# CHALLENGES FACING MULTIEMPLOYER PENSION PLANS: EVALUATING PBGC'S INSURANCE PROGRAM AND FINANCIAL OUTLOOK

## HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS

OF THE

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, DECEMBER 19, 2012

**Serial No. 112–70**

Printed for the use of the Committee on Education and the Workforce

Available via the World Wide Web:
*www.gpo.gov/fdsys/browse/committee.action?chamber=house&committee=education*
or
Committee address: *http://edworkforce.house.gov*

U.S. GOVERNMENT PRINTING OFFICE

77–383 PDF WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

## COMMITTEE ON EDUCATION AND THE WORKFORCE

JOHN KLINE, Minnesota, *Chairman*

Thomas E. Petri, Wisconsin
Howard P. "Buck" McKeon, California
Judy Biggert, Illinois
Todd Russell Platts, Pennsylvania
Joe Wilson, South Carolina
Virginia Foxx, North Carolina
Bob Goodlatte, Virginia
Duncan Hunter, California
David P. Roe, Tennessee
Glenn Thompson, Pennsylvania
Tim Walberg, Michigan
Scott DesJarlais, Tennessee
Richard L. Hanna, New York
Todd Rokita, Indiana
Larry Bucshon, Indiana
Trey Gowdy, South Carolina
Lou Barletta, Pennsylvania
Kristi L. Noem, South Dakota
Martha Roby, Alabama
Joseph J. Heck, Nevada
Dennis A. Ross, Florida
Mike Kelly, Pennsylvania

George Miller, California,
*Senior Democratic Member*
Dale E. Kildee, Michigan
Robert E. Andrews, New Jersey
Robert C. "Bobby" Scott, Virginia
Lynn C. Woolsey, California
Rubén Hinojosa, Texas
Carolyn McCarthy, New York
John F. Tierney, Massachusetts
Dennis J. Kucinich, Ohio
Rush D. Holt, New Jersey
Susan A. Davis, California
Raúl M. Grijalva, Arizona
Timothy H. Bishop, New York
David Loebsack, Iowa
Mazie K. Hirono, Hawaii
Jason Altmire, Pennsylvania
Marcia L. Fudge, Ohio

Barrett Karr, *Staff Director*
Jody Calemine, *Minority Staff Director*

## SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS

DAVID P. ROE, Tennessee, *Chairman*

Joe Wilson, South Carolina
Glenn Thompson, Pennsylvania
Tim Walberg, Michigan
Scott DesJarlais, Tennessee
Richard L. Hanna, New York
Todd Rokita, Indiana
Larry Bucshon, Indiana
Lou Barletta, Pennsylvania
Kristi L. Noem, South Dakota
Martha Roby, Alabama
Joseph J. Heck, Nevada
Dennis A. Ross, Florida

Robert E. Andrews, New Jersey
*Ranking Member*
Dennis J. Kucinich, Ohio
David Loebsack, Iowa
Dale E. Kildee, Michigan
Rubén Hinojosa, Texas
Carolyn McCarthy, New York
John F. Tierney, Massachusetts
Rush D. Holt, New Jersey
Robert C. "Bobby" Scott, Virginia
Jason Altmire, Pennsylvania

# C O N T E N T S

# CHALLENGES FACING MULTIEMPLOYER PENSION PLANS: EVALUATING PBGC'S INSURANCE PROGRAM AND FINANCIAL OUTLOOK

---

**Wednesday, December 19, 2012**
**U.S. House of Representatives**
**Subcommittee on Health, Employment, Labor and Pensions**
**Committee on Education and the Workforce**
**Washington, DC**

---

The subcommittee met, pursuant to call, at 10:03 a.m., in room 2175, Rayburn House Office Building, Hon. Phil Roe [chairman of the subcommittee] presiding.

Present: Representatives Roe, Wilson, Thompson, Walberg, DesJarlais, Hanna, Rokita, Bucshon, Barletta, Noem, Roby, Andrews, Kucinich, Hinojosa, Tierney, Holt, and Scott.

Also Present: Representatives Kline and Miller of California.

Staff Present: Andrew Banducci, Professional Staff Member; Katherine Bathgate, Deputy Press Secretary; Adam Bennot, Press Assistant; Casey Buboltz, Coalitions and Member Services Coordinator; Ed Gilroy, Director of Workforce Policy; Benjamin Hoog, Legislative Assistant; Marvin Kaplan, Workforce Policy Counsel; Barrett Karr, Staff Director; Brian Newell, Deputy Communications Director; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Todd Spangler, Senior Health Policy Advisor; Alissa Strawcutter, Deputy Clerk; Aaron Albright, Minority Communications Director for Labor; Tylease Alli, Minority Clerk; John D'Elia, Minority Staff Assistant; Daniel Foster, Minority Fellow, Labor; Brian Levin, Minority New Media Press Assistant; Megan O'Reilly, Minority General Counsel; Julie Peller, Minority Deputy Staff Director; and Michele Varnhagen, Minority Chief Policy Advisor/Labor Policy Director.

Chairman ROE. A quorum being present, the Subcommittee on Health, Employment, Labor, and Pensions will come to order.

Good morning, Director Gotbaum. And it is good to see you again. We appreciate your taking your time to be with us this morning.

Before we begin, I would like to take a moment to extend my condolences to the people of Newtown, Connecticut. Last week, an unspeakable act of evil killed 20 innocent children and six amazing adults, changing our country and the community around Sandy

Hook Elementary School forever. As a Nation, we continue to stand by the people of Newtown and lift them up in our prayers.

And I now yield to my friend Congressman Andrews for any comments he may have.

Mr. ANDREWS. Good morning, Chairman. Thank you for beginning our gathering with the appropriate memorial to those who suffered such a loss in Connecticut and across the country.

This is the Committee on Education and Labor. And the idea that such an act of pure unadulterated evil could take place in a school in this country is not something we can easily process. Suffice it to say that there is unanimous feeling, I know, on this committee that our hearts and prayers go out to all those afflicted by this unspeakable loss.

There is a higher purpose in life than politics. It is loving our children. And extending that love to those who suffered from this is something I certainly will join you in with a heavy heart but with a strong conviction.

Chairman ROE. On behalf of the committee, I ask that we honor memories of those who died by observing a moment of silence while we please stand.

You may be seated. Thank you for that privilege.

And now let's turn to the issue before the subcommittee this morning. Today's hearing is our second opportunity in recent months to examine the multiemployer pension system. In June, we discussed broadly the politics governing the system and its structural challenges. Since that hearing, news reports have reminded us of the problems plaguing many pension plans and the need for reforms that will help promote a stronger system. Hostess Brands, an iconic American company for more than 80 years, decided in November to close its doors and lay off 18,500 workers. Hostess participates in 42 multiemployer pension plans, and its total withdrawal liability, the penalty a company pays when exiting a plan, could exceed $2 billion. Yet it is uncertain whether that money will be collected in bankruptcy. Those employers who remain in the plans will have to provide Hostess employees the retirement benefits they earned.

Regrettably, the Hostess story is one that is becoming all too common in the multiemployer pension system. An employer withdraws from a pension plan leaving behind unfunded promises that then fall to the remaining employers. At times, this can drive even more employers out of the system, creating a domino effect that undermines the strength of the individual plan and the pension system as a whole.

These events have a profound effect on workers, and they also impact the Pension Benefit Guaranty Corporation. The Federal agency provides financial assistance to multiemployer pension plans in distress, a responsibility that has grown significantly in recent years. According to its annual report, PBGC has obligations of $7 billion in future financial assistance and a 57 percent increase since 2011. The agency believes there is a 30 percent chance its multiemployer insurance program will be insolvent in less than 20 years. Meanwhile, its total deficit continues to grow and now stands at $34.4 billion.

Maintaining the status quo is no longer possible. Provisions in the law governing multiemployer pensions will expire in 2 years, which means Congress has an important opportunity to study the system, assess its strengths and weaknesses, and pursue solutions that support workers without discouraging participation in the voluntary pension system.

To do this successfully, we need the facts as quickly as possible. Unfortunately, the administration has a history of delaying the facts and slowing the work of this committee. For example, it took nearly 9 months to get answers to questions submitted by members of the committee, both Republican and Democrat, after our hearing with Director Gotbaum in February. Only now are we able to complete the hearing record.

I am also troubled by two missing reports that were due last year. These reports should provide important details on multiemployer pensions, including the sufficiency of current premium levels and the impact of funding rules on small employers. The law requires the PBGC to finish these reports by the end of last year and yet we are still waiting. We are now told to expect the reports by the end of this year.

Congress is ultimately responsible for legislating changes that will improve the long-term health and stability of the multiemployer pension system. We cannot do our work if the administration fails to do its job in a timely manner. Blaming changes to the law enacted 6 months after the reports were due is not an acceptable excuse.

The success of the multiemployer pension system depends upon many factors, such as a strong economy, practical promises, and a diverse group of participating employers. It also requires policymakers working together on reforms that serve the interests of workers, employers, and retirees. Director Gotbaum, you play a vital role in that effort. I hope you will help us get the answers we need without unnecessary delay. And thank you for your service. And we look forward to working with you.

I now recognize my distinguished colleague, Rob Andrews, the senior Democratic member of the subcommittee, for his remarks.

[The statement of Chairman Roe follows:]

**Prepared Statement of Hon. David P. Roe, Chairman, Subcommittee on Health, Employment, Labor and Pensions**

Good morning. Director Gotbaum, it is good to see you. We appreciate you taking time to be with us this morning.

Before we begin, I would like to take a moment to extend my condolences to the people of Newtown, Connecticut. Last week, an unspeakable act of evil killed 20 innocent children and six incredible adults, changing our country and the community around Sandy Hook Elementary School forever. As a nation, we continue to stand by the people of Newtown and lift them up in our prayers. I ask that we honor the memories of those who died by a observing a moment of silence.

[Moment of silence.]

Thank you.

Now, let us turn to the issue before the subcommittee this morning.

Today's hearing is our second opportunity in recent months to examine the multiemployer pension system. In June, we discussed broadly the policies governing the system and its structural challenges. Since that hearing, news reports have reminded us of the problems plaguing many pension plans and the need for reforms that will help promote a stronger system.

Hostess Brands, an iconic American company for more than 80 years, decided in November to close its doors and lay off 18,500 workers. Hostess participates in 42 multiemployer pension plans and its total withdrawal liability—the penalty a company pays when exiting a plan—could exceed $2 billion. Yet it is uncertain whether that money will be collected in bankruptcy. Those employers who remain in the plans will have to provide Hostess employees the retirement benefits they earned.

Regretably, the Hostess story is one that is becoming all too common in the multiemployer pension system. An employer withdraws from a pension plan, leaving behind unfunded promises that then fall to the remaining employers. At times, this can drive even more employers out of the system, creating a domino effect that undermines the strength of the individual plan and the pension system as a whole.

These events have a profound effect on workers, and they also impact the Pension Benefit Guaranty Corporation. The federal agency provides financial assistance to multiemployer pension plans in distress, a responsibility that has grown significantly in recent years.

According to its annual report, PBGC has obligations of $7 billion in future financial assistance—a 57 percent increase since 2011. The agency believes there is a 30 percent chance its multiemployer insurance program will be insolvent in less than 20 years. Meanwhile, its total deficit continues to grow and now stands at $34.4 billion.

Maintaining the status quo is no longer possible. Provisions in the law governing multiemployer pensions will expire in two years, which means Congress has an important opportunity to study the system, assess its strengths and weaknesses, and pursue solutions that support workers without discouraging participation in the voluntary pension system.

To do this successfully, we need the facts as quickly as possible. Unfortunately, the administration has a history of delaying the facts and slowing the work of this committee. For example, it took nearly nine months to get answers to questions submitted by members of the committee—both Republican and Democrat—after our hearing with Director Gotbaum in February. Only now are we able to complete the hearing record.

I am also troubled by two missing reports that were due last year. These reports should provide important details on multiemployer pensions, including the sufficiency of current premium levels and the impact of funding rules on small employers. The law requires PBGC to finish these reports by the end of last year and yet we are still waiting. We are now told to expect the reports by the end of this year.

Congress is ultimately responsible for legislative changes that will improve the long-term health and stability of the multiemployer pension system. We cannot do our work if the administration fails to do its job in a timely manner. Blaming changes to the law enacted six months after the reports were due is not an acceptable excuse.

The success of the multiemployer pension system depends upon many factors, such as a strong economy, practical promises, and a diverse group of participating employers. It also requires policymakers working together on reforms that serve the interests of workers, employers, and retirees.

Director Gotbaum, you play a vital role in that effort. I hope you will help us get the answers we need without unnecessary delay. Thank you for your service and we look forward to working with you.

---

Mr. ANDREWS. Thank you, Mr. Chairman. And good morning again.

Mr. Gotbaum, thank you for being with us this morning and for your service to our country. You are running a very important agency, and I know you are very dedicated to that task. It is good that you are here this morning to answer the committee's questions.

Ten million Americans benefit from a system that has served this country for many decades very well. And it is a system where pensions and other benefits are provided, where small business people, contractors, trucking companies, markets, supermarkets, and others get together and pool their resources and share costs in order to provide pensions and other employee benefits. This is what is known, as the chairman said, as the multiemployer system.

The multiemployer system in all cases involves a collective bargaining agreement that sets the terms and conditions of the benefits that will be given. The system has worked extraordinarily well and it is the system that 10 million Americans rely upon for their pension. It is essentially and fundamentally sound, but there are some significant problems that we must deal with in order to assure its soundness.

The graphs that are to my right tell the story of the last few years in this situation. Prior to the financial downturn of the first decade of the new century, by and large, multiemployer pension plans were exceedingly healthy. We then had the downturn of 2001, followed by the market crash of 2008 and 2009. And if you look at the chart that is to my right, we are in a situation where only 32 percent of multiemployer plans were in the healthiest category in 2009. That number has now grown to 60 percent. So improvement in the economy and several steps taken by this committee—at that time under the leadership of our present Speaker John Boehner—helped us to give plan trustees the tools to improve the situation.

Having said that, the disturbing element of that graph is the red category at the bottom which indicates that roughly a quarter of plans are in some significant financial distress. This distress flows from a variety of causes. Typically, the cause is that the employers—the trucking companies, the supermarket owners, the construction contractors—are in very difficult segments of our economy. You talk to any electrical contractor, air conditioning contractor, trucking company, they will tell you they have had very difficult times over the last 5 or 6 years. So that manifests itself in less money coming into the business, fewer workers paying into the fund.

The second problem we can all see in our own 401(k) accounts, or thrift accounts in the case of Federal employees, that as market values have tumbled, so have our retirement accounts. So the investments in many of these funds have not kept pace with the needs of employees.

And then the third is a sort of demographic tidal wave that I have to take some responsibility for. I was born in 1957, so I am part of the baby boom generation. And as baby boomers begin to retire and relatively fewer workers are in place to pay into funds, you have more people drawing out and fewer people paying in, which is a problem we see in Medicare and Social Security, in single-employer plans, and certain of these plans as well.

So the task that is before the committee is to think about ways that properly balance the health of the small businesses that make up these plans so they can continue to thrive and prosper, fairness to present retirees, and a system that protects taxpayers to the maximum extent so that the promises made by the Pension Benefit Guaranty Corporation that Mr. Gotbaum leads would never have to step in and reach into the Federal Treasury in order to help these plans, should that occur. Now I would hesitate to point out, there is no explicit guarantee from Federal taxpayers for these plans. But the last 5 years have certainly showed us that moral hazard exists, and taxpayers are very often called upon to make good for promises they never explicitly made.

Our goal as a subcommittee, which the chairman has pursued very diligently for the last year, is to make sure that the day never occurs when we are in a situation where the 10 million people who are in these pension plans would ever require any consideration of a taxpayer step in to help make that problem happen. So I am encouraged, Mr. Chairman, that this is the second hearing that we have had to delve into this issue. And I look forward to working with you in the new year to find constructive solutions so that we can ensure the continued vitality of the businesses that pay into these funds, the continued security of the 10 million Americans who rely on these funds. And I yield back.

Chairman ROE. I thank the gentleman for yielding.

Pursuant to committee rule 7(c), all members will be permitted to submit written statements to be included in the permanent hearing record. And without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted for the official hearing record.

It is now my pleasure to introduce Joshua Gotbaum, who is the director of the Pension Benefit Guaranty Corporation, where he has served since 2010. As director, he is responsible for the agency's management, personnel, organization, budget, and investments. Mr. Gotbaum holds degrees from Stanford, Harvard Law School, and from Harvard's Kennedy School of Government.

And I understand, Mr. Gotbaum, that you have some family members here, and would appreciate you introducing your guests, if you would.

Mr. GOTBAUM. Thank you, Dr. Roe. I am accompanied this morning, in addition to by the very competent staff of the Pension Benefit Guaranty Corporation, by my mother-in-law, Carol Lougheed, who I will say, to evidence the bipartisanship with which I think pensions should be done, is a Republican.

Mr. ANDREWS. Mr. Chairman, if I might, it is not necessary to swear in this witness because no one would fail to tell the truth in front of——

Mr. GOTBAUM. Their mother-in-law. Yes. And also my son Adam.

Chairman ROE. Thank you for introducing your guests.

Before recognize you to provide your testimony, let me briefly explain our lighting system. You have 5 minutes to present your testimony. When you begin, the light in front of you will turn green. When 1 minute is left, the light will turn yellow. And when your time has expired, the light will turn red, at which point I will ask you to wrap up your remarks as best able. After you have testified, members will each have 5 minutes for questions. Now appreciate your testimony.

**STATEMENT OF JOSHUA GOTBAUM, DIRECTOR, PENSION BENEFIT GUARANTY CORPORATION**

Mr. GOTBAUM. Dr. Roe, Mr. Andrews, Mr. Chairman, members of the subcommittee, thank you very much. Thank you very much for holding your prior hearing. Thank you very much for holding this hearing. With your permission, I will summarize the main points.

I want to start with something which is basic, which is that multiemployer plans are important. I come from the business community. Employee benefit plans are complicated. And one of the real benefits of multiemployer plans is they permit several hundred thousand businesses—mostly small businesses—in many different industries to provide retirement security without needing a big H.R. department, just by writing a check. That is a huge benefit.

In addition, as Mr. Andrews noted, for more than 10 million people and their families, multiemployer plans give them a pension that is portable, that they can take with them from job to job, that doesn't require them to become an investment expert or an actuary, and that gives them an income they can depend on for the rest of their lives without worrying that they or their spouse might outlive the money in their 401(k). And as you can see from the map to your right and my left, multiemployer plans cover businesses and people in every State in the Union and, I daresay, virtually every congressional district.

Like single-employer plans, the last decade was tough for multiemployer plans. Their investments shrank, but their commitments did not. So their contributions necessarily rose at a time when the businesses had less work and less ability to pay them. Six years ago, a bipartisan coalition in Congress, with the support of the business and labor community, passed the Pension Protection Act. That was an important piece of legislation. It recognized that not all multiemployer plans were alike, some plans are healthier than others, that different plans have different needs, that they need flexibility. Two years ago, a similar bipartisan coalition passed the Pension Relief Act, recognizing, again, that multiemployer plans, as well as single-employer plans, needed greater funding flexibility.

So where are we today? After all the events of the past decade, the financial health of these plans varies widely. As you can see from the status graph, there is a wide range of financial conditions. Two years ago, about a third of all the participants were in plans that reported—a third of 10 million people—were in plans that reported they were in green status. Today about 60 percent do. Excuse me, that is not true. In the information we got, you know, a few months ago, as at the beginning of 2011, 60 percent do. So we think that is good news. What that means is that a majority of the participants are in plans that are recovering. They are recovering for a whole variety of reasons: In part because of their markets, in part because they were conservative, in part because they used the authorities that the Congress gave them under the Pension Protection Act, in part because of funding relief, and, let's be honest, in part because of luck.

However, a minority of plans, maybe a couple of hundred, lack the necessary economic base. As you can see there, that is a smaller set of the population. It is not most plans. It is the minority of plans. But it is a significant number of plans. They lack the economic base. They have fewer active employees and contributing employers. And those that they do have may be unwilling or unable to cover the costs of retirees, particularly the orphan retirees of other companies that no longer contribute to the plan.

Without changes, some of these plans will not be able to avoid insolvency. The reason I personally am encouraged, as in the past, multiemployer plans, their trustees, their employers, their unions, their professionals, and others are stepping forward, looking for solutions that everyone can endorse. They are changes to allow flexibility, changes to allow distressed plans more robust tools. One effort worth noting is the retirement commission sponsored by the National Coordinating Committee on Multiemployer Plans. We have not seen the result of their work. They have been very insistent that they keep government out. But they say they will come forward, and we look forward to hearing their results and commenting on and analyzing it.

We think that is the right step, that what the Congress has always done is, working consensually with the many businesses, small businesses, and the unions that make up multiemployer plans, to figure out what works. And so we think the right step is to hear from the industry itself and then to respond and work with it.

At the same time, PBGC's multiemployer insurance program also needs a fresh look. This is a program which has not been substantially modified in 30 years. PBGC does not have the same tools for multiemployer plans that it has for single-employer plans. PBGC pays lower benefits for multiemployer plans than it does for single-employer plans. And PBGC gets much lower premiums from multiemployer plans than it does from single-employer plans. As a result, unless there are significant changes, both for plans and in PBGC's programs and finances, the agency will eventually end up without the tools and resources to help the plans improve and without the resources to continuing to pay benefits for those plans that do fail.

I am, as one who spends his life working on fixing businesses, an optimist. The next 2 years provides an opportunity, an opportunity for multiemployer plans, their participants, their professionals, their businesses, and their unions to work together with the Congress and the administration to develop approaches that are flexible, practical, and facilitate self-help. And that is why we are enormously grateful for the committee's continuing interest. I look forward to hearing your comments, to answering your questions, to finally providing the reports that we have owed you for a year, for which I regret, and to working with you to preserve what is a really important form of retirement security for tens of millions of Americans.

Chairman ROE. I thank you for your testimony.

[The statement of Mr. Gotbaum follows:]

**Prepared Statement of Hon. Joshua Gotbaum, Director, Pension Benefit Guaranty Corporation**

Thank you for holding this hearing on multiemployer plans and on PBGC's efforts to support them.[1]

Multiemployer plans are an important part of retirement security. They affect hundreds of thousands of businesses and more than ten million participants and their families. Unlike some other retirement or savings plans, multiemployer defined benefit plans offer lifetime retirement income.

Multiemployer plans offer employers, especially small businesses, the opportunity to provide retirement benefits to their workers. They are an affordable way for busi-

[1] As the Committee knows, PBGC and the Board agencies are working to complete reports on both multiemployer plans and on PBGC's multiemployer program. As we explained in a letter to the Committee on this topic, we have not yet completed the reports in part to be able to present more current information than would otherwise have been available, in part to incorporate recent legislative changes, and for other reasons. We expect to complete the reports very soon. We regret the delay.

nesses to provide a defined benefit pension without the administrative expenses and burdens of sponsoring a separate company retirement plan.

There are about 1,340 ongoing multiemployer plans.[2] They are not all alike. They cover a variety of industries, including construction, retail food, transportation, manufacturing, and services (e.g., hotel and restaurant industry). They vary in size from small local plans covering a few hundred participants to large regional or national plans covering hundreds of thousands.

Together these plans held nearly $400 billion in assets at the end of 2010, making them an important factor in the U.S. economy and Americans' retirement security.[3] Like single-employer plans, multiemployer plans were strongly affected by recent declines in the economy and the investment markets. Virtually all of these plans suffered massive asset losses, causing underfunding to soar and compelling increased contributions at a time of economic contraction.

After all the events of the past decade, the financial health of these plans varies widely. The majority are recovering, in part by relying on the tools and authorities provided to plans under the Pension Protection Act of 2006 (PPA) and subsequent legislation, as the economy and the financial markets improve. Some plans, however, lack the necessary economic base and will not, absent changes, be able to avoid eventual insolvency.

As a result, PBGC's multiemployer insurance program will need a fresh look. Although the timing is uncertain, currently PBGC is at risk of having neither sufficient tools to help multiemployer plans deal with their problems nor the funds to continue to pay benefits beyond the next decade under the multiemployer insurance program.

In the past, multiemployer plans, the Congress, administrations of both parties, and others have worked together to preserve multiemployer plans, so they continue providing retirement security to more than 10 million participants and their families. We understand that multiemployer plan trustees, employers, unions, and others have been discussing potential solutions and expect to make proposals to the Congress and the Administration sometime next year. PBGC looks forward to assisting in that process.

*Why Multiemployer Plans Matter*

Multiemployer defined benefit plans offer a broad range of advantages:

- They provide lifetime participant and spousal annuities.
- They provide portability for employees who change employers frequently within an industry, such as in the construction trades.
- They ease employers' administrative burdens: joint boards of trustees administer these collectively bargained plans, retaining professional investment advisors and benefit managers, and minimizing employers' fiduciary obligations. The employer need only remit contributions to the plan in agreed-upon amounts.
- They reduce administrative and investment costs through economies of scale.

Outside the multiemployer sector, many employers over the past several decades have turned to defined contribution plans (such as 401(k) plans) to avoid the long-term liabilities, potential contribution volatility, and compliance complexities of defined benefit plans—and some have opted to offer no plan at all. This has also been occurring in the multiemployer sector. Unfortunately, the result is often that employees do not save enough for a secure retirement. Furthermore, defined contribution plans often lack lifetime income options, so many retirees are at risk of outliving their savings.

For all these reasons, at a time of inadequate retirement savings and declining retirement security, it is important to explore ways to preserve the multiemployer model.

*The Last Decade was Tough for All Pension Plans*

Until the 2000's, both single-employer and multiemployer defined benefit plans were generally adequately funded (plan assets were relatively high relative to liabilities). Strong investment returns provided asset growth with an affordable level of contribution effort by employers. Many plans also relied on excess investment returns to support benefit increases. However, the turmoil in the financial markets, both at the beginning and the end of the last decade, caused both single-employer and multiemployer plans to suffer dramatic losses. (Both kinds of plans had similar investment mixes.)

---

[2] There are also about 110 terminated plans. These continue to pay benefits until assets are depleted, at which point PBGC funds benefits and administrative costs.

[3] Based on Form 5500 filings.

The effect on multiemployer plans of a $50 billion loss in asset values following the 2001-2002 downturn and a $100 billion loss following the 2008 downturn was devastating. Underfunding, which had totaled less than $50 billion until 2000, increased eight-fold during the next decade, using PBGC measurements.

Equally distressing to plans was the economic recession that followed the 2008 crash, which hurt the industries in which these plans operate. Contributions to multiemployer plans are generally based on hours worked: as active employees were laid off and work hours were reduced, plan contributions plummeted. At the same time, the significant underfunding in these plans put pressure on employers to increase contributions: Minimum required contributions, as calculated by plan actuaries, rose precipitously and there were fears that hourly contribution rates for some plans would have to triple or quadruple to avoid a funding deficiency or, beginning in 2008, to conform to benchmarks required by funding improvement plans or rehabilitation plans under PPA.

*Congressional Support for Multiemployer Plans*

Congress has acted repeatedly to help reduce the strains on multiemployer plans and provide contribution flexibility: in 2004, certain plans were permitted to defer the charges related to one-time investment losses; in 2008, plans could elect to delay implementation of PPA requirements for one year; and in 2010, funding relief allowed many plans to lessen the impact of 2008 investment losses on their funded status and contribution requirements. Plans relied extensively on this relief as they tried to regain their footing.

*PPA Tools Have Helped*

Most important, Congress in the Pension Protection Act of 2006 recognized that different plans would require different combinations of authorities concerning benefits and contributions.

PPA required annual plan certifications based on standardized funding and liquidity measures for determining the financial health of plans. Plans in serious financial distress are identified as in “critical” (“red”) status, and plans experiencing some financial difficulty are identified as in “endangered” (“yellow”) status or “seriously endangered” (“orange”) status.[4] Plans not experiencing financial difficulty are categorized as non-distressed (“green”) status.

After the turbulence of 2008, PPA steered many plans to a more structured path towards improved funded status. Over the past few years, hundreds of plans in endangered or critical status were required to adopt funding improvement plans or rehabilitation plans to increase contributions and reduce costs. Between 2008 and 2010, average annual employer contributions to these plans increased from $4,300 per active participant to $5,000.

In 2009 and 2010 combined, over 350 plans reported reducing future benefit accruals as a way to limit costs and liabilities. In addition, for participants who had not yet retired, PPA permitted plans in critical status to reduce certain past benefits such as early retirement subsidies that were adopted when plans appeared to have had a surplus. In 2009 and 2010, more than 250 plans reported making such past benefit reductions; those that provided information reported erasing nearly $3 billion in past benefit liabilities.

The funding flexibility that multiemployer plans were given under PPA was particularly valuable to cushion the effects of financial market and economic disruptions. To accelerate plan funding, PPA shortens the amortization periods for all types of unfunded liabilities to 15 years. However, PPA also allows plans to extend their amortization periods by up to 5 years, without government approval, if they would otherwise face a funding deficiency in the future and they are on a path to funding improvement. By 2010, 178 multiemployer plans were operating under automatic amortization extensions, compared to only six plans using extensions in 2005 when IRS approval was required. In addition, PPA generally exempted plans from the excise tax assessed against employers for funding deficiencies, thus freeing up employer resources for the plan’s rehabilitation program. For the 2010 plan year, 90 plans reported funding deficiencies totaling $1.9 billion for which an excise tax will not be owed.

[4] Critical status is triggered when a plan is less than 65% funded (on the plan’s actuarial basis) and projects a funding deficiency within 5 years or projects insolvency within 7 years, or the plan has similar funding or insolvency characteristics; endangered status is triggered when a plan is less than 80% funded (on the plan’s actuarial basis) or projects a funding deficiency within 7 years (including amortization extensions); seriously endangered status is triggered when a plan exhibits both endangered status triggers.

*PRA 2010 Funding Relief Also Helped*

In 2009, nearly 70% of all plans (covering 70% of all participants) were in moderate or serious financial distress under PPA standards—endangered (yellow), seriously endangered (orange), or critical (red) status. By 2011, these numbers had dropped significantly: yellow, orange or red status plans represented only 40% of all plans and currently cover about 50% of all participants. This improvement in funded status is due in part to positive investment returns in 2009 and 2010 and the steps plans took to improve their status.

But it is also due to the funding relief in the Pension Relief Act of 2010 (PRA 2010). This relief allowed certain plans to amortize net investment losses incurred during the 2008 crisis over a 29-year period—rather than the shorter 15-year period that would otherwise apply—significantly reducing annual amortization charges and minimum required contributions. It also allowed plans to increase the actuarial value of their assets for funding purposes by recognizing 2008 investment losses over 10 years rather than the regular smoothing period of five years.

Plans relied extensively on PRA 2010 relief—more than 700 plans elected the relief. Form 5500 filings indicate that a decrease in amortization charges and an increase in amortization credits boosted these plans' aggregate credit balances by $2 billion over the amounts reported in the 2009 plan year.

The special funding rules had an additional importance: increasing the actuarial value of assets had the effect of inflating a plan's funded percentage, and larger credit balances delayed the date of a future funding deficiency, both of which positively impacted plans' funded statuses under PPA. About 400 plans that elected the relief were in non-distressed (green) status in 2010.

Notices from many of these plans explained that the relief provided a buffer against future adverse experience and made it easier to avoid endangered or critical status in future years.

Given the lack of timely information available on multiemployer plans, it is not possible to fully quantify the effects of funding relief on plans' PPA funded statuses. Nonetheless, it seems clear that many plans enhanced their certified status as a result of the relief.

Many plans certified as in endangered (yellow) and seriously endangered (orange) status for the 2010 plan year were re-certified to non-distressed (green) status as a result of the application of PRA 2010 relief. About 170 critical (red) status plans (45% of red plans in 2010) used PRA 2010 relief, stating that the plan was expected to either immediately move into endangered (yellow) or non-distressed (green) status or to emerge from critical status sooner as a result of the relief.

For some plans, the deferral of recognition of obligations permitted by PRA 2010 may make funding of those obligations ultimately more difficult. The ratio of active (employed) participants to inactive participants in multiemployer plans as a whole has been steadily declining: 60% of participants were active participants in 1990, but only 40% of participants are active today. Plans reported about 1.3 million nonsponsored ("orphan") participants (whose employers have withdrawn) in 2010, whose underfunded benefits become the responsibility of employers other than their own. A smaller pool of participating employers and active employees reduces the funding available to meet plan obligations.

*Multiemployer Plans Now in Varied Financial Situations*

*For Most Plans Challenges Seem Manageable, but Future Flexibility Can Help*

Our research suggests that the majority of multiemployer plans, though currently substantially underfunded, will be able to recover over time as the economy improves, financial markets stabilize, and small and large businesses ramp up hiring and hours worked. This assumes that these plans will generally maintain a base of contributing employers able to sustain their liabilities and benefit disbursements, and will avoid investment losses that significantly erode their asset base. A diverse industrial base, broad geographical coverage, and careful management help position plans for the future.

Generally, plans are using the tools and authorities provided under PPA to reduce costs, limit liabilities, and increase contributions steadily over time. They are using their new flexibility under PPA to respond to market fluctuations and to reduce excessive stress on employers and participants.

Trustees and others associated with these plans have begun suggesting additional flexibility to address pressing issues, such as the need to attract new employers, to transition to new benefit formulas that reduce costs and minimize risks, and to adjust their liabilities to ensure sustainability.

*Severely Distressed Plans Will Need More Help*

While a majority of plans appear primed for gradual recovery, a minority of plans will not be able to recover using the tools and authorities under PPA. Many critical status plans (and some seriously endangered status plans) are severely distressed and will need still further provisions to remain viable.

At the beginning of the 2008 plan year, only 12% of all plans were in critical (red) or seriously endangered status (orange). That number spiked to 44% of all plans at the beginning of the 2009 plan year. In 2010, nearly one-third of all plans, covering more than four million participants, continued to be in critical (red) or seriously endangered (orange) status. While the percentage of critical (red) and seriously endangered (orange) plans dropped slightly in 2011 to 26% (336 plans) of all plans, that percentage is likely understated due to the effect of PRA 2010 funding relief. A substratum of critical and seriously endangered status plans is beyond the point of recovery without significant changes in the rules that govern their operations.

These plans' underlying fundamentals reveal why they are so distressed. They often operate in declining industries—such as furniture manufacturing, textiles, or typesetting, or in intensely competitive markets, from which large numbers of employers have gone out of business. Their participant populations are mature, with a large proportion of retirees and significant unfunded retiree liabilities. As a result, contributions coming into these plans on behalf of current workers are small compared to the outflow of benefit payments. Investment returns during the 2000s were unable to make up the difference, as those returns suffered due to the drop in the overall asset base. In the worst-case scenarios, these plans' negative cash flows each year further erode their asset base and the plans are faced with eventual insolvency.

The severely distressed subset of plans includes several hundred plans. Some of these plans have already terminated and are expecting to receive financial assistance from PBGC. Others are ongoing plans that operate under PPA funding improvement or rehabilitation plans. The rehabilitation plans of critical status plans often signal that they have exhausted all "reasonable measures" for contribution increases and reductions in adjustable benefits and do not expect to emerge from critical status; they are merely striving to delay insolvency.

In the case of some of these ongoing plans, further contribution increases may be needed: our research shows that critical status plans averaged lower contributions per active participant in 2010 than plans in other funded statuses—about $4,000 per participant as compared with about $5,500 per participant. On the other hand, we also know that some employers contribute substantially more and participate in numerous multiemployer plans—large employers in one critical status plan contributed $18,000 per active participant in 2011.

Because benefits generally cannot be reduced after they are earned, there is also a natural limit to how much underfunding can be made up through reductions in benefits. Plans may reduce future benefit accruals for active workers and, under PPA, critical status plans may reduce certain previously earned benefits (known as "adjustable benefits")—such as early retirement benefits, early retirement subsidies, subsidized optional forms of benefit, and disability and death benefits (other than normal spousal death benefits)—for active workers and terminated vested participants (participants no longer earning benefits under the plan but not yet retired). However, where a majority—or close to a majority—in a plan are already retired participants whose benefits cannot be reduced, some employers and active workers will be reluctant to consent to contribution increases if the bulk of the money goes to retirees, while active workers' earnings and benefits deteriorate.

If the bargaining parties cease to view the employer's contribution to a plan as valuable, they will negotiate for the employer's withdrawal from the plan. Such actions can ultimately lead to a mass withdrawal of all employers from the plan and the plan's ultimate insolvency. A mass withdrawal termination can result in withdrawal liability assessments that can be particularly onerous at today's high plan underfunding levels.

Preserving severely distressed plans is important, not just to the employers and participants in those particular plans, but also to the health of other multiemployer plans. Many contributing employers, chiefly large employers, participate in numerous multiemployer plans, and the termination of one plan that produces withdrawal liability assessments for these employers could undermine the ability or willingness of those employers to contribute to other multiemployer plans. This, in turn, could result in multiple employer withdrawals and mass withdrawal terminations for other plans, damaging hundreds or thousands of businesses and hurting tens of thousands of workers along the way.

*PBGC's Multiemployer Insurance Program*

PBGC helps to secure the retirement benefits of more than ten million workers and retirees in multiemployer plans by working with plans to retain and attract participating employers and by paying financial assistance to cover benefits earned by workers up to the maximum allowed by law when plans are no longer able.

*Multiemployer Financial Assistance*

PBGC's multiemployer program is very different from its larger and better-known single-employer insurance program. Unlike the single-employer program, when multiemployer plans are in distress, PBGC generally can take no action until the plans have entirely run out of money and are insolvent. Also unlike the single-employer program, when PBGC becomes responsible for a multiemployer plan, the agency does not take over the plan. Instead, the plan administrator remains in place while PBGC funds the administrative and benefit costs.

PBGC multiemployer benefit levels are also very different. The maximum guarantee for a multiemployer participant with 30 years of service is $12,870 per year; it is not indexed for inflation. In contrast, the maximum guarantee set by law for single-employer participants at age 65 is $55,840 for the 2012 calendar year; the maximum guarantee is indexed for inflation for future plan terminations.

*PBGC's Other Multiemployer Activities*

In addition to providing financial assistance to insolvent plans, PBGC has oversight authority for certain activities of multiemployer plans that are important to their financial well-being.

Plans must notify PBGC when they propose to merge. PBGC evaluates a merger to determine whether the merged plan poses a risk of loss to PBGC or plan participants. Generally, this involves a confirmation that the plan's finances will not be weakened and the plan will have sufficient assets to pay benefits for a period of time. In some instances, mergers can reduce a plan's administration costs, improve future investment returns, and help expand the plan's ratio of active to inactive participants. PBGC can and does provide technical assistance, on request, to plans evaluating a merger option.

In a few rare cases, PBGC has facilitated a merger of an insolvent (or near-insolvent) plan by providing financial assistance to the merged plan rather than to the insolvent plan. However, PBGC does not have the legal authority to provide financial assistance to facilitate a merger in the absence of insolvency, nor the financial resources to step in in such circumstances.

Plans may also apply to PBGC for an order of partition, which permits a plan to transfer benefits of non-sponsored participants, whose sponsors no longer participate in the plan, to a partitioned portion of the plan that receives financial assistance from PBGC. The requirements necessary for a partition are strict, in part because retirees and participants in the partitioned plan incur an immediate reduction in their benefits to PBGC's guarantee levels. A partition requires a finding by PBGC that the plan has had a substantial reduction in contributions due to employer bankruptcies and is likely to become insolvent. PBGC has partitioned two plans; the second occurred in 2010 when PBGC partitioned a trucking plan. PBGC does not have the finances needed to undertake expanded partitioning activities, even though doing so would relieve employers of burdensome unfunded liabilities.

*PBGC's Multiemployer Program Financial Status is Strained*

Another difference from PBGC's single-employer program is that multiemployer premiums are much lower, too. Historically, the program had very low premium rates: multiemployer plans paid an annual flat-rate premium of $2.60 per participant per year until 2006, when Congress increased the rate to $8 per participant, indexed for inflation. Plans have paid $9 per participant per year since 2008, and multiemployer premiums to the insurance program totaled $92 million for FY 2012. Under the Moving Ahead for Progress in the 21st Century Act (MAP-21), multiemployer premiums will increase to $12 per participant in 2013 (indexed), generating about $120 million for the program. For single-employer plans, the per-participant flat rate premium under MAP-21 for plan years beginning in 2013 is $42 (indexed) and these plans also pay a variable rate premium on their underfunding. For multiemployer plans, even with the MAP-21 increases, absent further changes, PBGC premiums will be insufficient to support the guarantee at some point in the future.

Because PBGC does not trustee multiemployer plans, the multiemployer insurance program's assets consist only of premium income and investment income on the premiums. The multiemployer program has few assets: as of September 30, 2012, the program had total assets of $1.8 billion.

As of the end of FY 2012, the multiemployer insurance program has $7.0 billion in booked liabilities. This represents the present value of all future financial assistance payments owed to participants in 148 plans that are recorded as liabilities on our FY 2012 financial statements; these are plans currently receiving financial assistance, terminated plans not yet receiving financial assistance, and ongoing plans that are expected to receive financial assistance. Thus, our current deficit—the difference between the program's $7.0 billion in liabilities and $1.8 billion in assets—is $5.2 billion. We expect both our liabilities and our deficit to increase as more distressed plans terminate or approach insolvency in future years.

PBGC pays financial assistance in the form of life annuities and administrative expenses. In 2012, PBGC paid $95 million in financial assistance to 49 insolvent plans that had run out of assets to pay benefits when due. Another 61 plans are terminated plans to which PBGC expects to begin paying financial assistance in the future. Based solely on our current inventory of booked plans as of September 30, 2012, the amount of financial assistance PBGC will pay each year is projected to rise rapidly—with payments exceeding $500 million in 2022. This does not take into account financial assistance payments to any plans that would be first recognized as liabilities of the program in FY 2013 or future years.

Over the next decade or so, even before any new obligations are added, there is a substantial risk that, without significant change to the multiemployer system, the multiemployer program will become insolvent and not be able to pay financial assistance. If new claims are recognized and additional payments required, insolvency could occur within a shorter timeframe, particularly if a large plan became insolvent. However, the risk of program insolvency, while serious, is not immediate and its timing is uncertain. Timing is dependent on many factors, including investment returns and the actions of trustees, employers, and unions dealing with individual ongoing plans.

*Next Steps*

For several years, multiemployer plans, participating employers, unions, actuaries, plan professionals and others have been discussing various changes to the multiemployer system that would preserve plans by providing them greater flexibility to address various challenges. Several are now planning to present proposals to both the Congress and the Administration in the coming months.

The financial condition of multiemployer plans varies widely. Some plans will propose flexibility in benefit structures, or in contributions or withdrawal obligations. Severely distressed plans, on the other hand, will probably require broader changes.

Historically, when necessary to preserve plans, Congress has worked in a bipartisan way with the executive agencies, plans, businesses, unions, and others. It was such a collaboration that resulted in the Pension Protection Act of 2006. Some of the provisions of that Act will sunset in 2014, which creates both the need and the opportunity to consider what changes are appropriate for the future. PBGC looks forward to working with Congress and the multiemployer community as this important dialogue evolves.

PBGC's multiemployer program should also be reviewed as part of that discussion. The basic contours of the program have not been modified in more than 30 years. Some of the tools and authorities the statute provides that might be useful in certain circumstances are not useable in practice because of the agency's lack of financial resources. Both the program and PBGC's finances should be analyzed as part of and in the context of the broader changes for multiemployer plans generally.

PBGC takes the support and preservation of multiemployer pension plans very seriously. Since I have been Director, I have doubled the size of multiemployer staff, am planning to add further resources and make further changes to strengthen PBGC's capabilities.

PBGC staff has expertise and analytic ability in the area of multiemployer plans, as well as a dedication to multiemployer plans. We look forward to providing assistance in the deliberations, and to continuing to serve the millions that look to multiemployer plans for a secure retirement.

APPENDIX: PBGC FY 2012 ANNUAL REPORT

[The report, “Pension Benefit Guaranty Corporation Annual Report 2012,” may be accessed at the following Internet address:]

*http://www.pbgc.gov/documents/2012-annual-report.pdf*

---

Chairman ROE. And I really appreciate you being here a week before Christmas because I felt it was very important. And the reason for that was because that PPA sunsets in 2014. And I think both sides of the aisle understand that we have got a little bit of a timeline with this sunset to get moving. And I was afraid if we would put this off, we would be into February or later getting this done.

I can certainly appreciate the multiemployer, the improvement there. And my question is, after reading your testimony, that improvement somewhat is an improvement in the economy but is it also the changes in the law that was made in 2010? Because something happened in 2010 to allow you to amortize those liabilities over a different period of time. So how much of that is just due to amortizing instead of 15 years to 29 years? And I mean how much of it is due to the change in the law we passed in 2010?

Mr. GOTBAUM. Dr. Roe, you are unquestionably right that part of the improvement is due to the fact that the funding relief allowed plans to stretch out their required contributions and, as a result, the indicators of distress some plans no longer meet. Part of the improvement is clearly that. I think it is important to recognize that an important part of the improvement is also that the economy is recovering and that plans really are taking advantage of the authorities that this Congress gave them in the Pension Protection Act.

Unfortunately, the quality of information that we have, the information that the Federal Government gets is a little old. And so the reason why you have 2011 is because that is the latest information we have. And so we don’t have enough information for me to be able to tell you how much of this is funding relief and how much of this an economic recovery.

Chairman ROE. Clearly it is part of both, I think. I was just hoping that it wasn’t an accounting gimmick that we did. And understandably I certainly understand that in a downturn why companies need some relief, because they don’t have the cash flow to make their pension obligations. And that is something we have to look at.

I think the other question I wanted to ask was, in multiemployer plans versus single-employer plans, there is a difference in the premium. And I was reading the financial status is strained in your testimony where it is $9 per participant; and with a single-employer plan it is $42, I think. It looks like that very soon, at least last year, we paid out more in the multiemployer plans than we took in, in premiums. You obviously can’t continue to do that. And by 2020, or 8 to 10 years from now, 10 years from now, you estimate we will be paying out $500 million in plans.

And I guess the other thing that I have, the question, how do you propose to change that since you have the premiums only bringing in 20 percent of what we will be paying out? Although it is indexed for inflation. How do you propose to do that? What recommendations do you make for that?

Mr. GOTBAUM. That is an important question. Certain things we know and can say right now. One is that the situation, as it currently exists, cannot work forever. If we have the premiums as they currently are and we have the system as it currently is, eventually we will run out of money and can't pay benefits. However, and this is what we have been wrestling with, it is clear to us that because our program has not been rethought in 30 years, that the changes that ought to be made, some of which will clearly involve higher premiums, I have to say, I am a finance person, and I don't believe in, you know, prevaricating about numbers, some of this resolution is going to clearly have to involve higher premiums, premiums that reflect the real cost of this.

But, and this is the reason why we don't have a set of recommendations yet that are independent of what you all are going to do, part of the solution relates to what the plans themselves are allowed to do and can do to form self-help. If plans, using the tools that you have given them and the tools that the Congress might give them, as you consider changes, can continue that transformation to less and less red, then our situation is different. And so what we hope to do is, as part of your discussion over the next year or 2 as to how to change the multiemployer system in general, to work with the Congress to develop reforms in PBGC's program and finances.

Chairman ROE. I think one of the other questions, and of course I would like to see what it would be if we had the previous accounting rules, and one of the recommendations, I guess, that we will see, is should we assume these accounting rules we passed in 2010 will be the new norm.

The other question, and you don't have to answer it because my time has expired, is are these assumptions—and I have a list of questions I would like answered—assumed on a 7.5 percent return? In other words, do you follow me that that is a pretty lofty assumption these days? I am going to not answer that question now.

Mr. Andrews.

Mr. ANDREWS. Thank you, Mr. Chairman.

Thank you, Mr. Gotbaum. When do you think we would have results about 2012? I realize that you don't have those in your custody. They are reported by various plans. But when will we know the results for 2012?

Mr. GOTBAUM. We will know them towards the end of 2013.

Mr. ANDREWS. Okay.

Mr. GOTBAUM. One of the issues, Mr. Andrews, is that the information requirements that we have are kind of from the typewriter and carbon paper days. And so we are in an era in which——

Mr. ANDREWS. You may have to explain those references to the young staff that are sitting behind us here.

Mr. GOTBAUM. Oh, sorry, sorry, sorry. Yes. For Mr. Banducci's benefit, carbon paper is something that—anyway. Sorry. But we are in an era in which I can get and send information around the planet in a second and——

Mr. ANDREWS. We ought to figure out a way to work on it.

Let me ask you a couple. You have very wisely acknowledged and listened to a collaborative process that has begun among small businesses, unions, experts in this field. And I think that the chairman has done the same thing and it is a good thing to do. Without prejudging what those groups are going to recommend, let me ask a couple of conceptual questions that I carry as assumptions into this effort.

The first is that, given the relatively low cost of obtaining money, that stretching payments out over amortization schemes has been pretty effective in the 2010 and 2006 laws in helping plans get to the green zone. Is that right?

Mr. GOTBAUM. It is very clear that funding relief is an important part of enabling plans to deal with their situation.

Mr. ANDREWS. Is it also correct that if we were to put the hammer down on plans in the red zone and say, well, pay up right now to get current, it would in all likelihood seriously impair or kill a lot of these plans because we assume a lot of employers would just leave, and you got the problem of people abandoning and then the departure fee going up even more, that the way to kill the goose that is laying this golden egg is to insist that it pay up quicker. Do you think that is fair to say?

Mr. GOTBAUM. It is very clear, Mr. Andrews, that we can, if we demand that plans—let me step back one second, if I may. We are in a world in which financial markets vary a lot more than they used to. And so as a result, plans' financial statuses vary a lot more than they used to. And if we simultaneously, in a world in which plans' financial status is variable, if we demand that they fund up more and more rapidly, we are going to make it harder and harder for folks to do that.

Mr. ANDREWS. Which has the perverse effect of actually increasing PBGC exposure. It actually makes the problem worse from your deficit point of view, right?

Mr. GOTBAUM. It clearly raises our risks.

Mr. ANDREWS. Now, is it also true that many of these plans in the red zone would benefit from structural internal reform? Putting that in blunt English, lower benefits for some participants, higher contributions from some employers to improve their cash position. Is it empirically true that that is the case?

Mr. GOTBAUM. We don't know the details of the individual plans. What a number have come to us and said, we are in a box. The box is that if we keep on paying the benefits we have, we will pay those benefits for 5 years or 7 years, whatever, and then we will run out of money and then you, the PBGC, will owe them a smaller benefit. And they have said they would like an ability to think about whether or not there are ways to resolve that that are fairer to them.

Mr. ANDREWS. Well, I think what we also conceptually——

Mr. GOTBAUM. But if I may, Mr. Andrews, I want to be clear.

Mr. ANDREWS. Sure.

Mr. GOTBAUM. My view of this is, this is very sensitive. This gets to the guts, if you will, of the law regarding employee benefit plans.

Mr. ANDREWS. It is a very hard question. And what I think we all have to start to contemplate conceptually is an arrangement where plans get access to these facilities that would help them extend their liability and deal with this in exchange for making some difficult internal decisions, which hopefully would have the result of a relatively smaller benefit reduction now, avoiding a much larger benefit reduction down the road if they are PBGC beneficiaries. I yield back.

Chairman ROE. I thank the gentleman for yielding.

I now yield to our chairman, Mr. Kline.

Mr. KLINE. Thank you, Mr. Chairman, for your indulgence in recognizing me.

Thank you, Director, for being here for what many people in America think are the holidays. Some of us here in this building maybe not so much the holidays. But thank you very much and having your family here. I have a whole bunch of questions which, frankly, I am not going to ask. I just want to make it clear that, with or without the chart up there, we recognize that there are some multiemployer plans that are in real, real trouble and, therefore, hundreds of thousands of employees and retirees that are in trouble. And we also recognize that the PBGC has a relatively limited ability to help them. The benefit payments are relatively low, as you have testified, compared to single-employer plan.

And so I very much appreciate Chairman Roe and Mr. Andrews' diligence in pursuing this. I am determined to keep after this because where we have some plans that are spectacularly in trouble—and Central States is not a secret name here, in that one multiemployer plan alone, you have employers that are in trouble because of these obligations and you have in that one plan alone hundreds of thousands of employees and retirees that are at jeopardy.

So I am hoping that as we wrap up this Congress and move into the next Congress that we will be able to work with you and with those outside groups whose input we are eagerly awaiting to do something about this. I think that the work that we did under Chairman Boehner and ranking member then Miller in the Pension Protection Act was a pretty good step. But clearly, even though the 32 to 60 percent looks pretty nice up there, we know that there are some big, big problems in the multiemployer plans, and I am eager to get at it.

I see Mr. Miller is here, and I know that he recognizes there is a problem as well. And I hope we are going to be able to come together and do something about this, because it is a multifaceted problem with the PBGC's limited capability and some plans that are in real, real trouble.

So again, thank you very much for being here today and for your testimony and your willingness to work with us as we try to solve this problem.

And Mr. Chairman, I yield back.

Chairman ROE. I thank the gentleman for yielding.

Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

And thank you for being with us.

Just a couple of quick questions first. When you say number of plans, would the number of people covered by the plans be essentially the same charts?

Mr. GOTBAUM. Yes, Mr. Scott. This may be because I am a nerd. What we have done here is we have showed you the percentage of participants. So this is the percent of 10-plus million people whose plans are in those segments.

Mr. SCOTT. Okay. And how would those charts for single plans differ? Single plans, were they in trouble in 2009 and a little bit better now and still in the 60 percent range? These aren't any worse than single plans, are they?

Mr. GOTBAUM. Mr. Scott, rather than make a guess about the exact comparison, since the standards are actually different for single-employer plans and multiemployer plans, if I may, with your permission, let me come back with a chart for the record trying to do an apples-to-apples comparison.

Mr. SCOTT. Okay. Now, when a company withdraws from a multicompany plan on a voluntary basis they are responsible for their proportionate share of the liability. That is not much of a problem for a solvent company, but when a company goes bankrupt, what happens?

Mr. GOTBAUM. Unfortunately, what happens in a lot of cases is that the bankrupt company, along with its other obligations, is allowed in the bankruptcy process to eliminate its obligation to its pension plan.

Mr. SCOTT. So who picks it up?

Mr. GOTBAUM. In the multiemployer world, those obligations are picked up by the remaining employers.

Mr. SCOTT. So if a company gets into one of these things, they are at risk of getting everybody else's liabilities dumped on them?

Mr. GOTBAUM. Yes. And that is one of the issues that the employers, the hundreds of thousands of employers, small businesses and large, have continually raised.

Mr. SCOTT. They would argue that the pension fund really ought to pick up the bankrupt company's share of the liabilities.

Mr. GOTBAUM. Mr. Scott, I will say that over the years, it has repeatedly been suggested to the Pension Benefit Guaranty Corporation, you know, rather than having the remaining employers take the responsibility, why doesn't the PBGC take the responsibility? And the fact is, the PBGC does not have the resources to take on that responsibility. And the multiemployer plan, the multiemployer system designed 30 years ago, didn't anticipate that. And so part of the reason why I say that you need to rethink the PBGC's program in the context of how you rethink multiemployers is because a lot of the suggestions that we get and that I suspect you will get would lean towards saying, well, why don't you let the PBGC pay for it?

Mr. SCOTT. So what you are suggesting is, if we want to do that, we would have to adjust the premium that they are paying because the coverage is different?

Mr. GOTBAUM. I don't think this is something which changing premiums alone is going to resolve. I spend a lot of time with both single and multiemployer plans and the sponsors of them and the businesses. And some of the rhetoric I get about your premiums are too high is just rhetoric. But some of it is the very legitimate concern of businesses all across the country that are trying to stay competitive, trying to control their costs, and saying, you have become too big a piece of my cost, I can't keep doing it.

Mr. SCOTT. I want to get in a quick question before my time runs out. And that is, if you could respond to the chairman's comment about how you can chase a 7.5 percent return in today's market without unreasonable risk.

Mr. GOTBAUM. Mr. Scott, I don't have an answer for that. One of the things that we have learned over the last decade is that the assumptions that actuaries made—and by the way, it wasn't just actuaries, it was lots of folks, and it wasn't just multiemployer plans, it was single-employer plans, too—that people who went through the 1990s tended to think that pension funds could make 9 percent, 10 percent, or more. And it looked like it was going to last forever. And then for the last 10 years, as you know, pension funds have not earned 9 percent, 10 percent on average.

And so we are now in a, frankly, in a difficult situation because I don't think there is anyone who knows for sure what you can count on. And so we don't have a particular recommendation for what a pension plan should do. We don't think we are smart enough to do that. But we do think that everybody recognizes the fact that the last 10 years have been tough and you are going to need to think about what you do for the future in the context of that.

Chairman ROE. Thank the gentleman for yielding.

Now yield to Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman.

And thank you, Mr. Gotbaum, for being here. Last month, as we all know, Hostess decided to liquidate as a result of their bankruptcy. It had participated in, as I understand it, 42 different multiemployer plans and, in fact, two of the company's largest creditors are multiemployer plans. The withdrawal from these plans may cost the company up to $2 billion, with around $900 million going to the Confectionery Workers plan and more than $500 million going to the Central States plan. We know that they are very large contributors to these plans. And following up to an extent on what Mr. Scott was questioning, how will their bankruptcy affect these plans? And more specifically, does it threaten their solvency?

Mr. GOTBAUM. As you have said, sir, Hostess participates in more than 40—the numbers that I got from my staff say 41—but more than 40 multiemployer plans. In some of those plans, Hostess is a big dog. Hostess has been a big dog. In some of those plans, Hostess has been a more modest participant. For those plans where Hostess was the big dog, the fact that they are not going to contribute anymore and will be able to discharge their obligations in bankruptcy is going to put those plans in severely distressed status and some of those plans will probably run out of money. Other plans where they are either stronger or Hostess is a smaller percentage participant will continue on, but the employers in those plans will say, I am picking up, I am paying part of the cost that Hostess avoided.

Mr. WALBERG. But the larger ones, insolvency is the outcome ultimately?

Mr. GOTBAUM. No. As it happens, sir, the plans for which insolvency is a real risk as a result of Hostess are relatively smaller plans. Depending on how you count and how conservative you want to be, there are four, five, six plans. They are not the larger plans. These are smaller plans. And they are plans that, because their larger employer, one of their largest employers is no longer participating, are going to be in severe financial distress. The largest plans in which Hostess participated, they are a relatively small percentage of the total. And so what I consider the Hostess tragedy is not going to affect them particularly substantially.

Mr. WALBERG. In fiscal year 2008, the deficit in the multiemployer program was $473 million. However, over the past 4 years we have seen that deficit expand to $5.2 billion in fiscal year 2012. How have demographic trends created this increase? And what involvement is demographic trends?

Mr. GOTBAUM. The fact that people are living longer means that pensions, all pensions are necessarily more expensive. It is a fact of life. And as a result, the plans that are sufficiently likely on the multiemployer side that we have already put them on their books, what that means is that as people live longer, we are going to end up paying a little more for it.

In the broad scheme of things, I think demographics, partly because it is slow and partly because it is long, is less of an immediate concern to the integrity of the Pension Benefit Guaranty Corporation than the immediate financial or the near-term financial, within the next, decade circumstance of the severely distressed plans. Now, partly my reaction is, should I be distressed that people are living longer, healthier lives, and that it costs a little bit more? I don't think so. I think that is something we should celebrate. It is one of the great things about the Nation. I think the more immediate concern is——

Chairman ROE. I have some sensitivity to that, too. The gentleman's time is yield.

Mr. Tierney.

Mr. TIERNEY. Thank you, Doctor.

Thank you, Mr. Gotbaum. I just want to follow up on something Mr. Scott started—actually, the chairman started, Mr. Scott followed on. When you say you can't determine what the rate of return should be and what the risk is going to be on that, what bothers me a little bit is, don't you think we ought to be a little more conservative in approach on that as opposed to just accepting 7.5 percent return given history and given the facts that we have to deal with?

Mr. GOTBAUM. I think it is pretty clear, sir, that people whose expectations were set in the 1990s need to reset those expectations based on the experience we have had in the last decade. The reason why I was saying to be cautious about it is, there is a risk of overreacting on the downside in the same way that we may have overreacted on the upside.

Mr. TIERNEY. But we pay people a lot of attention, they are supposed to be smart enough to make those sorts of adjustments and those calculations. So I guess as far as the PBGC is concerned, you will be making more modest projections in all your calculations?

Mr. GOTBAUM. We actually are not in the business of making projections. And the way we do our books is, we use—excuse my dropping back into the jargon of the accounting community—we mark to market. So the way we do our liabilities is we actually get quotes from insurance companies about what they would charge in order to pay benefits on the stream that we do, and that is how we do it. We are actually not in the business of forecasting rates.

Mr. TIERNEY. But you are in the business of accepting some of those quotes and rejecting others.

Mr. GOTBAUM. I'm sorry?

Mr. TIERNEY. You are in the business of rejecting some of those quotes and accepting others when you make your determination.

Mr. GOTBAUM. Yes.

Mr. TIERNEY. So I am assuming that you are going to accept those that come on the more modest side than those that are more enthusiastic, given the history that we have seen here.

Mr. GOTBAUM. Yes, sir.

Mr. TIERNEY. The other question I have is about the Hostess debacle on that. What enforcement provisions or what role does PBGC play or can it play when a company like Hostess takes money from union employees meant for contribution to their pension plan and doesn't make that contribution as well as not making their own company contributions to the plan?

Mr. GOTBAUM. This is, sir, a very tough situation. I have spent my life working in distressed businesses. I have been on the management side. I have represented unions. I have been all around distressed companies for a long time. And I have learned a couple of things. One is that when companies are in distress, they take a whole series of actions to conserve cash, if they are legal, and in the case of bankruptcy, you can go to the court and say, I am not going to make my contributions, and get court approval for not making the contributions.

Mr. TIERNEY. Did Hostess do that? Or did they stop making their contribution before they went to court?

Mr. GOTBAUM. I can't say that I know the facts in Hostess and I am happy to come back.

Mr. TIERNEY. Well, let's assume for a moment that they stopped making those contributions before they got permission from the bankruptcy court. What responsibility does PBGC have? Or is it only the trustees of the plan that have the responsibility to monitor that situation?

Mr. GOTBAUM. I think you have got it exactly right, which is the trustees of the 41 plans in which Hostess participates, they are creditors. Now, as it happens, Hostess has a single-employer plan, too. So we are creditors too. But on the multiemployer side, we are not the creditors. We are a step removed from it.

Mr. TIERNEY. Did they stop making their contributions to the single-payer plan as well?

Mr. GOTBAUM. I don't know. Let me find out.

Mr. TIERNEY. If they did, what responsibility would accrue to you to do something about it?

Mr. GOTBAUM. That depends on what their legal obligations are in bankruptcy.

Mr. TIERNEY. What about before they get to bankruptcy, if they stopped making the payments?

Mr. GOTBAUM. If they fail to make contributions beforehand——

Mr. TIERNEY. If they are under contractual obligation to people in the union to pay what the union has designated as $4 and some change per hour of their pay in there plus not making their employer contributions, what obligation is it of PBGC or the trustees, for that matter, of the multiemployer plans to step in and do some enforcement, to do something about that before things go belly up?

Mr. GOTBAUM. Let me step back. Okay. When under bankruptcy, companies——

Mr. TIERNEY. They are not in bankruptcy yet.

Mr. GOTBAUM. Pardon?

Mr. TIERNEY. I am going to back you up a bit if you don't mind. Before they are in bankruptcy.

Mr. GOTBAUM. Hostess has been in bankruptcy multiple times in the last 5 years.

Mr. TIERNEY. Right. But there were times that they were not in bankruptcy, allegedly, when they were not making their contributions before they went back to the bankruptcy court. So they just took it upon themselves to take the money from the employees that was designated for the plan, not put that money into the plan, plus not make their own contribution to the plan. When that is happening, what obligation to PBGC, what obligation to the trustees to do something about that in that period of time?

Mr. GOTBAUM. The trustees of a plan——

Mr. TIERNEY. And PBGC on the single-payer plan.

Mr. GOTBAUM. Right. We can act before bankruptcy, and we do. We can go to court and put liens on property in order to ensure that contributions are made if they are not made.

Mr. TIERNEY. That was not done in this situation, in the Hostess situation.

Mr. GOTBAUM. Rather than speculate, why don't I get the facts and circle back.

Mr. TIERNEY. I would appreciate that, if you would. Thank you.

Chairman ROE. Thank you Mr. Tierney.

I now yield to Mr. Thompson.

Mr. THOMPSON. Thank you, Chairman.

Mr. Gotbaum, thanks for being here. Thanks for your testimony and your leadership in this area.

I wanted to first of all, with the report that you issued in addition to your testimony, the graph that is on the third page that talks about future retiree worries, I found that very interesting actually and just wanted to affirm. There has been, since 1979, based on that graph, obviously significant growth in sole direct contributions programs and a corresponding decrease in defined benefits. And it was the kind of gray area in between—although it is not gray, it is kind of green on the graph—which is where companies that have both. It seems like that has been pretty stable since 1979 proportionally, where a company offers both direct benefits and direct contributions. Is there anything—it is like the third page—there you go.

Mr. GOTBAUM. You talking about this one?

Mr. THOMPSON. That is it. I was just curious, is there any inside information, is there any proportional changes within those where companies hold both plans, where there has been kind of a movement towards heavier weighting of direct contributions versus defined benefits? Is that a movement you are seeing?

Mr. GOTBAUM. We continue to see that many employers are deciding that rather than keeping responsibility for the traditional defined benefit plan, that they instead would rather pass that responsibility off to their employees. They do it in a whole variety of ways. One way that has happened recently is that employers will say to their employees, I know I owe you $1,000 a month in perpetuity, but would you rather have a check for the full amount instead? So people go out of the defined benefit system by lump sums. They do it in other ways.

From my perspective, one of the real challenges, and it is not just a challenge in the multiemployer system, one of the real challenges as the Congress thinks about retirement security is how to balance the obligations you put on employers with the obligations that employers are willing to take.

Mr. THOMPSON. Right. I experienced that before coming here 4 years ago in my health care career. The first part of that, almost 30 years, was in a defined benefits, and, quite frankly, that was putting us on a path of insolvency as an institution. And I don't remember even the details. But there was a transition plan, as you described one option, into a defined contribution plan.

In your testimony, you said that any critical status plans and some seriously endangered status plans are severely distressed and will need still further provisions to remain viable. What are some options to forestall their insolvency without exposing taxpayers to potential liability?

Mr. GOTBAUM. To be honest, Mr. Thompson, their first reaction is, well, why doesn't the PBGC take it over? And they ignore the fact that we don't have the resources to do so. So that is in my view a kind of back door way of trying to get to the taxpayers.

They are talking among themselves, and what we expect is that some combination of stretching out obligations, expanding the authorities that the Congress already gave them in 2006 in the Pension Protection Act, that with a broader pallet of tools and authorities, that more of them will be able to do self-help. We haven't seen the specific proposals, and this is one where the devil actually is in the details. So we are looking forward to receiving proposals, as I know this committee is. And so at that point, then we can talk about what the puts and takes are.

Mr. THOMPSON. Thank you, Chairman.

Chairman ROE. I thank the gentleman for yielding.

Dr. DesJarlais.

Mr. DESJARLAIS. Thank you, Chairman.

And thank you, Mr. Gotbaum, to you and your family and staff, for attending here today. I would like to yield the balance of my time back to our chairman so he can finish his line of questioning.

Chairman ROE. Okay. I thank the gentleman for yielding. I don't have too many. But, you know, and what Mr. Thompson was saying and also Mr. Tierney, both, I would like to comment on that.

Because of the uncertainty, I guess, in these plans, and I have a real interest in this, my father was a union member who lost his job in 1973 when I was in the Army overseas. His company went out of the country to another country, so he lost his job and he lost his pension plan. Fifty old, first World War II, had a buyout, like you were talking about, of $10,000 which was nothing after 30 years there. So I understand the plight of people who have been promised something and it doesn't occur. I mean, you have made your plans based on your thinking that you are going to have a secure retirement.

We have a real obligation to get this right because there are 10 million people out there and their families, many of them who are retired, that are very, I am sure, very uneasy right now about, am I going to continue to get my benefits? So I think both sides of the aisle understand this very well. Probably not a lot of people in this Congress understand the size of this problem.

And I know I didn't until I started sat in this chair 2 years ago and began to understand that. So I saw one of the liability estimates was $27 billion. How in the world are we going to fund that? The current obligations are $5 billion under water, the PBGC is. So how do we get to $27 billion? How do we fix that problem? We have talked about premiums. Mr. Tierney and I both mentioned assumptions. I made the assumption when I retired that 5 percent would be what I would withdraw. That was a little more generous than I probably should have picked. So your answer.

Mr. GOTBAUM. The $27 billion number is an estimate of plans that might, under current law, in current circumstances, might fail over the course of the next decade or so. That is an estimate. Part of the reason why, frankly, your committee's deliberations, why this hearing matters and why the next matters, et cetera, is that there is no one who thinks that it is written in stone that all these red plans have to fail. We don't think that.

And so what, in my view, matters is that the Congress do what it did in 2006 and what you are talking about doing here, which is roll up your sleeves, work with the businesses and the unions and the plans, and figure out what kinds of steps they can take to do this.

One of the things you did in the PPA is you gave plans the ability to do self-help. And can't tell you exactly how many have done it, but a lot of them have. It is very clear that some plans are going to need more, and that is why they are going to come and suggest it.

I am a long-run optimist about this. Now, partly it is because, with the committee's permission, a year ago, a small business based in Dallas, Texas—American Airlines—filed for bankruptcy, and on the day they filed for bankruptcy, they said, we are going to have to terminate our pension plans.

These were single-employer plans, but it was a business, it was in bankruptcy; they said, we have got to terminate them. And we sharpened our pencils, we rolled up our sleeves. The very competent staff of the PBGC worked with American Airlines, with its unions, and with the other ERISA agencies, and today, a year later, those plans have not been terminated. So people were able to find ways to solve their problems without plans failing. That same willingness to roll up their sleeves, I think, can take a lot of red-zone plans and keep them from becoming PBGC obligations.

Chairman ROE. I think having been in the operating room thousands of times, I always planned on a train wreck and hoped I would go on a train ride, and what we need to do is plan—this is a train wreck. We need to plan the train ride I think is what we need to do here.

Mr. Hinojosa.

Mr. HINOJOSA. Thank you, Mr. Chairman. I am sorry that I had to leave for a few minutes.

Chairman Roe and Ranking Member Andrews, retirement security is an issue of great importance to millions of Americans, including me, so I thank you for having this hearing on the challenges facing multiemployer pension plans.

Director Gotbaum, in your testimony you indicated that multiemployer plans, like the single-employer plans, have been affected by the recent declines in the economy and the investment markets, as we saw starting in 2007 through 2010. Could you elaborate and tell me about the problem of orphan participants, which are the participants for whom there is no longer an employer; are they a significant problem for many of these multiemployer plans, and do you have any thoughts on solutions?

Mr. GOTBAUM. I can describe the problem. I can't tell you that there is a standard solution, Mr. Hinojosa.

In a single-employer plan, you have one company that is setting aside money to pay benefits for that company's employees, and that plan is limited to their employees so that if the stock market goes down, and, as a result, the plan's assets are insufficient, the company knows they are going to have to put more in, and they are going to know that it is for their employees.

In the multiemployer world you have hundreds of thousands of businesses, small businesses, that are contributing to a common pool. Now, there are some very important benefits from that. One of them is that as a result their employees have benefits that stay constant when they move from job to job. That is a huge benefit. Another benefit is, speaking as a person who has also worked in small business, you can be a member of a multiemployer plan without having a huge HR department, so it works better for a lot of small businesses.

So there are benefits to the multiemployer model, but there are costs. One of the costs of the multiemployer model is that everybody is in it together, and so if a plan gets underfunded, then the existing employers are the ones who make up the difference. The issue is that since you have many employers—and, as we know, some small businesses don't make it, and some industries—a lot of small businesses don't make it—the result is that in some multiemployer plans, the bill, if you will, is being presented to companies who know that most of the employees are not their employees, and so they say, we don't like that, that doesn't seem fair to us.

Now, does that get taken—do they take into account at that moment that they have for, in some cases, decades and decades gotten the benefits of the multiemployer model? No, obviously not. But that is the crux of the concern, that businesses feel that it is unfair that they pay for the obligations of employees that were not theirs, even though, let us be clear, they have been sharing those obligations in some cases for decades and decades.

This is not an easy issue by any means. I find it a lot easier to describe what the problem is than I can to tell you some fair and decent way to resolve it.

Mr. HINOJOSA. Time is running out, and I wanted to—thank you for that explanation—but I wanted to ask you about, you know, getting in the shoes of the employee who does not have to go through the human resources committee or department, but yet whatever money is being set aside for them, a fee is paid for those who are investing that money, and oftentimes that fee can be very expensive, and the employee doesn't know just how expensive it is.

Number two, there is administration costs, and the employee again doesn't know how much is being subtracted out of every dollar that is invested each year for his retirement.

How do you handle that, and how do you manage it so that it is—such as Federal employees using a thrift savings plan have a negotiated cost for the investing, for the investors, and it is very, very low. It is a fraction of 1 percent per year. That is good. But what about these groups?

Mr. GOTBAUM. Let me answer as I can, and then with your permission, Mr. Hinojosa, I would like to come back with a more detailed response.

From our perspective one of the benefits of multiemployer plans is that many, many employers can hire, pay for a centralized professional management, a management that can drive hard bargains with investment firms, a management that can get the economies of scale that you get from having many people processed without having hundreds of separate HR departments. So we think there is an important benefit from that.

What I can't tell you and don't know is what disclosure there is to the various participants of the costs of those plans. So with your permission, sir, let me come back and report on that for the record.

Mr. HINOJOSA. Thank you.

Chairman ROE. Thank the gentleman for yielding.

Mr. Rokita.

Mr. ROKITA. I thank the chair for holding this hearing. I found it very educational, and if you look on the map there, you can see that Indiana is very much affected by this issue and these multiemployer plans. And I hear about it quite frequently as I travel the State and as folks from Indiana visit out here.

Some of this has already been touched on, but at the risk of reiteration, I would like you to drill into it a little bit more just so we are very clear for the record, okay?

So, number one, I am reading about the Central States Pension Fund with liabilities of $14 billion, and if I notice from your testimony, or from I forgot where, maybe this book, I saw that your assets are $1.8 billion. Okay. So that concerns me. What happens when Central—if and when Central States, something terrible happens there, insolvency, how many more insolvencies can we sustain before you become insolvent?

Mr. GOTBAUM. Part of the reason why I say that I think the PBGC's own program has to be rethought is the issue that you raised. It is clear that if, because we have got a couple of billion dollars in assets, and our premiums are, round numbers, $100 million a year, it is bumped up a little bit, it is going to be 120-next year, et cetera, that if we start becoming responsible for several billion dollars a year in pension payments, that we are going to run out of money. However, and this is the important part, those plans—and it is not just the Central States plan. There are—in that red zone there, there are probably 200 plans, plans all across the country, not just on the border of Indiana, not just in Indiana, et cetera, and what we are hearing from them is they don't want to run out of money, they don't want to become the wards of the PBGC, they don't want to bankrupt the PBGC. They would like to have the ability to work out their own self-help measures.

Mr. ROKITA. Yet the number of orphan retirees only increases. The number of orphan retirees only increases. I mean, there is an insolvency issue, then there is the orphan retirees, and that is kind of where I want to go as well.

To make a loose analogy to Social Security, when Mr. Roosevelt started, there were 100 workers for every retiree. Now there is 3, going to 2 in 15 years, and it seems to me that these legacy orphan retirees, you know, how many do we have in the system? Do you even know? And is it becoming harder and harder to support these retirees obviously with less companies paying into the system?

Mr. GOTBAUM. In general, as I don't think we put in the testimony, but it is in our annual report, systemwide the average is about 1½ people who are not active, retirees and what we call deferred vested, per active worker in the system. So 1½ to 1 is the ratio. There are plans where that ratio is 10 to 1. Those plans obviously cannot just turn to the active employees and say, okay, you are going to increase your contributions by a factor of five and go in. There something is going to have to give.

I don't think that anyone can be definitive and say, oh, there is a particular measure that you can legislate that will work for all of the different kinds of plans that are there. And that is a point that I should have made, and I am grateful for you for enabling me to make it. Part of the reason why we think flexibility matters, why the flexibility you gave in 2006 mattered, and why whatever you do prospectively matters, is that the circumstance of the folks who are green is very different from the folks who are in the red, and we don't want to force one into the shoes of the other.

Mr. ROKITA. Okay. Thank you, Chairman. I yield. Thank you.

Chairman ROE. Thank the gentleman for yielding.

Mr. Hanna.

Mr. HANNA. Thank you for being here, sir.

The last 10 years haven't been very good, have they, in the market? You can see that. But you can also see that in the last—from 2009 to 2011, you went from 32 to 60 and from 34 to 24. We also know that for about 100 years the markets returned an average of someplace between 9 and 11 percent, depending on—and as was mentioned, the fees are critical to that.

What I am looking at is something that has a positive side to it, too, and that is that the actuarial tables that were built to guarantee these defined-benefit plans were built around long-held assumptions that that have broken down in the last 10 years.

Just in your mind or with your understanding of all this—and this year looks like the market may be up 9 or 10 percent—how many years out into the future would it take to take 90 percent of the people out of the red and put them back in the green? What has historically—because there is nothing fundamentally wrong with the assumptions they made based on the knowledge they had. We are looking at the 10-year slot, and we are saying, this is horrible, which, of course, it is, and plans are going broke, but this may not last forever either. Hopefully it won't with so many people unemployed, et cetera, et cetera. Looking forward, what do you see?

Mr. GOTBAUM. Let me talk in general now, and, if I may, especially after we get you the reports we owe you all, I would like to answer in more detail.

There are clearly some plans who, even if you think they will get the long-term average equity return, because the experience of the last 10 years has been so bad, they are in trouble, and they will be in trouble, and just praying for the stock market by itself won't help. It will help some, but it probably won't be sufficient. There are some plans.

There are other plans for whom the recovery of the stock market, if it gets back to the long-term average, will enable them, along with other things, to recover. So we know there is some in some and some in the other.

If I may, since this is in part the guts of the reports that we are working to send you all, if I can, after we have done those reports, come back and give you a little more detailed statement of how many we think are in one versus the other, I would appreciate the opportunity to do that.

Mr. HANNA. Defined-benefit plans are great. People are being told that they have to invest for themselves from a much younger age. As you said, it was 34 to 1 when Roosevelt developed Social Security. Now it is different. But that is still not a—that is always going to be the new model, isn't it? And a lot of people, a lot of companies are getting away from defined-benefit plans simply based on the assumptions of the last 10 years, and things like Mr. Madoff, those kinds of things. It is not a bad model, but it is also true that defined-benefit plans are really what works best for families in the long run.

Mr. GOTBAUM. I could not say it any better. Thank you for saying it.

Mr. HANNA. Thank you. I am all done here. Thank you.

Chairman ROE. I thank the gentleman for yielding. I would like again to thank Director Gotbaum for taking your time to testify before the committee today, and I recognize closing remarks from our ranking member Mr. Andrews.

Mr. ANDREWS. Thank you, Mr. Chairman. I thank our colleagues, and I thank Mr. Gotbaum and his family for attending and doing such a good job here today.

This is a problem I think we have set out on the right path to solve, which is to collect a range of views from a series of people with expertise on this problem and learn from them. And, Mr. Chairman, I am confident that if we continue down this path, we will find a solution that achieves the goals of helping small businesses that pay into these plans prosper and grow, that assures the maximum degree of security for pension payments for families who depend on them, and improves the fiscal health of the PBGC so we further minimize the possibility that the PBGC would ever have to call upon the Federal Treasury to make good its obligations.

What I have learned so far in listening to today's questions and answers and the prior hearing is that the credit facilities that the 2006 and 2010 laws made available have contributed substantially to the growth of the green zone from 32 percent to 60 percent. Certainly demographic trends and economic growth have contributed, but the availability of those facilities has had a positive impact.

And I have also—will approach the rest of the discussions with a premise that we should further facilitate those credit facilities to multiemployer plans in a variety of ways, but we should attach conditions depending upon the status of the plan. I think relatively healthy plans should have the opportunity to take advantage of such a facility, but I think that unhealthy plans, frankly, should have something more in the nature of an obligation to take advantage of them, and when they do, I think that those plans should have a concurrent obligation to make internal structural changes, however unpopular or difficult, that will improve their health and, with it, improve the fiscal health of the PBGC.

This is not a problem that—for which the solution will be painless, easy, or uncontroversial, but if we take the path that is too often taken here in Washington and just hope that it gets better, which is emphatically not what the chairman is doing, then I think it for sure will get worse.

There are 10 million people depending upon us, there are hundreds of thousands of employers depending upon us, and I do think that we have taken two very good steps toward a sober, well-considered, and mature approach to solving this problem.

I look forward to working with you, Mr. Chairman, and our colleagues, and, Mr. Gotbaum, you and your colleagues, and in listening to people around the country with a stake in this problem to solve it, and I appreciate your opportunity to be with us today.

Chairman ROE. I thank the gentleman for yielding and his comments. From the chair, I am absolutely committed, and this subcommittee is absolutely committed, to helping solve this problem, and it is imperative that we do that. I think the eyes of the country are on us. There are many pension plans not only in the multiemployer plan, but I think there are many pension plans in States and others that are in extremis now and certainly would be looking at us for guidance about how we manage through this morass that we are in right now.

So I think that they—you made the comment in your testimony that the PBGC is at risk for having neither sufficient tools to help multiemployer plans deal with their problem, nor the funds to continue to pay benefits beyond the next decade under the multiemployer insurance plan. That is a pretty sobering statement, and I think we can together certainly work on the tools you need to do your job, and we can certainly do that.

I had several thoughts up here today, and just to bring them up, no solutions, but we have the assumptions problem about the assumptions that we make. Is it possible in these plans to segregate?

I think the "last man standing rule" creates some issues for the stronger plans. For instance, UPS decided to get out. They wrote a check for $6 billion and got out so they would limit their future liabilities, and with credit being as low as it is, what is to keep a strong company out there that has a pretty good financial balance sheet to look at the multiemployer plans and look, as Mr. Rokita, I think, mentioned, the Central States plan with a $14 billion potential liability, and clearly the money is going to run out at some time, to walk.

I think that is a real issue for multiemployer plans, which would further weaken them. And as Mr. Hanna has clearly stated, the certainty of these plans for families is essential, certainly the ones getting the benefits. You are limited now because people who currently are receiving benefits cannot be cut, but then, as you stated in your testimony, you are going to go back to current employees and companies and say, hey, you need to pony up some more money that you may never get.

So I think that is an issue, and I think another issue is where the PBGC lines up in bankruptcy. I think the Hostess situation is clear, that you are not at the front of the line. Those employees that have worked there for decades are not at the front of the line. They may be getting a much—could be potentially getting a much-reduced benefit. It doesn't mean that they will.

So I think a lot of those things are just questions, not particularly solutions, but things that we have to work on, and we don't have a lot of time to do it. So this subcommittee is going to be very active in coming up with legislation to help, and I am interested in knowing how much of the green has been improved by our accounting that we changed and the assumptions, because I think the 7½ percent, even though I do understand what Mr. Hanna said, the historic assumptions have not occurred in the last 10, 12-plus years.

The city that I was mayor, I started this discussion in 2003. It took 10 years to get—almost 10 years to get there, but one was that we looked at our future liability. As the market went down when I first became mayor, we were—I think about 10, 11 percent of how much someone's salary was going into their pension plan for defined benefit. As the economy got worse, it was up at 18 or 19 percent of their income, which was really straining the city budget.

So we started a discussion that new hirees would not—you kept your promise to current employees, but new hirees would come in under a defined-contribution plan. I think a lot of businesses are having to look at that simply because of this, and I think what we end up doing here, if we do this right, might encourage other businesses to stay with the defined-benefit plan for employees. So I think we have a huge obligation.

I will finish by saying we will miss Don Payne, who passed during this past year, that served many years on this committee and did so with great dignity; and Dale Kildee and Dennis Kucinich, who won't be with us on the subcommittee. Mr. Kildee is retiring, and Mr. Kucinich is going on into private life. Judy Biggert will not be here. It has been a great pleasure to serve with all of those Members, and they have done a great job, and I wanted to pass my congratulations on to them, to wish everyone a merry Christmas.

Mr. ANDREWS. And Jason Altmire.

Chairman ROE. And Jason Altmire—I forgot my friend Jason from Pennsylvania—also served with great distinction. He was on and then off, and then back on, but he did serve here. We appreciate his service.

I wish everyone a merry Christmas.

Mr. ANDREWS. Ms. Hirono.

Chairman ROE. And we could go on and on. Ms. Hirono is a Senator now.

Anyway, we may have to get a whole list to read.

But anyway, merry Christmas. We are adjourned.

[Questions submitted for the record follow:]

U.S. CONGRESS,
*Washington, DC, March 4, 2013.*

Hon. JOSHUA GOTBAUM, *Director,*
*Pension Benefit Guaranty Corporation (PBGC), 1200 K Street, NW, Washington, DC 20005.*

DEAR DIRECTOR GOTBAUM: Thank you for testifying at the December 19, 2012 Subcommittee on Health, Employment, Labor, and Pensions hearing entitled, "Challenges Facing Multiemployer Pension Plans: Evaluating PBGC's Insurance Program and Financial Outlook." I appreciate your participation.

Enclosed are additional questions submitted by committee members following the hearing. Please provide written responses no later than March 18, 2013, for inclusion in the official hearing record. Responses should be sent to Benjamin Hoog of the committee staff, who can be contacted at (202) 225-4527.

Thank you again for your contribution to the work of the committee.

Sincerely,

PHIL ROE, *Chairman,*
*Subcommittee on Health, Employment, Labor, and Pensions.*

QUESTIONS SUBMITTED BY CHAIRMAN ROE

1. For plan funding purposes, multiemployer plans calculate their expected assets using a hypothetical, yet actuarially "reasonable" rate of return. Please contrast this method with PBGC's valuation methodology, and explain whether the plan funding rules appropriately reflect plan assets and liabilities.

QUESTIONS SUBMITTED BY CHAIRMAN KLINE

1. Press reports regarding a speech you gave at the 58th Annual Employee Benefits Conference of the International Foundation of Employee Benefit Plans indicate that you called for new regulations on the standard of care for multiemployer plans. Can you elaborate, and describe how these new regulations would affect PBGC's future sustainability?

2. In 2012, PBGC's Inspector General criticized the quality of the information fed into your Pension Insurance Modeling System. What steps have you taken to rectify this problem, and what remains to be done?

QUESTIONS SUBMITTED BY CONGRESSMAN TIERNEY

1. Did Hostess stop making contributions to its single and/or multi-employer pension plans prior to filing for bankruptcy?

2. Please detail the enforcement action(s) the PBGC can take to require a company to continue making contributions to its pension plans if it has stopped doing so. Is such enforcement action the same for both single and multi-employer plans? If not, please explain.

3. When Hostess stopped making contributions to its single and/or multi-employer pension plans, did the PBGC utilize all of the enforcement authority available to them under the law? If not, why not?

4. Does the PBGC believe it has sufficient enforcement authority to effectively deter and/or appropriately remedy future cases where a company stops making contributions to its pension plans? If not, please elaborate and provide specific recommendations (including technical assistance, if available) for amending the relevant statute(s).

QUESTIONS SUBMITTED BY CONGRESSMAN SCOTT

1. If a company in a multiemployer plan files for bankruptcy, do the other companies in the plan inherit the full responsibility for paying the withdrawn company's obligations in the pension fund? If so, is there any relief for a small company which represents only a minor portion of a large plan and which may be financially unable to pay the additional costs?

2. Do many multiemployer plans approach a "tipping point," where insolvent companies are leaving and the surviving companies are having so much trouble paying the increasing obligations of the departing companies that others become insolvent, resulting in a cascade of insolvencies and ultimate total failure of the plan?

3. What premium adjustment or statutory change would be necessary in order for PBGC to be obligated to pay the proportional liability of any single employer in a multiemployer plan that leaves a plan due to bankruptcy?

4. If a company in a multiemployer plan goes bankrupt, and then reorganizes and becomes solvent again, are its past pension obligations revived?

5. What happened to the pension obligations of the automobile companies that received assistance through the federal bailout?

6. How much risk could be mitigated if companies in multiemployer plans were required to invest a significant proportion of their investment assets in insurance products, where the risk of the vagaries of the stock market would be borne by the private insurance and not the plan itself?

---

[Response to questions submitted follow:]

PBGC
Protecting America's Pensions

Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

October 10, 2013

The Honorable David P. Roe, M.D.
Chairman
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and the Workforce
2181 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515-6100

Dear Dr. Roe:

This letter hereby transmits PBGC's response to the QFRs stemming from the Subcommittee's hearing on multiemployer plan issues held December 19, 2012.

Please contact me at (202) 326-4124 if you have any questions.

Sincerely,

John H. Hanley
Office of Policy & External Affairs

Attachment

## Mr. Gotbaum's Response to Questions Submitted for the Record

QUESTIONS SUBMITTED BY CHAIRMAN ROE

*1. For plan funding purposes, multiemployer plans calculate their expected assets using a hypothetical, yet actuarially "reasonable" rate of return. Please contrast this method with PBGC's valuation methodology, and explain whether the plan funding rules appropriately reflect plan assets and liabilities.*

Current law supplies multiemployer plans with more actuarial discretion in measuring assets and liabilities for funding purposes than single-employer plans. The methods of measurement used by PBGC are different from either multiemployer or single-employer plans.

Multiemployer Return Assumptions Most multiemployer plans with more than $1 billion in liabilities used an assumed rate of return between 7.5% and 8.5% for the 2010 plan year.[1] The average assumed rate of return for all multiemployer plans was 7.5%. These assumptions have been the subject of some criticism because returns in the past decade have been much lower and consensus forecasts for the next decade are also below 7.5%. However, the 7.5%-8.5% range is consistent with market returns in previous decades and with historical returns over longer periods of time.[2]

Multiemployer Asset Valuations Multiemployer plans also have more discretion in valuing assets for actuarial purposes than single-employer plans. Actuarial valuations are generally not based on current market values, but instead use a "smoothed" value of assets, recognizing market value gains and losses over five years (10 years for 2008-9 losses under PRA 2010 funding relief).

Actuarial discretion in plans' methods and assumptions (e.g., the interest rate used for measuring liabilities and the smoothing period for measuring assets) has an effect on the funded percentage and has reduced the effect of mandatory funding requirements. In addition, it affects plans' certified status as endangered or critical. While plans must also separately disclose to participants the market value of assets, they need not disclose the market value of their liabilities.

PBGC Asset and Liability Valuation Both PBGC's assets and liabilities are reported at current market levels and are not "smoothed" or subject to actuarial discretion. The interest rate used to determine PBGC's liabilities is derived from a survey of market quotes for comparable annuities. PBGC and its independent auditors believe this approach fairly and accurately represents the financial situation of PBGC.

QUESTIONS SUBMITTED BY CHAIRMAN KLINE

*1. Press reports regarding a speech you gave at the 58th Annual Employee Benefits Conference of the International Foundation of Employee Benefit Plans indicate that you called for new regulations on the standard of care for multiemployer plans. Can you elaborate, and describe how these new regulations would affect PBGC's future sustainability?*

What I said was that plans need less burdensome regulation and more flexibility. Employers will only be willing to sponsor defined benefit plans if there is more flexibility in plan design, cost-sharing, and funding for these plans. For example, the single-employer and multiemployer plan communities are discussing new hybrid plan designs that minimize contribution volatility and underfunding risk. Innovative changes in law and regulation will be needed to allow these new plan designs to work and to encourage companies to continue to provide retirement plans to their employees.

Clearly, preserving pension plans is necessary to the preservation of PBGC, but it's not enough. As I testified before the subcommittee, PBGC's financial situation is unsound and its resources and authorities are inadequate to help distressed plans avoid insolvency and fund the benefits of plans that fail.

---

[1] Actuarial discretion for multiemployer funding purposes generally continued under the Pension Protection Act of 2006 (PPA). In single-employer plans, the actuary's assumed interest rate (and mortality table) has been historically more closely regulated by statute. PPA specified the interest rate that all single-employer plans must use, based on average segment rates on the corporate bond yield curve for the preceding 24 months; the Moving Ahead for Progress in the 21st Century Act (MAP-21) funding relief allowed the segment rates to be adjusted if they are below or above certain percentages of the average of the rates for the preceding 25 years.

[2] Based on a 60%-40% allocation of equities to bonds, average returns exceeded 8% for the 85-year period preceding 2012; topped 14% for the 20-year period preceding 2000; but barely broke 1% for the 2000s decade.

*2. In 2012, PBGC's Inspector General criticized the quality of the information fed into your Pension Insurance Modeling System. What steps have you taken to rectify this problem, and what remains to be done?*

As detailed in the Inspector General's report, in preparing several reports, the staff of our Policy, Research and Analysis Department (PRAD) made careless errors (generally in copying numbers from one place to another) and did not check their own work. They compounded these errors by not keeping their work papers. Our IG found these errors, and also noted that PRAD's procedures weren't adequately documented. We immediately made the changes recommended by the IG and are making additional process improvements as appropriate. All reports are now separately reviewed by others and procedures are being more carefully documented.

Although issues documented by the IG arose in reports that used our pension insurance modeling systems (PIMS), the Inspector General was careful to note that her staff was not expressing an opinion on the quality of those models themselves. We believe that PBGC's pension insurance modeling systems are the best tools available by far for information and projections concerning the defined-benefit pension-plan universe. Most analysts in the actuarial and economic communities agree that PBGC's models remain the best tools available.

That does not mean that we cannot and will not review them to make them even better. We do.[3] We will continue to work to improve them as we better understand trends in the economy and in pension practices and as our information improves. The Moving Ahead for Progress in the 21st Century Act (MAP-21) requires an additional independent annual peer review of PBGC modeling systems.[4] PBGC responded by contracting for a review by the Social Security Administration and outside consultants. We will incorporate the results of those reviews in future improvements. Nonetheless, it would be wrong to conclude that the financial unsoundness of PBGC or of some multiemployer plans is the artifact of modeling error.

QUESTIONS SUBMITTED BY REPRESENTATIVE TIERNEY

*1. Did Hostess stop making contributions to its single and/or multi-employer pension plans prior to filing for bankruptcy?*

Hostess Brands made required contributions to its single-employer plan until it filed for reorganization under Chapter 11 in January 2012. Hostess stopped making those required contributions once it entered bankruptcy.

Hostess stopped making annual contributions to multiemployer plans in August 2011, a few months before it filed for bankruptcy.

In November 2012, a bankruptcy judge approved Hostess' request to shut down its operations and liquidate its business. Hostess' withdrawal from 41 multiemployer plans in which it participates triggered an obligation under ERISA for Hostess to pay its share of the plans' underfunding. These obligations total nearly $2 billion. Only a tiny fraction of that amount will be recovered and paid to the plans.

*2. Please detail the enforcement action(s) the PBGC can take to require a company to continue making contributions to its pension plans if it has stopped doing so. Is such enforcement action the same for both single and multi-employer plans? If not, please explain.*

PBGC's enforcement authorities are very different for single-employer plans and multiemployer plans.

---

[3] Over the years, PBGC's Single-Employer Pension Insurance Modeling System (SE-PIMS) has been reviewed and discussed in published reports. Several years ago, PBGC provided the model to the Society of Actuaries, which reviewed it and has begun using it in their own published reports.

The Multiemployer Pension Insurance Modeling System (ME-PIMS), which is newer than SE-PIMS, was designed in 2007, before implementation of the PPA changes for multiemployer plans. PBGC is revisiting certain ME-PIMS assumptions to better reflect current experience under PPA as a basis for ME-PIMS projections, but the ERISA agencies obtain information about how plans are responding to PPA only gradually. PBGC commissioned an external review of ME-PIMS by an outside consulting firm with substantial multiemployer experience and received recommendations for changes in September 2012. We are now in the process of reviewing and incorporating the consultant's suggestions for improvements.

[4] MAP-21, sec. 40233(a), states: "The Pension Benefit Guaranty Corporation shall contract with a capable agency or organization that is independent from the Corporation, such as the Social Security Administration, to conduct an annual peer review of the Corporation's Single-Employer Pension Insurance Modeling System and the Corporation's Multiemployer Pension Insurance Modeling System. The board of directors of the Corporation shall designate the agency or organization with which any such contract is entered into. The first of such annual peer reviews shall be initiated no later than 3 months after the date of enactment of this Act."

For single-employer plans, PBGC has the authority to file liens against the sponsor and its non-debtor controlled group members if missed contributions exceed $1 million. However, once a company files a Chapter 11 petition, the situation changes. Under bankruptcy law, PBGC cannot file liens against companies for contributions missed during bankruptcy.

For multiemployer plans, PBGC has no authority to require employers to make contributions. That authority is held only by plan trustees. Plan trustees lack PBGC's ability to file liens for non-payment of required contributions. Trustees must first obtain a judgment in federal court for the unpaid contributions, but by the time such a judgment is obtained, the employer may have entered bankruptcy, preventing the trustees from filing a lien.

The plan trustees are also responsible for collecting withdrawal liability from employers that leave the plan. (PBGC has no enforcement authority with respect to such collections.) Because a bankrupt company's withdrawal liability is generally discharged in bankruptcy and is generally an unsecured general claim that enjoys no priority, plans usually collect only a tiny fraction of the obligation of bankrupt withdrawn employers.

*3. When Hostess stopped making contributions to its single and/or multi-employer pension plans, did the PBGC utilize all of the enforcement authority available to them under the law? If not, why not?*

Once Hostess stopped making contributions to its multiemployer plans and, after filing, its single-employer plan, PBGC had no authority to change Hostess's actions.

Hostess' single-employer plan will terminate and be trusteed by PBGC. PBGC can and will pursue claims for contributions missed during bankruptcy and plan underfunding of $62 million in bankruptcy. However, because PBGC's claims are generally treated as unsecured claims in bankruptcy, the recoveries are generally only a small fraction of the plan's obligations.

*4. Does the PBGC believe it has sufficient enforcement authority to effectively deter and/or appropriately remedy future cases where a company stops making contributions to its pension plans? If not, please elaborate and provide specific recommend actions (including technical assistance, if available) for amending the relevant statute(s).*

PBGC does not have authority to require company contributions to pension plans. With such authority under the single-employer program, the agency would be better able to protect pensions, particularly during the bankruptcy process.

Furthermore, ongoing pension contributions, unlike other ongoing employee costs, are generally not considered a priority expense in bankruptcy.

QUESTIONS SUBMITTED BY REPRESENTATIVE SCOTT

*1. a. If a company in a multiemployer plan files for bankruptcy, do the other companies in the plan inherit the full responsibility for paying the withdrawn company's obligations in the pension fund?*

Yes. When a contributing employer to a multiemployer plan files for bankruptcy or otherwise fails to pay assessed withdrawal liability, the remaining employers in the plan become responsible for the benefits earned with that employer. If the plan is underfunded, the benefits must be funded by the remaining employers.

Even if the plan is well-funded in the year of an employer's bankruptcy or withdrawal, the plan could later incur a substantial loss in assets (e.g., due to investment losses) resulting in the underfunding of plan benefits. In these circumstances, plans attempt to preserve the plan by increasing contributions from current employers and/or reducing future benefit accruals for current employees.

Problems arise when there has been a significant drop in the number of contributing employers in a plan, and the number of inactive participants (many of whose employers have left the plan) greatly exceeds the number of active participants. If such a plan becomes significantly underfunded, steep increases in plan costs can put enormous pressures on a small pool of employers and employees to support the liabilities of a much larger group of inactive participants.

*b. If so, is there any relief for a small company which represents only a minor portion of a large plan and which may be financially unable to pay the additional costs?*

Yes. Withdrawal liability is calculated based on a company's level of contributions to a plan, so a small company with small contributions will face a smaller liability if it chooses to withdraw. Also, in some cases, plan trustees provide the bargaining parties with alternative schedules of varying contribution rates and benefit reductions, enabling small employers to negotiate less onerous contribution terms with commensurately lower benefits for their employees.

Nonetheless, some plans and employers report that their circumstances are such that these measures, by themselves, are insufficient, that some companies will choose to withdraw or be forced to declare bankruptcy, and that the risk to plans is that other employers will follow and cause mass withdrawal from a plan.

*2. Do many multiemployer plans approach a "tipping point," where insolvent companies are leaving and the surviving companies are having so much trouble paying the increasing obligations of the departing companies that others become insolvent, resulting in a cascade of insolvencies and ultimate total failure of the plan?*

We don't have enough current information to be sure, but we don't think that most of the more than 1,300 ongoing plans are or will be at such a point. Nonetheless, some plans clearly will be. These generally are plans that are both seriously underfunded and for which the base of active employers is too small for that underfunding to be remedied by increased contributions and/or reduced future accruals. Such plans are often found in industries that have undergone major transformation involving multiple bankruptcies, such as textiles, furniture-making, or printing, but there are severely distressed plans in other industries as well.

*3. What premium adjustment or statutory change would be necessary in order for PBGC to be obligated to pay the proportional liability of any single employer in a multiemployer plan that leaves a plan due to bankruptcy?*

In order for PBGC to be able to pay the obligations of employers that become bankrupt, PBGC would need much greater financial resources. At present, we cannot say with any confidence what increase in premiums would be necessary. We are undertaking analyses to try and develop estimates.

ERISA allows a plan to apply to PBGC for a plan "partition," transferring to PBGC the liabilities attributable to service with employers that withdrew from the plan as a result of bankruptcy. The purpose is to keep the plan viable for the remaining employers by relieving them of the significant unfunded liabilities left behind by bankrupt employers. However, this tool has been rarely used, as partition is limited only to those participants that are "orphaned" as a result of formal bankruptcy proceedings and not for other cases. Furthermore PBGC currently lacks the financial resources to fund partitions. We are currently working to quantify the number of plans that would be helped by a partition-type solution and what the associated costs might be.

*4. If a company in a multiemployer plan goes bankrupt, and then reorganizes and becomes solvent again, are its past pension obligations revived?*

Generally not. If pension commitments are extinguished in bankruptcy, then bankruptcy law acts to prevent any restoration after emergence from Chapter 11. Some companies in bankruptcy will negotiate with the union to remain as a contributing employer to the plan after reorganization. In those cases, pension obligations remain in place.

*5. What happened to the pension obligations of the automobile companies that received assistance through the federal bailout?*

General Motors (GM), Chrysler, and Ally Financial (formerly GMAC and still partially owned by GM in 2008) received assistance through the Automotive Industry Financing Program (AIFP) under the U.S. "Troubled Assets Relief Program" (TARP).

GM currently sponsors pension plans for its hourly and salaried employees. However, in 2012 GM announced that it was eliminating its obligations to salaried employees and retirees in several ways: (a) certain retirees in the salaried plan were offered a one-time lump-sum payment instead of receiving their pensions, (b) the pension obligations of those retirees who chose not to take the lump-sum payment were transferred by GM to the Prudential Insurance Company, and (c) active participants and those retiring after December 1, 2011, were moved to a new salaried pension plan with a lump-sum payment option available at retirement (note that GM froze this new salaried plan in late 2012). GM terminated the old salaried plan as well as a cash balance plan where the employees were offered the choice between receiving an annuity and a lump sum.

Chrysler currently sponsors pension plans for its hourly and salaried employees. In 2009, PBGC obtained an agreement from Daimler AG, then a Chrysler plan sponsor, to contribute $600 million to the Chrysler pension plans. In 2012, Chrysler terminated a small cash balance plan that was fully funded. In June 2013, Chrysler announced that it would freeze its U.S. defined benefit plans for salaried employees effective December 31, 2013. (Note that these plans were closed to new hires effective December 31, 2003. Salaried employees hired on or after January 1, 2004, were eligible for a 401(k) plan.) The freeze affects about 8,000 employees, who will now receive contributions from Chrysler in the 401(k) plan.

In 2012, Ally Financial offered terminated vested participants in its pension plan a lump-sum payment in lieu of an annuity.

*6. How much risk could be mitigated if companies in multiemployer plans were required to invest a significant proportion of their investment assets in insurance products, where the risk of the vagaries of the stock market would be borne by the private insurance and not the plan itself?*

Federal law has never required pension plans to invest in any particular form of investment. For those plans that are significantly underfunded, investment in the vast majority of insurance or fixed income products does not mitigate or exacerbate insolvency risk. Investment policy and the mitigation and diversification of risk are significant issues for multiemployer plans.

---

[Whereupon, at 11:28 a.m., the subcommittee was adjourned.]