit system. Is this not the first time that pension plans have been taken over by the PBGC where third parties will top up the workers and retirees' pensions, as if the pension plan had never gone to the PBGC?

In the instance before us, it is possible that if GM decides to step in again, it will most certainly be using Federal Government bailout dollars for the top-up. What kind of precedent is this setting for future pension plans that are taken over by the PBGC, and what does it say about the use of taxpayer dollars for the top-up?

Ms. BOVBJERG. I hope you will be relieved to hear that we have work underway on auto industry pensions, the PBGC, and the auto bailout TARP because we were very interested in this question of the role of the Federal Government as both majority shareholder in GM and insurer of the defined benefit pensions.

I was very interested in the New York Times article recently that said that the Delphi top-up was being paid by GM plan assets, which I had not heard before.

This raises really good questions that we hope we will have an answer for you on in the winter.

I did want to say that LTV Steel may have topped up benefits back in the 1990s when their plans went out, but they did have to take their plans back after they topped up the benefits. There were two pension plan bankruptcies with that company.

Senator ENZI. OK, thank you.

The drafters of ERISA back in the 1970s were careful not to have the PBGC give too generous of benefits in plans taken over by the PBGC, and the rationale was that too generous of benefits given, the companies would make promises way beyond the means and then they would dump their plans on the PBGC. And since that time and especially in light of the huge deficit at PBGC, Congress has not changed that philosophy.

By having companies make these top-ups to pension plans, is it not trying to circumvent what the 1970s' Congress was trying to prevent happening in the first place?

Ms. BOVBJERG. Well, I think you raise this fundamental point. Why is someone not paying for these benefits? If an employer is promising benefits to their workers, they should be funding those benefits.

Now, I appreciate the difficulty of trying to achieve the balance of how and when those benefits are funded, particularly in an economic downturn, that balance is important. You do not want to have a situation where an employer, in order to make their pension

contribution, has to go into bankruptcy or has to lay off employees. No one wants that.

On the other hand, employers who do not fund their benefits and their plans go to PBGC, you have the kind of situation that we talked about with the steel workers, and we have talked about with Delphi, where people are not able to get their full benefit, and it is because the benefits are not funded.

Senator ENZI. And our attempt is to make sure that the companies are not gaming the system at the same time.

Mr. Gump, I want to thank you for your very compelling testimony today. I, too, asked the Department of the Treasury for information concerning the Delphi pension arrangement. However, other than a promise to get back to my staff, I have not received any information to date.

Do you believe that if the negotiations between the Administration—GM and Delphi—had been more transparent, then the Delphi salaried retirees would have had a chance to comment on that situation?

Mr. GUMP. We would have at least had a chance to comment on the situation, and that is a part of the problem here, that PBGC followed a summary termination process and totally excluded all of the other beneficiaries. That process, as I understand it—and I am no ERISA lawyer or anything—is a process that was only supposed to be used in small pension plans, and yet, this is one of the largest that it has ever had to take over and that process was followed. In fact, it was done—I believe it was on a Sunday—and none of us knew about it. Essentially it was done in secret. So yes, if it had been required to have been more open, we would have had a better opportunity, I think, to participate.

Senator ENZI. We will see if we can make that happen.

Mr. Jones, at the end of last year, the Federal Government actuaries told us that companies can wait to make pension funding benefit decisions as late as the third quarter of the calendar year. At the end of 2008, when we passed the Worker, Retiree and Employer Recovery Act, the Federal Government actuaries advocated that we could have waited until September of this year to act.

However, many companies we have talked with state that yearly spending decisions, including pension funding payments, need to be decided at the end of the year. I am afraid that if we listened to the Federal Government actuaries' guidance this year, we might be told to wait until September of next year.

Could you give us insight into how companies' spending decisions are made? Should we wait until September of next year to act?

Mr. JONES. No, I do not think you should wait until September of next year to act. That is the deadline for when cash contributions need to be contributed, and organizations are complex and they obviously need to make decisions much sooner. No, I would not wait.

Senator ENZI. Thank you.

My time has expired. I do have questions that I hope you will allow me to submit in writing and get an answer to because it is critical to this debate. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Enzi.

Senator Mikulski.

## STATEMENT OF SENATOR MIKULSKI

Senator MIKULSKI. Thank you very much, Mr. Chairman. I ask unanimous consent that my opening statement be included in the record.

The CHAIRMAN. Certainly.

[The prepared statement of Senator Mikulski follows:]

## PREPARED STATEMENT OF SENATOR MIKULSKI

I thank Senator Harkin for holding this hearing today. While we're on the verge of an historic victory to improve health benefits, we also need to stand sentry for worker's retirement benefits. The financial crisis may have started on Wall Street, but this recession certainly has hurt everyone, especially workers and retirees who assumed that if they worked hard and played by the rules, they could retire with dignity and security.

It has also hurt companies and employers—that have been pillars of their community—that take pride in how they treated their employees. Today they are struggling to keep benefits in place and keep the lights on. The moral of the story is everyone is facing a challenge. Employers are challenged to fulfill their pension responsibilities and retirees and workers are challenged to find a way to retire securely.

Congress has poured money into Wall Street so it is not surprising that it's only on Wall Street that we see recovery taking place. But we should be focusing resources where they are needed: on workers who are the backbone of our economy, on the good guy employers trying to do the right thing, and on taxpayers who are responsible if something goes wrong. That's what I hope we can talk about today.

I have a few simple principles for pension issues. The first is that promises made must be promises kept. But we all know that isn't always easy. So we in Congress must work to help "good guy" businesses who still offer pensions to their employees. We know that these companies are competing in a global economy where offering a pension is voluntary, so we need to work with these companies.

We also need to do no harm. My top priority is jobs, jobs, jobs. We need to do everything we can to create and save them. I won't support pension legislation unless it does that. We need any relief to be targeted, timely and temporary. Comprehensive reform passed in 2005 hasn't even taken full effect. The principles of that reform were sound and we shouldn't undermine them.

As our response focuses on the temporary shock to our economy, we need to make sure we don't create permanent consequences. We also need to be bipartisan. This committee doesn't work on pensions to score political points. We do so because we all have citizens in our States who need us to fight for the retirement benefits they have earned. We have been bipartisan before and I hope that is how we proceed now. And most importantly, we need to act on behalf of workers and retirees, making sure what we do helps them and doesn't help fund golden parachutes or stock buy-backs and dividends.

We're focusing not only on what we can do to keep pensions alive, but also on what to do about those that have already ended.

Senator Brown has his constituents here because their pensions are being slashed as PBGC takes them over. I know all too well about this problem. I worked with his predecessor Senator DeWine to try to address it.

Like Ohio, my State used to have lots of manufacturing jobs too. They had good pay and good benefits—like a real pension plan. And like the Delphi employees here today, Bethlehem Steel employees in my State had their pensions taken over by PBGC.

When Bethlehem Steel went into bankruptcy, it broke our hearts. They were our neighbors. They worked all of their lives for their pensions in hot, dirty and often dangerous circumstances. Their hard-earned pensions went to PBGC. But when people started to get their benefits, PBGC made a math mistake. Workers who were forced to take pensions below what they had earned were then told that PBGC had made an overpayment and that they had to pay it back.

Well, I went to bat because I didn't want my constituents to pay for a mistake PBGC made. But we couldn't change what had already happened. Workers had to pay back part of the pensions they had earned. It was a very serious hardship.

Dealing with PBGC at the time was really one royal pain. And if I, as a Senator, was running into bureaucratic rigidity, then I can only imagine how hard it was for these retirees. I know we can't un-ring that bell, but I've continued to ring the alarm that we need a better PBGC. That's something I've worked on for a long time—a process that is predictable and timely and respectful; a process that is an investment attitude that is humble and prudent.

But no matter how much we improve the PBGC, Congress needs to try and prevent what happened at Bethlehem Steel and is happening at Delphi from happening in the first place. Everyone is talking about economic recovery, but we're here today because any recovery that is taking place is only happening in the financial pages—not the real world.

I am outraged with these TARP twerps paying themselves billion dollar bonuses at the same time that retirees are having to pay back the pensions they earned to PBGC. And at the same time that upstanding employers can't get the credit they need and have to scale back benefits or lay-off workers because Wall Street masters of the universe took us into a black hole. I will make sure that any legislation helps the people that deserve help. Not those who we've already helped and don't appreciate it.

I do have flashing yellow lights about relaxing pensions funding rules. It's led to trouble before. PBGC has deficits because companies don't pay enough to their pensions when they are healthy and can't pay enough when the PBGC has to assume the plan. For more than a year, companies have said they need taxpayers to sacrifice so they can stay afloat.

I have questions about funding relief. How do we know if there is a need? If there is a need, how do we know how much relief to grant? If there is a need, can we meet it without bailing out bad decisions? Can we make sure that only the companies that need the help take it? Can we reward those good guy employers that acted responsibly? Can we make sure that we help workers and retirees, nor corporate executives and Wall Street TARP twerps?

I won't tolerate another boardroom bailout or let a bill go forward to give taxpayer help to companies that don't need any more of it. But, while I have flashing lights, I also know that many good guy employers are struggling. They want to meet their obligations without risking their businesses or laying off employees who they consider part of their family.

Like all of us—I wish we didn't have to be here today. Pensions are supposed to be a source of stability. But today, workers and retirees are losing sleep over losing their pensions. And employers are losing sleep over having to choose whether to continue their pension plan or continue their business.

Our economy is just barely off of rock bottom. We need to make sure pension obligations do no harm and good guy businesses can start to recover. But we also need to make sure that short-term relief doesn't turn into long-term pension deficits. I am on the side of employees counting on promised pensions, good guy businesses trying to meet their obligations and taxpayers who shouldn't have to bail out the PBGC.

I look forward to hearing the witnesses' ideas about how to help and about how we can work together to strengthen the link between hard work and a solid retirement and how to help our businesses get to recovery.

Senator MIKULSKI. Mr. Chairman and also members, I want to acknowledge the fact that you will have a gifted witness in the second panel, Mr. Ron Peterson, running an iconic organization in the State of Maryland called Johns Hopkins.

But, Mr. Chairman—and my question will go to Mr. Jury from Bethlehem Steel.

We also had an iconic institution in Maryland. It was called Bethlehem Steel. It used to employ 18,000 people. Many people started out at something called the Point, worked their way up, fed their family, had good wages because they were represented by the Steelworkers. And they kept America going from the beginning of the Industrial Revolution through the great wars where we furnished armaments. Bethlehem Steel is now owned by a Russian oligarch.

And so, as a result, today the largest employer now in the State of Maryland in the private sector, but nonprofit, is Johns Hopkins.

Many of the men who worked at Bethlehem Steel and women had jobs they hated, that were dirty and dangerous, so that their children could have jobs that they love. And now many of them are working at Hopkins or the University of Maryland in accounting to medicine.

But along the way, something terrible happened to our steel industry due to foreign imports and dumping, and neither Democrat nor Republican administrations stood up for them. Bethlehem Steel went into bankruptcy, and they were thrown into Pension Guarantee. But all along the way, Senator Sarbanes and I were assured that the pension plan was solid. All along the way, we were assured of that.

What we found was that there is a pattern here. Everything is sweet. Everything is fine. Let us all have gushy-poo kumbaya meetings with the workers so we are all in it together. But what happens when they go under, what the workers find is they are not



all in it together. There is the "them" and there is the "us." There is the them that continues to get and there is the us that gets the shaft.

My workers are still hurting. They saw their pensions reduced when they went to Pension Guarantee, but they were grateful that there is a Pension Guarantee. Then as they got their benefits, they found that—and you speak, Mr. Jury, of it. Pension Guarantee told them they made a math mistake. Many of my retirees who were already living on the modest benefits provided by Pension Guarantee then found they had to give the money back because of a Government math mistake.

Well, I think we have more mistakes to correct than the math. I worked with Senator Mike DeWine who was my ranking member or I was his on this Subcommittee on Aging and Pensions. We worked together on a bipartisan basis. He had his workers in Ohio. I had my workers in Maryland. We found there was very little we could do.

And my question then to you, Mr. Jury—you saw this and you get the phone calls. You get the calls from those men and women who worked those shifts day and night and so on. Three questions.

No. 1, do you believe that through whatever law we have, as we look at this current situation facing us, that there needs to be kind of truth in pensions? And did we correct it in the Pension Reform Act of a couple of years ago? Truth in pensions about how they really are funded?

No. 2, Should there be an early warning system to both the management and to the workers about this?

And No. 3, what grievance procedures should they have when Government makes the math mistake and people have to give the money back?

What reforms would you recommend so that it would never—I cannot correct it for them, but they know I am here today. I want them to know I never forgot what happened to them. Those men and women were our neighbors. My father had a little grocery store. When they were having difficult times, he went on credit. My father is gone. Bethlehem Steel is practically gone. The way of life is gone. But let us see if we cannot at least reform it for the next go-round.

Mr. JURY. Well, thank you, Senator. You are correct. For the steel workers and others at Bethlehem Steel in Sparrows Point and Bethlehem, PA and northwest Indiana and Lackawanna, NY and elsewhere, we unfortunately cannot turn around and fix every one of their problems, but there are many other workers who are or may very well soon be in the same circumstances.

Certainly the idea of greater information and greater transparency for retirees is critical. I think there were elements of that in the Pension Protection Act in 2006, and if there is always an opportunity to think of whether more information could be provided in a more clear fashion on a more timely basis, of course, that is an important end.

We at the Steelworkers Union assisted retiree groups I believe from Bethlehem, but also from Republic Technologies and other steel and other companies through the PBGC's appeal process. Indeed, at the moment we have litigation going on in district court

here in Washington for some steel worker retirees from Thunderbird Mining on the Iron Range in Minnesota. These are internal administrative review processes which end with litigation in a district court where the courts defer greatly to the administrative agency's internal determinations.

Senator MIKULSKI. What reforms would you recommend?

Mr. JURY. Again, any reform that provides better information more quickly, particularly about the funded status of the pension plan, the risk the plan may be in, and also the cost to the employer, which is itself a risk to the plan. We have spoken in our written testimony and share the view that spreading out these costs so these additional added onerous costs do not imperil the pension system by creating this upward escalator. That in itself is something that will serve, we think, to preserve pension plans and protect our members and all employees working under these plans and protect the interests of retirees.

Senator MIKULSKI. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Mikulski.

Senator Reed.

Senator REED. Mr. Chairman, I would yield to my colleagues.

The CHAIRMAN. Senator Brown.

#### STATEMENT OF SENATOR BROWN

Senator BROWN. Thank you. Thank you, Senator Reed, for that. Thank you for the testimony from all four of you very much.

Mr. Gump, talk to me, if you would. Tell us more about the impact on Delphi's salaried retirees that took early retirement. What was the impact on their benefits for those that did? If you could give me some numbers of employees and amount of impact.

Mr. GUMP. There is a number of things that happened in here. The Delphi retirees oftentimes were coerced into early retirement with promises of severance pay and a supplement to the retirement plan that would be essentially a bridge to Social Security. Those are the things that were very much in danger. In fact, there was a point during the bankruptcy process when the company indicated that they would like to get out from under the severance pay. It was not allowed, but nonetheless, it was an attempt.

The point I am trying to make is it was not just encouragement to leave. You know, things are going OK. You have done all right. You know, things can be good. You can get out now. It was a coercion. Hey, if you leave now, we will give you this. And then after they are gone and things are moved to the PBGC, the PBGC does not recognize those kinds of supplements generally. So the rug is just pulled out from under a person.

In some people's cases in the mid- to late 1950s, those supplements could have amounted to something on the order of \$1,500 a month.

In the case of Delphi, we have been told by the PBGC that the initial estimate, which this all started August 1st, could be anywhere between January and March. It is hard. I mean, it is 70,000 people they have to get through. There is a lot to do. But if it goes to March, that would be 8 months. So 8 months times \$1,500—

when the first initial estimate comes along, you could already be \$10,000 or \$12,000 in debt to the PBGC.

The bottom line to it is that people do not know how to run their lives. They do not know what they are going to get. It is a very convoluted process that is hard to understand for an outsider. It takes a long time to get to any kind of answer. In the meantime, should we sell our house? Should we buy a house? Should we try to move? Can we keep our kids in college? Can we make commitments for the future? Can we buy a car? And that is a whole other issue.

A lot of this anger is aimed back at General Motors and the company that caused or initiated all this to happen. Here is the Federal Government who is the majority owner of General Motors and maybe 100,000 people, all told, are angry at them. They are throwing 100,000 customers away. And these were typically employees that were loyal customers. Plus, they have spouses and children and family and friends and the whole community can be angry. It seemed counterproductive for all these kinds of things to happen.

But on a community-wide basis, it absolutely can be devastating. In our local economy in the Mahoning Valley, in Warren, Youngstown, and Niles area, taking \$161 million per year every year out of that economy, which is already very badly damaged by the loss of the steel industry in that community—the population of Youngstown, as I understand it, has reduced from 160,000 to 60,000. There are 100,000 people who have had to move away from that community, and the blight that follows that kind of loss is just phenomenal and very difficult.

I think the picture in the *New York Times* standing near the parking lot there with all the weeds growing up *is* almost poetic. This is what is happening across America.

And I would point out that in our particular cases, because the Federal Government got involved and handled all this, that we were really poster children for every salaried employee in the United States because if the U.S. Government is going to step into a situation which is agreed to be unusual and should not really have to happen very often, but if it does and it treats the salaried people like yesterday's trash, then every salaried worker in America has just been treated that way. This is what they have to expect from their Federal Government. I do not think that is what is intended, but that is the message that comes across in the way this was handled.

Yes, there are devastating issues. There are some people here with me today that their pensions will be reduced to the point that they truly can just barely afford health care. One woman with me today, 2 weeks after she was told that benefits were lost, was diagnosed with a potential breast tumor. She had to pay the entire cost of determining whether or not essentially she was going to live or die. And her husband has a degenerative back disorder. He is in constant pain. He works at it. He does OK with it, but the medications that he requires are what he needs to live. And being self-employed, her insurance is what was supplying her family.

It is a terrible situation and we are not alone. There are a lot of people. Like I said, there are 20,000 people in Delphi alone that this is affecting, and the message to the rest of the salaried work-

ers in America is just absolutely devastating and really should not happen, especially based on some concept of commercial value. Imagine applying that whole concept of whether or not you can receive benefits based on your commercial value to health care that the Federal Government is deeply involved in.

Again, I do not think that is the message that is intended, but that is certainly the message that comes across, is that if we are willing to do it in this case, are we willing to do it elsewhere? They followed that process here. Would it be right somewhere else under some other conditions? I think we settled that question in this country a long time ago, and I really do not think we should be having to talk about it right now. But we are and that is where we are.

“Devastation” is probably the best word. Dr. Akpadock’s introduction to his study, when he gave it in a news conference—he said that the right word to classify this is “catastrophe” for the community.

Thank you.

Senator BROWN. Thank you. I thank you for the personal stories that you have shared with us today. I have heard for months from workers who have been given this news and about their heart-breaking family situations. I also appreciate the explanation you gave on the Youngstown State study, detailing what this does not just to the several hundred workers and their immediate or extended families, but what it means to a whole community that has lost a lot of jobs. I just commend that to the committee.

In my part of the country, there are more than a few cities like Youngstown that have literally half the population that they had in 1950. Youngstown, Cleveland, Detroit, cities like that. Detroit was 2 million. Now it is a million. Cleveland was a million. Now it is 400,000. Youngstown was 160,000–170,000, and now it is roughly 70,000. The Delphi communities are going to depend on the estimates the PBGC is making now. And what this does to individual families—and Mr. Gump talked about it and what it is doing to whole communities. And that is tens of millions of dollars that will go back into the community or will not depending on what we are able to do.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Brown.

I turn now to Senator Burr. I apologize for skipping. I thought you had gone by me going out there. But Senator Burr is our ranking member on the Retirement and Aging Subcommittee, which Senator Mikulski chairs.

Senator Burr.

#### STATEMENT OF SENATOR BURR

Senator BURR. Thank you, Mr. Chairman. I would also ask unanimous consent that my opening statement be a part of the record. [The prepared statement of Senator Burr follows:]

#### PREPARED STATEMENT OF SENATOR BURR

Thank you, Mr. Chairman, for taking this look at America’s voluntary employer-provided retirement system.

It is well past-due for Congress to address the funding crisis. For months the pension community—employers and employees—has looked to Congress for leadership. A number of us have had bipartisan conversations and have agreed on the need for action.

Senator Isakson and I have suggested we provide a temporary fix that maintains the overall obligations of companies to fund their pensions but gives additional flexibility and time to weather the recent financial market turmoil that has devastated asset values. A number of Democratic colleagues have told us they are interested in the idea but that they are deferring to the Majority leadership of this committee to take action and for the health care debate to conclude.

I am encouraged we are having this hearing because I think we need to ramp this process up. We can't wait.

Addressing the pension funding crisis is a true economic stimulus issue for both our Nation's employers and their employees. Jobs and pensions rely on the financial health of companies. Some plans are ongoing and building up new benefits for participants. Some troubled companies are simply trying to survive and maintain past promises earned by employees and retirees. All need help. There is no nationwide stimulus program more shovel-ready than pension stabilization. Addressing pensions would help the economy now.

The Administration's record on these issues is basically blank. Their most significant measure to date is the subject of our first panel. That panel will highlight the disparity between how different groups of employees were treated under the Delphi/GM and Treasury/Auto Czar deal.

Mr. Chairman, this hearing shows your recognition that this institution is capable of multi-tasking, and I thank you for that.

Thank you, Mr. Chairman. I look forward to hearing from our witnesses.

Senator BURR. I want to thank our witnesses for being here today.

Mr. Chairman, let me express at the beginning I am disturbed that somebody from PBGC is not here. I understand we have reached out to them. I think it is unbelievable that we could have this hearing and not have them here.

Mr. Jones, I am going to state something and just reconfirm for me that I understand it. Many pension funds—pre the economic crisis—were fully funded in America. Post the economic crisis most, if not all, pension funds were underfunded because of the reduction of the valuation of their assets that were held in the pension. And the challenge before Congress in a bipartisan way is how we change the pension rules to allow companies to catch up in a reasonable period while allowing enough time for assets to reinflate where that is possible based upon the capital markets.

Is that a pretty accurate description?

Mr. JONES. That is very fair, yes.

Senator BURR. Well, I want to just sort of plead with my colleagues that we work together to find a solution to this as quickly as we can. The longer we stay in an anemic growth period in this country, this pressure builds and it builds and it builds where companies by law are having to make decisions as to how much invest-

ment goes into pension obligations in many cases to catch up and how much does not go into job creation and this will be a never-ending cycle of increased unemployment if in fact we do not address what is a security need for the workers and sustainability for the companies.

Ms. Bovbjerg.

Ms. BOVBJERG. Bovbjerg, like iceberg.

Senator BURR. Bovbjerg, OK.

You made a statement. I just want to explore it a little bit. In a phrase, you used this, "unless the plan had assets." Now, were the PBGC liens associated with Delphi assets of the pension fund?

Ms. BOVBJERG. We were talking about this before the hearing. I really cannot say anything about the PBGC liens. I really do not know anything about them.

I can say that if there are sufficient assets in a plan that PBGC trustees, they can pay above the guaranteed level if the assets are there. They have a very complex asset allocation situation that we explained endlessly in our report.

Senator BURR. Mr. Jones, are you familiar with the Delphi situation?

Mr. JONES. I do not have close proximity to it, no.

Senator BURR. Mr. Gump, I will go to you because I know you do.

[Laughter.]

Do you consider that the liens that PBGC had, assets of the pension plan?

Mr. GUMP. Absolutely. PBGC itself told us that those liens were valued anywhere—as low as \$1.8 billion and as high as \$3.4 billion. And they gave them up for the sake of \$70 million in cash from GM and a \$3 billion unsecured claim——

Senator BURR. In your estimation, did PBGC voluntarily give up those liens?

Mr. GUMP. My understanding is that the expedited nature of the GM bankruptcy led to some discussion and, I suppose you could say, pressure from the Administration in order for the General Motors bankruptcy to proceed rapidly.

Senator BURR. From what you know now, did General Motors' bankruptcy basically make those assets worthless?

Mr. GUMP. Essentially that is what happened from our standpoint. The Administration said that they were not actionable, but they accepted a \$3 billion unsecured claim in bankruptcy court which were absolutely not actionable.

Senator BURR. So from an actuarial standpoint, Mr. Jones, can you envision a scenario where the PBGC would voluntarily give up \$3 billion worth of assets of a fund, transferring those under an agreement into a company that they knew would go bankrupt and the assets would be worthless?

Mr. JONES. I cannot speak for the PBGC——

Senator BURR. But you know what the PBGC's mission is and that is to protect the——

Mr. JONES. Pension security.

Senator BURR [continuing]. Pension assets.

Mr. JONES. Correct.

Senator BURR. Does this even become nearly rational for anybody, that the company that is in charge of protecting the value of the pension fund voluntarily gave up the lien on the assets with full knowledge that General Motors was going to go into bankruptcy and therefore those assets would become worthless? Have I got that right, Mr. Gump?

Mr. GUMP. Yes, sir.

Senator BURR. Who requested that PBGC release those liens?

Mr. GUMP. Well, of course, we were not part of the conversation, so I cannot truly answer the question. We do know that there was very heavy involvement of the Auto Task Force. One would assume that it would be the Administration.

Senator BURR. Mr. Chairman, I know we are here today and my time is up. I do look forward to working with my colleagues on a solution to the pension funding challenges that most companies have today, and I hope we will do that quickly.

I also hope that this committee or Senator Mikulski in the subcommittee will take the opportunity to invite back the PBGC, possibly the Auto Czar, anybody else who we think might be able to shed some light on why the Federal Government would have put their stamp of endorsement on the elimination of assets designated for the pensions of Delphi employees.

I thank the chair.

The CHAIRMAN. I would say to my friend that I had asked that question, and the basic response I got back was that it was very hard for the PBGC to enforce or to act upon these liens on foreign assets. There were liens on foreign assets, but they felt that they could not really prove up on them or enforce them at that time. Whether that is true or not, I do not know. I am just telling you that is the response I got back.

Senator BURR. I think the chairman has raised an important point. I think the committee deserves a clarification as to the thought process that PBGC went through and, more importantly, I think the employees of Delphi are owed an explanation as to why this decision was made.

Thank you, Mr. Chairman.

The CHAIRMAN. I agree with the Senator.

I will come back to you, Senator Reed.

Senator Franken.

#### STATEMENT OF SENATOR FRANKEN

Senator FRANKEN. Thank you, Mr. Chairman.

Thank you, Mr. Gump, for the story that you shared. I have heard a lot of similar stories up on the Iron Range in Minnesota from steel workers.

I want to thank Ms. Bovbjerg for your testimony. I was struck by the problems that the GAO identified in the report and how closely they mirror those of the groups of steel workers and retirees that I have talked to on the Iron Range in Minnesota. Their pensions were taken over by the PBGC in 2002 and 2003, and the problems that followed led them to form a group like Mr. Gump belongs to. These steel workers have told me that the PBGC failed to communicate with them for years at a time, and the information

they did receive did not fully explain the situation they were facing.

Additionally, many of these workers were employed at different mining operations, which made it more complicated for everybody in computing their benefits, and it really left them wondering what their benefits would be. And then many of them were subject to recoupment. They had to pay back overpayments.

I am very troubled to see that the problems that we had in 2002 seem to be persisting 7 years later, at the time of your audit.

First, I would like to ask you, in your audit, did you encounter any of these Minnesota steel workers?

Ms. BOVBJERG. We did talk to a number of steel workers. I think we might have talked with some from National Steel. Mainly we got our information from PBGC and from the experiences of prior terminations. We did go back to 2002, 2003 when we looked at these things.

I think that we were concerned like you that there are going to be so many more big, complex terminations coming into PBGC in the future—and at that time that we were doing this work, Delphi was in the wings—that we felt that it was really urgent that PBGC do the things that they can to make this process easier for people. They cannot change the law as to what the benefit guarantees are, but certainly they can change the way that they work with people, the frequency with which they talk to people, the complexity with which they provide information. You know, there is always that trying to achieve a balance between the technical accuracy and actually communicating with people who are not actuaries.

Senator FRANKEN. Precisely. There were years between when they would hear from them being alerted that they were going to be in PBGC and then what the outcome was.

Now whose job is it to change those laws? Oh, right, that would be us.

[Laughter.]

Ms. BOVBJERG. I am glad I did not have to tell you.

Senator FRANKEN. Yes.

I want to ask Mr. Jury about this because you work with the steel workers. I got the endorsement of the steel workers up in Hibbing very early, and I went down to their locker room area and the president of the local introduced me to the guys saying this is Al Franken. We are endorsing him. And do you have questions? And a guy stood up and said, "Yes, what are you going to do to protect our pensions?" And I really did not know what to say to him. I am glad I am here because I really want to know what I can say to him.

The fact of the matter is that they are guys that worked for 38 years in the mines expecting that they would get a pension of \$2,400 a month, and it went to the PBGC and they ended up getting like \$600–\$700. And they are 58 years old and they had kids in college. And they were not on Medicare yet and they had health problems after working for 38 years at a taconite mine.

They would say, "The mine went bankrupt. The entity that owned the mine would go bankrupt. I lose my pension. The next day they would be open again under some new ownership and I would be working again except I would start from zero."



What can we do as a body to prevent that kind of thing from happening? How can I give this guy an answer? What is the answer I can give him?

Mr. JURY. Thank you, Senator. That is a fair point. And those same frustrations that were expressed to you were expressed to me as well. I am a union-side labor lawyer that spends too much time in bankruptcy court and I was around the National Steel bankruptcy and the Eveleth Mining or Thunderbird Mining bankruptcy cases where there were pension plan terminations.

We have addressed today questions about how to prevent the next generation, whether they are on the Iron Range or elsewhere, about protecting and elevating the interests of the workers and retirees by smoothing out some of these onerous funding requirements, also eliminating what we think are some gratuitous provisions that cut off benefit guarantees when a company files in bankruptcy, which is an event the worker has absolutely no control over.

In addition, I note that in the last Congress there was bankruptcy reform legislation introduced, and if introduced again, there is much about that bankruptcy reform legislation that would further the protections of workers and retirees in bankruptcy. It is a comprehensive approach.

In addition, it brings to mind the need for speedier processing of these cases, and while I will not comment upon the merits of this Thunderbird Mining case that is pending here, I simply note that the pension plan there terminated in, I think, July 2003. We are still litigating some of the determinations PBGC made, and certainly as others have said, the sooner a retiree knows what his or her future bears, undoubtedly that is the better course.

Senator FRANKEN. Thank you.

Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Hagan.

#### STATEMENT OF SENATOR HAGAN

Senator HAGAN. Mr. Chairman, I really appreciate you holding this hearing, and I have no questions for this panel at this point in time. But thank you all for being here.

The CHAIRMAN. Thank you.

Senator Reed.

#### STATEMENT OF SENATOR REED

Senator REED. Thank you very much, Mr. Chairman.

I thank the panel. If I was taller, I could see you, Mr. Gump.

[Laughter.]

I think we both have a similar characteristic.

First of all, what you have described is an extraordinarily not only poignant, but in fact disheartening situation where people who have struggled all their lives are now trying to get by. The human element you bring here is as instructive as any of the technical issues we will discuss. Thank you very much for that.

It has been brought up here that we are in a situation where because of the financial crisis, pension assets have decreased and

therefore there is underfunding. We have to allow a gradual build-up.

I seem to recall when the market was very high-priced, that it was not uncommon for companies to be taken over and the pension plans reduced because it was overvalued. I wonder, Ms. Bovbjerg, your view in terms of what we have to do in the good times to provide for these bad times.

Ms. BOVBJERG. Well, I am sorry that Senator Mikulski is not still here because Bethlehem Steel was really a major reason why the Pension Protection Act was enacted. Bethlehem Steel had been well funded until just really a very few years before its bankruptcy, and then it was 40 percent funded or something. By the time that PBGC took it, it was the largest single termination PBGC had ever done at that time.

So the question is how can you encourage employers to fund the promises that they make to employees while at the same time being flexible enough that you do not drive them out of the system entirely. I think that is why you see the Pension Protection Act coming in to try to shore up funding for employees and for PBGC and then, in downturn, concern about whether it was flexible enough for employers to really do what they need to do with their plans, but at the same time not go bankrupt in the process of just trying to fund their plan.

We have talked in terms of assistance in bailout about the need for things being targeted and temporary, and we continue to say that about pension funding relief, that to the extent that it can be targeted to those who need it and not those who do not, which is difficult because we do not have a lot of information, targeting would be preferable to widespread relief to employers who do not need it and making it temporary so that in a time when it is very difficult for employers—and I think everyone agrees on that right now—that they are able to address the funding shortfalls but maybe in a longer period of time, maybe not at the expense of retaining jobs or even creating new ones.

Senator REED. It seems to me again—and these might be isolated incidents—that there were occasions where companies who had taken over, the pension plan was on the books overfunded, and that money was not used for reinvestment in jobs or anything else. It was essentially dividend out to the new owners.

Ms. BOVBJERG. Well, at one time they could do that. They are not supposed to do that now.

Senator REED. Are you confident that we have done everything we can to ensure that situation?

Ms. BOVBJERG. The thing that did concern me in the Pension Protection Act is we really did not do anything about credit balances, and that is what caused a lot of the underfunding in Bethlehem Steel. That is why GM has not had to make any contributions recently. They were overfunded. So they can use those credits later instead of making contributions. So what that means is that your funding level can drop very precipitously if there are other bad things going on in the economy when you are enjoying your credit balances.

We have a lot of concern about that. That is exactly the time that PBGC might be called on to step in and take a plan, and from what

you have seen from the Delphi experience, when you continue to run a plan and you are not making contributions, your asset-liability ratio plummets.

Senator REED. I just want to quickly turn the topic because we have focused on commercial enterprises, but there is a growing—this is not a surprise to anybody—concern among municipal governments and State governments about their pension liabilities. They are operating outside of PBGC. And is there any mechanism in place now to reinsure them, to help them? Because this might be the next crisis.

Ms. BOVBJERG. Well, the public plans are regulated by their States.

Senator REED. Right.

Ms. BOVBJERG. It is really quite different.

Senator REED. That is why we might have another crisis.

Ms. BOVBJERG. But they are in a different situation because in the private sector, you may have a Bethlehem Steel that goes out of business and goes into bankruptcy and leaves an underfunded plan. The State of Wisconsin does not go out of business and leave underfunded plans. They are an ongoing concern. It is a different situation when you think about underfunding of public plans. But you are right to be concerned.

Senator REED. One final point. The chairman has been very kind.

One of the concerns would be—you are exactly right. They will not go out of business, but their only remedy then would be to essentially do what has been done to Mr. Gump and his colleagues which was to ratchet down payments or increase significantly contributions just to reach a balance. Am I missing something in terms of what else they can do?

Ms. BOVBJERG. It is likely to be to raise taxes because for most States, they cannot reduce benefits for people who are already on board. It has to only be for new employees. It is very hard for them. You raise a good point.

Senator REED. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Reed.

I want to thank this panel for your input.

I would ask if each of you could submit for the record your suggestions, any suggestions you might have, for I think what Mr. Jones has said in his testimony is a pension plan for the 21st century. If you were to design a pension plan to answer the problems that have come up here, what would it look like? Maybe what we have had in the past is not working well, and maybe we need to think about how we design a new pension plan for the years ahead. I am open for any suggestions that you might have, if you would submit those for the record.

Ms. BOVBJERG. Mr. Chairman, if I could jump in. We did do a report last summer on alternative approaches to retirement income security, and I would be happy to make that available to this committee.

The CHAIRMAN. OK. I did not know that. Make sure we get it. I can get another copy of it. Do not worry about that. I can track that down.

Ms. BOVBJERG. Thank you.

The CHAIRMAN. I am going to dismiss this, but did you have one last thing, Mr. Gump, that you wanted to say?

Mr. GUMP. If you do not mind, yes. I think to answer your question initially, I think one of the first things that needs to happen is employees need to be elevated in priority. Right now they are treated as essentially unsecured creditors. Employees are not speculators in a company. They are the people that are doing what they are told to do by the executives, and they are the ones that are having to take it on the chin while the executives are protecting themselves.

I would point up that in March the Delphi 10(k) form that was filed just before they exited bankruptcy in July under the paragraph entitled "Change of Control"—if the executives lost control of the company, they set aside for themselves just over \$100 million for the top five executives, while when we have tried to form a VEBA, we were only able to squeeze about \$8.75 million out of them to form a VEBA for 20,000 people which essentially ends up being nothing for support. Employees need to be raised in the level of priority for bankruptcy.

If I may, Mr. Chairman, I brought with me what we call a Hallmark card. The point of this document is that what is happening to us is happening across the entire community. We have had major business leaders, community leaders, political leaders of our community sign. There is all together—and there is an 8½ by 11 that goes in here—about 200 signatures that have signed. And these are not just necessarily individuals. These are the mayors and the trustees. I have a proclamation here from the county commissioners that I just got done Tuesday night. All we are asking for is fair treatment in this, nothing more, but nothing less. I would like to submit that also. Thank you.

The CHAIRMAN. Well, we will figure out some way of getting that in the record.

[Laughter.]

[The information referred to follows:]

#### SAVE THE VALLEY: AGAIN

We the undersigned participants in the Alliance for Senior Action Round Table Discussion do hereby affix our signatures in support of the following:

- That the determination by the Automotive Task Force to make decisions regarding Delphi retirees' earned legacy benefits based on a theoretical commercial model is unfair, unjust and erroneous thinking.
- That the negative economic effect, as substantiated by the Youngstown State University Economic Impact Statement, will be devastating and long lasting to the recovery of the Mahoning Valley.
- That the estimated potential loss of \$161 million in spendable income and the elimination of up to 5,000 additional non-auto industry jobs is unjustifiable in a regional economy already suffering from double digit unemployment.
- That there is a real moral and ethical obligation for the Federal Administration to intervene further into the domestic auto industry recovery to ensure that all retirees receive fair and equitable earned legacy rights comparable to benchmarks already established by General Motors and Delphi.
- That President Obama instruct the U.S. Treasury and the Automotive Task Force to initiate immediate and binding communications with Senator Brown and Congressman Ryan to resolve the issue of full funding of Delphi's pre-bankruptcy legacy obligations.
- That the President advises the Pension Benefit Guaranty Corporation to maintain pensions for Delphi and its domestic subsidiary retirees at pre-trusteeship levels until the top-up funds are in place.

- That the Commerce Department be instructed by the President to exhaust every possible effort to attract large scale employment projects to the vacant Delphi facilities in the Mahoning Valley while those facilities are still sound and usable.

## RESOLUTION

**Whereas** the GM-Delphi Retirees have experienced discrimination regarding their treatment by the Automotive Task Force, General Motors and Delphi through a lack of fair and equitable treatment comparable to other stakeholders, and,

**Whereas** this unfair discrimination was based on perceived "commercial value" of the Retirees by their Federal Government; and,

**Whereas** the Youngstown State University Economic Impact Study compiled by Dr. Frank Akpadock demonstrates a devastating yearly impact in terms of both economic activity and employment on the local economy as a result of the transfer and reduction of benefits through the Pension Benefit Guaranty Corporation, and loss of health care insurance; and,

**Whereas** the economic impact of that loss of earned deferred income and healthcare benefits will dramatically and negatively impact the security and welfare of the citizens of this township, and,

**Whereas**, the earned deferred incomes of both Hourly and Salaried Retirees of Delphi are integral to the maintenance of public service for this community, and,

**Whereas**, we deem the situation, as it now stands, to be unfair, and unethical,

**NOW, THEREFORE, BE IT RESOLVED**, that the Trustees of Brookfield Township, Trumbull County, Ohio do hereby call on the President of the United States, the Secretary of the U.S. Department of the Treasury, the Head of the President's Auto Task Force, the Chairman of General Motors, the President and Chief Executive Officer of General Motors, the Chairman of Delphi Corporation, and the Chief Executive Officer and President of Delphi Corporation, to immediately remedy this injustice, treat GM-Delphi Hourly and Salaried Retirees fairly and equitably in relation to other GM-Delphi Retirees, and provide for the receipt of the full pensions and health care insurance GM-Delphi Hourly and Salaried Retirees were promised over a lifetime of employment.

**BE IT FURTHER RESOLVED**, that this resolution shall, immediately upon passage, be submitted to the President of the United States, the Secretary of the U.S. Department of the Treasury, the Head of the President's Auto Task Force, the Chairman of General Motors, the President and Chief Executive Officer of General Motors, the Chairman of Delphi Corporation, and the Chief Executive Officer and President of Delphi Corporation.

  
John P. Schmidt, Trustee

  
Gary F. Lees, Trustee

  
Ronald E. Haun, Trustee

# CHAMPION TOWNSHIP TRUSTEES



Chief Officer: Fred A. Mercer

Trustees: Jeffrey S. Horvath  
Robert W. Farmer  
Thomas E. Truax

RESOLUTION 2009-5  
November 2, 2009

Whereas, the GM Delphi Retirees have experienced discrimination regarding their treatment by the Automotive Task Force, General Motors and Delphi through a lack of fair and equitable treatment comparable to other stakeholders; and

Whereas, the initial discrimination was based on perceived "commercial value" of the Retirees by their Federal Government; and

Whereas, the Youngstown State University Economic Impact Study compiled by Dr. Tracy Alexander demonstrates a devastating yearly impact in terms of both economic activity and employment on the local economy as a result of the transfer and reduction of benefits through the Pension Benefit Guaranty Corporation and loss of health care programs; and

Whereas, the economic impact of that loss of retired deferred income and healthcare benefits will economically and negatively impact the security and welfare of the citizens of this township; and

Whereas, retired deferred incomes of both hourly and salaried Retirees of Delphi are integral to the maintenance of public services for this community; and

Whereas, we deem the situation as it now stands to be unfair, unethical and unsustainable;

**NOW, THEREFORE, BE IT RESOLVED** that the Township of Champion, does hereby call on the President of the United States, the Secretary of the U. S. Department of the Treasury, the Head of the President's Auto Task Force, the Chairman of General Motors, the President and Chief Executive Officer of General Motors, the Chairman of Delphi Corporation, and the President and Chief Executive Officer of Delphi Corporation, to immediately remedy this injustice, return GM Delphi Hourly and Salaried Retirees fairly and equitably to solution as other GM Delphi Retirees, not waiting for the receipt of the full pensions and health care programs GM Delphi Hourly and Salaried Retirees were promised over a lifetime of employment in a lifetime of work.

**BE IT FURTHER RESOLVED** that this resolution shall, immediately upon passage, be submitted to the President of the United States, the Secretary of the U. S. Department of the Treasury, the Head of the President's Auto Task Force, the Chairman of General Motors, the President and Chief Executive Officer of General Motors, the Chairman of Delphi Corporation, and the President and Chief Executive Officer of Delphi Corporation.

Thomas Truax, Chairman  
Robert Farmer, Vice Chairman  
Jeffrey S. Horvath, Trustee

YES \_\_\_\_\_ NO \_\_\_\_\_  
YES \_\_\_\_\_ NO \_\_\_\_\_  
YES \_\_\_\_\_ NO \_\_\_\_\_

CHAMPION TOWNSHIP BOARD OF TRUSTEES

100 Center Street, Suite 200  
Warren, Ohio 44481  
Phone: (330) 847-2983 Fax: (330) 847-0690

RECORD OF RESOLUTIONS	
Resolution No.	2-25-03
Date	November 2, 2003
<p><b>A RESOLUTION TO SUPPORT AND CALL FOR FAIR AND EQUITABLE TREATMENT FOR GREYHOUND PASSENGERS THAT WILL RESULT IN THEM RECEIVING THEIR FULL PENSIONS AND HEALTH CARE INSURANCE PROMISED TO THEM OVER DECADES.</b></p>	
<p>WHEREAS, the Transportation State University Economic Impact Study compiled by The Brookings Institution demonstrates a devastating impact on the local economy as a result of the loss of jobs and employment in the local economy as a result of the transfer and relocation of Greyhound through the Portland Region; and</p>	
<p>WHEREAS, the economic impact of that loss of recent deferred pension and healthcare benefits will dramatically and negatively impact the stability and welfare of the citizens of the City of Portland; and</p>	
<p>WHEREAS, the recent deferred incomes of both hourly and salaried employees of Greyhound are integral to the maintenance of public services for the community;</p>	
<p><b>NOW, THEREFORE:</b></p>	
<p><b>BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PORTLAND, OREGON:</b></p>	
<p>Section 1. That the City of Portland, do hereby call on the President of the United States, the Secretary of the U.S. Department of the Treasury, the Head of the President's Anti-Tax Pacts, the Chairman of General Services, the President and Chief Executive Officer of General Motors, the Chairman of Delphi Corporation, and the Chief Executive Officer and President of Delphi Corporation, to assist GM Delphi Hourly and Salaried Employees fairly and equitably in relation to their GM Delphi Pension, and provide for the receipt of the full pension and healthcare insurance GM Delphi Hourly and Salaried Employees were promised even a lifetime of employment for a lifetime of years.</p>	
<p>Section 2. This Resolution shall take effect and be in full force as early as allowed by law.</p>	
<p>PASSED IN COUNCIL THIS <u>2nd</u> DAY OF <u>NOVEMBER</u>, 2003.</p>	
ATTEST	<p><i>[Signature]</i> CLERK OF COUNCIL</p> <p><i>[Signature]</i> PRESIDENT OF COUNCIL</p>
FILED BY MAYOR	<p><i>[Signature]</i> DATE MAYOR</p>
<p>DATE APPROVED <u>11-03-03</u></p>	
<p><b>NOTES:</b></p> <p>Resolution, 2003 Exemption, 2003 Exemption, 2003 Exemption, 2003 Exemption, 2003 Exemption, 2003</p>	
<p><i>[Signature]</i> CLERK OF COUNCIL</p>	
<p><b>LEGAL REVIEW</b></p>	

**RESOLUTION 2009-109**

The Board of Trustees of Howland Township, Trumbull County, Ohio, met in Regular Session on October 14, 2009 with the following members present:

Rick Clark, Richard Orwig, Sally Wehmer

Richard Orwig moved for adoption of the following Resolution by the Howland Township Trustees

We, the undersigned elected officials of Howland Township, a political subdivision of Trumbull County in the State of Ohio, do hereby with the Resolution, declare the following:

WHEREAS, the Automotive Task Force has the ability and authority to impose a fair and equitable plan that insures parity among the stakeholders by the transfer of the salaried retirement to General Motors.

WHEREAS, the Youngstown State University study compiled by Dr. Frank Apkadock demonstrates a devastating impact of \$161 million of the local economy, yearly, as a result of the transfer and reduction of benefits through the Pension Benefit Guaranty Corporation; and

WHEREAS, the loss of earned legacy income and healthcare benefits will dramatically and negatively impact the security of citizens of this Township; and

WHEREAS, the earned legacy incomes of both hourly and salaried retirees of Delphi are integral to the maintenance of public service for this community; and

WHEREAS, we deem the situation, as it now stands, to be disproportionate.

NOW, THEREFORE, BE IT RESOLVED, the elected officials of Howland Township do hereby proclaim that we call upon the Automotive Task Force, General Motors and Delphi to take all necessary steps to amend the current plan by making all automotive industry retiree groups at parity with the United Auto Workers model that was established during the General Motors organization.

Sally Wehmer seconded the motion to pass the Resolution and upon roll call, the vote resulted as follows:

Richard Orwig  
Sally B. Wehmer  
Rick Clark

Yea  
Yea  
Yea

Dated: October 14, 2009

State of Ohio )  
 ) ss:  
County of Trumbull )

**CERTIFICATE OF THE FISCAL OFFICER**

I, Sam Delaquila Sr., Fiscal Officer of the Board of Trustees of Howland Township, Trumbull County, Ohio in whose custody and control the files and records of such Board are required by the Laws of the State of Ohio to be kept, do hereby certify that the foregoing is taken and copied from the original resolution, and that the same is a true and correct copy thereof.

Sam Delaquila Sr.  
Sam Delaquila Sr., Fiscal Officer

Date: 10.14.09



## RESOLUTION # 09-137

The Board of Trustees of Liberty Township, Trumbull County, Ohio met in a regular session at the Administration Building on October 19, 2009 with the following members present: Mr. Jack Simon, Mrs. Jodi Stoyak, and Chairperson Mr. W. Gary Litch presiding.

Motion made by Mr. Simon to pass the following resolution:

**BE IT RESOLVED** that the Board of Trustees support the Delphi Retirees; and

Whereas The GM-Delphi Retirees have experienced discrimination regarding their treatment by the Automotive Task Force, General Motors and Delphi through a lack of fair and equitable treatment comparable to other stakeholders; and

Whereas this unfair discrimination was based on perceived "commercial value" of the Retirees by their Federal Government; and

Whereas, we deem the situation, as it now stands, to be unfair, unethical and unreasonable; and

**NOW, THEREFORE, BE IT RESOLVED** that the township of Liberty, Trumbull County do hereby call on the President of the United States, the Secretary of the U.S. Department of the Treasury, the Head of the President's Auto Task Force, the Chairman of the General Motors, the President and Chief Executive Officer of General Motors, the Chairman of Delphi Corporation, and the Chief Executive Officer and President of Delphi Corporation, to immediately remedy this injustice, treat GM-Delphi Hourly and Salaried Retirees fairly and equitably in relation to other GM-Delphi Retirees, and provide for the receipt of the full pensions and health care insurance GM-Delphi Hourly and Salaried Retirees were promised over a lifetime of employment for a lifetime of work.

Mr. Litch seconded the motion to adopt the Resolution. On the roll call being called, the vote result as follows:

Mr. Simon, Yes. Mr. Litch, Yes. Mrs. Stoyak, Yes. Seconded by Mr. Litch. Motion carried.

Resolution passed:

State of Ohio

County of Trumbull

I, John E. Fusco, Clerk of the Board of Trustees of Liberty Township, Trumbull County, Ohio in whose custody and control the files and records of such Board are required by the Laws of the State of Ohio to be kept, do hereby certify that the foregoing is taken and copied from the original resolution, and that the same is a true and correct copy thereof.

10-27-09

*John E. Fusco*  
JOHN E. FUSCO, CLERK  
LIBERTY TOWNSHIP

RESOLUTION NO. 30-09  
 SPONSORED BY: COUNCIL AS A WHOLE DRAFT NO. 72-09  
 AUTHORIZED BY: ALL MEMBERS PRESENT 10/21/09

**A RESOLUTION FOR THE FAIR AND EQUITABLE  
 TREATMENT OF GM-DELPHI HOURLY AND  
 SALARIED RETIREES**

**WHEREAS**, the GM-Delphi Retirees have experienced discrimination regarding their treatment by the President's Auto Task Force, General Motors and Delphi through a lack of fair and equitable treatment comparable to other stakeholders, and,

**WHEREAS**, this unfair discrimination was based on perceived "commercial value" of the Retirees by their Federal Government; and,

**WHEREAS**, the Youngstown State University Economic Impact Study compiled by Dr. Frank Akpadock demonstrates a devastating yearly impact in terms of both economic activity and employment on the local economy as a result of the transfer and reduction of benefits through the Pension Benefit Guaranty Corporation, and loss of health care insurance; and,

**WHEREAS**, the economic impact of that loss of earned deferred income and healthcare benefits will dramatically and negatively impact the security and welfare of the citizens of this valley; and,

**WHEREAS**, the earned deferred incomes of both Hourly and Salaried Retirees of Delphi are integral to the maintenance of public service for this community; and,

**WHEREAS**, we deem the situation, as it now stands, to be unfair, unethical and unreasonable.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NILES, STATE OF OHIO:**

**SECTION 1:** That the Council of the City of Niles, Ohio do hereby call on the President of the United States, the Secretary of the U.S. Department of Treasury, the Head of the President's Auto Task Force, the Chairman of General Motors, the President and Chief Executive Officer of General Motors, the Chairman of Delphi Corporation and the Chief Executive Officer and President of Delphi Corporation, to immediately remedy this injustice, treat GM-Delphi Hourly and Salaried Retirees fairly and equitably in relation to other GM-Delphi Retirees, and provide for the receipt of the full pensions and health care insurance GM-Delphi Hourly and Salaried Retirees were promised over a lifetime of employment for a lifetime of work.

**SECTION 2:** Be it further resolved, that this Resolution shall, immediately upon passage, be submitted to the President of the United States, the Secretary of the U.S. Department of the Treasury, the Head of the President's Auto Task Force, the Chairman of General Motors, the President and Chief Executive Officer of General Motors, the Chairman of Delphi Corporation, and the Chief Executive Officer and President of Delphi Corporation.

PASSED: October 23, 2009

ATTEST: Linda A. Yuhasz  
 CLERK OF COUNCIL

[Signature]  
 PRESIDENT OF COUNCIL

Filed with the Mayor of the City of Niles, Ohio on the 24<sup>th</sup> day of October, 2009 and signed by me as such Mayor on the 26<sup>th</sup> day of October, 2009.

I, LINDA A. YUHASZ, Clerk of Council, City of Niles, State of Ohio, do hereby certify that this is a true and correct copy of Res. 30-09, which was duly passed on the 23<sup>rd</sup> day of OCTOBER, 2009.  
Linda A. Yuhasz  
 CLERK OF COUNCIL

[Signature]  
 MAYOR

REQUESTED BY:  
RUCKER

LAW DEPARTMENT  
 DRAFT NO. 2951

TITLE

A RESOLUTION FOR THE PURPOSE OF CALLING  
 UPON VARIOUS PARTIES TO FULLY RESTORE,  
 AND MAINTAIN, PENSION AND HEALTH CARE  
 BENEFITS TO THOSE GM-DELPHI RETIREES WHO  
 HAVE EXPERIENCED ANY LOSS THEREOF.

RESOLUTION NO. 4436/09

WHEREAS, the GM-Delphi Retirees have experienced discrimination regarding their treatment by the Automotive Task Force, General Motors and Delphi through a lack of fair and equitable treatment comparable to other stakeholders; and

WHEREAS, this unfair discrimination was based on perceived "commercial value" of the Retirees by their Federal Government; and

WHEREAS, the Youngstown State University Economic Impact Study compiled by Dr. Frank Akpadock demonstrates a devastating yearly impact in terms of both economic activity and employment on the local economy as a result of the transfer and reduction of benefits through the Pension Benefit Guaranty Corporation, and loss of health care insurance; and

WHEREAS, the economic impact of that loss of earned deferred income and healthcare benefits will dramatically and negatively impact the security and welfare of the citizens of this city; and

WHEREAS, the earned deferred incomes of both Hourly and Salaried Retirees of Delphi are integral to the maintenance of public service for this community; and

WHEREAS, this Council deems the situation, as it now stands, to be unfair, unethical and unreasonable; NOW THEREFORE

BE IT RESOLVED by the Council of the City of Warren, State of Ohio:

Section 1: That the City of Warren does hereby call on the President of the United States, the Secretary of the U.S. Department of the Treasury, the Head of the President's Auto Task Force, the Chairman of General Motors, the President and Chief Executive Officer of General Motors, the Chairman of Delphi Corporation, and the Chief Executive Officer and President of Delphi Corporation, to immediately: remedy the aforescribed injustices; treat GM-Delphi Hourly and Salaried Retirees fairly and equitably in relation to other GM-Delphi Retirees; and provide for the receipt of the full pensions and health care insurance that GM-Delphi Hourly and Salaried Retirees were promised over a lifetime of employment for a lifetime of work.

Section 2: That the Council of the City of Warren hereby directs the Clerk of Council to forward a certified copy of this Resolution to each of the people mentioned in Section 1 of this Resolution.

Draft No. 2951  
Page Two

Section 3: That this Resolution shall take effect at the earliest time allowed by law.

Passed in Council this 14TH day of OCT., 2009.

SIGNED: [Signature]  
PRESIDENT OF COUNCIL

ATTEST: [Signature]  
CLERK

FILED WITH THE MAYOR: 10-14-09

DATE APPROVED: 10-14-09

[Signature]  
MAYOR, CITY OF WARREN, OHIO

I, Darla Neugebauer, Clerk of Council of the City of Warren, County of Trumbull, State of Ohio, do hereby certify that the foregoing is a true and correct copy of RESOLUTION No. 4436/09 passed in Council this 14TH Day of OCT. 2009 and now on record in the files of my office.  
[Signature]  
DARLA NEUGEBAUER, Clerk of Council

# WARREN TOWNSHIP TRUSTEES

3765 W. Market Street • P.O. Box 307 • Leavittsburg, Ohio 44430

## RESOLUTION

THE WARREN TOWNSHIP BOARD OF TRUSTEES MET IN REGULAR SESSION ON THE 27TH DAY OF OCTOBER AT 7:30 P.M. AT THE WARREN TOWNSHIP ADMINISTRATION BUILDING WITH THE FOLLOWING MEMBERS PRESENT: TERRY AMBROSE, KAY ANDERSON CHERYL ZABEN.

MRS. ANDERSON MADE A MOTION TO APPROVE THE FOLLOWING RESOLUTION:

WHEREAS, THE GM-DELPHI RETIREES HAVE EXPERIENCED DISCRIMINATION REGARDING THEIR TREATMENT BY THE AUTOMOTIVE TASK FORCE, GENERAL MOTORS AND DELPHI THROUGH A LACK OF FAIR AND EQUITABLE TREATMENT COMPARABLE TO OTHER STAKEHOLDERS; AND

WHEREAS, THIS UNFAIR DISCRIMINATION WAS BASED ON PERCEIVED "COMMERCIAL VALUE" OF THE RETIREES BY THEIR FEDERAL GOVERNMENT; AND,

WHEREAS, THE YOUNGSTOWN STATE UNIVERSITY ECONOMIC IMPACT STUDY COMPILED BY DR. FRANK AKPADOCK DEMONSTRATES A DEVASTATING YEARLY IMPACT IN TERMS OF BOTH ECONOMIC ACTIVITY AND EMPLOYMENT ON THE LOCAL ECONOMY AS A RESULT OF THE TRANSFER AND REDUCTION OF BENEFITS THROUGH THE PENSION BENEFIT GUARANTY CORPORATION, AND LOSS OF HEALTH CARE INSURANCE; AND,

WHEREAS, THE ECONOMIC IMPACT OF THAT LOSS OF EARNED DEFERRED INCOME AND HEALTHCARE BENEFITS WILL DRAMATICALLY AND NEGATIVELY IMPACT THE SECURITY AND WELFARE OF THE CITIZENS OF THIS TOWNSHIP; AND,

WHEREAS, THE EARNED DEFERRED INCOMES OF BOTH HOURLY AND SALARIED RETIREES OF DELPHI ARE INTEGRAL TO THE MAINTENANCE OF PUBLIC SERVICE FOR THIS COMMUNITY; AND,

WHEREAS, WE DEEM THE SITUATION, AS IT NOW STANDS, TO BE UNFAIR, UNETHICAL AND UNREASONABLE.

**NOW, THEREFORE, BE IT RESOLVED,** THAT THE TOWNSHIP OF WARREN DOES HEREBY CALL ON THE PRESIDENT OF THE UNITED STATES, THE SECRETARY OF THE US DEPARTMENT OF TREASURY, THE HEAD OF THE PRESIDENT'S AUTO

Trustees: 330-898-2101 • Clerk: 330-898-8767 • Fax: 330-898-2573

Zoning: 330-898-0124 • Parks: 330-898-6891 • Road Dept.: 330-898-6188

TASK FORCE, THE CHAIRMAN OF GENERAL MOTORS, THE PRESIDENT AND CHIEF EXECUTIVE OFFICER OF GENERAL MOTORS, THE CHAIRMAN OF DELPHI CORPORATION AND THE CHIEF EXECUTIVE OFFICER AND PRESIDENT OF DELPHI CORPORATION TO IMMEDIATELY REMEDY THIS INJUSTICE, TREAT GM-DELPHI HOURLY AND SALARIED RETIREES FAIRLY AND EQUITABLY IN RELATION TO OTHER GM-DELPHI RETIREES, AND PROVIDE FOR THE RECEIPT OF THE FULL PENSIONS AND HEALTHCARE INSURANCE GM-DELPHI HOURLY AND SALARIED RETIREES WERE PROMISED OVER A LIFETIME OF EMPLOYMENT FOR A LIFETIME OF WORK.

**BE IT FURTHER RESOLVED**, THAT THIS RESOLUTION SHALL, IMMEDIATELY UPON PASSAGE, BE SUBMITTED TO THE PRESIDENT OF THE UNITED STATES, THE SECRETARY OF THE US DEPARTMENT OF TREASURY, THE HEAD OF THE PRESIDENT'S AUTO TASK FORCE, THE CHAIRMAN OF GENERAL MOTORS, THE PRESIDENT AND CHIEF EXECUTIVE OFFICER OF GENERAL MOTORS, THE CHAIRMAN OF DELPHI CORPORATION AND THE CHIEF EXECUTIVE OFFICER AND PRESIDENT OF DELPHI CORPORATION.

SECONDED BY MRS. ZABEN. ROLL CALL BEING CALLED UPON ITS ADOPTION THE VOTE RESULTED AS FOLLOWS: MRS. ANDERSON, YES, MRS. ZABEN, YES, MRS. AMBROSE, YES. MOTION CARRIED.

ADOPTED: OCTOBER 27, 2009

  
DEBRA L. D'ORIO  
WARREN TOWNSHIP FISCAL OFFICER

The CHAIRMAN. Thank you all very much. Again, I welcome your suggestions on how we develop a new plan. Thank you very much to this panel. Thank you for being here.

We will call up our second panel: Ronald Peterson, Ron Gebhardtshauer, Randy DeFrehn, and Karen Friedman.

[Pause.]

Thank you very much. Now we will turn to our second panel. First we have Mr. Ronald Peterson, President of The Johns Hopkins Hospital and Health System in Baltimore. He serves also as the chairman of the Health System and the chairman of Johns Hopkins Community Physicians that provides ambulatory care at 17 centers and a trustee of the Johns Hopkins Home Care Group and is also vice chairman of the Maryland Governor's Workforce Investment Board and was appointed by the Governor to Maryland's Economic Development Commission.

Second, we have Mr. Ron Gebhardtshauer. He heads up the Actuarial Science Program at the Smeal College of Business at Pennsylvania State University. Prior to that, he was the Senior Benefits Advisor for the U.S. Senate's Committee on Finance, the Senior Pension Fellow and Spokesperson for the Actuarial Profession at the American Academy of Actuaries here in Washington.

And then we have Mr. DeFrehn. Randy DeFrehn is the Executive Director of the National Coordinating Committee for Multiemployer Plans, a nonpartisan membership organization of multiple em-

ployer pension plans and their sponsoring employee and employer organizations.

Then last we have Ms. Karen Friedman, Executive Vice President and Policy Director of the Pension Rights Center, the country's only consumer organization dedicated solely to protecting and promoting the retirement security of American workers, retirees, and their families.

We welcome you here. Again, as I said to the other panel, your statements will be made a part of the record in their entirety. I appreciate it. We will start with Mr. Peterson. If you could sum up your testimony in around 5 minutes, we would appreciate it. Thank you very much, Mr. Peterson.

**STATEMENT OF RONALD R. PETERSON, PRESIDENT, THE  
JOHNS HOPKINS HOSPITAL AND HEALTH SYSTEM, BALTI-  
MORE, MD**

Mr. PETERSON. Thank you very much. Good morning. I am Ron Peterson. I serve as President of the Johns Hopkins Health System. I am also the Executive Vice President of Johns Hopkins Medicine, which is the formal alliance between our university school of medicine and our health system. Collectively, Johns Hopkins institutions constitute the largest private sector employer in the State of Maryland. We have 49,000 employees.

Chairman Harkin and Ranking Member Enzi, certainly thank you for the opportunity to testify before this committee this morning. You are to be commended for holding this important hearing to help workers preserve their retirement security as we recover from this deep recession.

Retirement security is critically important to Johns Hopkins and its employees. We are a 100-plus-year-old institution with many long-term employees who rely on us for their retirement security.

This issue is also important, we believe, to every company, every employee, and every community across the United States because it is more than a pension issue. We, in fact, view this as an economic recovery issue and a jobs issue. You will hear that with a few regulatory changes and no Government money, you can save thousands of jobs.

First, let me assure you that Johns Hopkins will meet its obligations to our defined benefit participants. All of us have been hit by the extraordinary market losses of 2008, but we are not here this morning asking for a bailout nor for taxpayer assistance to right our pension plans. Rather, we are here to ask today for temporary relief from Congress that can be accomplished through pension funding rule changes allowing us to manage our recent plan losses through this unprecedented market downturn. With a few changes, we can continue to grow our institutions and create jobs while meeting our pension obligations. Remember that health care is one of the few sectors where jobs have continued to grow.

The Pension Protection Act of 2006 accelerated pension funding requirements for defined benefit pension plan sponsors. These new requirements went into effect in 2008, the year the financial crisis began. We fundamentally support the goals of the PPA to increase the funding levels of defined benefit pension plans over time, but the rules were enacted in a more robust economy. By the time the

rules went into effect, the plans had taken losses in the market and interest rates dropped, creating a perfect storm which caused dramatic, unplanned increases in our pension funding obligations.

Now, the Worker, Retiree and Employer Recovery Act enacted last year by Congress did provide temporary relief to some but not all companies. We appreciate as well the additional relief through regulatory guidance provided by the Treasury Department that has helped many companies for 2009. But these changes are really not enough.

Companies across the country are facing staggering funding obligations for 2010 and beyond which will divert funds from other purposes, including jobs. This issue is time-sensitive. Under the PPA, the vast majority of plan sponsors' funding obligations will be locked in on January 1, 2010, regardless of what happens in the economy for the remainder of the year.

Johns Hopkins University and Johns Hopkins Health System sponsor five active defined benefit pension plans that provide benefits for 32,000 current and former employees. Johns Hopkins is intent on maintaining these plans and adding participants in the future.

We take a long-term approach to pension funding. All of our plans were very well-funded, 95 percent or better, before the recession, based on Johns Hopkins' prudent investment policy and its commitment to secure benefits. In fact, Johns Hopkins paid no variable rate premiums to the Pension Benefit Guaranty Corporation last year.

We view the recent recessionary environment as a unique event. The reality is that we are now behind in our capital and cash flow forecasts as they relate to meeting the funding requirements of the PPA.

Johns Hopkins is currently expanding and improving its facilities to provide for enhanced care to the patients we serve from Maryland and throughout the world. As a product of that expansion, we are creating more jobs in the local market. Like other not-for-profit institutions, we are facing tough choices which could force us to scale back on much-needed programs which benefit humankind in order to redirect those funds into the pension trusts. In the absence of pension reform, we could be faced with the undesirable choice to reduce benefits or eliminate jobs.

Now, during fiscal year 2009, our plans have suffered severe asset losses, 24 percent of the portfolio, or \$223 million, due to the performance of the stock market. Thus, our funded status has deteriorated to as low as 70 percent for one of our plans. Coupled with the low level of interest rates, these asset losses will require significant increases in cash funding over the next 8 years. We have computed this to be approximately \$291 million, a jump of 60 percent in the amount we had forecasted as recently as the summer of 2008.

We must undertake steps now to reserve cash for this very large liability. Because this obligation is required by law, we will be forced to divert resources from patient care services and from job retention and creation. Every \$10 million in incremental pension funding equates to salaries for approximately 125 nurses.



Johns Hopkins encourages Congress to take additional steps to strengthen defined benefit pension plans, given the impact of the recession. Specifically, lengthen the amortization period for paying down pension deficits from 7 years to 15 years for the 2008 losses. For plans below an 80 percent funded level, remove restrictions on accelerated payments except for lump sum payments. Return to a policy that permits the asset-smoothing corridor to be 20 percent of fair market value of assets, and return to a 48-month asset-smoothing period to allow for more prudent forecasts.

We encourage Congress to apply pension relief equally to all plan sponsors.

Now, as a reference point, we do support the majority of the concepts expressed by Representative Pomeroy in his discussion draft that I have recently had the opportunity to review.

By way of concluding, let me offer the following. Due to the recent unusual market conditions, Johns Hopkins and other defined benefit plan sponsors will be faced with extraordinary incremental funding requirements. As the economy is beginning to recover, job growth will be impeded as employers such as Johns Hopkins will have to limit new program development and divert these resources to our pension trusts. Ironically, this will further exacerbate access to health care at a time our country needs meaningful health care reform. Passage of these four modifications to the pension funding rules will support job growth and provide employers with the resources they need to innovate and compete in a global marketplace. Again, this can be done without a penny from Congress.

I wish to thank you very much for the opportunity.

[The prepared statement of Mr. Peterson follows:]

#### PREPARED STATEMENT OF RONALD R. PETERSON

Good Morning. I am Ronald R. Peterson, President of the Johns Hopkins Health System and Executive Vice President of Johns Hopkins Medicine. Johns Hopkins Medicine is the formal alliance between The Johns Hopkins University School of Medicine and Johns Hopkins Health System. I am here today on behalf of the Johns Hopkins Health System, Johns Hopkins University and Johns Hopkins Medicine. Collectively, Johns Hopkins institutions constitute the largest private sector employer in Maryland, with 49,000 employees.

Chairman Harkin and Ranking Member Enzi, thank you for the opportunity to testify before this committee. You are to be commended for holding this important hearing to help workers preserve their retirement security in this time of recession. Retirement security is critically important to Johns Hopkins and its employees. We are a 100+ year-old institution with many long-term employees who rely on us for their retirement security. This issue is also important to every company, every employee, and every community across the United States, because it is more than a pension issue. We view this as an economic recovery issue and a jobs issue. You will hear that with a few regulatory changes and no government money, you can save thousands of jobs.

First, let me assure you, that Johns Hopkins will meet its obligations to our defined benefit participants. All of us have been hit by the extraordinary market losses of 2008, but we are not here asking for a bailout, nor for tax payer assistance to right our pension plans. Rather, we are here to ask today for temporary relief from Congress that can be accomplished through pension funding rule changes allowing us to manage our recent plan losses through this unprecedented market downturn. With a few changes, we can continue to grow our institutions and create jobs while meeting our pension obligations. Remember that health care is one of the few sectors where jobs have continued to grow.

The Pension Protection Act ("PPA") of 2006 accelerated pension funding requirements for defined benefit pension plan sponsors. These new requirements went into effect in 2008, the year the financial crisis began. We fundamentally support the goals of the PPA to increase the funding levels of defined benefit pension plans over

time. But, the rules were enacted in a more robust economy. By the time the rules went into effect, the plans had taken losses in the market and interest rates dropped, creating a perfect storm to cause dramatic, unplanned increases in our pension funding obligations.

The Worker, Retiree and Employer Recovery Act enacted last year by Congress provided temporary relief to some, but not all, companies. We appreciate, as well, the additional relief through regulatory guidance provided by the Treasury Department that has helped many companies for 2009. But these changes are not enough.

The stock market has not fully recovered and interest rates remain low. As a result, companies across the country are facing staggering funding obligations for 2010 and beyond, which will divert funds from other purposes, including jobs. This issue is time sensitive. Under the PPA, the vast majority of plan sponsors' funding obligations will be locked in on January 1, 2010, regardless of what happens in the economy for the remainder of the year.

#### HOPKINS' BACKGROUND ON PENSIONS

The Johns Hopkins University and Johns Hopkins Health System sponsor five active Defined Benefit pension plans that provide benefits for nearly 32,000 current and former employees. Johns Hopkins' intent is to maintain these plans and add participants in the future.

We take a long-term approach to pension funding. All of our plans were well funded (95 percent or better) before the recession, based on Johns Hopkins' prudent investment policy and its commitment to secure benefits. In fact, Johns Hopkins paid no variable rate premiums to the Pension Benefit Guarantee Corporation last year.

#### IMPACT OF 2008–2009 RECESSION ON PLAN FUNDING

We view the current recessionary environment as a unique event. The reality is that we are now behind in our capital and cash flow forecasts as they relate to meeting the funding requirements of the Pension Protection Act.

Johns Hopkins is currently expanding and improving its facilities to provide for enhanced care to the patients we serve from Maryland and throughout the world. As a product of that expansion, we are creating more jobs in the local market. Like other not-for-profit institutions, we are facing tough choices which could force us to scale back on much-needed programs which benefit humankind in order to redirect those funds into the pension trusts. In the absence of pension reform, we could be faced with the undesirable choice to reduce benefits, or eliminate jobs.

During fiscal year 2009, our plans have suffered severe asset losses, 24 percent of the portfolio (or \$223 million) due the performance of the stock market. Thus our funded status has deteriorated to as low as 70 percent for one of our plans. Coupled with the low level of interest rates, these asset losses will require significant increases in cash funding over the next 8 years—\$291 million—a jump of 60 percent in the amount we had forecasted during the Summer of 2008.

We must undertake steps now to reserve cash for this very large liability. We and the many other for-profit and non-profits companies in a similar position will have to make decisions in the next few months in order to be ready to satisfy the dramatically increased funding obligation we expect to owe. Because this obligation is required by law, we will be forced to divert resources from patient care services and from job retention and creation. Every \$10 million in incremental pension funding equates to salaries for 125 nurses.

This obligation also affects the community in which Johns Hopkins resides. With tremendous pressure on cash requirements for operations, job-generating construction projects that have not begun will be put on hold and much-needed patient care equipment replenishment programs will be curtailed as well.

#### PENSION REFORM POSITION

Johns Hopkins encourages Congress to take additional steps to strengthen defined benefit pension plans given the impact of the recession, specifically:

- Lengthen the amortization period for paying down pension deficits from 7 years to 15 years for the 2008 losses. This would reduce the \$291 million funding requirement by \$46 million over the next 8 years;
- For plans below an 80 percent funded level, remove restrictions on accelerated payments except the lump sum payments;
- Return to a policy that permits the asset smoothing corridor to be 20 percent of the fair market value of assets; and
- Return to a 48-month asset smoothing period to allow for more prudent forecasts.

We encourage Congress to apply pension relief equally to all plan sponsors. As a reference point, we would support the concepts expressed by Representative Pomeroy in his discussion draft on this issue.

#### CONCLUSION

The Johns Hopkins University opened in 1876. After more than 130 years, Johns Hopkins remains a world leader in both teaching and research. Preeminent professors mentor top students in the arts and music, the humanities, the social and natural sciences, engineering, international studies, education, business and the health professions. The Johns Hopkins Hospital opened its doors in 1889 and soon thereafter established a symbiotic relationship with The Johns Hopkins University School of Medicine which opened in 1893. For more than a century, Johns Hopkins Medicine has been recognized as a world leader in patient care, medical research and teaching.

Today, Johns Hopkins Medicine is known for its excellent faculty, nurses and staff specializing in every aspect of medical care. Johns Hopkins Medicine includes four acute-care hospitals and programs for local, national and international patient activities. In the past decade, our environment has changed drastically, particularly in the financing of patient care. We responded by moving into the community, establishing ambulatory care centers, affiliating with other hospitals in order to provide a broader spectrum of patient care and moving toward the development of an integrated patient care delivery system. At the same time, we have added to the economy and jobs throughout Maryland.

Due to the recent unusual market conditions, Johns Hopkins and other defined benefit plan sponsors will be faced with significantly larger funding requirements. As the economy is beginning to recover, job growth will be impeded as employers such as Johns Hopkins will have to limit new program development and divert these resources to our pension trust. Ironically, this will further exacerbate access to health care at a time our country needs meaningful health care reform. Passage of these four modifications to the pension funding rules will support job growth and provide employers with the resources they need to innovate and compete in a global market. Again, this can be done without a penny from Congress.

Thank you very much for the opportunity to testify today. I look forward to answering your questions.

The CHAIRMAN. Thank you very much, Mr. Peterson.

Now we will turn to Mr. Gebhardtsbauer. Please proceed.

#### **STATEMENT OF RON GEBHARDTSBAUER, MAAA, EA, FSA, FCA, MSPA, FACULTY-IN-CHARGE, ACTUARIAL SCIENCE PROGRAM, PENNSYLVANIA STATE UNIVERSITY, UNIVERSITY PARK, PA**

Mr. GEBHARDTSBAUER. Chairman Harkin, Ranking Member Enzi, and distinguished members of the committee, thank you for inviting me to testify here today on this very important issue.

A robust defined benefit system is vital for the retirement security of our Nation's retirees, for the management of our industries, and for our national economy.

I want to first note the significant advantages of DB plans over 401(k)'s. We already knew that one-third of employees were not contributing to their 401(k)'s and another third were not contributing enough. Now, as you mentioned at the beginning of this hearing, even the one-third that contributed enough are finding they are in financial distress too because of the market problems. Workers who planned to retire soon now suddenly realize they cannot retire. With workers not retiring now, the employers have to lay off more employees.

The biggest problem will show up actually in 10 years when millions of retirees that have 401(k)'s now and they are retiring in the future are reaching their 80s and they have run out of money. At that point they will be too old to go back to work. What will they

do? With all these problems, 401(k)'s should not be the only way we provide for retirement, but that could easily happen.

With this as a backdrop, it is clear that our national policy was more forward-looking when it encouraged DB plans. The current laws are way more onerous for DB plans than they are for 401(k)'s. No wonder companies are dropping their DB plans.

The most important DB item to fix is the spike in the minimum pension contributions due to the recent market crash. With temporary relief, employers can meet their contribution requirements that would otherwise double or even quadruple, according to a Watson Wyatt analysis. Relief will also help employers return to building and hiring American workers much sooner, which helps America's No. 1 problem today, the jobless recovery.

And as mentioned earlier, this relief is not a subsidy. It does not cost the Government one penny. In fact, there is a CBO memo that says it will increase Government revenues by about \$10 billion over the next 10 years. And it will also increase the PBGC premiums. And it will reduce the number of weak companies that will dump their pension plans on the PBGC.

So given these facts, I think relief is a no-brainer, but we do need to make sure it is not too generous. An idea in the Pomeroy bill keeps the relief from being too generous by requiring contributions increase by a certain percent each year.

Now, some would deny this relief to employers that froze their DB accruals, and as an actuary I much prefer DB plans, ones that are not frozen. But such a rule would cause an injustice. Employers that recently replaced their DB plans with a generous DC plan, even though that is not my favorite way to go—I would still be concerned for them because in order to get this relief, then they would have to back and reinstate their DB accruals which would be doubly expensive unless they go back then and freeze this new DC plan that they just created.

This would also treat companies in the same industry differently. Companies that replaced their DB plan with a DC plan would not get relief, thus putting them at a competitive disadvantage to others in their industry.

Also, it would create a catch 22. If a market crash causes a plan to be worse than 60 percent funded, the laws we just passed in 2006 would require a freeze in the benefits. But then this new rule that we are talking about would penalize the employer for the freeze that we just imposed on them. We should not have both a freeze and a maintenance rule operating at the same time.

A maintenance rule could be important, and there is one in the Pomeroy bill that makes sense to me. It requires a minimum accrual in either the DB or DC plan, and if the company says we cannot afford it anywhere—you know, if we cannot afford it for the rank and file, then Congress can say, "Well, then you are not allowed to provide it to the top executives either. If you cannot afford it for one, you cannot afford it for the other."

Almost in closing, one concern of relief is that employers will expect help in every crash in the future, which is actually understandable because right now the rules do not work in a market crash. Congress would have to come back and fix it every time. If

Congress fixes these rules permanently, though, then the employers will not expect relief.

And there is an easy fix. I mention three in my paper, three ways of doing it, but one easy fix is just change the asset corridor back to 80 percent to 120 percent. Within 20 percent of market values.

The theory behind that is actually very good. I surveyed Penn State's top finance and economics professors, and I found that not one of them—not one of them—increased the contributions to their retirement plan over the past year. In fact, I did not either. I asked them why did they smooth so heavily, and they looked at me with surprise and they said, is that what you mean by smoothing? What they do is they just assume that their assets are going to come back fairly soon, and that is what actuarial smoothing is.

Earlier Senator Enzi brought up the question, why was there this push to go to 90 to 110 percent smoothing, and I think it was for the wrong reason. It was because in the accounting world it really makes sense for the financial statements to know—you know, mark-to-market because if you want to buy a company, you know, half a company, a whole company, or if you just want to buy 1,000 shares, you want to know what is that company worth today. You do want a mark-to-market there. But when it comes to budgeting for your contributions to a pension plan, that is different.

For example, in a situation we have had just recently or back in 1987 when the market crashed 20 percent and then came right back up, the rule right now would say you cannot reflect the fact—in fact, now that assets are like 50 percent back up from where they were before—they are not all the way back, but they are very far back. But the rule right now would say, “No, your assets can only be 10 percent different than what they were back on December 31.” Not only do you not have smoothing. You cannot plan ahead. You do not have predictability because back in September people did not know we were going to have a crash, and so they were planning on building this building, hiring these workers, and then all of a sudden the crash happens. In September they find out, oh-oh, something is happening. We may have to contribute double or triple or quadruple as much. That is a real concern. That is what is caused by the corridor.

Now, I am not trying to, at the moment, say anything about the 7-year amortization. If we still have 7-year amortization, you still get back up to full funding after 7 years. The smoothing does not change that.

Finally, I also note that I have heard that PBGC is acceptable to some smoothing and the particular idea that they are OK on smoothing. This 20 percent corridor is actually tighter than the one that PBGC is willing to go along with.

Finally, being the former actuary at the PBGC, I want to protect it. I would also modify the bankruptcy rules so that employers do not use them to dump their pension plans on the PBGC. They should be held responsible for their promises, and I will be happy to discuss that later. Thank you.

[The prepared statement of Mr. Gebhardtsbauer follows:]

PREPARED STATEMENT OF RON GEBHARDTSBAUER, MAAA, EA, FSA, FCA, MSPA

Chairman Harkin, Ranking Member Enzi, and distinguished members of the Senate HELP Committee, thank you for inviting me to testify on this very important issue.

**A robust defined benefit (DB) system is important** for the retirement security of our Nation's retirees, for the management of our industries, and for our national economy.

**While it is valuable for employers to provide both DB and DC plans, I want to note the important advantages of DB plans over 401(k)s.** A major advantage was demonstrated by the recent crash in the stock market. We already knew that one-third of employees were not contributing anything to their 401(k) and another one-third were not contributing enough. Now we see that even the one-third who contributed enough, are in financial distress, even if they responsibly invested in a target retirement date fund. Many that just retired are finding that they need to go back to work, even though now is not an easy time to find a job. Those workers planning on retiring soon, now suddenly realize they can't. They will need to continue working for they don't know how long, even though many of them are getting laid off. This is a problem for employers too. With a DB plan, employers could count on their workers retiring on a more regular basis. But now, with no one retiring, they will have to lay off employees, which is not easy to do.

We still haven't seen the biggest problem with the 401(k). In about 10 years or so, millions of retirees in their 80s will be running out of money, because they lived longer than they expected or there is another stock crash, and they didn't buy a lifetime income with their 401(k) funds. But, they will be too old to go back to work, so what will they do? With all these problems, we don't want 401(k)s to be the only way we provide for retirement, but that could easily happen. DB plans address these problems for workers *and employers*. With DB plans, these retirees would more likely have had lifetime incomes, and they would not have to return to the labor pool.

Retirees returning to the labor market also hurt the Nation because this increases unemployment rates. Finally, DB plans help the Nation with patient capital that is more efficiently invested in the markets than individual retirement money, *and* DB plans can hold investments that individuals cannot.

**With this as a backdrop, it becomes clear that our national policy was more forward looking in the past when most large employers provided DB plans;** now our rules encourage employers to choose 401(k)s, even when an employer would prefer a DB plan for their particular situation. Yes, we allow employers the choice of a DB and/or DC plan, but it is a false choice because current laws are much more onerous on DB plans, and much easier for 401(k)s.

**The most onerous item to fix today is the spike in minimum pension contributions due to the market crash.** With measured and temporary relief, employers can meet their contribution requirements that would otherwise double, triple, or even quadruple according to a recent Watson Wyatt analysis.<sup>1</sup> Without relief, their analysis shows that contributions would be much larger than they have ever been. And, with relief, we not only help employers meet their contribution requirements, we also help them return to building and hiring American workers much sooner. **Thus, we have the opportunity to help not only retirement security in America, but also the Nation's No. 1 problem today: the jobless recovery.**

**And this relief is not a subsidy.** It will not cost the government one penny. In fact, according to a CBO memo,<sup>2</sup> it will increase government revenues by about \$10 billion over the next decade, and it will not hurt the PBGC.<sup>3</sup> In fact, it will increase premiums to the PBGC. Now, some may worry that PBGC will have to take over some worse-funded plans in the near future, but that won't happen in the aggregate. Their weak sponsors will not triple their contributions anyway. On the contrary, CBO noted (and I agree) that providing relief could decrease the number of weak companies that will dump their pension plans on the PBGC. And relief will help keep healthy employers in the DB system, so that they will continue to pay their premiums to the PBGC.

**Given that relief is needed and doesn't hurt the PBGC, it is a no brainer, but we need to make sure it is not too generous.** Three House bills (H.R. 2989, the Pomeroy bill, and the Boehner bill) are all in the same ballpark on relief according to the Watson Wyatt analysis. The Boehner bill may be unintentionally too generous in the first year. The Pomeroy bill provides a way around that problem by

<sup>1</sup>Analysis by Watson Wyatt Research and Innovation Center.

<sup>2</sup>CBO's 7/31/09 Cost Estimate on H.R. 2989.

<sup>3</sup>Per page 4 of CBO's 7/31/09 Cost Estimate on H.R. 2989.

requiring an increase in the contribution by at least a certain percentage over the next few years. I encourage you to adopt something similar to those bills, with a possible minor change that reflects recent IRS relief.

**Recent IRS Relief:** Recent IRS guidance provided relief for many DB sponsors in 2009, so their problems have been moved to 2010 and 2011. Thus, it might make sense for your relief to be in those years. For the pension plans that were not helped by the IRS guidance, you could give them the relief for this year and either 2010 or 2011.

**Maintenance of DB plan:** Some employee groups have suggested denying relief to employers that froze their DB accruals. Much as I prefer DB plans with accruals, I have to note that a rule like that would cause an injustice. For example, employers that froze their DB plans may have already replaced it with a generous DC plan. They would have to reinstate their DB accruals which would be doubly expensive, unless they froze their new DC plan. That would create a lot of disturbance just to get temporary relief. A rule requiring DB accruals would also treat companies in the same industry differently. Companies that replaced their DB plan with a DC plan would not get relief, thus putting them at a competitive disadvantage to others in their industry.

In fact, I don't understand the imposition of a maintenance rule in difficult times. The penalty doesn't fit the problem. It would make our pension laws schizophrenic. I'll explain. If a market crash causes a plan to be worse than 60 percent funded, a PPA provision requires the freezing of accruals. But then this new rule would penalize the employer for the freeze we just imposed on them. That's inconsistent, and doesn't make sense. We shouldn't have both the law freezing benefits and the maintenance rule operating at the same time. Dutch pension laws, which people have been enamored of late, are much more sensible in this area. After a market crash in the Netherlands, a recent pension accrual (or cost-of-living adjustment) can be reduced. And then when the market comes back, the accrual is restored. No wonder a greater percentage of Dutch workers are covered by DB plans. Their pension laws make more sense.

If a maintenance rule is really important, something like the one in the Pomeroy bill makes more sense. It requires a minimum accrual in either the DB or DC plan. Some employers may even be too weak to provide either DB or DC accruals. Since those companies would be the ones in need of the most help, prohibiting relief to them (or giving them only partial relief) is going in the wrong direction. In this case, the Pomeroy bill requires those employers to freeze their NQDC (Non-Qualified Deferred Compensation) plan for executives. That makes more sense. If a company can't afford benefits for their rank and file, then they can't afford them for their executives either.

**Permanent Fix to Funding Rules:** After Congress solves this temporary problem, they should revisit long-term pension funding policy, so that they don't have to return to this issue again and again. A fix could be a fairly simple change to the existing rules. If Congress fixes the funding rules on a permanent basis, employers will get the certainty they need, so that they can plan ahead and make decisions (for example, how much of the plan assets should be allocated to stocks). The recent past showed that the current funding rules break down after a crash. We knew that when they were created, which is why the American Academy of Actuaries pushed for an anti-volatility mechanism in PPA. The new rules will also have problems in a market bubble, because minimum contributions will go to zero under the PPA rules. And when the inevitable crash comes, contributions will spike to 200 percent or 300 percent of what they were in the past, which is way more than employers can handle. When health costs go up by just 15 percent or 25 percent employers, workers, and retirees scream. A 100 percent or 200 percent increase can be cataclysmic. At these times, pension contributions need more smoothing than the current rules allow.

A concern caused by giving relief today is that employers will hope for relief on the next crash, and not make the changes they need to make in their policies. Thus, if Congress fixes the funding rules in a permanent way so that they provide an appropriate amount of smoothing that works even after a crash, then employers won't expect relief next time. Here are several different ways to do it, with different levels of complexity.

**One method suggested by the actuarial consulting firm Mercer (sometimes called the Anti-Volatility Mechanism or AVM)** caps the contribution increase (or decrease) at 25 percent of the cost of the plan's current year accruals. (Congress could set the percent in the law after consultation with the PBGC.) Here is how it would work. If the contribution of a pension plan that was 100 percent funded was \$100 million and the market crashed, so that next year's minimum contribution doubled, the AVM would kick in and cap it at \$125 million. Each year,

the minimum contribution would go up another 25 percent until it reaches the actual amount of the contribution. Applying this rule to past experience shows that the cap may not be needed for more than 1 to 3 years generally, due to the market reverting to mean Price/Earnings ratios (after fears subside) and the cumulative nature of the cap. An Academy paper<sup>4</sup> suggested the plan's funding levels would not be much worse off due to the cap.

Because this cap smoothes out the volatile contribution, some employers might forgo the use of smoothing their asset and liability numbers.

This idea also works in the other direction. If a market bubble occurs, the minimum contribution would not decrease by more than 25 percent. This keeps the contribution from going to zero too quickly. The pension plan can become overfunded, but there will still be a contribution. That is a positive attribute if you are the PBGC, because having a surplus in the pension plan can help in the future if there is a stock crash. However, it destroys wealth if a company is forced to contribute to an overfunded plan, because surpluses are locked into the plan. Thus, employers will be strongly against being forced to put more money into an overfunded pension plan, unless the IRC section 420 rules on asset transfers are relaxed (which I will discuss later).

There are a couple other concerns to address with the AVM idea. It is a big change from current rules, so it needs to be tested before put into law. Some concerns follow:

*The AVM calculation could be complex.* For example, contributions delayed would have to create a new loss, and the interplay with credit balances could be confusing. Also, a company shouldn't be able to increase benefits, and then avoid the increase in their contribution due to the AVM cap. Thus, the increase in contribution due to a benefit increase should not be capped (ditto if an employer shuts down a plant which increases benefits).

*Mature plans:* The AVM cap is modified if the cost of accruals is zero, because otherwise the contribution increase would be 25 percent of zero, which is zero. The AVM cap has another minimum increase equal to 2 percent of a plan's value of accrued liabilities (if larger than the above cap). This 2 percent number could also be set by Congress in consultation with the PBGC, but it would be very difficult to agree upon. Mature employers with large retiree populations compared to their current workforces will find this minimum will blow them out of the water, while PBGC will most likely want it stronger than these companies will want.

*AVM cap doesn't vary with interest rates:* Unlike the 7-year amortization rule, the AVM cap has problems because it doesn't vary with interest rates. The 7-year amortization payment to a pension plan works like a loan. When interest rates are high, the loan payment is high relative to the loan amount. When interest payments are low, the loan payment is low. For the same reason, a pension plan sponsor has to pay a much larger 7-year amortization payment to get back to 100 percent funding when interest rates are high, and a lower payment when interest rates are lower. However, the 2 percent cap will still just be 2 percent. For example, if interest rates are high, the funding ratio won't improve by 2 percent as intended, and if assets don't do as well for awhile, the funding ratio could actually deteriorate over the period, not get closer to 100 percent. On the other hand, if interest rates are low and if stocks do well, the funding ratio would snap back much quicker than expected (possibly overfund, if assets revert to prior levels), so the cap would have been higher than necessary.

**Method II: Another idea suggested by the actuarial consulting firm Towers Perrin (TP)** would use market values of assets and liabilities to determine a pension plan's funding ratio for the current and prior two valuations. It would then average them, with heaviest weighting on the current funding ratio. This average funding ratio could then determine the underfunding to be paid off over 7 years, as under the current PPA rules.

TP's suggestion uses market values at each valuation date, so it would work for sponsors using LDI (liability determined investment) techniques to immunize their pension plans from market and interest risks (by, for example, holding bonds). It would also work for plans that held stocks due to the averaging of the funding ratios. It would be more responsive to market crashes than the AVM method: the greater the crash, the larger the next year's contribution, but the increases would be tempered by the averaging of the funding ratios. The averaging of the funding ratios would also help with predictability, since a certain portion of the contribution would already be fixed before the valuation date, as in current rules.

<sup>4</sup>Pension Funding Reform for Single Employer Plans (dated 2/28/05).



This idea would have *some complexity*, in that prior funding ratios should probably be revised to reflect subsequent contributions, benefit accruals, and benefit improvements, but otherwise it could operate under the PPA rules as they are now.

**Problems with the corridor:** Unfortunately, there is one aspect of the PPA funding rules which if retained would undo all the good that the TP idea provides. It is the tight corridor restriction that assets must be within 10 percent of the market value of assets. The TP proposal didn't keep the corridor. I will use an example to explain why. If a pension plan's market value of assets equaled plan liabilities at \$100 million, and then a stock crash brought the assets down temporarily to \$70 million right around the valuation date, and then came back to \$100 million over the next year, the use of average funding ratios would smooth the contribution and make it predictable, but the 90 percent/110 percent corridor would override it, so that the contribution would double, which would be way more than needed. It would overfund the plan. The following year, the overfunding would eliminate the minimum contribution requirement. It doesn't make any sense to double contributions 1 year and then eliminate them the next year. Employers are not going to want to maintain a DB pension plan, if that happens. It makes much more sense to keep contributions relatively stable.

Thus, even if assets come back fairly quickly, the PPA funding calculation is stuck using the assets within the 90 percent/110 percent corridor on the valuation date. In fact, this is the primary reason PPA's funding rule didn't work this past year after the crash. This brings us to the simplest fix of them all.

**Method III: Reduce contribution volatility by simply changing the permissible asset corridor back to 80 percent/120 percent of the market value (and allow partial use of market values).** Changing back to the 80 percent/120 percent asset corridor doesn't require much change to the law. It would let PPA's 2-year smoothing rules work the way they were intended.

In fact, PPA's 10 percent corridor causes problems even for plans that partially immunize against interest rate risk. That's because it restricts the value of assets, but not the value of liabilities. For example, if interest rates increased say 200 basis points in 1 year, the liabilities and bond values would decrease by about the same amount (more than 10 percent). Since the employer only partially immunized, they would probably still be using asset smoothing for the stock values, but that would cause a problem with the bond values. They would be pulled down by the 10 percent corridor restriction. One way to fix that problem would be to allow employers to use market values of assets and liabilities for the portion of liabilities that are immunized, and use smoothed values for the portion not immunized.

There is good theory behind smoothing contributions. In recent U.S. history, assets have come back after a crash. And if they don't come back, then the 2-year smoothing will quickly revert to the new level of assets. When I took an informal poll of some leading Finance and Economics professors at my University, I asked if they had increased their contributions to their retirement funds over the past year, and *not one of them* had, even though they all held stocks whose value had crashed. When I asked them why they had used such severe smoothing, they looked at me with surprise, and some said "is that what you mean by smoothing?" When we discussed why they had not increased their contributions, they said they were assuming that their assets would come back way before they retire. This is not a perfect analogy, but it helped them understand why employers argue for some smoothing of contributions. (By the way, some people may be thinking that I am arguing for smoothing pension assets and liabilities in financial statements. I am not. The need for market values makes sense there, since companies are constantly being bought and sold, and in that case you need to know the accurate values that day.)

The theory of smoothing contributions goes in both directions. It is not used to just decrease contributions. It also increases contributions. For example, smoothing assets during a bubble makes the appropriate assumption (as in 1999) that the equity market can be overvalued, so that smoothing would require a contribution. Using market values would eliminate a contribution requirement.

Dr. Richard Thaler of the University of Chicago, one of the top behavioral economists in the country, wrote an Opinion Piece in the August 4, 2009 *Financial Times* entitled "In Support of Actuarial Smoothing." He wrote that market prices are not always right, and suggested that government create automatic stabilizing activities. Such an idea in the pension world would be to smooth pension contributions through market bubbles and crashes. That would dampen the business cycles of boom and bust caused by current rules that don't smooth contributions adequately during market crashes. In addition, I note that using the 80 percent/120 percent corridor has a lot less smoothing in it than the AVM method after a large stock crash,

so I don't understand why supporters of the AVM rule think that the 80 percent/120 percent corridor rule is bad. Maybe there is an inconsistency in their thinking.

**Trapped Pension Surplus:** In addition to reducing contribution volatility, there are a few other items needed for pension funding to work. As noted earlier, requiring plans holding stocks to have surplus assets in their plans makes sense in case there is a future crash in stock values, but it will only succeed if employers can access plan surplus that will never be needed. Employers will not want to be forced to contribute surplus funds to plans, knowing that they can never get it back if it is not needed to pay promised benefits. Currently, if an employer were to transfer surplus assets out of a plan to help them pay for say the employee health plan costs, it is assessed a Federal income tax of 35 percent plus a reversion excise tax of 50 percent and a State income tax of maybe 5 percent, so that the government gets 90 percent of any reversion. But the government gets no income from this, since no employer will do it at such high tax rates. The 50 percent excise tax was instituted in the 1980s when investors would buy a company, and pay for the purchase by raiding the company's pension surplus. Fortunately, thanks to mark-to-market accounting and rules putting the pension plan on the company books, the purchaser would have to pay for that surplus in order to buy the company, so it wouldn't happen anymore. The law already allows transfers of pension surplus to retiree health plans under IRC section 420, but that has no value to companies that don't have a retiree health plan. If Congress wants to encourage well-funded plans, it should expand IRC section 420 to also allow transfers to say the health plan of employees in the pension plan, without bringing pension raids back. They could provide restrictions, such as:

- (1) Only allow small amounts of pension surplus to come out in any 1 year,
- (2) Use the IRC 420 rules that requires the plan to have a 20 percent margin in the plan after the asset transfer,
- (3) Require continuation of the pension plan for 5 years, and/or
- (4) Require the approval of any union.

Even unions have testified in favor of a provision to transfer pension assets to the employee health plans (since it was successfully used with the UMW plan in the 1990s, and it could help employers retain their health plans).

**Other abuses that need to be fixed:** I used to be the chief actuary of the PBGC, so I want to make sure we don't harm it, but strengthen it. As noted above, temporary relief shouldn't hurt the PBGC as long as we don't encourage employers to think that we will continue to provide relief at every crash. The way to do that, is to fix the rules permanently so that they handle crashes better, as discussed above, and discourage abuses, such as the ones below.

**Bethlehem Steel was a weak company with a huge pension fund invested heavily in stocks.** When the stock market did well, good returns eliminated the need for contributions to the pension plan, but Bethlehem Steel was gambling. When the stock market crashed, they were not able to afford the pension plan, and in fact, the crash gave them the ability to put their pension promises to the PBGC. Heads they won, tails the PBGC loses. We need to avoid that abuse. One way would be to prohibit large weak companies from having such large amounts in stocks. If a prohibition is too strong, an alternative would be to let the PBGC charge these weak companies with unusually large allocations to stocks (e.g., greater than 50 percent or 60 percent or their active liability if less), a risk related premium. The premium could reflect their probability of going bankrupt (by comparing their borrowing rate to a Treasury rate). The calculating could also incorporate what the plan assets might be after a crash (using recent volatility in the assets held by the plan). The premium might be enough to keep the sponsor from "overinvesting" in stocks. Thus, it doesn't punish weak companies for being weak. It only punishes them if they overinvest in stocks.

**Companies like United Airlines went into reorganization, enabling them to put their pension promises to the PBGC.** An opinion piece in the Wall Street Journal co-authored by the CEO of a major airline, the former head of the PBGC, and the head of the major airline union suggested that companies going through reorganization should have to keep the responsibility for their pension promises, instead of dumping them on the PBGC. Their solution required the three parties involved to work out an Alternative Funding Arrangement where the contributions were temporarily decreased in exchange for frozen guarantees and possible benefit reductions that would be less harsh than if the PBGC took over the plan. The Senate had a provision that would have implemented such an idea in section 402 of their version of PPA, and the American Academy of Actuaries wrote about this in a paper entitled *Keeping Employers Responsible for Their Promises*. The Administration was concerned that it would give the Treasury Department and PBGC too

much influence over an individual company and allow them to aid one company in an industry over its competitors, but the aid pales in comparison to the benefits of the PBGC completely taking over the pension plan from the reorganizing company. If consistency is a problem, Congress could set parameters around the relief provided.

**PBGC Premiums:** Finally, I would be remiss if I didn't note that PBGC has a deficit and needs additional income to completely fulfill its mission. It may be difficult to get enough funds from the remaining companies in the DB system, since so many companies have terminated their pension plans. PBGC's current underfunding is primarily due to taking over underfunded pension plans in the airline and steel industries, which means that the customers of those industries underpaid for their services. This suggests that one source of funding for PBGC could be the current customers of those industries. For example, a fee of \$1 per person could be charged for each commercial flight (domestic or international) that takes off or lands at a U.S. airport. In addition, there could be a \$1 fee for every ton of raw steel sold in or imported into the United States. Without these changes, PBGC will have to rely on premium income from covered pension plans, whose numbers are shrinking, and possibly withdrawing employers.

**In conclusion,** measured temporary relief can help both retirement security and the Nation's unemployment problem. And it can be done in a way that doesn't hurt the PBGC, and works for employers, if it is done without unfair restrictions on which firms get it. In addition, so that employers can plan ahead, Congress should fix the funding rules on a permanent basis so that they don't have such volatile results after a market crash. Otherwise, employers will expect relief after the next crash. In addition, the pension asset transfer rules should be expanded so that employers are more likely to add surplus assets to their pension plans. A few abuses described above also need to be closed. I appreciate the opportunity to discuss this topic and look forward to your questions.

The CHAIRMAN. Mr. Gebhardtshauer, thank you very much. Very enlightening.

Mr. DeFrehn, welcome and please proceed with your testimony.

**STATEMENT OF RANDY G. DEFREHN, EXECUTIVE DIRECTOR,  
NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS, WASHINGTON, DC**

Mr. DEFREHN. Thank you, Chairman Harkin. Chairman Harkin, Ranking Member Enzi, members of the committee, thank you for the opportunity to appear here today and to offer our perspective on this important issue.

In the interest of time, I will limit my remarks to the effects of the financial crisis on the status of multiemployer plans which operate under a different statutory and regulatory framework than single-employer plans do.

Second, the unintended consequences of rigidly imposing the PPA funding rules on the small businesses that contribute to these plans.

And third, our suggestions for appropriate relief measures to be enacted preferably before the end of the year.

Multiemployer plans are prevalent in a wide variety of industries across the economy, including construction, trucking, retail, and a host of other industries characterized by a mobile workforce. Tens of thousands of small employers contribute to them, the vast majority of which employ fewer than 20 employees and are only able to provide benefits that rival much larger firms by taking advantage of the administrative economies of scale offered by these plans.

According to the latest PBGC Databook, there are 1,510 multiemployer DB plans in the United States. They cover 10.1 million participants, or about one in every four Americans who has a defined benefit plan.

Multiemployer plans have been conservatively invested, well managed, and historically have presented little risk to the PBGC because employers share responsibility for these industry plans and collectively pick up the responsibility for other employers who leave the fund without paying their share of the unfunded liabilities rather than shifting them to the PBGC.

Since 2000, multiemployer plans were victims of the same two market collapses that have decimated the other segments of the financial services industry. The first one resulted in the enactment of the multiemployer provisions of the Pension Protection Act that incorporated many of the recommendations of our coalition's joint proposal for funding reform. Although the PPA provided a viable framework for reform under normal market conditions, including new, more aggressive funding targets, its implementation coincided with the second once-in-a-lifetime market collapse in less than 10 years.

Following enactment of the PPA, plan sponsors acted aggressively to deal with the new, more demanding funding benchmarks. Our recent survey of 385 plans showed that the bargaining parties had already implemented contribution increases averaging 21 percent in the 24-month period from January 2007 through January 2009, not including the additional costs related to the 2008 investment losses that averaged a loss of 21 percent.

In terms of the funded status of the plans, it is quite simple. In 2007, over three-fourths of all plans were funded above 80 percent. By early 2009, over three-fourths of the plans reporting were funded below 80 percent.

The funding requirements of the PPA that were intended to improve benefit security of these plans now demanded the parties adopt funding improvement or rehabilitation plans to comply with these new funding targets. Absent legislative relief, many plans will be forced to reduce benefits or increase contributions further than necessary. That will make contributing employers less competitive, reduce employment and corresponding hours of contributions, and increase the likelihood of plan failure. Furthermore, once adopted, these contribution increases and any benefit reductions may not be reversed until the plan emerges from endangered or critical status perhaps years from now.

The coalition has proposed a variety of provisions to provide the greatest relief to the broadest number of plans. The proposals include two categories of change.

The first addresses plans that are expected to remain solvent but which need more time to address the asset depletion without inflicting irreparable harm to contributing employers. This category of change includes, among others, proposals to extend the amortization of losses incurred during 2008 and 2009 over 30 years or, alternatively, to allow plans to fresh-start their funding standard account and amortize those charges over 30 years.

It is also proposed that plans be allowed to use 10-year smoothing of only those losses for 2008 and 2009, as several of the other speakers have mentioned, a change in the corridor, which for multiemployer plans is currently 20 percent, as it has been in the law for many years, but due to the magnitude of the losses, we believe

it is appropriate to change that corridor to 30 percent for a short period of time.

The second category of change addresses plans that are not expected to remain solvent absent further relief. Among the proposals to help those plans and their participants are increased flexibility for the PBGC to facilitate mergers of weaker plans into stronger ones and to expand the existing law that permits certain plans that are projected to become insolvent to partition liabilities attributable to employers who no longer contribute to the plan and which fail to pay their withdrawal liability. Admittedly, this proposal carries some costs, not anticipated to be paid for from the premium structure, but by saving the remaining portion of the plan, it has the potential of significantly reducing the longer-term liability exposure for the PBGC, if the plans subject to this relief were to fail.

A third aspect of this part of the proposal is to increase the level of guaranteed benefits now limited to a maximum of \$12,870 a year for a participant with 30 years of service. We would like to see that increased to about \$20,000 with the corresponding increase in premiums to cover that. By contrast, you heard Ms. Bovbjerg explain that the current single-employer guaranteed maximum is \$54,000, about four times as much.

These proposed measures, as well as most of the other recommended changes put forth by our coalition, are included in the bill introduced Tuesday in the House by Congressman Pomeroy and Tiberi known as the Preserved Benefits and Jobs Act of 2009 which Congressman Pomeroy proudly announces the acronym of PB&J, since it is time to get back to basics.

We urge the committee to take timely action to enact similar legislation to protect our plans, our employers, and our participants before the end of 2009. Failure to act will put the financial viability of thousands of small businesses and the jobs of tens of thousands of employees at risk.

Thank you and I welcome your questions.

[The prepared statement of Mr. DeFrehn follows:]

#### PREPARED STATEMENT OF RANDY G. DEFREHN

##### SUMMARY

Multiemployer defined benefit pension plans have provided secure retirement benefits to tens of millions of American workers for over 60 years. They have been a successful model through which small businesses can provide benefits comparable to those of much larger firms through the pooling of risk and economies of scale. The 1,510 multiemployer defined benefit plans currently provide pension benefits coverage for 10.1 million participants (approximately one in every four workers currently covered by defined benefit plans today).

The success of this model lies in the shared commitment of labor and management, reinforced by decades of successive laws and regulations dating back to the 1947 Labor-Management Relations Act which requires joint management of trust funds for the sole and exclusive benefit of plan participants. Nevertheless, conflicting Federal tax policies have compounded the problems created by the two "once-in-a-lifetime" market contractions that have occurred this decade.

The multiemployer community addressed the last economic decline through the formation of a broad-based coalition of stakeholders (the Multiemployer Pension Plans Coalition) which embodied this joint commitment by developing a coordinated proposal for funding reform which formed the basis for the multiemployer provisions of the Pension Protection Act of 2006. These reforms were designed to encourage plan sponsors to improve the funding of multiemployer plans by setting new benchmarks for the funding of plans that begin to experience funding problems as the result of the bursting of the "Tech bubble" and ensuing crisis of confidence, and pro-

vided new tools for plans to achieve them. Since the end of the earlier crisis, plans had begun to recover their earlier funded status when the PPA became effective. Even before then, plan sponsors took pre-emptive action to address the funding problems by increasing contributions and, to the extent possible before its effective date, modifying future accruals. Unfortunately, this coincided with the second “once-in-a-lifetime” market contraction in this decade.

With input from Senate and House Committee staff, the NCCMP conducted a funding status survey for multiemployer plans to collect and analyze information regarding the impact of that market crisis on multiemployer plan funding and the need for further legislative relief. The results of that survey are reported in the testimony, along with irrefutable evidence that the fundamental reason for the deterioration of the funded status of multiemployer plans was the global financial meltdown.

Having identified the cause of the funding decline, the Multiemployer Pension Plans Coalition once again coalesced to develop a set of proposed funding reforms to address this latest funding challenge. This testimony also includes a review of several of the principal proposals for reform that attempt to balance the need to improve funding without jeopardizing the competitive status of contributing employers.

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#### INTRODUCTION

Mr. Chairman and members of the committee, it is an honor to speak with you today on this important topic. My name is Randy DeFrehn. I am the Executive Director of the National Coordinating Committee for Multiemployer Plans (the “NCCMP”).<sup>1</sup> The NCCMP is a non-partisan, non-profit advocacy corporation created under section 501(c)(4) of the Internal Revenue Code in 1974, and is the only such organization created for the exclusive purpose of representing the interests of multiemployer plans, their participants and sponsoring organizations. I am testifying today on behalf of the NCCMP and the Multiemployer Pension Plans Coalition (“Coalition”),<sup>2</sup> a broad group comprised of employers, employer associations, labor unions, multiemployer pension funds, and trade and advocacy groups from across the country, representing the full spectrum of the multiemployer community.

My remarks will be directed to the longstanding shared commitment to retirement security for American workers evidenced by multiemployer plans and the impact of the recent financial crisis on their long-term viability.

#### EXECUTIVE SUMMARY

Multiemployer plans have provided retirement security to tens of millions of American workers for more than 60 years. They currently account for nearly one of every four participants in all defined benefit plans. This system has survived and thrived as a result of a joint commitment by labor and management (reinforced by the statutory and regulatory structure) to responsibly balance the needs of all of the stakeholders. Through the collective bargaining process the parties have negotiated competitive wages and excellent pension and health benefits while enabling employers to remain competitive. Multiemployer plans enable employees in mobile indus-

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<sup>1</sup>The NCCMP is the premier advocacy organization for multiemployer plans, representing their interests and explaining their issues to policymakers in Washington since enactment of ERISA in 1974. It has more than 200 affiliates which directly sponsor over 700 pension, health and welfare and training trust funds, as well as employers and labor unions whose workers and members participate in multiemployer plans.

<sup>2</sup>The Multiemployer Pension Plans Coalition, which is coordinated by the NCCMP, came together in response to the first “once in a lifetime” bear market early in this decade, to harness the efforts of all multiemployer-plan stakeholders toward the common goal of achieving benefit security for the active and retired American workers who rely on multiemployer defined benefit pension plans for their retirement income. Collectively, these stakeholders worked tirelessly to devise, evaluate and refine proposals from all corners of the multiemployer community for funding reform. Their efforts culminated in a proposal for fundamental reform of the funding rules contained in ERISA; rules that had never been “stress-tested” under the kind of negative investment markets which prevailed from 2000 through 2002; and rules that were largely adopted in the multiemployer provisions Pension Protection Act of 2006 (“PPA”). This group recognized that benefit security rests on rules that demand responsible funding, discipline in promising benefits and an underlying notion that even the best benefit plan is irrelevant if the businesses that support it are unable to remain competitive because of excessive, unanticipated or unpredictable costs. The Coalition was reconstituted following the second “once in a lifetime” market event in 2008 when it became clear that the provisions of the PPA were not sufficiently flexible to address the magnitude of the global catastrophic market contractions that affected every part of the financial services infrastructure of the United States.

tries to receive reliable benefits through a system that pools assets, administration and liabilities.

Multiemployer plans have been conservatively managed and well-funded as evidenced by the fact that in the 29-year history of PBGC's multiemployer guaranty fund only 57 funds covering 122,000 participants have received any financial assistance from the agency totaling just \$417 million.<sup>3</sup> Despite suffering losses between 15 percent and 25 percent in the early part of this decade, over 75 percent of plans were more than 80 percent funded as recently as 2007. Nevertheless, the investment losses suffered in the current global financial collapse have threatened the financial viability of multiemployer defined benefit plans as they have virtually all other financial institutions. Coming in the first year of the new, more aggressive funding rules required under the PPA, the recent losses have pushed compliance with those rules out of reach for many plans without crippling additional contribution increases, deep benefit cuts, or both; making contributing employers less competitive, jeopardizing jobs and further reducing hours on which contributions to the plans are based.

As a result, the multiemployer community has coalesced behind a comprehensive set of proposals that are designed to mitigate the immediate effects of the current financial crisis. These proposals are generally enumerated in the "Preserve Benefits and Jobs Act of 2009" introduced October 27 in the House by Congressmen Pomeroy and Tiberi. The timely enactment of these measures will preserve the retirement security of hundreds of thousands of multiemployer plan participants and prevent further economic deterioration in the industries in which such plans are the prevailing model.

#### BACKGROUND

Multiemployer defined benefit pension plans have provided retirement income security to tens of millions of retired American workers for more than 60 years. A product of the collective bargaining process, they provide a model through which small employers, especially those in industries characterized by mobile workforces, can provide reliable benefits on a scale comparable with much larger firms, by taking advantage of economies of scale and centralized administration provided by the multiemployer plan model. According to the latest PBGC *Databook*, there are currently 1,510 multiemployer defined benefit plans covering some 10.1 million participants (approximately 23 percent of all participants in defined benefit plans). They are prevalent in virtually every area of the economy where employment patterns require frequent movement within an industry, including: construction; trucking; retail; communications; hospitality; aerospace; health care; longshore; maritime; entertainment; food production, sales and distribution; mining; manufacturing; textiles; and building services.

The overwhelming majority (over 90 percent) of contributing employers to multiemployer plans in many industries are small businesses, employing fewer than 20 employees, with more than half employing fewer than 10. Any specific multiemployer plan may have only a few contributing employers, or as many as several thousand, depending on the industry and the scope of the plan (local, regional or national).

#### *Statutory and Regulatory Environment*

Multiemployer plans have had separate and distinct statutory and regulatory structures dating back to the 1940s, with the passage of the Labor Management Relations Act of 1947 (more commonly referred to as the Taft-Hartley Act). Among its sweeping labor law provisions, that law prohibited employer contributions directly to unions or union funds (as had become the practice). Instead it requires that any contributions to support employee benefits must be made to a trust established and maintained for the "sole and exclusive benefit" of the participants, rather than furthering the interests of either labor or management. Furthermore, while the misnomer of "union funds" is still often incorrectly applied, the act requires equal representation by employers and labor and in the management of these collectively bargained employee benefit plans—a model and a requirement which continues today.

The differences between single employer and multiemployer plans and the obligations of the plan trustees were further codified with the passage of two laws in the 1970s and 1980s. The first, the *Employee Retirement Income Security Act of 1974* (ERISA), expanded on the common law fiduciary responsibilities of plan trustees, in-

<sup>3</sup>To place these numbers in context, the PBGC's single employer guaranty fund currently insures approximately 27,900 plans covering 33.8 million participants. To date the agency has assumed responsibility for 3,860 plans covering 1.2 million participants at a cumulative cost of \$39.4 billion since its inception in 1974.

roduced the concept of non-forfeitable (vested) benefits and required the pre-funding of benefits. The second was the *Multiemployer Pension Plan Amendments Act of 1980* (MPPAA) which created the multiemployer guaranty fund of the Pension Benefit Guaranty Corporation<sup>4</sup> and imposed the concept of “withdrawal liability” that required sponsoring employers who depart from plans pay their proportionate share of any unfunded vested benefit obligations. These assessments were deemed necessary to prevent such obligations from being unfairly shifted either to the taxpayer or to the remaining employers thereby providing a double competitive advantage to the departing employers (first, by no longer having any obligation to make contributions to the plan, and second, by sticking those same remaining employers with the liabilities for service earned with the departing employers). Although both laws were the subject of significant legal challenges, by and large they and the multitude of ensuing regulations have been subsequently upheld and reinforced by numerous court decisions.

This notion of shared responsibility has proven to be an effective means of delivering quality pension and health care benefits to workers. All such benefits are funded by contributions that are required to be made to independent trust funds pursuant to collective bargaining (or other written) agreements between more than one employer and at least one union. Benefit levels have traditionally been quite modest. At the initiation of ERISA’s pre-funding requirements, employer contributions were the only source of revenue for payment of benefits, the costs of administration and for the accumulation of assets to pre-fund benefits owed to future retirees as they become due. Over time, however, investment earnings from the monies set aside for such future benefits provided an additional source of revenue. These earnings became an increasingly important source of income to the funds, quickly equaling and then surpassing contribution income as the primary source of income. Today, most mature funds derive as much as 70 percent or 80 percent of the fund’s income from their investments.

These pools of worker capital have a history of conservative, professional management. Most boards of trustees utilize “Qualified Professional Asset Managers” to manage their investments as permitted under the law, and retain outside investment consulting firms to monitor the performance of the managers selected. This approach, coupled with the exceedingly favorable economic conditions generally during the 1980s and 1990s, proved particularly successful in helping to fully fund the plans’ obligations. Unfortunately, rather than providing a comfortable cushion against adverse markets, conflicting tax policies helped set the stage for the two consecutive funding crises plans have experienced since 2000. Specifically, two converging developments combined to contribute to this phenomenon: the increasing leveraging of plans; and the tax code limitations on accumulation of reserves through contributions to plans that were “fully funded.”

#### *What is Meant by “Leveraging” of the Plans?*

Unlike other economic references in which leveraging relates to the practice of using assets as collateral, the term “leveraging” in this context applies to the growing reliance on investment returns rather than contributions to fund future benefits. Based on historical rates of return when ERISA was enacted in 1974, most actuaries set assumed rates of return on such investments between 4.5 percent and 5.0 percent. Actual returns that consistently exceeded assumed rates during the 1980s and 1990s, and a strong economy that produced high hours of contributions which built larger and larger fund balances, eliminated the threat of unfunded vested benefits (and the corresponding withdrawal liability) for all but a few plans. More importantly, the market performance led actuaries to gradually increase their assumed rates of return to their present levels that range between 7.0 percent and 8.0 percent.<sup>5</sup> Consistent with the plan fiduciaries’ “sole and exclusive” statutory obligation to manage multiemployer funds in the best interests of plan participants, each time the rates of return were increased, plan trustees were advised that the plan had the ability to prudently increase benefits for both active workers (through higher rates of accrual) and retirees, to improve the monthly benefits for pensioners who had retired when benefit levels were necessarily modest. Therefore, based on the

<sup>4</sup> It is important to note that, unlike the single employer guaranty program which acts as the insurer of first resort when a sponsoring employer fails, the multiemployer program functions as the insurer of last resort which never assumes liability for providing financial assistance to troubled plans until all of the contributing employers have ceased making contributions or paying withdrawal liability and the collective pool of assets is depleted to the point of insolvency (e.g. when the plan no longer has sufficient assets to pay its benefit obligations).

<sup>5</sup> According to a recent funding survey of nearly 400 of the 1,510 multiemployer defined benefit pension plans conducted by the NCCMP, 95 percent of plans assumed rate of return fell within that range with more than half at 7.5 percent



recommendations of the fund professional advisors, trustees gradually improved benefits. Even with such increases, a recent survey by the NCCMP found that the majority of multiemployer plans pay average monthly benefits that range between \$500 and \$1,500, providing modest income replacement by anyone's standards for workers who have been paid good middle-class wages throughout their careers.

Theoretically, taking a long-term view of pension funding, this approach was reasonable; however, such a long-term approach recognized that the years in which the actual rate of return exceeded the assumed rate would provide for the accumulation of assets to offset those other years in which actual investment performance would lag the assumption. In practice, this theoretical model was constrained by a Federal tax policy that had been intended to prevent employers from sheltering income in retirement plans by discouraging plan sponsors from accumulating assets in excess of the plan's full funding limits.

#### *How did the Tax Code Contribute to the Problem?*

Acting as the other side of the same coin that required minimum contributions to plans to ensure that adequate funds be accumulated to pay benefits as they come due, the tax code prevented plan sponsors from building reserves during the good years to offset losses suffered during years of poor market performance. Employers who made contributions above the "maximum deductible" limit, even those who were required to do so by the terms of their collective bargaining agreements, ran the risk of incurring penalties including the loss of a current deduction for those contributions and the assessment of an excise tax on such contributions. As plans approached this limit (as some 70 percent or more of all plans did during the late 1980s and 1990s), trustees were advised that rather than accumulate additional "rainy day" reserves, they would need to make additional benefit improvements to increase the cost of the plan sufficiently to protect the deductibility of their legally required contributions under their collective bargaining agreements.

#### *The Day[s] of Reckoning*

Questions of the sustainability of these benefit improvements were raised by plan trustees even before the first stock market declines early this decade began to be felt. Although some modest relief was granted in EGTRRA, when the tech bubble burst and the markets suffered a crisis of confidence fueled by the collapse of companies like ENRON and WorldCom, the plans were unable to absorb market losses of 15 percent to 25 percent. Instead of being concerned with the maximum deductible limits, for the first time since the passage of ERISA and MEPPA, plans faced projections of near-term funding deficiencies as they were told of the likelihood of failing to meet their minimum funding requirements. Under ERISA's funding rules, the consequences of such failures included a requirement for employers to pay their proportionate share of the shortfall and pay an excise tax on top of those additional contributions. The reliance on investment income by mature plans meant that such additional contributions could total several times the amounts contributed under their bargained rates, and for industries like construction which typically have narrow profit margins, significant numbers of contributing employers faced the very real possibility of bankruptcy. Were this to occur, the remaining employers would then have the shortfall amounts that were not paid by the bankrupt companies redistributed among those that remained, causing additional bankruptcies and, with a contracting contribution base, eventual plan failure.

For unions and participants, the prospect of plan failure would mean that future generations would have no reliable source of retirement income. Even more troublesome was the prospect of the loss of significant benefits for current pensioners and beneficiaries whose benefits would be reduced, at best, to the maximum PBGC levels (a maximum annual benefit of \$12,870 for participants who retired with 30 years of service, with corresponding reductions for those with less service). The convergence of interests by the stakeholders resulted in a coordinated effort by labor and management (through the Multiemployer Pension Plans Coalition) to devise a proposal for funding reform that would prevent the destruction of the plans. This set of proposals formed the nucleus of the multiemployer provisions of the PPA.

This set of proposals contained tough medicine for all of the stakeholders. Once again, recognizing the problem was one in which all stakeholders were affected, the parties agreed to a package which included a notion of "shared pain" rather than having either group shoulder the full costs. For plans facing long-term funding difficulties (referred to as "Endangered status" or so-called "yellow zone" plans), the law required the bargaining parties to negotiate over the terms of a "Funding Improvement Plan" to reverse eroding funding levels. For plans with more serious funding problems ("Critical status" or so-called "red zone" plans), a "Rehabilitation Plan" is required to reverse the declining funding trend. For the first time since the

early 1980s, plans could reduce certain classes of subsidized early retirement or subsidized surviving spouse benefits in addition to reducing future accruals, as well as imposing employer surcharges and, in limited circumstances, requiring contribution increases. Furthermore, the PPA raised the maximum deductible limit for multiemployer plans to 140 percent of the previous limits. If the plans had sufficient time with "normal" market performance, even a market contraction of the magnitude experienced from 2000 to 2002 could have been absorbed.

Following the enactment of the PPA, but before it became effective in 2008, plan fiduciaries began to take corrective action by increasing contributions and adjusting benefits to avoid falling into one of the "zones." Once the act became effective in January 2008 (for calendar year plans), plans began to adopt funding improvement and rehabilitation plans based on recent experience and then current rates of return. The parties adopted what were frequently quite aggressive additional contributions that strained the wage package and the contributing employers' ability to compete. They were willing to do so because they now knew the rules going forward and wanted to address any potential funding difficulty as early as possible.

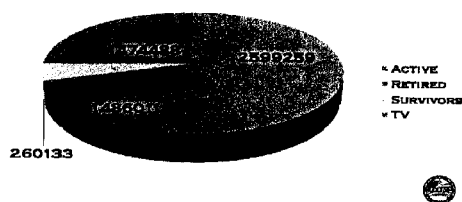
However, as the year progressed, the sudden and precipitous drop in investment markets that decimated financial institutions of all types around the world also wreaked havoc on multiemployer plans. Plans that had formulated their Funding Improvement or Rehabilitation Plans were now facing even deeper reductions in accumulated assets than had been experienced from 2000 to 2002. Unfortunately, those groups which had taken some of the most aggressive preventive measures were now faced with filling an even deeper hole to meet their PPA funding targets, but having previously exhausted their ability to increase contributions and remain competitive, plan trustees and the bargaining parties are faced with even more difficult choices. Above all, the magnitude of the recent losses pointed out some of the shortcomings of the PPA to respond to such drastic market fluctuations.

#### THE MAGNITUDE OF THE PROBLEM

In order to determine the extent of the losses and the effects of the market contraction on the funded position of multiemployer plans and assess the relative effectiveness of possible recommended corrective measures, the NCCMP conducted a detailed survey of multiemployer plans funded position over the period from 2007 through May 31, 2009. With input from committee staff in both the Senate and the House in formulating the questionnaire, the NCCMP sought to determine the funded position prior to the PPA's effective date; the number of covered participants; assets and liabilities (both on a market value and actuarial basis); changes in funding levels subsequent to the market contraction; contribution rates per hour and as a percentage of compensation; asset allocation to determine the level of risk inherent in the composition of the plans' investment portfolio and actions taken to address funding difficulties. The following section will present summary findings from that study.

#### *Breadth of Survey Sample*

Responses were received from 385 of the universe of 1,510 multiemployer defined benefit plans as reported in the PBGC's September 2008 *Databook* published in September 2009. Although the timing of the plan year and the availability of certain data elements resulted in fewer responses to a number of specific questions, comparative results were compiled using data from plans that provided answers to each of these relevant questions. As shown in Figure 1, responses were received from plans covering 5.8 million of the 10.1 million participants in all multiemployer plans.



*The 2008 Annual Report, the PBGC reported that there were approximately 10.1 million participants in multiemployer plans. The NCCMP survey includes plans that cover more than 5.8 million of them or nearly 60% of the total. Similarly, the 44.6% of participants who are Active is consistent with the PBGC's latest distribution for all plans of 45%.*

The distribution of responding plans by number of participants reflects a slightly greater number of larger plans than reported by the PBGC.

In figure 2, roughly 40% of plans responding had between 1,000 and 5,000 participants and a similar percentage (44.6%) were in plans with more than 5,000 participants.

### DISTRIBUTION OF RESPONDING PLANS BY SIZE OF PLAN

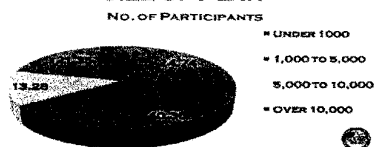
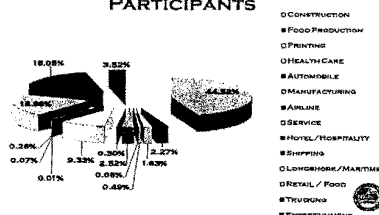


Figure 3 shows the distribution of respondent plans distributed by numbers of participants by industry association.

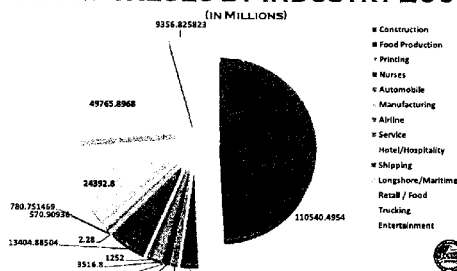
### INDUSTRY CONCENTRATION OF RESPONDENTS BY NUMBER OF PARTICIPANTS



This figure shows the largest industry concentration of participants in respondent plans is in construction at 44.52%, followed by retail trades at 18.96%, trucking at 16.05% and [Building] Services at 9.33%. The comparable statistics from PBGC show construction participants at approximately 36% with trucking at 9.5%, building services at 14.5% and retail trades at 13.7%.

Plans that responded to the survey reported total assets in 2008 at over a quarter trillion dollars (\$237,569 million). Figure 4 shows the distribution of assets for those respondents that reported an industry affiliation.

### DISTRIBUTION OF RESPONDENTS ASSET VALUES BY INDUSTRY 2008

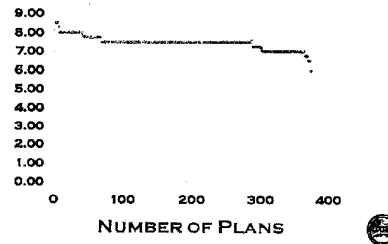


Construction plans were the largest concentration of assets at more than \$110 billion followed by trucking at \$49 billion and the retail industry at \$24.3 billion.

The assumed rate of return is a key determinant in assessing whether benefits are sustainable in the long run. Figure 5 shows that the rates of return for multiemployer plans fall within a relatively tight range between 7 percent and 8 percent with the majority of plans at 7.5 percent.

### ASSUMED % RATES OF RETURN

As this chart clearly demonstrates, while seven plans had assumed rates of return in excess of 8% and twelve more fell below 7%, 354 plans or 94.9% of all plans had assumed rates between 7.0 and 8.0% with the greatest concentration (over half) at 7.5%, a conservative assumption based on historical rates of return.



Asset allocation is perhaps the single most important determining factor in the success of a plan's investment program. Multiemployer plans have been guided by Department of Labor rules that plans be invested in diversified portfolios. Although one school of thought encourages a lower risk profile with greater exposure to alternative investments, most multiemployer plans have a traditional asset mix. Looking at the performance from 2007 through 2009, for plans reporting their asset allocation, equities comprised about 50 percent of the average portfolio, with fixed income at about 30 percent, real estate 8 percent and "other", hedge funds, cash and private equity all comprising less than 5 percent on average each. The reduction in equity exposure from 2007 to early 2009 is primarily due to the reduction in value of the underlying asset rather than a deliberate decision to reduce equity exposure.

Figure 6 shows the actual median rates of return for all plans reporting performance for the periods from 2007 and 2008. In 2007 the median rate of return slightly exceeded the assumed rate at 7.97 percent, whereas the performance for 2008 was consistent with that of the broad markets at a negative 21 percent.

### SHIFT IN AVERAGE ASSET ALLOCATION 2007 - 2009

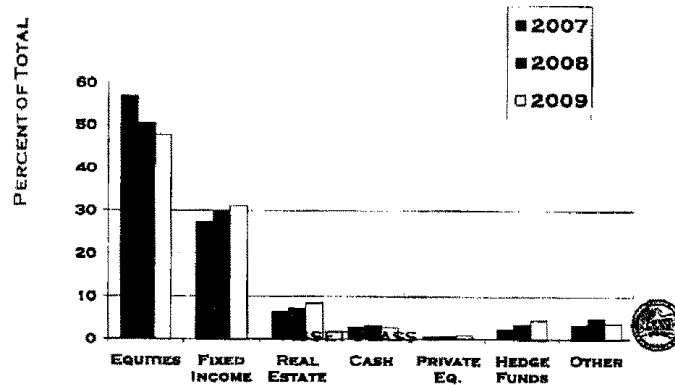
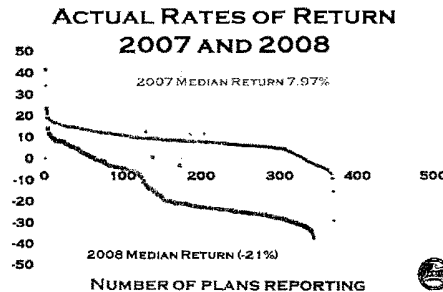
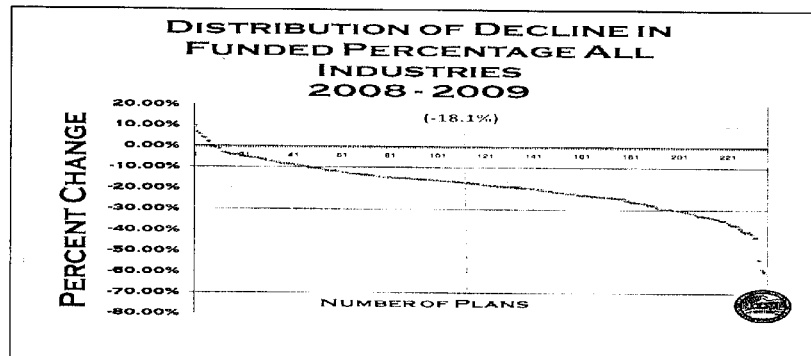


Figure 8 clearly shows how pension fund assets invested in a traditional portfolio were directly affected by the collapse of the broad markets.

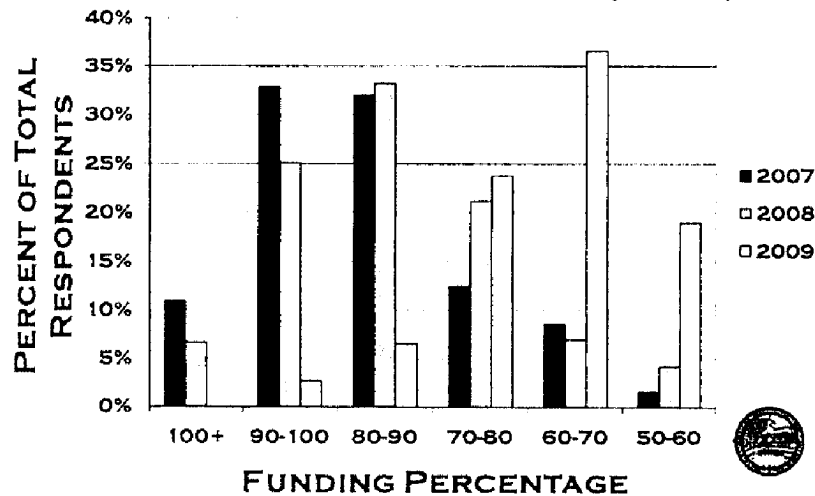


These investment losses directly translated into a decline in the plans' funded percentage. As shown in Figure 8, the reduction in funded percentage was consistent across all industries generally ranging from negative 10 percent to negative 40 percent, with the median loss at negative 18.1 percent for plans that reported their funded percentage in both years.



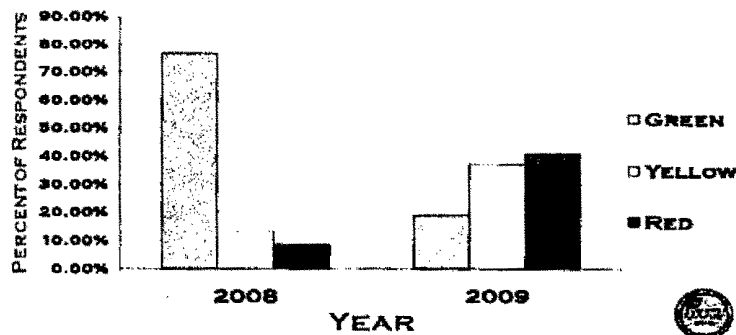
The net effect of the decline in funded percentage is shown in Figure 9 (below) which shows a clear shift in the funding status of plans from 2007 through 2009 with more than 75 percent of funds reporting market value of assets *greater than* 80 percent of actuarial liabilities in 2007, dropping to more than 75 percent of funds reporting market value of assets at *less than* 80 percent funded by 2009. Although the number of plans reporting results at the beginning of 2009 was lower because of the timing of the survey and the start of the plan year, the pattern is as clear as the precipitating event.

## MARKET VALUE V. ACTUARIAL LIABILITY (PPA)

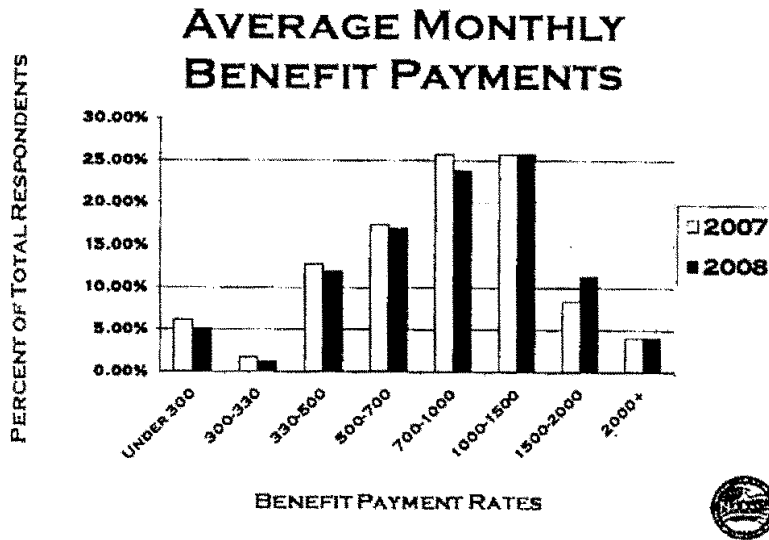


The reduction in funded status is reflected in the change in reported “zone” status disregarding any election to freeze under the WRERA. As shown in Figure 10, the number of plans reporting green zone status in 2008 (the first year this concept became effective) was 77 percent, with 14 percent in yellow and 9 percent in red. By 2009, those numbers had reversed. Green zone plans had fallen to 20 percent, while those in the yellow zone increased to 38 percent and red zone plans to 42 percent.

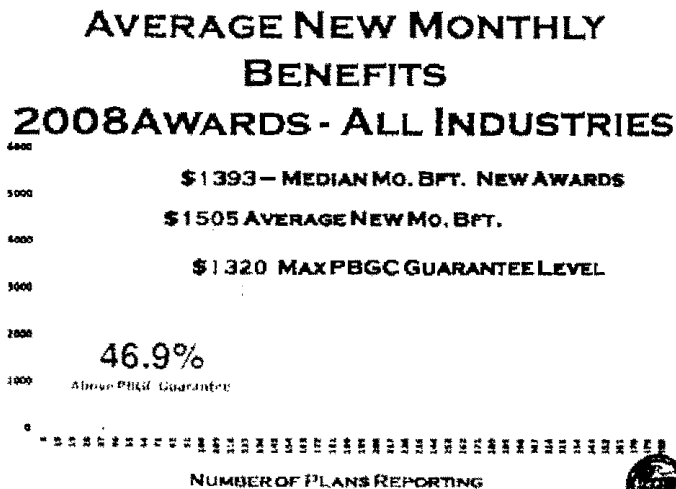
## ZONE STATUS 2008 AND 2009 ALL INDUSTRIES



Average benefit payments for all reported multiemployer plan participants in pay status are shown in Figure 11. The concentration of monthly benefit payments between \$500 and \$1,500 reflects the large number of pensions and survivors benefits based on pensions which became effective when benefit levels were necessarily low.



New benefit awards are shown in Figure 12. The point where the current PBGC benefit guarantee level is maximized is \$1,320. Of the 275 plans which reported this data, 46.9 percent of all awards exceeded that amount, meaning that participants in failed plans would suffer even greater reductions than the formula provides to provide a disincentive for plan sponsors to abandon their plans.



Figures 13 through 15 demonstrate that plan sponsors have been proactive in addressing funding concerns. Figure 13 shows the reported median contribution rates for 2007, 2008 and 2009. Median rates increased by approximately 5 percent from \$3.84 to \$4.04 from 2007 to 2008, and by an additional 68.5 percent to \$6.81 in 2009. The total increase in median contributions from 2007 to 2009 exceeded 77 percent.

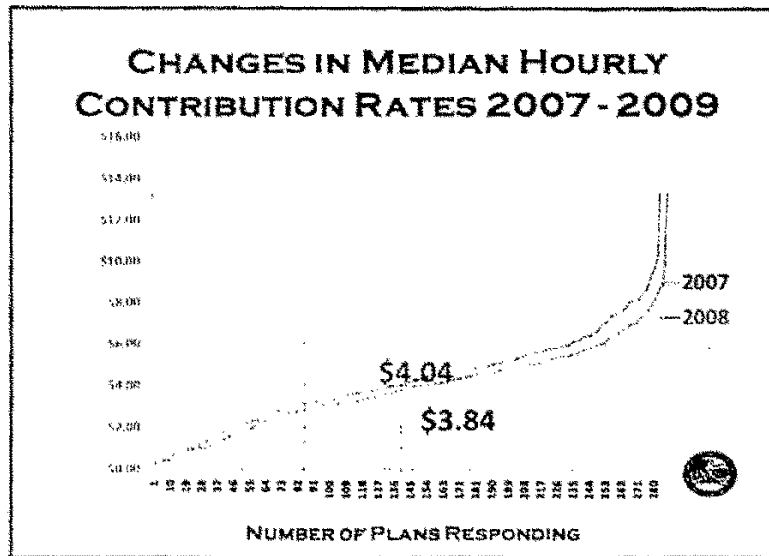
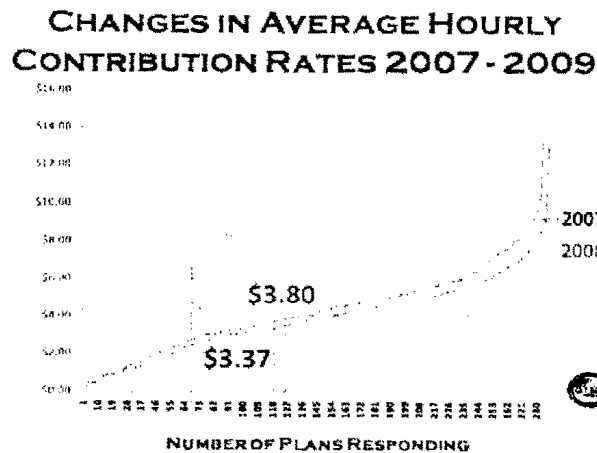
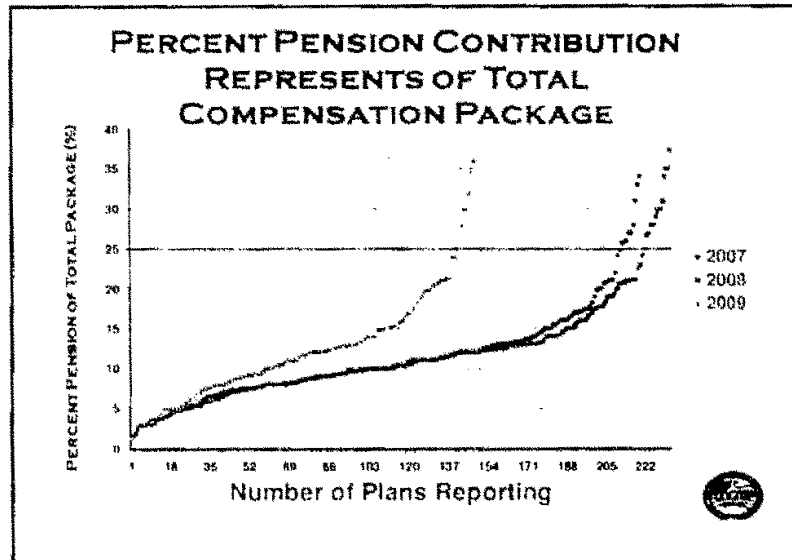


Figure 14 shows the average (mean) contribution increase for the same periods. Hourly contributions rose by 20¢ (12.7 percent) between 2007 and 2008 from \$3.84 to \$4.04 and an additional 38¢ (10 percent) to \$4.18 per hour from 2008 to 2009. The total increase from 2007 to 2009 was 81¢ per hour or 21 percent.



Finally, Figure 15 shows the percentage of total compensation for plans that reported this information for the years 2007, 2008 and 2009. While the majority of plans report rates between 10 percent and 20 percent for all 3 years, the slope of the increase for plans reporting in 2009 appears to be increasing. It should be noted that the 2009 numbers *are not likely to* reflect changes in funding improvement or rehabilitation plans pursuant to the 2008 losses.





#### IMPLICATIONS AND PROPOSALS FOR LEGISLATIVE RELIEF

The data clearly show that the reason the funded position of multiemployer plans has deteriorated in the last 3 years is the financial crisis which has negatively impacted all financial institutions—not overly generous plan designs, mismanagement or risky investments as has been alleged by the uninformed. Given the collective assets of these plans, it is also undeniable that these plans are an integral part of the Nation's financial infrastructure, not only because of their value in delivering reliable monthly benefits to plan participants, but as a source of capital for private equity and as an economic generator for the local economies where pensioners and beneficiaries reside. It is also clear that plan fiduciaries and settlers have taken prudent action to address projected funding difficulties without waiting for the government to mandate such actions.

Nevertheless, this system is not without limits. Unrelenting statutory pressure to increase contributions above the very substantial increases already implemented will place greater numbers of contributing employers at a competitive disadvantage, further threatening the long-term viability of plans that are dependent on such contributions to meet their short- and long-term funding targets.

#### PROPOSED RELIEF MEASURES

The Multiemployer Pension Plan Coalition has evaluated and recommended numerous legislative relief measures to provide statutory flexibility to address the recent market volatility. Unfortunately, there appears to be no “one-size-fits-all” solution. As a result, the proposal identifies several reform options that are designed to provide the greatest relief to the largest number of plans. With two exceptions, these proposals have been incorporated into the House “*Preserve Benefits and Jobs Act of 2009*” bill introduced on October 27 by Congressmen Pomeroy and Tiberi.

The specifics of the proposals are attached to this submission and will not be repeated here. However, it is important to underscore that these proposals can be considered as following two tracks: one that extends the timeframes to meet the plans' long-term obligations for those plans that, with such assistance, will remain solvent; the second addresses relief for plans that are unlikely to survive without direct intervention.

For plans in the first category, the Coalition proposal suggests that granting 30 years to either: (1) consolidate and “fresh-start” the plans' existing amortization bases (Funding Standard Account) over that period; or (2) isolating and amortizing only the losses suffered by plans in 2008 and 2009 over 30 years. The proposal includes related provisions that would allow plans to use 10 year smoothing of the

portion of the plan's losses that would be recognized in the 2008 and 2009 years and would expand the relevant market to actuarial value of assets corridor from 20 to 30 percent.

For plans in the second category, the proposal advocates for the expansion of the PBGC's ability to facilitate mergers or "alliances" of weaker plans into stronger plans that could be a "win-win" proposition for participants (by not having the weaker plan fail with corresponding benefit reduction if the plan were to require PBGC funding assistance); contributing employers (by increasing the number of contributing employers and lessening the probability of plan failure); and the PBGC, whose timely intervention could reduce the agency and taxpayers' liability exposure.

The second element of relief for vulnerable plans in certain industries is the expansion of the current ERISA provisions governing partition of plans projected to become insolvent. Such partitioning could allow the plan to survive by segregating liabilities associated with participants' service with employers that have ceased plan participation and left without paying their full withdrawal liability. Such segregation would be analogous to the amputation of a limb to save the life of the patient, and would also reduce the likely liability exposure of the PBGC. More importantly, prompt action on this issue could protect thousands of jobs in industries that will be adversely affected by the adoption of Funding Improvement or Rehabilitation plans in the absence of such relief.

Finally, while each element of the coalition proposal is important and the inclusion of specific mention of one rather than another is no indication of priority, it is important to note that the proposal also includes an increase in the PBGC guaranteed benefit levels by expanding the current formula which guarantees 100 percent of the first \$11 of accrual, plus 75 percent of the next \$33 of accrual times the number of years of service, the Coalition proposal would add a third layer—50 percent of the next \$40 of accrual. This proposal reflects the increases in benefit levels required by the tax laws cited above and, unlike the proposal for partition, would be funded by an increase in the PBGC premiums.

I welcome the opportunity to submit these comments for your consideration and look forward to reviewing certain aspects of them with you at Thursday's hearing.

#### ATTACHMENT

#### MULTIEMPLOYER COALITION LEGISLATIVE PROPOSAL FOR MULTIEMPLOYER DEFINED BENEFIT PENSION PLAN FUNDING RELIEF

##### A. GENERAL RELIEF FOR CHALLENGED BUT SOLVENT PLANS

1. Allow multiemployer plans that meet stated solvency standards (to assure that the plan is expected to have enough cash-flow during the extended period) to elect a one-time fresh-start of the Funding Standard Account, with the sum of all of the current outstanding balances amortized over a single 30-year period, effective starting with the plan year beginning after either September 30, 2009 or September 30, 2010.

2. As an alternative that the trustees may select instead of option one, provide an option to isolate the investment losses suffered during the period of 2-plan years beginning on and after September 1, 2008 and ending by September 30, 2010 and amortize them over 30 years.

3. At the option of the trustees, extend the Rehabilitation or Funding Improvement Periods by 5 years, offset (if applicable) by the 3-year extension elected by some plans pursuant to WRERA. The election to use this extension could be made at any time that the Rehabilitation or Funding Improvement Plan is being developed or updated, provided that it could only be elected once with respect to each period that such plan is in the Yellow Zone and once with respect to each period that it is in the Red Zone.

4. Extend the automatic amortization extension period from 5 to 10 years with an additional 5 years available with IRS approval, and set time limits for IRS review of automatic amortization extension submissions, so that, if the actuary has properly certified that the standards are met, the extensions can be adopted on a timely basis.

a. Provide that the 2008–2009 investment losses will not cause multiemployer plans that received amortization extensions from IRS before enactment of PPA to lose the benefit of those extensions, despite IRS's requirement, when granting the extensions, that the plans' funded levels improve each year by at least 1 percent.

5. To temper the immediate and dramatic impact of the recent plunge in investments, widen the acceptable corridor for purposes of actuarial smoothing to 30 per-

cent to mitigate the initial impact on increased employer contributions and/or benefit modifications attributable to the precipitous drop in asset values for 2008 and 2009; and extend the acceptable smoothing period to 10 years to phase in the losses of 2008 and 2009 only.

#### B. FOR TROUBLED PLANS THAT NEED SPECIAL HELP

##### 6. Help multiemployer pension plans support one another by:

a. Recognizing a new type of plan called an "alliance," through which multiemployer pension plans can be combined for purposes of investment, administration, fiduciary accountability, prospective service credit for benefits and eligibility and retroactive vesting credit, but maintain separate accounting for purposes of the funding requirements (including the special funding requirements for endangered and critical-status plans) and withdrawal liability associated with benefits earned prior to the effective date of the alliance;

b. Specifically authorizing the PBGC to encourage and facilitate fund mergers and alliances, including by providing financial assistance from the multiemployer guaranty fund if the agency determines that that assistance is reasonably expected to reduce the PBGC's likely long-term loss with respect to the funds involved; and

c. Modifying the fiduciary rules and standards to remove unnecessary impediments to multiemployer pension fund mergers, including alliances, by:

(1) Providing that the trustees approving such a merger or alliance are deemed to meet the "exclusive benefit" standards of sections 403 and 404 of ERISA if they determine that the merger is not reasonably likely to be adverse to the long-term interests of the participants in the pre-merger plan for which they are responsible, and

(2) Specifically adding multiemployer plan mergers that are alliances to the types of mergers that, under existing law, are deemed not to be prohibited transactions under sections 406(a) and 406(b)(2) of ERISA, if the PBGC finds that the transaction meets the standards in section 4231 of ERISA; and

(3) Confirming that the fiduciaries of the combined plan are accountable to all of the participants of the merged plans in the alliance.

##### 7. Reinvigorate the multiemployer plan partition option under ERISA §4233, to meet special industry needs. Specifically, amend the partition rules in ERISA §4233 as follows:

a. The provisions in ERISA Section 4233 would be revised to include a new subsection entitled "Qualified Partition upon Election By Certain Plans."

b. The new subsection would include the following provisions:

(1) Multiemployer pension plans that meet the requirements of ERISA Section 4233(b)(1)–(4) (as modified as described in (b. 2) below), as well as the other criteria described in (b. 2) below, could elect to transfer to the PBGC responsibility for the vested benefits attributable to service of participants with non-contributing employers that either have become bankrupt or otherwise have gone out of business without paying their proportionate share of the plan's full withdrawal liability. If an election is made, the PBGC would be required to assume the responsibility with respect to those benefits by the first day of the first month that begins at least 90 days after the date of the plan's election.

(2) To be eligible for a Qualified Partition, a Plan would have to meet the following criteria:

- (a) The plan has been certified to be in Critical ("Red Zone") Status at the time of the Automatic Partition request;
- (b) The plan has suffered a substantial reduction in the amount of aggregate contributions under the plan that is attributable to employers that either have previously become bankrupt or otherwise gone out of business without paying their proportionate share of the plan's full withdrawal liability;
- (c) The trustees certify, based on actuarial projections, that the plan is likely to become insolvent and a significant increase in contributions would be necessary to prevent insolvency;
- (d) As of the end of each of the immediately preceding 2-plan years, the plan had a ratio of inactive participants (retirees, beneficiaries and terminated vested participants) to active participants of at least 2 to 1;
- (e) In each of the immediately preceding 2-plan years, had a ratio of benefit payments to legally-required contributions of at least 2 to 1; and

(f) The trustees certify that, based on actuarial projections, partition would significantly reduce the likelihood of insolvency.

(3) For each plan year after a Qualified Partition, the plan sponsor will determine whether aggregate employer contributions have declined 10 percent or more as a result of employers' becoming bankrupt or otherwise going out of business without paying their proportionate share of the plan's full withdrawal liability and, if so, shall transfer responsibility to PBGC for non-forfeitable benefits attributable to service with those employers.

(4) In the case of a Qualified Partition, the PBGC's partition order described in ERISA Section 4233(d) will provide for the transfer of vested benefits attributable to service of participants with respect to non-contributing employers that either have become bankrupt or otherwise have gone out of business without paying their proportionate share of the plan's full withdrawal liability, and the transfer of plan assets attributable to withdrawal liability payments collected from such non-contributing employers and any earnings thereon but reduced by the amount of benefit payments actually made to such participants.

(5) The PBGC would guarantee the non-forfeitable benefits transferred pursuant to a Qualified Partition.

(6) Any net unfunded costs or liabilities incurred by the PBGC in connection with Qualified Partitions will be disregarded in determining the financial condition of the guaranty funds under ERISA §4005 and premiums payable under ERISA §4006.

8. Encourage continued participation by employers facing additional pension contribution stress by:

a. Authorizing a "*pension support tax credit*" equal to the eligible increase in the amount of employer contributions paid to a multiemployer plan that is seriously endangered or in critical status, pursuant to a collective bargaining agreement adopting a schedule of contributions acceptable to the Trustees and consistent with the plan's Rehabilitation or Funding Improvement Plan, provided that the plan is not terminated or frozen for future accruals during any of the plan years for which the increased contributions are paid.

b. An increase in contributions is eligible under this provision to the extent it is attributable to an increase in the rate of contributions (including an increase due to a change in the basis on which contributions are made) required under the Trustee-approved schedule.

c. The tax credit will be available for up to 3 consecutive years, beginning with the year in which the increased contributions are first paid.

#### C. FOR ALL PLANS

9. Increase the generally applicable PBGC multiemployer guarantees prospectively, by adding a third level of guaranteed accrual rate, to a maximum of 100 percent of the accrual rate up to \$11, plus 75 percent of the next \$33, **plus 50 percent of the next \$40**. This would produce a maximum guarantee of roughly \$20,000 a year for a participant with 30 years of service for a pension (compared with less than \$13,000 under current law).

10. Back PBGC obligations with respect to Qualified Partitions with the full faith and credit of the United States to more appropriately reflect the magnitude of benefits guaranteed and to enable the agency to carry out its objectives to protect all defined benefit plans as set forth in ERISA §4002(a), with due consideration to avoiding crippling increases in the applicable premium structure.

11. Authorize employers to issue "PPA Compliance Bonds" that would be guaranteed by the U.S. Treasury, subject to certain risk management conditions, the proceeds of which would be contributed to the plan.

12. Make technical corrections to sections 202 and 212 of the PPA, which added the special funding rules to ERISA and the Internal Revenue Code for multiemployer plans in endangered or critical status. For example:

a. eliminate the possibility that IRC §432(c)(4)(C)(ii) could subject plans that shift from endangered to critical status to overlapping, inconsistent standards during the Rehabilitation Plan Adoption Period,

b. streamline the rules for seriously endangered plans by providing that the benchmarks in IRC §432(c)(3)(B) and (4)(B) apply to all such plans, and

c. confirm that, if an endangered plan meets the applicable statutory benchmarks before the end of its Funding Improvement Period but the actuary certifies that it still fails the tests in §432(b)(1), the original Funding Improvement Period and Funding Improvement Plan remain in effect until the plan is no longer certified to be in endangered status.

The CHAIRMAN. Thank you very much, Mr. DeFrehn.

And now we will turn to Karen Friedman from the Pension Rights Center. Welcome.

**STATEMENT OF KAREN D. FRIEDMAN, EXECUTIVE VICE PRESIDENT AND POLICY DIRECTOR, PENSION RIGHTS CENTER, WASHINGTON, DC**

Ms. FRIEDMAN. Chairman Harkin, Ranking Member Enzi, and members of the committee, thank you for the opportunity to testify today.

In today's devastated economic environment, we have seen how important defined benefit pension plans are to the security of American workers and their families. While millions of Americans have seen their 401(k) account balances plummet in value, workers and retirees in ongoing traditional pension plans are the ones who are most likely to be sleeping soundly, knowing that they will have a guaranteed lifetime stream of benefits to supplement Social Security.

Helping companies to continue their ongoing defined benefit pension plans is an important part of the economic recovery process because doing so will provide retirees with guaranteed monthly incomes so they can continue to contribute to the economy, and in addition, pension plans generate long-term investment capital that can help promote job creation.

For these reasons, the Pension Rights Center supports providing emergency funding relief to companies that have done the right thing and have continued to maintain their defined benefit plans, and we believe that this emergency funding should be given as long as that relief is conditioned on certain critical protections for employees.

I will also explain today why we oppose providing blanket funding relief for companies that have frozen their plans. Due to time limitations, I will refer you to my written statement for a discussion of other issues, and with your permission, I would like to have these included in the record.

First and foremost, we believe that emergency funding relief should be targeted to active defined benefit plans. We support full funding relief only for companies that sponsor pension plans where employees continue to accrue benefits. Companies that have stood by their defined benefit programs, while others have abandoned or frozen them, deserve the support of Congress.

The type of relief we favor for ongoing single-employer plans is an extended amortization period for losses attributable to the recession. It is important to note that it is the employees who would share the downside risk with the PBGC if employers ultimately default on their obligations. And obviously, we have seen that today with the Delphi retirees loud and clear. Because of this, we believe that if companies get funding relief, they must make a commitment that employees will continue to accrue benefits under the plan at least until the end of the period in which relief is granted. This will ensure that companies will not get relief and then just freeze the plan.

Also, we believe that as part of funding relief for ongoing plans, companies should be prohibited from both making contributions

into deferred compensation arrangements and then from paying out benefits to executives from these plans during the relief period. We ask why should companies get funding for pension plan contributions if they are then using the company's operating assets to pay out huge benefits just for executives.

Our second major point that I want to emphasize today is that companies with frozen plans, those that have stopped accruals for workers, should not receive the same automatic funding relief. Why? It is because the best argument for granting funding relief to employers is that pension plans provide benefits that working men and women can rely on. Companies that have frozen their plans by stopping workers from accruing benefits have severed this commitment to their workers.

It is important to keep in mind that funding relief is not free. It is essentially an unsecured loan provided by a pension plan and its participants to the company. If a company cannot continue to fund the plan and it is later terminated, employees can lose benefits they earned if these are not fully guaranteed by the Pension Benefit Guaranty Corporation. Again, we saw this. The Delphi retirees are a tragic and extreme version, but we have seen this all over the country. Since it is the participants who bear a great part of the risks, we do not believe that emergency relief should be made available to plans in which employees are no longer accruing benefits.

Now, some have argued that extending relief to frozen plans could free up money that could be used to create and preserve jobs, but we really have not seen evidence of this. And this money could be used for any purpose, including moving jobs overseas, automation, or even executive compensation.

Here is what we are saying. Instead of granting automatic funding relief for frozen plans, we suggest making use of provisions that are already in current law. These provisions allow employers to request a funding waiver from the IRS if they could show temporary, substantial business hardship. We would support providing the IRS with resources to streamline the process to review waiver requests in the case of companies with frozen plans that need relief, and one option might be for Congress to establish a special temporary funding review board and require that waivers be ruled on in an expedited manner, perhaps within 60 or 90 days of the request.

In conclusion, Congress should definitely help ensure the survival of existing defined benefit plans and stand by those companies that continue their pension plans. But, Senator Harkin, as you mentioned before, just providing funding relief is not going to address the Nation's growing pension problems. Also in direct response to your question, we encourage the committee to hold hearings not just on ways to stabilize and expand the pension system for current workers, which we are all committed to do—and we have to look at all the ways that we can address the problems of today and other problems of the system—but we also need to examine the need for a new universal, secure, and adequate pension system that supplements Social Security for future workers.

And I just want to say quickly that the Pension Rights Center, along with many other organizations, including the AFL-CIO and the Service Employees International Union, just started a new ini-

tiative called Retirement USA which released 12 principles for a universal, secure, and adequate pension system for future generations. We are all committed to working to keep the current system and preserve defined benefit plans for today's workers and do everything we can to protect 401(k) plans, but to work toward a universal, secure, and adequate pension system for the future.

I welcome any interest that you have and I will be happy to answer any questions that you have today.

[The prepared statement of Ms. Friedman follows:]

PREPARED STATEMENT OF KAREN D. FRIEDMAN

Mr. Chairman, members of the committee, thank you for the opportunity to testify today. I am Karen Friedman, the Executive Vice President and Policy Director of the Pension Rights Center, a 33-year-old consumer rights organization dedicated to protecting and promoting the retirement security of workers, retirees and their families.

In today's devastated economic environment, we have seen how important defined benefit plans are to the security of American workers and their families. While millions of Americans have seen their 401(k) savings accounts plummet in value, workers and retirees covered by defined benefit pension plans are the ones who are most likely to be sleeping soundly, secure in the knowledge that they will have a guaranteed lifetime stream of benefits to supplement Social Security.

Helping companies to continue their ongoing defined benefit plans is also an important part of the economic recovery process, because: (a) doing so will provide retirees with a guaranteed source of monthly income to enable them to continue to be productive citizens and to contribute to the economy; and (b) defined benefit plans generate long-term investment capital that can help expand the economy and ensure the preservation and creation of jobs.

For these reasons, the Pension Rights Center supports providing emergency funding relief to companies that have done the "right thing," and have continued to maintain ongoing defined benefit plans—as long as the relief is conditioned on certain critical protections for employees, which I will discuss today. As I will explain later, we oppose providing blanket funding relief for companies that have frozen their plans. I will also talk about why we believe, as part of this debate, certain Pension Protection Act (PPA) provisions that adversely affect participants should be repealed. I also will discuss briefly issues related to multiemployer plans, and why Congress should act to stop the use of qualified defined benefit plans to unfairly provide special benefits to selected top executives through so-called Qualified Supplemental Executive Retirement Plans, or Q-SERPs for short.

I. FUNDING RELIEF SHOULD BE TARGETED TO ACTIVE DEFINED BENEFIT PLANS

First, and most important, we support full funding relief only for companies that sponsor active defined benefit plans under which employees continue to accrue benefits. Companies that stood by their defined benefit programs while others abandoned or froze them deserve support from Congress.

The type of relief we favor for ongoing single-employer plans is to permit an extended amortization period for losses attributable to the recession. It is important to note that it is employees who would share the downside risk with the PBGC if employers ultimately renege on their obligations. Because of this, we believe that if companies get funding relief for their defined benefit plans, they must make a commitment that employees will continue to earn new benefits under the plan at least until the end of the period in which relief is granted. This will ensure that companies will not get relief and then freeze the plan which would be unfair to employees and contrary to the purpose of receiving relief in the first place.

Also, we believe that as part of funding relief, companies should be prohibited from both making contributions into deferred compensation arrangements, such as rabbi trusts, and from paying out benefits to executives from these plans during the relief period. The reason for this recommendation is that contributions to and payments from these nonqualified plans for executives are company assets that could help fund the company's qualified plan for workers. Why should companies get funding relief for plan contributions if they are still funding and paying out benefits from deferred compensation plans for executives?

## II. COMPANIES WITH FROZEN PLANS SHOULD RECEIVE NO ADDITIONAL FUNDING RELIEF

As I said before, we believe that the best argument for granting funding relief to employers is because doing so serves a constructive societal purpose in preserving pension plans, which provide secure and adequate retirement income to working men and women. Companies that have frozen their plans—by stopping workers from accruing benefits—have severed this commitment to their workers.

It is important to keep in mind that funding relief is not free: It is essentially an unsecured loan provided by participants to the company. Employees give up wage increases in exchange for company contributions to defined benefit plans on their behalf. If a company cannot continue to fund the plan and it is later terminated, employees can lose benefits they earned if these are not fully guaranteed by the Pension Benefit Guaranty Corporation. Since it is the participants who potentially bear a great share of the financial burden of funding relief, we do not believe that emergency relief should be made available to plans in which employees are no longer earning new benefits.

Some have argued that extending relief to frozen plans will help save jobs because money not contributed to the pension plan could be used to create and preserve jobs. But this argument is unsupported by firm evidence. The fact is that this money could be used for any purpose, including moving jobs overseas, automation or even executive compensation.

It should also be noted that there are provisions in current law that allow employers to request a funding waiver from the Internal Revenue Service if they can show temporary substantial business hardship and that failure to grant a waiver would be adverse to the interests of plan participants.

We would support providing the I.R.S. with resources to streamline the process to review waiver requests in cases of companies with frozen plans that need relief. One option might be for Congress to establish a special temporary funding review board and require that waivers be ruled on in an expedited manner (perhaps within 60 or 90 days of the request).<sup>1</sup> A company with a frozen plan that wants further funding relief could qualify for that relief by unfreezing the plan and accepting the conditions we described above.

## III. REPEAL CERTAIN PENSION PROTECTION ACT PROVISIONS

- Repeal the PPA provision mandating the automatic freeze of benefit accruals in single-employer plans that are less than 60 percent funded. Congress should not penalize plan participants because employers have not funded the plan. Alternatively, the PPA provision could be converted into a temporary suspension of benefit accruals rather than a freeze, with the suspended accruals automatically restored once a plan has attained a specified funding level.

- Repeal the PPA provision that allows the PBGC to set the date of a distress termination as the date the plan sponsor filed bankruptcy rather than the date the plan is officially terminated by the bankruptcy court. When the PBGC uses the earlier date, the agency effectively cuts workers benefits by not counting additional accruals that were earned before the plan was actually terminated.

## IV. PROTECTIONS FOR EMPLOYEES IN MULTIEMPLOYER PLANS

- Raise the maximum PBGC guarantee for multiemployer plan benefits to at least \$20,000 for a full-career worker.

- Multiemployer plans in the future may find their way out of the current crisis and become over-funded by a significant amount. If so, we hope that Congress will explore ways to reinstate subsidized early retirement benefits (and subsidized survivors benefits) that may have been eliminated under the “Red Zone” (critical status) provisions of the PPA.

## V. ELIMINATE Q-SERPS

Two years ago, the *Wall Street Journal* revealed a practice in which companies use pension plans that were set up for rank-and-file workers to provide increased benefits for a small number of high-paid executives. The enhanced benefit formulas for a privileged few were known as Qualified Supplemental Executive Retirement

<sup>1</sup> In the case of companies that are continuing their plans for current employees but have frozen them for new hires, a tiered approach to funding relief might be appropriate. For example, these plans might be allowed to amortize only a portion of the recessionary losses, or be permitted to amortize them over a shorter period of time. A similar approach could be used for plans that no longer credit current employees with future service, but allow their benefits to reflect future increases in compensation.



Plans, (Q-SERPs.) These provisions were an inequitable use of plan assets and may have contributed, at least at the margins, to the current funding problems of some plans. Congress should eliminate Q-SERPs.

#### CONCLUSION

The economic meltdown of the last year has shown the tremendous value of defined benefit plans to employees and retirees. Congressional response to the economic crisis should be to help ensure the survival of existing defined benefit plans and stand by those companies that stood by their defined benefit plans in an era when too many companies abandoned their plans.

Also, we hope that this committee continues to hold retirement income hearings both to examine ways of encouraging new defined benefit plans as well as to look at broader issues for the future. We would encourage you to look at both how to shore up the current system for current workers and also to examine whether we need a new retirement income system—on top of Social Security—for future generations. The Pension Rights Center recently joined with the AFL-CIO, the Economic Policy Institute, the National Committee to Preserve Social Security and Medicare and the Service Employees International Union to convene Retirement USA, a new initiative working for a visionary retirement system—one that is universal, secure and adequate. Retirement USA has established 12 Principles for a New Retirement System. These can be viewed at [www.retirement-USA.org](http://www.retirement-USA.org) and I would be pleased to answer any questions you may have about this initiative.

The CHAIRMAN. Thank you very much, Ms. Friedman. Thank you all very much for your testimony.

When I was reading over your testimonies last night, I have different things that I circled. I asterisked this last sentence of yours which said that “Retirement USA has established 12 Principles for a New Retirement System.” I would like to get those. I guess I can get them online here. You gave us the—

Ms. FRIEDMAN. Yes, and I will be happy to send them to you.

The CHAIRMAN. Again, Ms. Friedman, any funding relief that we provide I think should be targeted to those companies that need it most. It should not be just a corporate giveaway. I have said that many times.

Yesterday we received new data from the PBGC on the 50 large financial institutions that received the most TARP funds. PBGC says that 38 of those 50 TARP recipients had defined benefit pension plans. Well, I notice also that—I probably should have said this to the former panel—TARP funds to General Motors, \$50.7 billion. Four-hundred million dollars has been returned. They still have \$46 billion or something like that. GMAC, the holding company, got \$13.4 billion. It just seems to me the companies that got TARP funds could use some of that money to make payments to their pension plans.

Do you think the financial companies that received billions of dollars in TARP relief should get pension funding relief?

Ms. FRIEDMAN. Well, I guess this is what we would say. We know that there are many financial institutions that have received TARP money and they do, as you pointed out, have defined benefit plans. I think that we would recommend the same thing for the financial institutions that are getting TARP money that we are recommending for frozen plans, and that is, Congress should consider setting up a panel to review these requests from financial institutions that have gotten TARP money on a case-by-case basis. I do not think there should be blanket relief, and I think—

The CHAIRMAN. Why do we not just require them to use the TARP money to fund their pension plans?

Ms. FRIEDMAN. Well, that could be something that you could consider. It would depend on the individual situations, but certainly at the bare minimum, I think that these cases should be reviewed on a case-by-case basis.

The CHAIRMAN. It does seem odd that we would give them the taxpayers' money or our future generation's money, by the way, for the TARP money and then we go back to the taxpayers and say you got to fund them again on their pension benefits. It just seems to me they could use some of that TARP money for that.

Ms. FRIEDMAN. Well, in this case what you are basically doing is if they ask for funding relief, they are basically saying we do not want to use this money to put into the pension plans. I think you would have good reason to ask them why not and what the money is going to be used for.

Certainly, Senator Harkin, which I am sure you agree with, given all the legislation that you have introduced in the past, if they do get relief, they really should stop contributions and payments out of their executive deferred compensation packages. And I think that is an absolute.

The CHAIRMAN. Any other views on using TARP money for pension funding relief? Anybody else got any views on that? Mr. Gebhardtshauer, you have been with PBGC in the past. What say you?

Mr. GEBHARDTSBAUER. I can appreciate your point. I think I would still—and earmark some of that possibly just like we earmark certain money to people who do not have enough to buy food. We tell them you have to buy food with the food stamps, I guess.

But I guess I would still—I guess a little bit like Karen was saying. I do not know enough about the details of the company, and so I would want to look at this on a case-by-case basis to understand what I am doing.

I would also say that I think by smoothing the contributions out, we are not saying you do not ever have to contribute. We are just saying you do not have to contribute as much this year. You will just have to contribute more down the road. They still have to get back up to 100 percent. It is just, does it all have to be right now or can we smooth it out.

The hope, of course, is that the stock market is going to come back in a short period of time, a year or 2 or whatever, and so what will end up happening, like it happened in 1987 and other times when you have a crash, the stock market goes further down than the fundamentals would call for. There are a lot of fears. They are just afraid of buying in the stock market. The stock market will always go down further than it really makes sense and then it will come back.

Dr. Richard Thaler at the University of Chicago talks about that, that maybe the market is not being appropriately priced. Therefore, we should not be looking at what is today's value because we are going to lock that number in for a whole year. We should smooth it out a little bit. So he actually wrote an article in the Financial Times talking about how we really—in fact, he even used the word “actuarial smoothing.” He said a case for actuarial smoothing. He is probably one of the most famous behavioral economists around.

I tip my hat to the idea of using TARP funds, but I would still go for some of the smoothing that we talked about like expanding the corridor.

The CHAIRMAN. I understand that completely. I do. I think that is something that this committee is really going to have to take a look at. How many years were you looking at?

Mr. GEBHARDTSBAUER. I have actually been thinking more about the smoothing, that it should be 20 percent within market like it was in the old days. Now it is only 10 percent.

The CHAIRMAN. The 80 to 120?

Mr. GEBHARDTSBAUER. Yes, 80 to 120. The 10 percent—you know, you get smoothing through the 7-year amortization rule, and then the corridor totally eliminates it. It totally eliminates all the good stuff from the 7-year amortization.

The CHAIRMAN. I asked that question earlier. How was that 90 to 110 ever—what was that based on?

Mr. GEBHARDTSBAUER. I think what it is, back around 2000–2001, everybody was focusing on mark-to-market for the accounting statements, and FASB actually moved to mark-to-market. And it makes sense. If you are buying a company, you want to know what is the company worth today, or even if you are buying 1,000 shares of a stock, you want to know what is it worth today. You want mark-to-market on the accounting books. But when it comes to putting your money in, as I mentioned to the finance professors at Penn State and the economics professors—they all knew that the market crashed, but they did not contribute any more this year than they did the year before because they assume the market is going to come back. They were heavily smoothing. They did not change their contribution at all and neither did I. I guess we all sort of assume the market is going to come back. It is very difficult to be forced to use that number back on January 1 when we already know the market is much better now than it was even back on that date.

The CHAIRMAN. Senator Enzi.

Senator ENZI. Thank you, Mr. Chairman.

Mr. Gebhardtsbauer, I am glad you are back in Washington, DC, even just for a short while.

Mr. GEBHARDTSBAUER. Thank you.

Senator ENZI. I greatly appreciated your insight as we worked on the original Pension Protection Act in 2006.

In your testimony, you discuss the Dutch pension system and how it was able to weather downturns in the stock markets, as well as the ability to keep more individuals in defined benefit plans. Can you provide us with a little more insight into that Dutch system?

Mr. GEBHARDTSBAUER. Yes. Well, they have multiemployer plans where it covers whole industries. You will have the whole industry covered. There is one advantage.

They also have a smoothing technique on the benefits. For example, if there is a big crash—and this helps the accounting books too because they have mark-to-market accounting in Europe too. What it does is it says if you have this huge crash, if you just gave a nice benefit in the past year, you can actually reduce that temporarily, and then as soon as the market comes back, you put it back in the

plan. So people are not really hurt because if they keep working, if they are in their 30s, 40s, and 50s, the market will come back and so it will be back as a benefit in the plan.

Because of those laws helping employers keep their pension, it allows that smoothing. It not only smoothes the contributions. It is actually smoothing the accounting statement book numbers because the liability gets smoothed too.

Senator ENZI. We have been talking about this narrower corridor. In the previous panel, we talked a lot about trying to prevent companies from gaming the system. But you are recommending that we go back to the older corridor provisions. If we go to those, can we keep the companies from gaming the system with their pensions, whether they are fully funded or they may not be?

Mr. GEBHARDTSBAUER. Right. I do not think this causes gaming. There would be some economists and actuaries that would say that because you are smoothing, you can hold more stocks in the pension plan now. I talk about that in my written testimony, that you do not want to encourage companies to have too much stock. You get all kinds of penalties when you go below 100 percent, 80 percent, 60 percent. You have to stop paying lump sums. You have to freeze accruals. There are all these penalties. You have to start contributing every quarter of the year.

We might want to toughen those penalties a little bit. For example, like Bethlehem Steel that was brought up a little bit earlier. They had a huge percentage of their pension plan assets in stocks, and it was only now a small company and a huge number of retirees. The liabilities in the pension plan were huge compared to the size of the current workforce. As long as the stock market was doing alright, they could afford their pension plan. In fact, the excess returns in the stock market helped them. They did not have to contribute to the pension plan and they still looked over 100 percent funded. But then they were gambling because as soon as the stock market went down, boom, they were blown out of the water and they had to terminate, give it to the PBGC.

Since the PBGC existed, they knew we did not have to worry about that. Actually they did because some employees then do not get as good a benefit from the PBGC because the guarantees are only up to a certain maximum.

But maybe we need some rules to make sure that you do not have—that is the abuse, I think, you were talking about, taking too much of a gamble with your pension plan, taking a gamble that if things go badly, you can put the liabilities to the PBGC.

The suggestion in my written testimony is—I do not know if you want to prohibit, like you cannot have more than 60 or 70 percent stocks. I do not know if we would prohibit the choice, but we would make it very difficult to do something like that. For example, if you have over 60 percent or over 50 percent of the assets in your plan in stocks, then we are going to charge you a risk premium. This risk premium says you are putting a risk on us, you know, the PBGC. Especially you would make it mostly for a company that is pretty weak, a company whose ratings are not high. That is where the abuse is going to occur. We know we are weak. We can take a gamble, and if things do not work, we dump it on the PBGC be-

cause we are already weak enough to dump on the PBGC. So that might be an idea.

Senator ENZI. Thank you. I have some more specific questions for you, as I do for all of the members of the panel. I will submit those in writing.

I was going to do an additional question for the panel. You can think about this because you will get it in writing. What do we do about companies that are funded below 60 percent and have no chance of coming back? We will need an answer to that one too, but my time is about to expire here and other people want to ask questions. I do want to rely on your expertise and get some answers because this is really important to a lot of people. Thank you.

The CHAIRMAN. Thank you, Senator Enzi.

Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman.

Obviously, this recession has exacerbated this problem. I am from North Carolina and had chaired the Budget Committee for a number of years. I can remember that we were 110 percent funded, overfunded in our pension plan. Just recently I think it is down to 99 percent. I am very confident with what we are doing in North Carolina, but obviously so many companies have been impacted.

Mr. Peterson, your comment that \$10 million in incremental pension funding is the equivalent to 125 nurses is really evident of the fact that we need jobs in our economy right now. We are desperate to be sure we can provide jobs for people who are unemployed and underemployed. I think it is obvious that we are going to have to do something to amortize these problems and help companies.

I want to be sure we give enough flexibility to make the changes that companies need to be solvent, but without giving them so much free rein that we find ourselves in the pre-Pension Protection Act situations with unjustifiably underfunded plans. I would love to hear some comments on that. Either Mr. Peterson or Mr. Gebhardtshauer.

Mr. PETERSON. One way to perhaps start a response is that I think we are thinking in terms of temporary relief. For example, the reference to the extension of the amortization period from 7 to 15 would be with respect to the losses incurred in 2008. It would not be in perpetuity. I think maybe that is one way of thinking about a way of providing relief that does not open Pandora's box.

Mr. GEBHARDTSHAUER. Yes. In my testimony, I talk about how the Pomeroy relief makes sense on a temporary basis, and it seems to help everybody. Even the PBGC does not get hurt because they get more premium income too. Hopefully, fewer companies will end up terminating because for companies on the edge with a triple or quadruple contribution they have to make this year, that might be enough to push them into the PBGC. I think this temporary basis—everybody is OK.

My concern about temporary relief is that then they expect getting relief every time we have another crash because the rules do not work right now in a crash. That is why we need to make a fix so that the rules do work in the future for a temporary crash. And one of the ideas I suggested was this corridor relief. Other people have other ideas.

Senator HAGAN. I had one other question and that is concerning the defined contribution plans, and moving toward those. Many companies are moving away from the defined benefit plans. Do you think that what we are seeing right now would increase the possibility that so many companies will move toward, or future companies will definitely choose, the defined contribution plans away from the defined benefit. Any thoughts on that?

Mr. GEBHARDTSHAUER. Sure. I think if Congress does give temporary relief, employers will see that Congress understands our concerns. Congress understands that PPA is not working perfectly right now in the midst of this unprecedented crash. I think they would also want some sort of permanent relief that it fixes something like the corridor. Again, I keep on going back to those two things.

There is a whole bunch of other things, though, that I would say are—there are a lot of differences in the rules for DB plans versus 401(k)'s. I would try and level the playing field more.

At one time, it was very clear, from looking at the laws, that defined benefit plans paid you an income for the rest of your life no matter how long you live, even if the stock market crashed. It looked like the preferred thing. You know, it is kind of like Social Security. There is real sureness that you are going to get that benefit for the rest of your life no matter what happens in the market. The DB has a really good thing not only for retirees, but it is also good for employers. Employers were happy to have DB plans in the past because it helps them with managing the work flow, managing the industry, and it is good for the country.

At one time, we used to encourage them more, but now, for example, with a 401(k), you do not have to include one-third of your employees or you do not have to really give much to it. It could be just a small amount and only for the ones that put money in first. If the employee puts money into a 401(k) plan, it is tax deductible, whereas if the employee puts money into the DB plan, it is not tax deductible. There are just lots of reasons why the laws right now favor 401(k)'s.

Ms. FRIEDMAN. Yes, and I would just echo what Ron is saying. I mean, I think that we need to further examine beyond just today's hearing ways of encouraging companies to preserve and set up new defined benefit plans because one thing this economic recession collapse has done is focus attention on the deficiencies of 401(k) plans and the importance of having guaranteed income. It is very important that we figure out ways to encourage companies to keep these plans, to set up new types of these plans, and to look for ways of protecting future generations.

Mr. PETERSON. Another perspective, if I may share just briefly, is that my observation had been that in an enterprise such as Hopkins where we hire a lot of young people, young people used to come to us with very little interest or concern about the nature of the retirement plan that was offered. They were mostly concerned about how much am I going to get paid, maybe some other things about fringe benefits, but very little concern about the pension.

Increasingly what we are finding is when they come in the door for an interview, they are very much interested, and we are finding that by offering a defined benefit approach, that is really a leg up

in the competitive marketplace. We think that with employees having now experienced such a devastating period over the last 24 months, there is renewed interest. We think it is actually not only a responsible thing as an employer to continue to offer. We do think it could be a competitive advantage.

Senator HAGAN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hagan.

Senator FRANKEN.

Senator FRANKEN. Thank you, Mr. Chairman.

What we have here is that these companies, corporations, are in a down period. The value of the money they have in their pension plans has gone down, and we are in a recession. And we are asking them essentially to put in more money to make up for what they lost in the down market. Right?

In the middle of a recession, we are asking them to put more money aside for the pensions, and that is money that cannot be used to create jobs or invest in things. You want to give them some flexibility and some relief. That all makes sense to me.

Ms. Friedman, I think you spoke to this. I just want to make sure that this money does not go to paying executives more money.

Ms. FRIEDMAN. We are with you on that.

Senator FRANKEN. Yes. We saw from Mr. Gump the example of the Delphi employees, former employees, who cannot afford health care. He started to tear up. And yet, it seems like the top five executives at Delphi put aside \$100 million for themselves. That really seems just wrong. Right? How can we prevent that kind of thing from happening?

Ms. FRIEDMAN. Well, certainly what we are recommending is two conditions for providing funding relief to companies that have ongoing plans. One is that if they get the relief, they have to make sure that they maintain the plan, they do not freeze it for the period of relief.

And the second is that since companies are saying that they need this relief because the money that would have gone into the pension plan instead could be used to preserve and create new jobs, we are basically calling them on that by saying, OK, then none of the money, during the period of time that you get funding relief, should be used to either fund executive compensation, the deferred executive compensation plans, or be paid out to executives during that period, subject to contractual concerns. That is one way of doing it, tying it to the funding relief that you give to companies during this period because it is a balancing act.

Obviously, the Pension Rights Center is very sympathetic to businesses during this time, just as we are to employees and retirees. Everybody has gotten whacked by this economy. We do not think there should just be blanket relief to everybody. First and foremost, we think that the relief should go to the companies that have done the right thing and they are keeping their plans going for workers and retirees because that is why you are giving relief because you believe in the sanctity of pension plans. But certainly we feel very strongly that there should be conditions, and the limits on executive compensation should be at least a part of that.

Senator FRANKEN. Mr. DeFrehn, you were talking about multi-employer plans, right? That is what I got.

Mr. DEFREHN. Yes.

Senator FRANKEN. I was interested in your testimony.

Mr. DEFREHN. And I think your groups, sir, are a part of our group too.

Senator FRANKEN. Yes.

Now, as I understand it, the PBGC guarantees—for single-employer plans, their guarantee is \$54,000?

Mr. DEFREHN. That is correct.

Senator FRANKEN. And for multiemployer plans, only \$12,000.

Mr. DEFREHN. That is correct too.

Senator FRANKEN. Why is that and why should I be OK with that?

Mr. DEFREHN. When the guarantee programs were first put into place, actually there was some question as to whether or not a guarantee program was even necessary for multiemployer plans because the structure is quite different. If a corporation goes out of business, there is nowhere to go but to the Government to cover those pension obligations. If an employer who contributes to a multiemployer plan goes out of business, the remaining employers pick up those liabilities.

Senator FRANKEN. But sometimes an entire industry is hit. Right?

Mr. DEFREHN. When an entire industry is hit, that is the appropriate time for the Government to step in, and that is what the PBGC is there for. And it has happened in several situations, but if you look across the history of the two trusts, you heard Ms. Bovbjerg say that about 3,860 companies have had to turn to the PBGC for financial assistance. They have taken over that many plans. And the cost to the agency over that period of time is \$39.4 billion collectively back to 1974.

Multiemployer plans, though, have looked out for their own and been—

Senator FRANKEN. Have any of them turned to the PBGC?

Mr. DEFREHN. Fifty-seven plans have received financial—as opposed to 3,860. And the total dollars spent on those 57 plans was \$417 million instead of \$39 billion. You can see the system is good as far as having lower risk.

However, over time the level of benefits for those plans that do fail—and there are plans that have gone that way and there are others on the PBGC watch list that they are expecting to see fail over time. We have had some really difficult periods with the investments, but we also have mature plans, many of which have an ongoing cash flow deficiency because the number of contributing employers has shrunk. The trucking industry, for example, where very few of the long haul freight union companies continue to exist.

As those plans and those industries contract, there need to be some additional tools available to the PBGC to make sure that neither the employers that have continued to do the right thing over the years, stepped in and acted in the stead of the PBGC, are driven out of business because of that—and also we need to better protect the participants who do receive benefits. Therefore, we are recommending that the guarantee levels be increased.



Now, there was a question as far as the structure and the formula for determining what the benefits are from the PBGC. There was a question of moral hazard. There was a concern when these guarantee programs were put up that the Government not be dumped on because it is easy for employers and plan sponsors to walk away.

The formula for multiemployer plans is 100 percent of the first \$11 of accrual is guaranteed and 75 percent of the next \$33 is guaranteed. That is a very modest benefit if you figure that the guarantee is based on 30 years' worth of service and that is what you need to get that full \$12,870. If you left with 20 years of service, you are going to get about \$800 a month.

We are suggesting that in light of some of the benefit improvements that were necessary—just if I can take one more moment here. We had conflicting tax policies. We had a policy where we wanted plans to be fully funded, and yet when they got fully funded, we said you could not put money away for a rainy day. Until this was adjusted in the PPA, plans that got to 100 percent funding were subject—if the employer continued to make their collectively bargained required contributions, they no longer got the deduction for making those contributions and were subject to an excise tax. You could not put money aside for a rainy day. And in that situation, which about 70 percent of our plans ran into in the 1990s, the trustee's only alternative was to increase the cost of the plan by raising benefits.

We now have a situation where we made a bad situation worse. We have dug the hole a little bit deeper. As a result, we now have benefits that are well above the PBGC guarantee.

We are suggesting that along the line of the formulas that are already in place, that for the next \$40 of accrual, we would guarantee 50 percent of that. That would get the guarantee level to about \$20,000, which is still not a lot by anybody's standards, but we believe it is appropriate. Again, that should be addressed in the premium structure.

Senator FRANKEN. Thank you. I guess no one foresaw that there could be a rainy day.

Mr. DEFREHN. Probably not.

Senator FRANKEN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

I thank our panel.

Again, I would ask you the same thing I asked the last panel. Some of you already have this. But any suggestions, an outline you would have for a new kind of pension system that we might want to look at, a hybrid or a combination. You stated that we have more tax benefits basically for the 401(k)'s than we do for the DBs. Maybe that needs to be skewed around a little bit. Maybe we ought to be thinking about how we have workers provide payments into a DB plan and get some kind of tax relief for that rather than just the 401(k)'s that they are doing now.

It seems to me that we have a short-term and long-term problem. We have this short-term problem right now because of the downturn in the economy. I think we have a much longer-term problem in terms of how we say to American workers, whether they are organized labor union workers or salaried workers, as we heard here

from Mr. Gump, that there is a retirement program to which they can enter and they can reasonably judge what their benefits are going to be at the end within some parameters. At least maybe there is a minimum or something.

For example, on Social Security, every so often I get something from Social Security, or I did before when I was younger, telling me how much I had accrued and what my benefits were going to be. I realize you cannot do that with a program that is not backed by the full faith and credit of the U.S. Government, but there ought to be at least some reasonable balance that says that if you get into this plan and you put in this much and your employer puts in this much, at age 65 or 62 or 68 or whatever, you are going to be somewhere in this range. And then we need the laws to back it up.

Of course, companies do go belly up. Conditions change. New industries emerge. I still feel very strongly that the Pension Benefit Guaranty Corporation has a very vital, vital role in backing up these plans.

I look forward to your input on that. Any suggestions or advice—get to our committee. I would appreciate it very much.

Thank you all very much. It was very interesting.

The record will be left open for 10 days for Senators and others.

Thank you very much. The committee is adjourned.

[Additional material follows.]

## ADDITIONAL MATERIAL

## PREPARED STATEMENT OF THE NATIONAL EDUCATION ASSOCIATION (NEA)

The National Education Association (NEA) respectfully submits these comments to the Committee on Health, Education, Labor, and Pensions for the record in conjunction with the October 29, 2009 hearing on "Pensions in Peril: Helping Workers Preserve Retirement Security Through a Recession."

NEA strongly supports H.R. 3936, the "Preserve Benefits and Jobs Act of 2009" introduced by Representatives Pomeroy (D-ND) and Tiberi (R-OH) that provides the funding relief desperately needed by sponsors of defined benefit pension plans in the private sector. H.R. 3936 is appropriately calibrated to help plan sponsors recover from the cataclysmic market losses that occurred during the 5-month period stretching from the summer of 2008 through the winter of 2009, when the assets of defined benefit pension plans suffered an average market value loss of 40 percent. Without the short-term, targeted funding relief provided by H.R. 3936, many employers will not be able to continue in business, let alone maintain their pension plans. Accordingly, NEA commends Representatives Pomeroy and Tiberi for sponsoring this bill and urges the Senate to look at and move forward similar legislation.

NEA is a leading advocate for financially stable, employment-based, defined benefit pension plans in both the public and private sectors of the economy. Although nearly all of NEA's members are employed by public school employers not subject to the funding rules governing private sector defined benefit pension plans (and therefore would not be affected by the funding relief provided by H.R. 3936), NEA understands that passage of the legislation is vitally important to the survival of employment-based defined benefit pension plans in all sectors of the economy. Without funding relief, the relatively inflexible funding rules imposed on sponsors of private sector defined benefit plans would make sustaining those plans, given the stresses of the once-in-every-other-generation market upheaval of the end of last year and the beginning of this one, nearly impossible for many employers. For those employers, the cost of sustaining their defined benefit pension plans under the funding rules without relief will force them to retrench their operations severely, causing losses in economic activity and jobs in their core businesses. And, as private sector defined benefit pension plans become rarer, the defined benefit pension plans maintained for our members will inevitably become harder for public sector employers to sustain.

NEA's knowledge about the severe challenges that private sector employers are facing in maintaining their defined benefit pension plans has been gained first hand through the experience of its own affiliated associations throughout the country, nearly all of whom maintain defined benefit pension plans—on both a single employer and multiemployer basis—for their own employees. For the most part, NEA's affiliates are financially stable, mature organizations with predictable cash flow. These organizations take pride in providing retirement security for their staff employees by maintaining well-funded defined benefit pension plans. Yet, the application of the new stringent funding rules of the Pension Protection Act ("PPA")—which generally increase the unpredictability of funding requirements year-to-year—to plans that have suffered, over a 5-month period, a drastic and unpredictable market drop in the value of their funding, has suddenly made sustaining those plans a nearly unbearable burden.

And it is not just the plans that are jeopardized by this funding crisis: many of NEA's affiliated associations are being forced to postpone, curtail, or eliminate regular services, staffing, and capital improvements, often on top of increases in member dues. This is because, absent relief, in 2009 the average NEA affiliate will be faced with the immediate obligation to make funding contributions equal to 37 percent of its payroll, just to maintain its defined benefit pension plan. This huge funding obligation is not the result of past irresponsible funding behavior; on the contrary, these organizations have been uniformly fiscally responsible sponsors of their defined benefit plans, and many have been making markedly increased contributions to their plans over the last few years. Not one of these associations has taken contribution holidays or paid only the minimum contribution required by existing funding rules. Financially sound, long-term membership organizations such as these—like many other businesses in the private sector—should be financially able to maintain defined benefit pension plans. But, unless these employers are given some temporary flexibility in how to recoup the severe investment losses of the last 2 years suffered by their plans, many of these plans will not be sustained, and the organizations will be substantially damaged financially as well.

H.R. 3936 will have a major beneficial impact by providing sponsors the opportunity to fund the investment losses that their defined benefit plans incurred at the

end of 2008 and the beginning of 2009 over a longer period of time. This one temporary change in the funding rules will permit many defined benefit pension plans to remain viable; and it will free up needed investment capital for the sponsors' core businesses and allow these employers to begin hiring again. The draft House proposal provides this temporary relief in the form of two alternative funding rules, either of which sponsors may elect voluntarily to comply: (1) an option to defer for 2 years the amortization of the shortfalls occurring in 2009 and 2010; or (2) an option to amortize the shortfalls occurring for the first time in 2009 and 2010 separately over a 15-year period. NEA is most pleased by the inclusion of the latter alternative in the bill, because it will provide greater relief for sponsors' contribution obligations in the earlier years. NEA is similarly pleased with the bill's temporary funding relief for multiemployer plans, which employers would be permitted to elect voluntarily during 2009 or 2010 either: (1) to restart the amortization of unfunded liabilities over a 30-year period; or (2) to establish a separate amortization base for investment losses recognized from the fall of 2008 through the fall of 2010 and to fund this liability over a 30-year period.

The bill's "maintenance of effort" requirements, which are linked to its temporary funding relief provisions for single employer plans, are appropriately calibrated to incentivize sponsors to continue to provide benefits to plan participants during the same period in which they are receiving relief. As no plan sponsor is required to accept the temporary funding relief, and the bill provides different methods of complying with the maintenance of effort requirements, the temporary limitation on the sponsors' flexibility to curtail plan benefits or to enhance executive nonqualified plan benefits is both justified and fair.

The genius of the bill is that it provides temporary funding relief without undoing the principles of the PPA, which were designed to ensure that defined benefit pension plans were better funded. Under the bill, no employer would be allowed to make contributions for 2009 and 2010 that are less than those made for prior years. And no liabilities will be hidden; that is, the accounting statements made on behalf of the plan will fully reflect the value of the liabilities and the longer time period during which sponsors will fund them.

Further, the changes that the bill does make to the PPA will help sponsors maintain better funded defined benefit pension plans. All of the temporary and permanent changes to the PPA are well-designed to make plan funding more predictable and affordable, making it much more likely that sponsors will be able to maintain their defined benefit pension plans in the long run. By doing so, the bill improves the financial outlook of the plan sponsors and the Pension Benefit Guaranty Corporation.

For all of these reasons, NEA fully supports H.R. 3969, the "Preserve Benefits and Jobs Act of 2009" and intends to advocate vigorously for the bill's enactment in both the House and Senate. We urge the members of the Senate Health, Education, Labor, and Pensions Committee to move forward similar legislation.

Thank you for the opportunity to submit these comments.

#### PREPARED STATEMENT OF YRC WORLDWIDE, INC.

YRC Worldwide, Inc. (YRCW) is one of the Nation's largest trucking companies. We employ approximately 45,000 men and women in the United States, the majority of whom are members of the International Brotherhood of Teamsters. We provide good middle class jobs with strong wages, health care, and a pension. YRCW has approximately 700,000 customers, including the Department of Defense and FEMA. In 2008, YRCW generated \$22.1 billion in total output, employment for 141,158 workers, and \$2.8 billion in total tax revenues for Federal, State, and local governments. The Company transported goods valued at approximately \$202 billion or 1.4 percent of GDP. In addition, YRCW contributed approximately \$540 million to 36 multiemployer pension plans to provide pension benefits to more than 1.2 million active and retired Teamster members.

As the title of today's hearing suggests, many workers face an uncertain retirement future because of the impact the recession has had on their pension plans. Many companies that sponsor defined benefit plans are struggling to adjust to a steep decline in business activity while having to make up for significant investment losses incurred by those plans. For companies that are part of the trucking and grocery industries, the problems are even more acute. Thus, we thank the Chairman for holding this hearing, as pensions are indeed in peril, and workers need Congress to help preserve their retirement security.

Prior to the start of the recession, the Company had delivered record earnings and operating margins. Since the freight recession began in the second half of 2006, however, the Company has gone from producing strong earnings to significant

losses. In this exceptionally difficult business environment, YRCW now faces three inter-related problems in meeting its pension obligations: The Company funds the benefits of, and effectively acts as insurer or guarantor for, hundreds of thousands of workers who never have worked for YRCW ("non-sponsored retirees"); the multi-employer plans to which we have been contributing have suffered significant investment losses; and we face a worsening demographic challenge as fewer workers support the pension obligations of more and more retirees. Given our significant pension obligations, the downturn in business volume in the current economic environment has had especially adverse consequences for the Company. In short, our contribution burden has now grown to an unsustainable level as our business continues to suffer from the global economic meltdown.

Working with the Teamsters, we are doing what we can through self-help measures to address the challenges we face. Since the beginning of the year, for example, our union and non-union employees have agreed to a 15 percent reduction in wages. Management has done so as well. In addition, YRCW has taken other steps to improve the company's cash flow and liquidity, including selling off excess property, consolidating back-office functions, and reducing overhead. In addition, we have temporarily terminated our participation in our largest plans for 18 months in order to preserve our cash flow. At the same time, the multiemployer plans to which the Company has contributed also have taken self-help measures to address the solvency challenges they face.

But unless Congress provides legislative relief *this year*, many of the pension plans to which YRCW has been contributing will eventually become insolvent. When that occurs, the Pension Benefit Guaranty Corporation (PBGC) will be responsible for the pension obligations of the hundreds of thousands of participants in the plans.

How did we get here? In 1980, Congress enacted two bills that, albeit seemingly unrelated, have together over time created unsustainable pension plan obligations for YRCW and other successful freight carriers. The Motor Carrier Act deregulated the trucking industry, while the Multiemployer Pension Plan Amendments Act (MPPAA) imposed an exit penalty on companies upon their withdrawal from multi-employer pension plans, including companies in the trucking industry. As a result of MPPAA, a company that withdraws from a multiemployer plan must pay its fair share of liability to fund the plan's unfunded vested benefits.

Although seemingly similar, "termination" liability and "withdrawal" liability are fundamentally different legal concepts, and have had fundamentally different impacts in the real world. Prior to the enactment of MPPAA, if a multiemployer plan had a declining base of contributing employers, the remaining employers were required to absorb a greater share of the funding costs of benefits for non-sponsored participants, *i.e.*, plan participants previously employed by former contributing employers. Similarly, if a multiemployer plan terminated because of a substantial decline in its contribution base, only the companies remaining in the plan at the time of termination were required to pay termination liability to the PBGC. This often resulted in a race to the exits by companies wishing to avoid termination liability upon the plan's termination.

By substituting "withdrawal liability" for "termination liability" in MPPAA, Congress sought to provide some measure of protection for companies remaining in multiemployer plans. The rationale for the change was that, if a company had to pay a fee upon withdrawal, remaining employers would be less exposed and less inclined to race to exit the plan. But the legislation had a perverse effect instead: by imposing an exit penalty upon withdrawing companies, MPPAA acted as a deterrent to new companies entering into multiemployer agreements. The impact was particularly dramatic in a contracting industry such as the freight carrier industry.

As a result of the interplay of the two statutes, of the thousands of carriers in business in 1979, only a few are left to principally fund multiemployer pension plans today. This has created a crippling financial obligation that could lead to massive job losses and health care and pension benefits losses for hundreds of thousands of active and retired workers. To put the impact of the legislation in perspective, we have appended to our statement a list of the top 50 LTL carriers that were in business in 1979 and the handful left in business today, two of which are now part of YRCW and two of which have dropped out of the top 50.

In short, as an unintended consequence of the 1980 legislation, YRCW now supports hundreds of thousands of workers who never worked for YRCW. In fact, we have contributed more than \$3 billion towards their benefits. Employer bankruptcies and recent investment losses are crippling the multiemployer plans to which YRCW has been contributing. As a result, YRCW's contribution burden has become unsustainable and many pension funds are headed for insolvency.

Many plans have been forced to implement both benefit reductions and contribution increases as a result of the collapse in equities and the requirements of the

Pension Protection Act. Many plans are “mature” plans in which retirees receiving benefits heavily outnumber participating active employees and where contributions already fall well short of paying benefits, requiring significant investment earnings each year to maintain their funding level. By themselves, these circumstances likely will require every multiemployer plan to make some kind of draconian adjustment for 2009 and beyond. Plans that are fully funded or nearly fully funded will likely be required to reduce the level of benefits they provide. Plans that are operating under an amortization extension, funding improvement plan or rehabilitation plan likely will be required to further reduce benefits or increase contributions or both for 2009 and beyond.

The failure of a major employer, such as YRCW, will exacerbate these problems. When a contributing employer fails, the plan loses the contributions attributable to the employer both for the current year and for the purposes of its actuarial calculations. Only a small percentage of withdrawal liability—the amount the defunct contributors owe for prior year benefits—is ever recovered in bankruptcy. The plan suffers an immediate reduction in actives and often a substantial and immediate increase in retirees, increasing its annual benefit payments and making it more dependent on investment income. Required adjustments become correspondingly greater. Contributions will need to be higher. Cuts will need to be deeper.

In a multiemployer plan, when one employer fails, the benefit obligations are shifted to the surviving employers, who must bear the burden not only for current participants but also for the new non-sponsored retirees. For members of the Teamsters, the remaining employers include not just industrial employers but also participating local unions and affiliated health and welfare and pension plans. At a minimum, these remaining employers will bear the added burden of the vested benefits of the failed employer's employees. Depending on required adjustments, their employees may suffer reduced future accruals, and the employers will likely be required to pay even higher contributions. If the failure creates an immediate funding deficiency, the remaining employers, even if they have an existing collective bargaining agreement, will likely be required to pay an excise tax on top of the increased contributions.

Higher contributions and reduced benefits may prompt other employers to leave the plan, further reducing the number of active members and the contribution base, increasing the number of retirees and terminated vested members, and making the plan even more dependent on future investment returns and more unstable. In some situations, higher contributions will likely force remaining employers into bankruptcy, resulting in even more lost jobs. In the worst case, the failure of the primary plan will have a domino effect, leading to the failure of other plans in which these employers contribute and even more job losses.

Having made roughly \$3 billion in contributions to fund the pension benefits of retirees not affiliated with YRCW, the Company can no longer afford to continue to serve in its role as an involuntary surrogate for the PBGC. Self-help measures will not be enough. For the sake of our Teamster employees and retirees, we need help from the Congress this year to address the challenges facing the company and the multiemployer plans to which we have long provided support.

#### PROPOSED LEGISLATIVE SOLUTION

We very much appreciate the efforts of Members to address the challenges faced by multiemployer plans and companies such as YRCW. In drafting legislation this year, we urge the Health, Education, Labor, and Pensions Committee to:

- Update the “partitioning rules” of current law so that the PBGC would assume the pension obligations for non-sponsored retirees while the plans continue to support the participants of current employers; and
- Provide a “fresh start” for multiemployer pension plans suffering from recent investment losses.

Thank you for your consideration.

#### ATTACHMENT

##### TOP 50 LTL CARRIERS IN 1979\*

1. **Roadway Express (now part of YRCW)**
2. Consolidated Freightways
3. **Yellow Freight System (now part of YRCW)**

\* Bold = Companies Still Operating on 10/01/2009

4. Ryder Truck Lines
5. McLean Trucking
6. PIE
7. Spector Freight System
8. Smith's Transfer
9. Transcon Lines
10. East Texas Motor Freight
11. Interstate Motor Freight
12. **Overnite Transportation (now UPS Freight)**
13. **Arkansas Best Freight (now ABF Freight System)**
14. American Freight System
15. Carolina Freight Carriers
16. Hall's Motor Transit
17. Mason & Dixon Lines
18. Lee Way Motor Freight
19. TIME-DC Inc.
20. Wilson Freight Co.
21. Preston Trucking Co.
22. IML Freight
23. Associated Truck Lines
24. **Central Freight Lines (now no. 84)**
25. Jones Motor-Alleghany
26. Gateway Transportation
27. Bowman Transportation
28. Delta Lines
29. Garrett Freightlines
30. Branch Motor Express
31. Red Ball Motor Freight
32. Pilot Freight Carriers
33. Illinois-California Exp.
34. Pacific Motor Trucking
35. **Central Transport (no longer in the top 100)**
36. Brown Transport
37. St. Johnsbury Trucking
38. Commercial Lovelace
39. Gordons Transports
40. CW Transport
41. Johnson Motor Lines
42. System 99
43. Thurston Motor Lines
44. **Watkins Motor Lines (now part of FedEx Freight)**
45. Santa Fe Trail Transportation
46. Jones Truck Lines
47. Merchants Fast Motor Lines
48. Murphy Motor Freight
49. Maislin Transport
50. Motor Freight Express

U.S. SENATE,  
OCTOBER 29, 2009.

BARBARA BOVBJERG, *Director,*  
*Education, Workforce and Income Security,*  
*Government Accountability Office,*  
*441 G. Street, NW.,*  
*Washington, DC 20548.*

DEAR BARBARA: Thank you for your recent testimony before the Senate Committee on Health, Education, Labor, and Pensions, titled, "*Pensions in Peril: Helping Workers Preserve Retirement Security Through a Recession.*" I regret that another commitment with the Judiciary Committee prevented my attendance, but have reviewed your testimony and would like to ask a few questions of you.

You do an excellent job explaining how the PBGC is making both underpayments and overpayments when determining a final benefit for pension participants assigned to it. At the October 29th hearing, another witness, David Jury, provided a concrete example of an overpayment.

Jury cites the case of Republic Technologies International (RTI), a firm that filed bankruptcy in 2001. On June 14, 2002, PBGC terminated the RTI pension plan, but a final determination benefit was not issued until May 2008. Consequently, for near-

ly 6 years RTI employees received benefits from PBGC based on estimated benefit determinations, only to find out in May 2008 that they had received benefits in excess of the benefits guaranteed by PBGC. Some retirees owed PBGC a few thousand dollars, others \$60,000 or more.

In light of testimony, it is curious that the GAO's April 2009 *Improper Payments* report shows absolutely no improper payments for PBGC in either fiscal year 2008 or 2007. While I understand that a mechanism is in place to allow PBGC to correct both under- and overpayments of this nature, these are clearly instances of improper payments. Can you please explain why GAO does not include these tallies in its annual improper payments report? Do you think that there should be a better accounting of the improper payments made by PBGC?

Also related to the PBGC, you testified before the Senate Committee on Aging in May 2009 and commented on the status of outstanding audit recommendations given to PBGC. You stated that GAO had identified 130 outstanding recommendations for corrective action that have not yet been implemented, some of which were quite old. Has any progress been made on the part of PBGC over the last 5 months in implementing any of these outstanding recommendations.

Thank you for your time and expertise. Please feel free to follow-up with my office if you have questions.

Sincerely,

TOM A. COBURN, M.D.,  
*U.S. Senate.*

[Whereupon, at 12:48 p.m., the hearing was adjourned.]

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