STRENGTHENING THE MULTIEMPLOYER PENSION SYSTEM: HOW WILL PROPOSED REFORMS AFFECT EMPLOYERS, WORKERS, AND RETIREES?

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, OCTOBER 29, 2013

Serial No. 113–35

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
85–135 PDF WASHINGTON : 2014

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
Joe Wilson, South Carolina
Virginia Foxx, North Carolina
Tom Price, Georgia
Kenny Marchant, Texas
Duncan Hunter, California
David P. Roe, Tennessee
Glenn Thompson, Pennsylvania
Tim Walberg, Michigan
Matt Salmon, Arizona
Brett Guthrie, Kentucky
Scott DesJarlais, Tennessee
Todd Rokita, Indiana
Larry Bucshon, Indiana
Trey Gowdy, South Carolina
Lou Barletta, Pennsylvania
Martha Roby, Alabama
Joseph J. Heck, Nevada
Susan W. Brooks, Indiana
Richard Hudson, North Carolina
Luke Messer, Indiana

George Miller, California,
Senior Democratic Member
Robert E. Andrews, New Jersey
Robert C. "Bobby" Scott, Virginia
Rubén Hinojosa, Texas
Carolyn McCarthy, New York
John F. Tierney, Massachusetts
Rush Holt, New Jersey
Susan A. Davis, California
Raúl M. Grijalva, Arizona
Timothy H. Bishop, New York
David Loebsack, Iowa
Joe Courtney, Connecticut
Marcia L. Fudge, Ohio
Jared Polis, Colorado
Gregorio Kilili Camacho Sablan,
Northern Mariana Islands
John A. Yarmuth, Kentucky
Frederica S. Wilson, Florida
Suzanne Bonamici, Oregon

Juliane Sullivan, *Staff Director*
Jody Calemine, *Minority Staff Director*

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

DAVID P. ROE, Tennessee, *Chairman*

Joe Wilson, South Carolina
Tom Price, Georgia
Kenny Marchant, Texas
Matt Salmon, Arizona
Brett Guthrie, Kentucky
Scott DesJarlais, Tennessee
Larry Bucshon, Indiana
Trey Gowdy, South Carolina
Lou Barletta, Pennsylvania
Martha Roby, Alabama
Joseph J. Heck, Nevada
Susan W. Brooks, Indiana
Luke Messer, Indiana

Robert E. Andrews, New Jersey,
Ranking Member
Rush Holt, New Jersey
David Loebsack, Iowa
Robert C. "Bobby" Scott, Virginia
Rubén Hinojosa, Texas
John F. Tierney, Massachusetts
Raúl M. Grijalva, Arizona
Joe Courtney, Connecticut
Jared Polis, Colorado
John A. Yarmuth, Kentucky
Frederica S. Wilson, Florida

C O N T E N T S

Appendix

STRENGTHENING THE MULTIEMPLOYER PENSION SYSTEM: HOW WILL PROPOSED REFORMS AFFECT EMPLOYERS, WORKERS, AND RETIREES?

Tuesday, October 29, 2013
House of Representatives,
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and the Workforce,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:02 a.m., in Room 2175, Rayburn House Office Building, Hon. David P. Roe [chairman of the subcommittee] presiding.

Present: Representatives Roe, Wilson, Salmon, Guthrie, DesJarlais, Bucshon, Gowdy, Roby, Heck, Messer, Andrews, Holt, Loebsack, Scott, Hinojosa, Tierney, Courtney, and Wilson.

Also present: Representatives Kline and Miller.

Staff present: Andrew Banducci, Professional Staff Member; Janelle Belland, Coalitions and Members Services Coordinator; Owen Caine, Legislative Assistant; Molly Conway, Professional Staff Member; Ed Gilroy, Director of Workforce Policy; Benjamin Hoog, Senior Legislative Assistant; Nancy Locke, Chief Clerk; Brian Newell, Deputy Communications Director; Krisann Pearce, General Counsel; Jenny Prescott, Staff Assistant; Nicole Sizemore, Deputy Press Secretary; Alissa Strawcutter, Deputy Clerk; Juliane Sullivan, Staff Director; Alexa Turner, Staff Assistant; Aaron Albright, Minority Communications Director for Labor; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Jody Calemine, Minority Staff Director; Daniel Foster, Minority Fellow, Labor; Melissa Greenberg, Minority Staff Assistant; Eunice Ikene, Minority Staff Assistant; Megan O'Reilly, Minority General Counsel; Michele Varnhagen, Minority Chief Policy Advisor/Labor Policy Director; and Mark Zuckerman, Minority Senior Economic Advisor.

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

Good morning, everyone. I would like to welcome our guests and thank our witnesses for being with us today.

The topic of this hearing personally affects many in our audience—men and women who have spent a lifetime in the workplace and hope to enjoy retirement with the financial security they were promised. Unfortunately, that security is now in jeopardy for a number of different reasons.

For example, the recent recession and the sluggish economy continue to threaten the multiemployer pension system and the retirement savings of many Americans. Flawed government policies have also had a hand in the current crisis we face, making it difficult for the trustees of these pension plans to prepare during the good times for the difficult times we are in now.

I expect our witnesses will describe in greater detail the challenges facing the multiemployer pension system and how we have ended up with nearly 400 billion in unfunded benefit liabilities, a Pension Benefit Guaranty Corporation on the brink of insolvency, and employers stretched thin by current pension obligations, and both workers and retirees fearful they will lose what they worked so hard to achieve.

For more than a year this subcommittee has been closely examining this difficult issue. During that time two things have become abundantly clear.

First, the pain inflicted on workers and retirees will be far greater if we fail to act in the coming months. A number of multiemployer plans are regaining their financial health. We certainly welcome that progress and hope it continues; however, we cannot lose sight of the sizeable number of large plans that remain in financial distress.

Pension plans that include hundreds of thousands of workers will become insolvent unless they receive the tools necessary to change course. If they don't, it is impossible to predict with any certainly how far the consequences will spread.

We have discussed in previous hearings a domino effect that would undermine not just the strength of the individual pension plans but the pension system as a whole. PBGC will become overwhelmed and unable to provide the federal backstop it has delivered for nearly 40 years, which means some retirees will be left with nothing.

We must also be mindful that employers will be harmed under this nightmare scenario as well. Improving the multiemployer pension system is not only about retirement security; it is about saving jobs and protecting the competitiveness of America's workplaces. As elected policymakers we have a responsibility to take action and help prevent the worst from happening.

It has also become clear that there are no easy answers, despite what some may suggest. Our goal is to strengthen the multiemployer pensions.

Part of that effort must include finding ways to encourage new employers to join the system. Raising contributions and premiums to punitive levels will undermine this important goal. In fact, I fear it will destroy jobs and drive even more employers out of the system, exacerbating the problems that already exist.

We need to find a better way forward. While we face significant challenges, I am hopeful we can enact meaningful solutions before it is too late.

Members of the labor and management communities have united behind a comprehensive proposal to reform the multiemployer pension system. Their work has been vital to this debate and encouraged members on both sides of the aisle.

I have also had a number of positive conversations with the senior Democratic member of the subcommittee, Representative Rob Andrews. We share a commitment to working together and making the tough choices that are necessary. America's workers, employers, and retirees deserve no less.

I know this is extremely difficult for every man and woman involved. Promises were made and lives were planned believing those promises would be kept. I cannot fathom the anxiety and frustration you must feel, but I hope you will work with us, not against us, as we try to preserve the multiemployer pensions you and millions of Americans rely upon.

I will now recognize my colleague, Mr. Andrews, for his opening remarks?

[The statement of Chairman Roe follows:]

Prepared Statement of Hon. Phil Roe, Chairman, Subcommittee on Health, Employment, Labor, and Pensions

Good morning, everyone. I'd like to welcome to our guests and thank our witnesses for being with us today.

The topic of this hearing personally affects many in our audience, men and women who have spent a lifetime in the workplace and hope to enjoy retirement with the financial security they were promised. Unfortunately, that security is now in jeopardy for a number of different reasons.

For example, the recent recession and a sluggish economy continue to threaten the multiemployer pension system and the retirement savings of many Americans. Flawed government policies have also had a hand in the current crisis we face, making it difficult for the trustees of these pension plans to prepare during the good times for the difficult times we are now in.

I expect our witnesses will describe in greater detail the challenges facing the multiemployer pension system and how we have ended up with nearly 400 billion in unfunded benefit liabilities, a Pension Benefit Guaranty Corporation on the brink of insolvency, employers stretched thin by current pension obligations, and both workers and retirees fearful they will lose what they worked so hard to achieve.

For more than a year the subcommittee has been closely examining this difficult issue. During that time two things have become abundantly clear.

First, the pain inflicted on workers and retirees will be far greater if we fail to act in the coming months. A number of multiemployer plans are regaining their financial health. We certainly welcome that progress and hope it continues. However, we cannot lose sight of the sizeable number of large plans that remain in financial trouble.

Pension plans that include hundreds of thousands of workers will become insolvent unless they receive the tools necessary to change course. If they don't, it is impossible to predict with any certainty how far the consequences will spread. We've discussed in previous hearings a domino effect that would undermine not just the strength of the individual pension plans, but the pension system as a whole. PBGC will become overwhelmed and unable to provide the federal backstop it has delivered for nearly 40 years, which means some retirees will be left with nothing.

We must also be mindful that employers will be harmed under this nightmare scenario as well. Improving the multiemployer pension system is not only about retirement security; it's about saving jobs and protecting the competitiveness of America's workplaces. As elected policymakers, we have a responsibility to take action and help prevent the worst from happening.

It has also become clear that there are no easy answers, despite what some may suggest. Our goal is to strengthen multiemployer pensions. Part of that effort must include finding ways to encourage new employers to join the system. Raising contributions and premiums to punitive levels will undermine this important goal. In fact, I fear it will destroy jobs and drive even more employers out of the system, exacerbating the problems that already exist.

We need to find a better way forward. While we face significant challenges, I am hopeful we can enact meaningful solutions before it's too late. Members from the labor and management communities have united behind a comprehensive proposal to reform the multiemployer pension system. Their work has been vital to this debate and encouraged members on both sides of the aisle.

I've also had a number of positive conversations with the senior Democratic member of the subcommittee, Representative Rob Andrews. We share a commitment to working together and making the tough choices that are necessary. America's workers, employers, and retirees deserve no less.

I know this is extremely difficult for every man and woman involved. Promises were made and lives were planned believing those promises would be kept. I cannot fathom the anxiety and frustration you must feel, but I hope you will work with us—not against us—was we try to preserve the multiemployer pensions you and millions of Americans rely upon. I will now recognize my colleague Mr. Andrews for his opening remarks.

Mr. ANDREWS. I thank you, Mr. Chairman. I thank you for your continued courtesy and cooperation and thank the witnesses for giving us their time this morning.

Almost everything we do around here every day is about politics. We spend an enormous amount of time, particularly the last 5 weeks, trying to say who is responsible for this problem and that problem and one side try to gain the advantage over the other.

This is one of the few things we are doing around here that is not about politics. The easy political thing to do here is for the two sides to square off and accuse each other of wanting to cut the pensions of hardworking Americans.

It is very tempting; it is very easy; it is very wrong. It is very wrong.

The harder thing to do is to work together to try to fix this problem. What is this problem?

Well, as I see it, this problem is about someone who worked very hard his or her whole life wiring up schools, or driving a truck, or cutting meat in a supermarket, or building houses, or working in a chemical plant; someone who has worked very hard for his or her whole life and they are counting on the fact that the pension they were promised will be there for the rest of their life, and if provided for, it will be there for their spouse and their survivors.

That promise is in jeopardy today, not because anybody wants it to be; not because, in my opinion, because people have mismanaged. I think there have been some mismanaged funds but I think by and large this is not a problem of mismanagement. It is a problem of a horrendous economic situation that crested in 2008, about 5 years ago.

People stopped building houses. They stopped building convenience stores and schools.

They stopped buying goods that are trucked over the country's roads. And as those things happened jobs bled out of the economy, profits bled out of employers, and we got ourselves to a situation where the amount of money being paid into those pension funds in many cases was insufficient to cover the benefits that are being paid out and that will be paid out in the future. That is the problem.

There is a harsh reality that if—if something is not done for some of those plans—some, not all—that we will reach a day when the plans will cease to exist and they will be turned over to the Pension Benefit Guaranty Corporation. What that generally means, not always, but what it generally means is a 60 percent benefit cut for people who are receiving pensions. Sixty percent.

That is what we are here to avoid today. That is what we need to work together to accomplish.

And I am pleased that we have four dedicated, sincere, able individuals here to talk to us this morning about their ideas. Later we will be putting some statements in the record from others who are not physically present to testify but who have things to say about this. And we will be working together to try to find ways to address this problem.

If we want to do the politics of this it is pretty simple: We will take a position, the other side will take a position, and nothing will happen. Nothing. And it is my sense that if that happens a lot of innocent people who worked hard their whole lives will lose an enormous amount of their pensions.

We are not going to let that happen. We are going to do the best we can to work together to find a fair, reasonable solution, and I hope this morning contributes to that.

Thank you.

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 materials referenced during the hearing to be submitted for the official hearing record.

It is now my pleasure to introduce our distinguished panel of witnesses.

First, Ms. Carol Duncan—thank you for coming all the way across the country—is the owner and president of General Sheet Metal Incorporated in Clackamas, Oregon. Ms. Duncan is also testifying on behalf of Sheet Metal and Air Conditioning Contractors' National Association.

Welcome.

Mr. David Certner is the legislative counsel and director of legislative policy for government affairs for AARP in Washington, D.C. He serves as counsel for the association's legislative, regulatory, litigation, and policy efforts.

Welcome, Mr. Certner.

Mr. Sean McGarvey is the president of the building and construction trades department of the AFL–CIO in Washington, D.C. He also serves as the chairman of the board of directors for the National Coordinating Committee for Multiemployer Plans.

And welcome, Mr. McGarvey.

Mr. Tom Nyhan is the executive director and general counsel of the Central States Southeast and Southwest Areas Pension Funds, headquartered in Rosemont, Illinois. The pension covers more than 416,000 plan participants.

Before I 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; when you time is expired the light will turn red. At that point I will ask you to wrap up your testimony as best you can.

After everyone has testified members will each have 5 minutes to ask questions.

I will now begin with Ms. Duncan?

STATEMENT OF MS. CAROL DUNCAN, PRESIDENT, GENERAL SHEET METAL WORKS, CLACKAMAS, OREGON

Mr. DUNCAN. Thank you, Chairman Roe, and Ranking Member Andrews, and members of the subcommittee, for holding this hearing. I truly appreciate your bipartisan efforts.

My name is Carol Duncan. I am the CEO and president of General Sheet Metal out of Clackamas, Oregon. We are a small business, employing between 60 and 100 craftspeople. We perform both public and private work in several divisions, including mechanical, architectural, and manufacturing.

I am pleased to be here today representing SMACNA and my company.

General Sheet Metal was founded in 1932 and purchased by my father and my uncle in 1972. I started with the company when I was 21 and recently purchased my father out, becoming the sole owner.

I would also like to mention my brothers own a roofing company and contribute to two defined contribution plans, also. My husband worked 47 years in the construction industry and now draws his retirement from two construction industry plans.

My daughter, who just finished college, worked for me during the summers and is interested in becoming a third general family business owner. However, unless something is done to address the unfunded pension liability, I am not sure that is the best advice a mother could give.

My company pays into two defined pension benefit plans—a national plan in critical status and a local plan in green status but with $178 million unfunded vested benefits. That might be more than all the value of all the contributing contractors in the plan.

My recent contributions totaled $1.5 million to our local plan and over 500,000 to our national plan. Yet, we are liable for contributions far beyond that.

General Sheet Metal's contributions to the national plan in 2011 were 149,000, but my withdrawal liability for that year alone increased by 280,000—almost double my contributions. As withdrawal liability grows, it can outpace the value of a company, especially in small, family-owned businesses.

Employers keep making higher contributions every year but the hole keeps getting deeper. It is important to know that the employees are doing their part, too. They have agreed to lower accrual rates. Some have taken new funding increases out of their paychecks to help the contractors stay more competitive. But this alone hasn't done it.

I run a successful business, but unfunded pension liability results in an uncontrollable uncertainty that affects my major business decisions every day. For example, negotiating with my banker or my surety for increasing operating lines or bonding capacity requires me to educate them on this issue, and I can tell you firsthand that no matter how much I explain or educate them their discomfort with my company not being able to realize—their discomfort with the unfunded liability holds my company back from realizing its full potential.

It would be hard if not impossible to sell my company because of the pension liabilities. And although I have key employees who expressed an interest in becoming part owners, even they may not be willing to invest, given the risk and uncertainty of the pension liabilities.

In the 1990s, when the economy and the stock market were booming, our local plan exceeded 100 percent funding. Back then, tax law prevented the plans from building reserves, so benefits were increased. Congress addressed the overfunding issue, but those benefit improvements cannot be changed and now they are part of the plan's unfunded liabilities.

As we look for solutions we must stop digging the hole; and we are focused on more stable models for the future. Oregon Business Magazine rated GSM as one of Oregon's top companies to work for in 2010 and 2012, and it gives me great satisfaction to provide our employees quality wages, health care for their families, and a secure retirement that many others don't.

Therefore, I am interested in new plan designs that would offer the best characteristics of the defined-benefit plan but would not expose my business to additional pension liabilities. Employers can't continue to be the backup for stock market performance, nor can we be dependent on the volatility of other employers in the plan.

I, along with SMACNA, support the Solutions Not Bailout proposal developed over 18 months with both labor and management working together. We are not asking for taxpayer bailout. It is a self-help plan for plans, and also relieving the stress on the PBGC.

Let me finish by saying when a mother has second thoughts about turning over her business to her daughter and when unfunded pension liabilities overshadow the value of a company, something is wrong.

Thank you, and I would be happy to answer any questions.

[The statement of Ms. Duncan follows:]

The United States House of Representatives

Committee on Education and the Workforce

Subcommittee on Health, Employment, Labor and Pensions

October 29, 2013

Strengthening the Multiemployer Pension System:

How Will Proposed Reforms Affect Employers, Workers, and Retirees

Testimony of

Carol Duncan

Chief Executive Officer, General Sheet Metal

Clackamas, Oregon

Chairman Roe, Ranking Member Andrews and members of the Subcommittee it is a privilege to appear before you today on this important topic. I am pleased to hear that this Subcommittee has been united in trying to find a solution to the complex issues facing multiemployer plans. Thank you for your persistence and for your bipartisan efforts.

Introduction:

My name is Carol Duncan. I am the owner and CEO of General Sheet Metal (GSM) out of Clackamas, Oregon. We are a small business employing between 60 to 100 craftspeople. We perform both public and private construction services in several divisions, including Mechanical, Siding, Roofing and Metal Fabrication. I have deep and strong personal and professional connections to the construction industry.

- My company was founded in 1932, purchased in 1972 by my father and uncle to provide sheet metal to two roofing companies they operated. I began working for the company when I was 21 and just recently completed the buyout of my father.
- My brothers own the roofing company that my father and uncle started in 1950. Their firm also contributes to two defined benefit pension plans.
- My husband retired after 47 years in the industry and draws his retirement benefits from construction industry plans.
- My daughter, who just finished college, worked for me during the summers while she was growing up and has consistently expressed an interest in being the third generation family business owner. But without some structural changes to pension law, I'm not sure I should encourage her to do that. We run a successful business but the defined benefit plans GSM contributes to have unfunded plan liabilities that creates an uncertainty that I am unwilling to pass on.

I am here today also representing the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA). SMACNA was founded in 1943 and is supported by more than 4,500 construction firms engaged in industrial, commercial, residential, architectural and specialty sheet metal and air conditioning construction in public and private markets throughout the United States. SMACNA contractors specialize in heating, ventilating and air conditioning; architectural sheet metal; industrial sheet metal; kitchen equipment; specialty stainless steel work; manufacturing; siding and decking; testing and balancing; service; and energy management and maintenance. SMACNA has 103 national and international chapters.

On the pension issue, SMACNA has worked with two coalitions. SMACNA is pleased to have worked closely with the Retirement Security Review Commission (the Commission) created by the National Coordinating Committee for Multiemployer Plans (NCCMP). The group is comprised of representatives from over 40 labor and management groups from the industries within the multiemployer community and spent 18 months in study and discussions before developing a comprehensive set of recommendations for reforms to strengthen the system. SMACNA stands in full support of the recommendations outlined in the Commission's final report titled, "Solutions Not Bailouts."

According to the 2011 PBGC Data Table, Construction industry plans comprise 55% of all multiemployer plans (MEPPs), approximately 816 out of 1475 plans nationwide. Thirty-seven percent of MEPP participants, approximately 3.9 million, are in construction industry plans. Construction industry plans vary by asset value, number of participants, number of employers, and funding status. For the 2011 plan year, an NCCMP survey showed approximately 56% were in so-called the green zone status, 26% were in endangered status, and 18% were in critical status.

The numbers speak for themselves; construction industry employers are big stakeholders in multiemployer plans. SMACNA helped form and participated in a construction employer coalition, "Construction Employers for Responsible Pension Reform." CERPR is comprised of eight construction employer associations representing the interests of approximately 34,000 construction employers. Those employer groups include the Associated General Contractors of America, Association of the Wall and Ceiling Industry, the Finishing Contractors Association, the International Council of Employers of Bricklayers and Allied Craftworkers, the Mechanical Contractors Association of America, the National Electrical Contractors Association, and the Sheet Metal and Air Conditioning Contractors' National Association, and the Association of Union Constructors. These associations represent the country's most responsible employers, the vast majority of which are small family-owned businesses. However, the real and growing issue of pension plan insolvency affects large and small employers alike.

Background:

Multiemployer pension plans are mature plans. They depend on income from two main sources to pay benefits, investment returns and employer contributions.

Pension funding contribution rates are based on information from plan trustees. Collective bargaining parties negotiate over plan contributions or on a total compensation package, but not over plan design. Once the bargaining agreement takes effect, employers are legally bound to make the payments as long as they are obligated to that collective bargaining agreement.

Employers contributing to multiemployer plans are not allowed under any circumstances, to legally defer payments to their respective pension trust funds. Construction employers cannot withhold payments to funds for capital improvements, for stock dividends, for executive pay, or wage increases, nor can funds go to any company or any union general treasury. Further, the Pension Protection Act, PPA, includes strict funding rules with adverse consequences for employers for noncompliance.

When contractors are delinquent in their contributions, plan trustees have a legal, fiduciary responsibility to take all reasonable steps to collect the delinquent amount.

Once retirement benefits are promised and there is not enough money in the plan to cover them, a plan has unfunded liabilities. It is normal for a plan to have a certain amount of unfunded vested benefits because the plan can accumulate the funds needed over time to pay future benefits. However, too many plans face funding and demographic issues that worry the employers contributing to them. The committee has reviewed the causes of the challenges faced by multiemployer pension plans in previous hearings but I want to re-emphasize that funding issues are beyond the control of contributing employers and, significantly, employers ultimately hold all the risk for plan funding. The majority of issues cannot be solved without structural changes to the defined benefit system.

Law prevented plans from accumulating reserves: In our local plan, in the 1990s when stock market returns were exceptional and work was good, plan funding approached 120%. I watched as our trustees increased benefits for participants. The plan increased the accrual rate and offered an early retirement benefit. To be clear, federal tax policy prevented plans from building reserves. Employers were legally bound by their collective bargaining agreements to make their contributions, even at a time when their contributions would have caused plans to exceed the "maximum deductible" limit. Suspension of contributions was not allowed and employers ran the risk of incurring penalties and the assessment of an excise tax on the contributions. <u>Although tax laws were changed, those benefit improvements cannot be changed and now they are part of the plan's unfunded vested benefits.</u>

Two historic market events within a decade: The market contraction between 2000 and 2002 resulted in a decline in both the local plan and the national plan and contribution rates increased. Many multiemployer plans that had been well-funded were looking at the possibility of reaching a funding deficiency. If a plan were to reach to funding deficiency, employers faced additional minimum funding obligations and related excise taxes. This funding crisis was mitigated by The Pension Protection Act (PPA) of 2006. PPA was designed to give plans more tools and time to address their funding problems.

The PPA was a good piece of legislation but in 2008, the stock market plummeted before plans were able to take advantage of the provisions to get the plans on track to better funding. In addition, it proved inflexible in this unexpected, additional crisis so soon after enactment. The national plan sustained losses of approximately 28 percent. In the best market environment, it would take 10 years or more to recover from the losses of 2008. Employer contributions have gone up. Since 2008, market gains have been uneven and any employer contributing to these plans worry about the stability of the equity markets in the future.

Economic downturn/Employer contributions: During any economic downturn, the construction industry is one of the first segments of the economy to feel the hit and it is one of the last segments to recover. Plans count on income from contributing employers that is based on hours worked. When work is not available or when a contractor cannot win a job in head to head bidding, plans take a hit. As employer pension contributions increase to make up funding shortfalls in a plan, winning a contract award becomes more difficult. Still reeling from the most recent recession, construction still has the highest industry unemployment of any industry and competition is stiff.

Unfavorable demographics: The number of retired participants drawing benefits is growing. Association data in a report SMACNA helped prepare in 2011 for the Department of Labor, the

IRS and PBGC, shows a loss of contributing contractors in several major construction industry associations. Plans are losing contributing employers, no new employers are coming into plans and many construction industry plans have a progressively unfavorable active participant/retired participant ratio.

Increasing and uncontrollable employer withdrawal liability a cause for concern

GSM currently pays into two defined benefit pension plans. We contribute to a national plan in critical status that is approximately 57% funded with scheduled contribution rate increases of 7% a year until at least 2017. That plan suffered an investment loss of approximately 28% in 2008. We also contribute to a local plan that is in the green zone but has $178 million in unfunded vested liabilities.

In recent years, GSM has contributed $1.5 million to our local plan and over $500,000 to the national plan. Yet, we're liable for amounts far beyond those contributions.

In the last year alone, GSM's contributions to the national pension plan were $149,000 but my withdrawal liability for the year increased by $280,000 – almost double my contributions. I'm making higher contributions but getting in a deeper hole with no idea or control over how much more my exposure will grow. As withdrawal liability grows, it can outpace the value of a company, especially in the case of a small family-owned business. GSM's withdrawal liability for its share of unfunded pension liabilities in both plans is almost $3 million even though GSM has made all its substantial required pension contributions.

The hard truth is, a series of factors over which I have no control have the potential to create even more plan underfunding: another downturn in the construction economy, another stock market event, increasing retirements, and withdrawal of contractors. While some construction businesses fail, others decide they need an exit strategy and I am forced to worry about the potential of a plan collapse or mass withdrawal even though I have grown GSM into a very successful business.

The government and the taxpayer share this risk. The PBGC already faces financial challenges that would be exacerbated by additional plan failures.

Members of the committee might think the only time a company would worry about the amount of withdrawal liability is when a company plans to withdraw and has to pay it. That may have been true when the Multiemployer Pension Plan Amendments were enacted in 1980, but it is certainly not true today.

Securing bank loans and bonding is more difficult: Withdrawal liability makes negotiating bank loans and securing bonding, both of which are necessary to operate a construction business, much harder to secure. This is a huge issue for small employers. The Financial Accounting Standards Board (FASB) requires detailed information on company pension plan contributions on financial statements. Even for a successful business with no intention of withdrawing from any of the plans to which they contribute, the information is sometimes misleading, raises questions and is difficult to properly explain.

Family transitions and selling a business hindered: When it is time for a business owner to retire, selling the business becomes problematic because a firm's share of pension plan unfunded liabilities (withdrawal liability) can exceed the value of the company. Successful business owners hesitate to transition their business to their children for the same reason. New employers don't want to become party to a collective bargaining agreement where they would become responsible for unfunded pension liabilities, therefore the plan cannot benefit from new employers and participants and man hours paying into the plan.

Structure of current DB plans: Members of Congress outside of the committee may not be aware that as the number of businesses in a plan dwindles, the liability for the remaining employers goes up. Every time an employer goes bankrupt or closes its doors, the remaining employers assume a proportional share of that employer's liability. When there are too few employers left standing, the fund and the remaining employers are no longer viable.

Higher contribution rates don't work for anyone: As unfunded liabilities go up more money has to go into the plan. Employers are no longer able to absorb increased contribution rates if they want to remain competitive and win bids. The result has been active employees have also been hurt. In addition to having reductions in accruals rates, they have lost wage increases and some have even taken a reduction in their paychecks as well. They do this to help to pay for the increased contributions required by remedial plans, in order to help the employer stay competitive in the marketplace.

Under the current structure, contributing employers hold all the risk for underfunded plans. This system is no longer sustainable.

Solutions:

I want you to know that Oregon Business Magazine rated GSM as one of Oregon's top companies to work for in 2010 and 2012. I feel good about taking care of our employees by paying them a living/saving wage, as well as providing good healthcare benefits and I want to continue to be able to do that.

The purpose of this hearing is to find ways to strengthen multiemployer plans and I am here today to advocate for some reasonable solutions. My hope is that the system can be reformed so that my business will be viable for the long-term and that pension benefits already earned can be saved without any bailout from the federal government. Multiemployer plans must remain solvent to keep their liabilities from going to the PBGC. For plans to remain solvent, contributing employers must continue to thrive.

I am very interested in new plan designs going forward that would offer new, more stable models for the future. I mentioned SMACNA participated in the Retirement Security Review Commission and supports the recommendations in *Solutions Not Bailouts*. The proposal outlines plan designs that maintain the best characteristics of a defined benefit model but that would not put my business at risk.

It is no longer feasible for employers to be the backup for stock market performance and my business cannot continue to be dependent on the viability of other construction employers in the plan.

GSM and SMACNA support the *Solutions Not Bailouts* proposal developed over 18 months with both labor and management around the table. I want to highlight

- It does not depend on a taxpayer bailout
- It is self-help for plans, providing them with a range of options
- It tackles all aspects of multiemployer funding issues – from plans that simply need adjustments to the PPA, to plans that need dramatic action ahead of insolvency to save precious benefits
- It would also relieve stress on the PBGC

We hope you find Solutions Not Bailouts a valuable roadmap for bipartisan solutions.

Conclusion:

Let me finish by saying, you know something is wrong when pension liabilities overtake the actual value of a company and when a mother has second thoughts about turning over a successful business to her daughter. My hope is that the committee will move expeditiously, before more construction industry firms go out of business or simply close their doors. Contributing employers and their union partners know how to make the bargaining process work. Negotiating is familiar territory for labor and management representatives who serve as Plan Trustees, but we need the structural changes recommended in *Solutions Not Bailouts*.

The PPA expires in December of 2014. That is a critical date but I would hope the Congress could act sooner. Plans are unstable and companies are at risk. Plans have taken action to improve their funding status as allowed under the PPA. New tools are needed to change the current system to match today's economic realities.

Thank you and I would be happy to answer any questions.

Chairman ROE. Thank you, Ms. Duncan.
Mr. Certner?

STATEMENT OF MR. DAVID CERTNER, LEGISLATIVE COUNSEL AND LEGISLATIVE POLICY DIRECTOR, AARP GOVERNMENT AFFAIRS, WASHINGTON, D.C.

Mr. CERTNER. Mr. Chairman, Mr. Andrews, and members of the committee, I am David Certner, legislative counsel for AARP. And thank you for inviting us to testify today. We appreciate the opportunity to share our views on steps to strengthen multiemployer pension plans.

AARP recognizes the effort put forward by NCCMP in its Solutions Not Bailout report to address the potential insolvency of some deeply troubled plans. Under insolvency, participants would only receive a very low insurance amount from the PBGC. AARP agrees that doing nothing in the face of this problem is not a viable option.

However, the centerpiece of the NCCMP plan is a proposal to give multiemployer plans the legal authority to drastically cut the pension benefits of current retirees to as little as 110 percent of the PBGC insurance levels. AARP has concerns with several aspects of the plan but we are most alarmed at the proposal to grant plan trustees broad discretion to cut accrued benefits for participants, including the unprecedented step of reducing the pension benefits of retirees already receiving and living on their pensions. Not surprisingly, AARP strongly objects to this proposal.

This would mean an 80-year-old retiree with 1,000-a-month pension could lose more than one full month's worth of income every year. A retiree with a modest $24,000-a-year pension, or $2,000 a month, could see a whopping 41 percent cut, to about 1,180 a month. That is a recipe for drastically reducing the living standards of a median-income retiree to an income barely above the poverty level.

The simple question is this: How exactly are these retirees expected to make up that lost income? The NCCMP report attempts to preserve defined-benefit retirement security, but security is illusory if your benefits can be cut after you have already retired. Far from boosting confidence in the plan, the broken promises to retirees would damage workers' trust they will collect their own pension when they retire.

Proponents fear potential insolvency. However, this is not by itself a sufficient argument for cutting retiree benefits and upending ERISA protections.

If ERISA stands for anything, it stands for the proposition that already-accrued benefits cannot be reduced. The anti-cutback rule is perhaps the most fundamental of ERISA's protections. Accordingly, we must explore alternatives and focus on strategies that increase the PBGC's capacity to assist plans and protect participants.

We urge the committee to explore different approaches, spelled out in greater detail in our written statement, including the following: One, require steps plans can take now. The Pension Protection Act permits distressed plans to cut adjustable benefits but this has not always happened. Plans in critical status should be required to take all steps currently available before any other cuts to accrued benefits are every considered.

Two, enhance the ability of the PBGC to assist troubled plans. If the PBGC had the authority and financial resources to step in sooner with more tools at its disposal it could help stave off insolvency, minimize participant losses, and mitigate its own liabilities. Our written statement suggests potential ways to use plan mergers, alliances, and partition to leverage support from healthy plans.

Three, increase funds for the PBGC. Premiums are currently set at the low level of 12 per year per participant—inadequate to cover the PBGC's liabilities—and with insurance levels that are too low to provide retirement security. Improving the PBGC's capacity to handle its liabilities, intervene to assist plans, and to provide greater insurance protection should be a shared responsibility among healthy plans, employers, participants, and Congress.

And fourth, increase revenue for the plans. Congress has provided long-term loan assistance to some industries that have been decimated by the financial crisis. Similar federal financial assistance, such as low-interest loans, should be an option here as well.

Permitting retiree benefit cuts is bad enough, but to propose standards for making the cuts are deeply flawed and, quite frankly, unfair. Our written statement contains a detailed critique, but in short, the due diligence standards are heavily biased towards cutting retirees with inherent conflicts of interest.

Retirees have no meaningful voice throughout the process. The PBGC's scope of review is really more like a rubber stamp, and there are few details on how to protect retirees, mitigate the harshness of the cuts, or protect vulnerable populations. When the median multiemployer pension benefit received by retirees is only about $8,300 a year, AARP would contend that most retirees will qualify as "vulnerable."

And in closing, AARP simply rejects the premise that cutting retiree benefits is an imperative, and we advocate instead the adoption of alternative approaches.

Again, thank you, and I would be happy to answer any questions you may have.

[The statement of Mr. Certner follows:]

Real Possibilities

TESTIMONY OF
DAVID CERTNER

SUBMITTED TO THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS
EDUCATION & THE WORKFORCE COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

ON

STRENGTHENING THE MULTIEMPLOYER PENSION SYSTEM: HOW WILL PROPOSED REFORMS AFFECT EMPLOYERS, WORKERS, AND RETIREES?

OCTOBER 29, 2013

AARP
601 E Street, NW
Washington, DC 20049

For further information, contact:
Deborah Chalfie
AARP Government Affairs
(202) 434-3723

Introduction

On behalf of our more than 37 million members and all Americans age 50 and older, AARP appreciates the opportunity to testify today on steps to strengthen multiemployer pension plans.

AARP is a nonprofit, nonpartisan organization that strengthens communities and fights for the issues that matter most to families, including healthcare, equal employment opportunity, and retirement security. For decades, AARP has also worked to preserve and strengthen defined benefit pensions as well as ERISA's protections for pension participants and beneficiaries. Defined benefit pension plans have proven themselves to be reliable, efficient, and vital mechanisms for ensuring retirement income security. Unfortunately, such plans increasingly have been supplanted by defined contribution arrangements such as 401(k) plans, which shift all of the investment and longevity risk to employees. AARP believes we should take needed steps to help preserve those defined benefit plans still in operation, explore ways of incorporating some of their participant protections and efficiencies into the defined contribution system, and further improve the current system to better ensure retirement security for all.

The "Proposed Reforms" referenced in today's hearing title presumably reflect those offered by the National Coordinating Committee for Multiemployer Plans (NCCMP) Retirement Security Review Commission in their "Solutions, Not Bailouts" report.[1] However, no bill has yet been introduced, nor has any draft bill been widely shared for review and comment. If such a bill emerges, AARP looks forward to commenting more specifically.

AARP appreciates the tremendous effort put forward by the Retirement Security Review Commission of the National Coordinating Committee for Multiemployer Plans (NCCMP plan). It must be recognized that some deeply troubled multiemployer plans face potential insolvency within the next two decades, or sooner. If this happens, only very low levels of insurance from the Pension Benefit Guaranty Corporation (PBGC) for multiemployer plans will be available – a *maximum* of $12,870 for a 30-year participant – and even that amount is not guaranteed due to the structure of the multiemployer insurance formula and because the PBGC's multiemployer insurance fund itself has far less than it needs to pay projected claims. In the event that the PBGC fund runs short, participants would receive less than the insured amount, or possibly even nothing at all. AARP agrees that "doing nothing" in the face of these threats is not a useful option.

The NCCMP proposal lays out in detail the forces, risks, and liabilities weighing on both employers and employees in multiemployer plans. It seeks to keep troubled plans from becoming insolvent so as to ensure that working-age active participants who are contributing to the plan and retirees who are already receiving their hard-earned pensions receive benefits that are above PBGC-insured levels. However, AARP has deep concerns about several aspects of the plan; chief among them is that it would grant plan trustees broad discretion to cut accrued benefits for participants – *including the unprecedented step of reducing the pension benefits of retirees in pay status* – to achieve solvency. Not surprisingly, AARP strongly objects to this element of the proposal. We are also troubled that such a fundamental diversion from pension law could move quickly through the Congress with a minimum of public attention. We urge this Committee to more closely examine this proposal to avoid undermining one of the central protections for participants under ERISA and to instead consider many other available alternatives.

---

[1] R. DeFrehn & J. Shapiro, *Solutions not Bailouts: A Comprehensive Plan from Business and Labor to Safeguard Multiemployer Retirement Security, Protect Taxpayers and Spur Economic Growth* (National Coordinating Committee for Multiemployer Plans, Feb. 2013), *available at* http://webiva-downton.s3.amazonaws.com/71/59/b/39/1/Solutions_Not_Bailouts.pdf [hereinafter *NCCMP Proposal*].

An Unprecedented Attack on Promises to Retirees

The centerpiece of the NCCMP plan is a proposal to give multiemployer plans the legal authority to drastically cut the pension benefits of *retirees*, people already receiving and living on their pensions. It is based on the contention that plans have already done everything else they can possibly do and that "[b]enefit suspensions that preserve benefits above the [very low] PBGC guarantees are preferable to plan insolvency."[2] It does this by offering a benefit floor that is no lower than 110% of the PBGC's insurance level.

Here is what this would mean. Because of the very different way the multiemployer formula is structured compared to single employer plans, even participants whose pensions are under the maximum insurance amount of $12,870 would face cuts. Under the NCCMP's 110% plan, an 80-year-old retiree with a modest $12,000/year pension after 30 years of service – $1,000/month – could instead receive as little as $10,984/year, a total cut of $1,016/year. That represents a loss of more than one month's worth of income every year. How does that retiree pay for food, medicine, housing, and utilities for that lost month? How, exactly, is that retiree expected to make up for that lost income? A retiree with a $24,000/year pension, or $2,000/month, could have her or his benefits cut a whopping 41%, down to $1,180/month, or $14,160/year. That is a recipe for drastically reducing the standard of living of a median income retiree to an income barely above the poverty level. Both of these examples are pensioners with 30 years of service – a lifetime of pension earnings that deserves better. Retirees with fewer years would receive even less. Presumably, surviving spouses would have their survivor pensions cut as well.

Proponents state that, if nothing is done, participants and retirees in an insolvent plan could receive the inadequate PBGC insured level of benefits, *without* the 10% premium. However, this is not a sufficient argument for cutting retiree benefits and upending ERISA protections. If ERISA stands for anything, it stands for the proposition that already accrued benefits cannot be reduced. The law provides that *future* benefits can be pared or frozen, but not benefits that have already been earned and vested. The "anti-cutback rule" is perhaps the most fundamental of ERISA's participant protections. As a result, we urge this committee to explore and institute alternatives, as well as focus on strategies that increase the PBGC's capacity to assist plans and its multiemployer plan insurance levels.

AARP understands that active employees have already shouldered reductions in the form of increased contributions and scaled-back future benefits. According to NCCMP, employers have also increased their contributions to the point of straining their competitive bidding for jobs. NCCMP is also concerned that the plans may reach a tipping point, prompting old employers to withdraw from the system and new employers to refrain from participating. In addition, NCCMP has expressed concerns that active workers may be prompted to abandon their participation for fear that they'll pay into plans but never see a retirement benefit themselves when they retire. All of these are legitimate concerns. And AARP would be the first to agree we should take all reasonable steps to help preserve defined benefit plans for the sake of retirement security of the workers. The reason is simple – everyone recognizes the value of DB plans that offer *defined*, guaranteed, insured benefits – an income stream that can't be outlived or reduced.

But, the retirement security offered by DB plans would become illusory if, after having worked a lifetime and earned that pension – which is, after all, income in the form of deferred compensation – your benefits can be cut after you've already retired. If pension benefits can be taken away after one retires, the fundamental value of a DB plan is lost. NCCMP has expressed concern that active workers may lose confidence and be unwilling to pay into an insolvent plan. However, AARP can

---

[2] *NCCMP Proposal, supra* n. 1, at 24.

imagine a similar if not greater loss of confidence for active employees who witness cuts to retirees' earned benefits. Some have also argued that cuts to retirees' benefits are a matter of internal equity between active workers, who have already seen benefit givebacks, and retirees, who have not. Far from creating a sense of equitable sacrifice, the broken promises to retirees may irreparably damage the trust active workers could have that they will collect their own earned pension benefit at retirement. It is also important to acknowledge that the proposal contemplates that the multiemployer community in the very near future will need to revisit these issues, either to create and substitute new plan designs or maintain the authority of these new plans to cut accrued benefits for active participants and retirees.

What is missing from the NCCMP proposal is an explicit recognition of the strong reasons against cutting accrued benefits for retirees or near-retirees. Historically, there has been a broad consensus that any plan modification that leads to benefit reductions should protect (hold harmless) retirees as well as near-retirees (e.g., those within 5-10 years of retirement age). For good reason: those in and near retirement are either already relying on that income, which is usually modest in amount, or have already made near-term plans in reliance on that income. In the case of retirees, most do not have any meaningful opportunity to return to the workforce or somehow generate new sources of income; in the case of near-retirees, they are deemed too close to retirement to be able to effectuate any significant change in career or retirement plans. It is widely viewed as simply unfair to change the rules of the game people have relied upon throughout their working careers.

Accordingly, other alternatives should be fully explored and deployed as an alternative to cutting *anyone's* accrued benefits. AARP believes that rather than considering abrogation of the anti-cutback rule, alternative measures must be considered and pursued.

Alternatives to Cutting Accrued Benefits

1. Require Steps Plans Can Take Now

AARP believes distressed plans should take all possible steps to rehabilitate themselves under current law. This has not always happened. For instance, according to a report earlier this year by an Independent Special Counsel for the Central States Pension Fund,[3] the fund's rehabilitation plan adopted two approaches available for employers and unions to adopt in their collective bargaining agreements to help improve plan funding. One permitted agreements to maintain benefits but required increased employer contributions. The other approach required the parties to agree to a less attractive menu of increased contributions (though not as high as the first option) and cutbacks in "adjustable" benefits such as early retirement provisions. Most employers and unions in the plan chose the first alternative. During Central States' 2012 rehabilitation plan update process, the pension plan staff reportedly advised the trustees that further "reasonable measures," above and beyond the increased contribution rates, were needed to forestall "possible" insolvency. Based on the fact they had already substantially increased employer contribution rates, raised the minimum age of retirement to 57, and reduced future benefit accruals, the trustees decided not to impose any further benefit reductions or contribution increases.

The Pension Protection Act's (PPA) grant of authority to cut back accrued "adjustable benefits" was a troubling development for AARP. However, as long as the PPA already authorizes these additional steps, which if taken might materially improve the condition of troubled plans, all reasonable measures should be *required* to be taken before any other cuts to accrued benefits are ever

[3] Quarterly Report of Independent Special Counsel (from David H. Coar to US Dist. Judge Milton Shadur) 4-5 (April 29, 2013), *available at* https://www.tdu.org/sites/default/files/CSPFSpecialCounselReportYearEnd2012.pdf.

considered. In this case, it would first be important for stakeholders and lawmakers to know exactly how much in savings and increased solvency could be gained by making these cuts.

Moreover, it is also important to note that the PBGC's projections of its own financial status do not assume that distressed plans have taken or will take all available steps to address their underfunding. In its five-year report to Congress earlier this year, the PBGC stated that it had to modify its modeling system to "reflect that many plan trustees have decided not to follow all of the plan steps under the law, a decision that is permitted under the 'reasonable measures' provision of PPA."[4] Thus, if all reasonable measures under current law were taken or required to be taken, it is possible that the PBGC's condition would also be better than projected.

2. Enhance the Ability of the PBGC to Assist Troubled Plans

When single employer plans undergo distress terminations, the PBGC receives any remaining plan assets, takes over the plan, and pays benefits directly to participants and beneficiaries. With multiemployer plans, generally, the PBGC can only step in once a plan becomes insolvent, in which case it has no assets. It makes "loans" to the plan, and the plan continues to pay benefits. If the PBGC could step in sooner, with more tools at its disposal, it might be able to stave off insolvency, minimize losses to participants, and mitigate its own liabilities. To better assist troubled plans, the PBGC needs the legal authority to act where it is lacking, and the financial resources to enable it to negotiate changes and restructure plans.

- **Mergers and Alliances** - AARP agrees with NCCMP that mergers and alliances with healthy plans should be encouraged, and not only for small plans. Yet, the NCCMP report states that although many smaller troubled plans could benefit from mergers with healthier plans, funding rules under the PPA and the PBGC's recently restrictive interpretation of its authority are barriers to allowing this to happen. To the extent that overly narrow interpretations of its authority are getting in the way of this potentially helpful strategy, AARP agrees that the PBGC's authority to facilitate mergers and alliances prior to insolvency should be affirmed. Lack of funds to intervene, however, would appear to be the larger obstacle. In any case, merging weaker plans into healthier plans is one promising approach.

  In addition, it would be worth exploring whether multiemployer or single employer plans with overlapping sponsors might be able to combine participants or assets in a way to materially assist troubled plans and still protect participants. Normally, the exclusive benefit and fiduciary rules would and should prevent transfers of assets from one plan to another; however, under very narrow circumstances, limited transfers of assets between one employer's plans are permitted with the goal of helping preserve benefits for retirees.[5] If it could be effective and make a difference, the possibility of transferring one employer's participants from one plan to another should be considered in order to increase the base of contributing active participants or otherwise protect retirees. Similarly, some employers and unions participate in more than one plan, some of which may be healthy and one of which may be distressed. Where the same employers and unions jointly trustee both healthy plans and troubled plans, Congress should consider allowing the PBGC to be able to compel a related healthy plan to contribute funds to a weaker plan, without violating ERISA. Certainly, healthy plans should not undertake steps that would put the better-funded plan at risk of underfunding. However, to the extent pooling assets and liabilities in this

---

[4] *PBGC Insurance of Multiemployer Pension Plans: Report to Congress required by the Employee Retirement Income Security Act of 1974, as amended* 2 (Jan. 22, 2013), *available at* http://www.pbgc.gov/documents/pbgc-five-year-report-on-multiemployer-pension-plans.pdf [hereinafter *Five-Year Report*].

[5] *See e.g.*, I.R.C. § 420 (transfers of excess pension plan assets to retiree health accounts).

way might work to save a portion of at-risk participants from cuts in accrued benefits, this step should be considered.

- **Partition** - The PBGC has rarely used its authority to partition the benefit obligations of employers who failed to make contributions or went bankrupt.[6] Assuming that the PBGC had the funds needed to partition off and cover participants whose employers no longer contribute, this step could improve the solvency of the plan for remaining participants. In the case of deeply troubled plans, though, it is unclear whether this remedy would be sufficient to restore solvency, because other factors have also contributed to the distress of these plans. However, partition might help staunch concerns about *further* withdrawals from the plan. Unfortunately, this strategy doesn't avoid benefit cuts, at least for those partitioned into the PBGC-assisted plan. Thus, it is critical that increases in the insurance levels covering all multiemployer plans accompany any partitions, whether done within a plan or as part of a merger.

- **Additional Authority** - The PBGC has little leverage to compel plans to improve funding levels. Congress should consider giving the PBGC greater authority, consistent with legal constraints, to compel troubled plans to take steps that would shore up their funding status and to take steps to better protect plan participants.

3. Increase Funds for the PBGC - A *Shared* Responsibility

In addition to enhancing the PBGC's authority to act, AARP also recommends measures to improve the health of the PBGC's multiemployer plan insurance fund, to ensure it is capable of handling its projected liabilities and addressing problems before they become crises. There is no getting around the fact that the PBGC needs additional funds. Premiums were recently increased in the MAP-21 legislation by $3 per participant, but are set at the still-too-low level of $12/year per participant beginning in 2013 – about what it costs to go to a movie. These premiums are wholly inadequate to cover the PBGC's liabilities. They also yield insurance levels that are far too low to provide retirement security to participants.

According to the PBGC, raising premiums to $120/year per participant would reduce the probability of the PBGC's insolvency by 2022 down to zero,[7] at least for plans now on the PBGC's books. Another roughly $120/year per participant would help finance multiemployer statutory insurance guarantees to at least double their current levels – to around $24,000/year. Given current low premium levels, there is room to improve PBGC financing.

Ultimately, the PBGC may need higher premiums, especially if Congress takes the position that the PBGC should be self-financing no matter what the circumstances. Restoring the PBGC's ability to handle its liabilities, intervene to assist plans, and provide greater insurance protection should be a shared responsibility.

- **Healthy Plans** - If healthy plans cannot absorb troubled ones, at a minimum increased PBGC premiums should be an option to help cover the PBGC's projected funding shortfall due to multiemployer plan insolvencies. Ideally, they should contribute an additional amount to help enable the PBGC to cover the costs of intermediate assistance measures and hopefully improved levels of PBGC insurance for multiemployer plan participants.

---

[6] *See, Challenges Facing Multiemployer Pension Plans: Evaluating PBGC's Insurance Program and Financial Outlook* 8, (Testimony of Joshua Gotbaum, PBGC Director, before the Health, Employment, Labor and Pensions Subcommittee of the House Committee on Education and the Workforce (Dec. 19, 2012)), *available at* http://www.pbgc.gov/Documents/PBGC-Testimony-Multiemployer-Plans.pdf.
[7] *Five-Year Report, supra* n. 4, at 6.

- **Employers** - The NCCMP plan implies that employers cannot bear additional costs such as large premium without triggering withdrawals and other severe consequences. Employers may not be able to afford substantial increases in their contributions to the plan, but employers' ability to contribute a more reasonable amount in premiums should be an option.

- **Participants** - Premiums at current levels also yield insurance levels that are too low to provide retirement security to participants. AARP objects to cuts in participants' accrued benefits, but some type of small assessment to participants could be considered as an option. In the past, some retiree health plans have started to charge premiums or other forms of cost-sharing of retirees, even though the plans were earlier offered as requiring no contributions from retirees.[8] This was possible because retiree health plans are not protected by an anti-cutback rule. Faced with the threat of being forced to accept benefit cuts of one-third or worse under the NCCMP proposal, it is possible that retirees and other participants might welcome the chance to better insure their pensions, especially if they would receive much higher levels of insurance protections. For example, if all of the more than 10 million participants in multiemployer plans were required to contribute $120 per year or $10/month, it would raise more than $12 billion dollars over the next 10 years, thereby helping to finance more adequate levels of insurance. However, any assessment on retirees would need to recognize that most retirees receive pensions that are, at best, modest.

- **Congress** - From the standpoint of national retirement policy, Congress should help support the preservation of defined benefit plans and ensure that no one's hard-earned pensions can be undercut. Since Congress currently sets the PBGC's premiums and limits its ability to manage its liabilities, Congress should share some role in shoring up the finances of the PBGC, especially if all other stakeholders are pitching in. The history of ERISA is based on the importance of protecting those who have worked and earned a pension, particularly for those who had the bad fortune of retiring from a struggling company or industry. Congress should consider additional financing to help close the PBGC's projected deficit and improve multi-employer insurance protection for retirees, which is currently much less than for retirees of single employer plans.

4. Increase Revenue for the Plans

The NCCMP report is called *Solutions, not Bailouts.* Pension plans, and the PBGC, are set up to be self-financing, without the need for federal funds. And for the most part, they have been. Some of the same plans that are so troubled now were adequately funded at the beginning of 2008, when the financial meltdown decimated business and jobs for many of the industries such as construction that sponsor multiemployer plans. The meltdown also led to steep losses in plan asset values and returns, and it produced the need for an extended, stimulative, low-interest rate environment, which is placing inflated funding obligations on employers.

Given that federal policy has played a role in many of the developments that have placed multiemployer plans at risk of insolvency (e.g., oversight and industry deregulation, pension policy changes, interest rate assumptions), combined with the fact that Congress has provided long-term loan assistance to some companies and industries decimated by the financial crisis, some similar federal assistance should be an option.

[8] *See generally*, Employee Benefits Security Administration, U.S. Dept. of Labor, *Can the Retiree Health Benefits Provided By Your Employer Be Cut?*, *available at* http://www.dol.gov/ebsa/publications/retiree_health_benefits.html.

- **Low-interest loans** - Until jobs and higher interest rates return to levels that help troubled plans regain their financial footing, Congress should consider making low-interest loans available to the plans, such as by requiring the banks and investment houses that received TARP funds to make long-term, low-interest loans to the plans at the same Federal Reserve discount rate they use to loan each other funds.

- **Private financing with public guarantees** - The challenges facing distressed pension plans call for creative financing models and partnerships. For instance, without endorsing particular proposals, AARP notes that a 2011 Milken Institute report recommended some ways to involve private capital markets.[9] Previous hearings by this Committee have explored, for example, whether there might be a way to encourage investment banks or hedge funds to provide federally guaranteed loans to plans earlier so as to stave off insolvency due to cash flow issues, or even to establish a federal credit facility that would infuse funds to help offset the contributions that employers are having to make for orphans and others in the plan for whom an employer is not contributing.[10] The NCCMP proposal puts forward the idea of federally guaranteed bond offerings that companies could use to pay off their unfunded legacy costs. Options such as these should be fully considered before the hard-working employees and retirees who rely on these plans should be asked to accept cuts in already accrued benefits.

AARP would suggest that the PBGC – which has the institutional expertise, the data, and the actuaries to crunch the numbers – could be charged with fully developing and analyzing these ideas, with some numbers attached. Then, Congress could adopt such measures as part of any legislation to stabilize multiemployer plans and protect plan participants and beneficiaries.

Cutting Accrued Benefits

The proposed standards and process for making cuts to participants' accrued benefits are deeply flawed and unfair. Some have urged AARP and other participant advocates to propose safeguards that would make the NCCMP's benefit-cutting process more fair. However, AARP rejects the premise that cutting retiree benefits is an imperative, and advocates instead the adoption of the many alternative approaches that are available. The following critique of the "benefit suspension" proposal illustrates the significant shortcomings of the proposal that fails to be even minimally protective of participant rights.

1. Unbridled Discretion by Plan Trustees

At the outset, the NCCMP proposal states that certain criteria would need to be met before a plan would be eligible to cut accrued benefits. It would need to be so distressed as to face a projection of insolvency in 20 years or less, the cuts in benefits must fix the problem and restore solvency, and the "plan sponsors and trustees [must] have exercised due diligence in determining that suspensions are necessary, including having taken all reasonable measures to improve the plan's funded position."[11]

---

[9] P. Angkinand, B. Belt, *et al.*, *Protecting Private Pensions and the Public Interest: Solutions for the Shortfalls in Employer-Sponsored Defined-Benefit Plans* (Apr. 2011), *available at* http://www.milkeninstitute.org/pdf/FI_ProtectingPensions.pdf.

[10] *See e.g.*, *Assessing The Challenges Facing Multiemployer Pension Plans* 39-40, 51, Hearing before the Health, Employment, Labor and Pensions Subcommittee of the House Committee on Education and the Workforce. (Transcript) (June 20, 2012), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg74621/pdf/CHRG-112hhrg74621.pdf.

[11] *NCCMP Proposal*, *supra* n. 1, at 24. AARP reads this last criterion as requiring plans to have already taken "all reasonable measures" *before* determining cuts are necessary; to the extent that it does not, it should be modified to do so. Every plan should consider other measures rather than consider cuts to accrued benefits.

First, for purposes of the drastic measure of "benefit suspension" authority, one would think that such an extreme measure would only be considered on the brink of imminent insolvency, for instance, less than 5-7 years. Supporters of the NCCMP proposal would argue that having to wait that long would mean that the retiree cuts would not be efficacious in staving off insolvency. However, as discussed earlier, it is not at all clear to AARP that any plan that can so drastically cut the accrued benefits of people already retired is still a "defined benefit" plan worth saving. Cutting the benefits of 80-year-old retirees today to a level that is not much higher than PBGC levels is not an appropriate step for addressing shortfalls that are two decades away. Plans that are operating at a deficit but have 15-20 years until they face insolvency may be able to obtain low-cost financing or take other steps that would significantly "bend the curve" away from insolvency, thereby lessening the need for more draconian measures.

Second, the plan as proposed grants too much discretion to plan trustees. Nothing is required. What constitutes "reasonable measures" is not specified, but would seem to be encompassed within the list of "illustrative" indicators of "due diligence," i.e., considering factors such as contribution levels, future accrual levels, the impact on ancillary benefits, etc. Yet, as noted earlier, nowhere is there a requirement *first* to have taken all rehabilitative measures permitted by law. Instead, having granted that plans should be required to exercise due diligence to be eligible to take drastic actions, the proposal then provides that "it is impractical to develop a precise and complete list of quantitative tests to measure the due diligence of the sponsors and trustees...."[12] AARP understands that plan designs and terms can vary widely and that plan trustees may need to have some flexibility to fashion the measures that will work best for their stakeholders and participants. However, pension plans are not so different from one another that "all reasonable measures" cannot be anticipated and required, or that steps that constitute and are relevant to a finding of "due diligence" cannot be specified.

Third, the proposal does not clarify the trustees' fiduciary duties, or to whom they are owed. This is not the usual plan design or plan modification that generally fits within the "settlor" function. Any legislation should expressly make clear that the trustees are acting in their fiduciary capacity when they make any decisions related to remedying underfunding – and that they especially have a fiduciary duty to the participants and beneficiaries to safeguard their accrued benefits. Moreover, the proposal does not appear to recognize that the trustees may have possible conflicts of interest between protecting the active employees, who are contributing to the plan, paying union dues, and voting for union leadership; the deferred vested employees, who no longer contribute, pay dues, or vote; and the retirees, who no longer contribute or pay dues, and may not have a vote or representation among the plan trustees. In failing to differentiate among various groups of participants with competing interests, it also fails to provide any appropriate procedural and substantive protections against conflicts of interest.
Related to the conflict of interest problem is that retirees have no guarantees of effective representation in this process. There is no requirement for retirees to be represented among the plan trustees who make the decisions, no requirement that retirees receive sufficient advance notice of proposed changes, no process for retirees to be heard by the trustees (or later by the PBGC), nor any duty by the plan to finance adequate legal and actuarial support for retirees to be able to prepare their own counterproposals or challenge the trustees' findings or decisions.

2. PBGC Approval Process

The inclusion of a review and approval process by the PBGC, as outlined, does not compensate for these problems, as that process is itself grossly inadequate.

[12] *Id.*

First, there is a threshold issue of whether the PBGC is the appropriate entity to review a plan's proposed cuts to benefits. The entire scheme fails to acknowledge that the PBGC is *not* a disinterested watchdog in this context. If plans become insolvent, the agency is on the hook to pay benefits, and at present, it has insufficient funds to do so. As long as the PBGC is underfunded, it is in the interest of the PBGC to do all it can to prevent the plan from becoming insolvent; it has little financial incentive to not approve the trustees' plan. Further, even if the PBGC were not so incentivized, the PBGC Director is a political appointee, and politics vary; participants cannot count on the PBGC to be attuned to their interests. Nevertheless, because the PBGC has the institutional expertise and is best situated to question and oversee such proposed actions by plans, AARP believes that an adequately funded PBGC, constrained by much better procedural rules than proposed by NCCMP, should play a role in reviewing proposed benefit changes. The newly created Participant and Plan Sponsor Advocate at the PBGC, who is charged with advocating for "the full attainment of the rights of participants in plans trusteed by the corporation,"[13] or in this case, plans at risk of being trusteed by the corporation, should be given a meaningful role in the review and approval process.

Second, the PBGC's assigned scope of review is limited to whether the plan trustees exercised due diligence. Yet, as stated above, "due diligence" is simply a list of considerations, not standards of fairness or a defined set of duties that provide a basis for any real measure of accountability. The NCCMP plan does call for PBGC approval of the distribution of suspensions, taking into account "equitable" distribution across populations and "protections" for "vulnerable populations."[14] However, these terms are vague and undefined.

The PBGC's scope of review should be broadened to include all relevant factors weighing in favor and against adoption of the plan, including but not limited to strengthened standards of due diligence. The PBGC should examine the actuarial justification for the proposal, with dissenting views adequately represented, and whether the plan trustees have first taken all available steps and met applicable standards. In that sense, its review should be "de novo" rather than requiring the PBGC to defer to the plan's decisions "absent clear and compelling evidence to contrary." Contrary to what NCCMP proposed, the trustees' plan should not simply be "deemed approved" and in accordance with fiduciary standards if the PBGC fails to approve the plan within six months, possibly preempting challenges, or at least creating a presumption of compliance. The entire process should be more than a rubberstamp of the trustees' decision. AARP agrees with NCCMP that the agency should be given a time limit for acting; the PBGC will need to weigh in on the question of whether six months is reasonable and appropriate. However, deemed approval by default does not rise to the level of appropriate review, especially when people's benefits are at stake. And as noted earlier, fiduciary standards should apply to the trustees' proposal and be subject to challenge for breach.

Finally, any plan approved by the PBGC should have to be updated by the plan and reapproved by the PBGC, frequently, such as every two years. A plan's fortunes can improve as quickly as it deteriorates. A plan should be required to revise its solvency status and rejustify its remedial plan, and the PBGC should have to reevaluate and reapprove whether it is still necessary or could be revised to lessen any hardships or restore any lost benefits.

<u>3. Inadequate Protections for Participants, Especially Retirees</u>

AARP is also extremely concerned that the NCCMP proposal is substantially lacking in participant protections, especially for retirees. Consideration of *retirees* appears *nowhere* in the list of "illustrative"

---

[13] Moving Ahead for Progress in the 21st Century (MAP-21), Pub. L. No. 112-141, 126 Stat. 405, 856, Sec. 40232 (2012).

[14] *NCCMP Proposal*, *supra* n. 1, at 24.

factors that would be used to determine due diligence. The plan's trustees, and then by design the PBGC, are not called upon by a single factor to weigh the impact of the solvency plan on retirees. Moreover, it seems to us that the due diligence factors that *are* listed tilt heavily *toward* cutting benefits for retirees. Clearly, the high substantive standards of loyalty and fairness embedded in ERISA should be required as part of any measure of due diligence and should include the fundamental protections afforded to participants who are already retired and in pay status.

In addition to omitting any consideration of retirees, the plan makes no differentiation in treatment between different groups of participants and beneficiaries. This is also a fatal flaw. There is nothing to prevent the trustees' plan from treating retirees or near-retirees more adversely than it treats newly vested participants, for example. The only allusion to differentiation in the proposal appears in the provision regarding the distribution of benefit suspensions. There, the proposal specifies that benefit cuts should be distributed "equitably" across the participant population, and that "vulnerable" populations, which are never defined, should receive protections which again are never specified.

These objections regarding lack of regard for retirees and near-retirees are not ones of the tail wagging the dog, or allowing concerns about the vulnerable to overwhelm the bigger proposal, as some have suggested. This is a huge problem *with* the bigger proposal. It is not very meaningful to cordon off a "vulnerable" group as if they are a small part of the population when the median multiemployer pension benefit received by retirees is so modest: only about $8,300/year in 2009.[15] If, in fact, most of the participant and beneficiary population in multiemployer plans are receiving relatively small pensions of well under $10,000/year, AARP would contend that most retirees would qualify as "vulnerable" and unable to bear any benefit cuts whatsoever.

Numerous alternatives were available to protect benefits and lessen the harshest effects of the NCCMP plan on retirees. For example, first and foremost, the plan should have required consideration of the status of retirees to be an explicit factor that is part of any evaluation of due diligence and fairness. Second, the plan should have differentiated among groups of participants. The plan fails to consider or establish any order of priority in how any proposed benefit suspensions would be handled in order to protect retirees in pay status, as well as near-retirees. This ranking should have been mandatory/statutory, and retirees and near-retirees should have been placed at the end of the line as an absolute last resort. Third, any benefit cuts should also have been expressly limited, perhaps according to a formula based on age or income, or limited on a sliding scale based on the size of the pension, e.g. no cuts should have been permitted for those with benefits of $12,000 or less, with higher limits on cuts for those at higher ages. Certainly, benefit protections that are only 10% higher than the amount provided by the PBGC in the event of insolvency is not much protection. That floor could have been set at a much higher level, for instance at 150-175% of PBGC insurance levels.

If any cuts at all are considered, AARP agrees that cuts in optional, adjustable, or "ancillary" benefits such as 13th checks should be considered instead of cuts in core pension benefits earned and determined at retirement. However, AARP disagrees that benefits for surviving spouses (the 50% qualified joint and survivor annuity), or former spouses/surviving spouses who have received a court-ordered share of a participant's pension, are "ancillary" benefits. These benefits were part of deferred compensation, jointly earned and jointly owned by both partners in the couple. They are considered part of the core benefit, and respect for these beneficiaries' rights are a condition of the plan's tax-qualified status. The NCCMP proposal does not state exactly how it would affect the rights of beneficiaries, or how, for example, a qualified domestic relations order that orders payment of a particular dollar amount would be fulfilled. AARP would maintain that the benefits of beneficiaries

[15] *See*, GAO, *Private Pensions: Timely Action Needed to Address Impending Multiemployer Plan Insolvencies* 32 (March 5, 2013), *available at* http://gao.gov/assets/660/653383.pdf.

should not be subject to worse treatment than the benefits of the participant. For instance, if the participant's benefits are reduced by 15%, the cuts to the beneficiary should not be larger. In addition, cost-of-living adjustments are part of the core benefit, and these adjustments, if available, should not be considered adjustable or ancillary just because they are issued after retirement.

If legislation moves forward, AARP agrees with the proposal's limitation that any suspension of benefits "must achieve, but not exceed," the amount needed to achieve solvency. However, should such a proposal be adopted, we would take issue with the framing of another stated limitation. The proposal specifies, presumably after the plan achieves solvency, that any future benefit improvements "must be accompanied by equitable restoration of suspensions, where the liability value of the improvement for actives cannot exceed the value of the restoration for retirees."[16] Of course, it would inappropriate and unacceptable for *any* participant's benefits to be improved unless and until all suspended benefits are restored. However, should retirees' benefits be reduced, it is insufficient to specify that improvements or restorations of benefits for active participants cannot exceed the value of restoring benefits to retirees. Under such a plan, it should be an absolute requirement that once solvency is achieved, the benefits of retirees are restored first, *before* there is *any* improvement or restoration of benefits to active participants. Once all suspended accrued benefits have been restored in full to retirees, improvements to the benefits of active participants would be permitted.

In summary, AARP believes it is contrary to the most fundamental pension protection to permit the reduction of anyone's accrued benefits, especially those of retirees and near-retirees; other alternatives should first be explored and implemented. If Congress is committed to consideration of proposals to permit reductions to accrued benefits, cuts to retirees and near-retirees should be the last resort, and severely limited in scope and amount. We do not countenance vague assertions of protections in lieu of the current firm statutory protections for retirees and other vulnerable populations. Nor do we consider statutorily required benefits for surviving spouses and former spouses to be ancillary. Protections for these groups must be strong and explicit. Finally, *before* any future improvements in retirement benefits should be permitted, any cuts to accrued benefits, especially for retirees, should be required to be restored in full. In fact, periodic reviews of the implementation of any plan that includes accrued benefit reductions should be mandatory to determine whether prior cuts could be partially or fully restored.

There can be no doubt that the current proposal is contrary to one of the most central and fundamental tenets of ERISA, and would be a bad precedent for pension law generally. AARP also has no doubts that such a precedent could encourage other efforts to cut back accrued benefits. To prevent any further erosion of pension law, any proposal that advances should make clear that the measures permitted are emergency measures confined only to the unique and difficult circumstances currently faced by a minority of very distressed multiemployer plans.

Other Issues in the Proposal

The NCCMP proposal also proposes allowing plans to "harmonize" their normal retirement age with those of Social Security, as a way of "strengthening" the system.[17] Currently, private sector pensions may not raise their retirement age for full benefits past 65.[18]

AARP would caution against this proposal for several reasons. First, the types of jobs held by participants in many multiemployer plans are typically physically demanding and/or are performed

[16] *NCCMP Proposal, supra* n. 1, at 25.
[17] *NCCMP Proposal, supra* n. 1, at 23.
[18] 29 U.S.C § 1056.

under difficult working conditions. Many participants in these plans will not be able to work until age 65, let alone later. It is for this very reason that many unions have been among the most ardent opponents of raising the early retirement age in Social Security above 62 and of raising the full retirement age beyond the higher age 67 previously enacted in the 1983 changes.[19] Second, most pension plans already provide for actuarially reduced benefits in the event of early retirement. Raising the full retirement age in pension plans would have the same effect as it has in Social Security: to further reduce the benefits the participant receives, for life. Third, this change likely would not be limited to multiemployer plans on the brink of insolvency. Finally, especially for those with physical disabilities or illness that prevents them from working longer, being able to collect a full pension at 65 enables the pensioner to make it until 66 or 67 when they can collect their full Social Security, in order to maximize what may be a small retirement income. AARP believes that retroactively increasing the retirement age for pensions, as is proposed, is again an unfair benefit cutback and would impose an undue hardship.

AARP does believe that there need to be better ways of handling bankruptcies by employers who sponsor or participate in pension plans. Currently, employers can use bankruptcy to discharge their pension liabilities and to foist payment responsibilities onto others. Employees and pension participants should have higher standing among creditors in a bankruptcy court. While AARP is not currently recommending changes to address the problem of withdrawal liability facing multiemployer plans, we agree that action is needed to protect against excessive liability for orphans and other disincentives on remaining employers.

Finally, the NCCMP report puts forward some proposals for the redesign of pension plans in the future. AARP has not analyzed nor do we take a position on those plans here. However, AARP welcomes the efforts of NCCMP and many others who recognize the unique value of defined benefit plans for both employers and employees, and recognize the importance to retirement security of maintaining them.

Conclusion

The NCCMP proposal comes at a time when promises to retirees are under unprecedented stress, at all levels, public and private. Recent proposed changes have become more aggressive, with many proposals now designed even to reduce the benefits of people who are retired, in pay status, and living on fixed incomes – an option that previously was considered out of bounds. These cutbacks in promised and earned benefits are simply unfair and highly damaging to a retiree population whose typical annual income is only about $20,000.

AARP agrees the NCCMP proposal attempts to address real problems faced by multiemployer plans, and appreciates its attempt to ensure everyone comes out better than they would under insolvency. However, we are not convinced that alternatives to cutting accrued benefits – a fundamental protection under ERISA – have been adequately considered. Nor are we convinced that an ill-conceived design will serve to make plan benefits any more secure. We are convinced, however, that should a package emerge, far greater protections for participants and beneficiaries must be required.

---

[19] *See e.g.*, International Brotherhood of Teamsters Resolution on Social Security/Medicare (July 1, 2011), *available at* http://www.teamster.org/content/social-securitymedicare; AFL-CIO, *What Is Social Security? available at* http://www.aflcio.org/Issues/Retirement-Security/What-Is-Social-Security.

Chairman ROE. I thank you, Mr. Certner.

Mr. McGarvey, you are recognized?

STATEMENT OF MR. SEAN MCGARVEY, PRESIDENT, BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL–CIO, WASHINGTON, D.C.

Mr. MCGARVEY. Good morning, Mr. Chairman, Mr. Andrews, and members of the subcommittee. My name is Sean McGarvey, and I am the president of North America's Building Trades Unions. And I apologize—I am a little under the weather today—if I have to stop to blow my nose or something.

We are an alliance of 13 national and international unions that collectively represent over 2 million skilled craft professionals in the United States and Canada. Due to the nature of the construction industry, whereby the vast majority of our members move from project to project and from employer to employer, our health and benefit plans are structured under what are known as multiemployer plans.

Multiemployer plans have been providing retirement security to tens of millions of Americans for over 60 years. Traditionally such plans have been conservatively managed and well funded. In fact, over the 35-year history of the Pension Benefit Guaranty Corporation, over 74 multiemployer plans ever received financial assistance from the agency. As recently as 2007, over 75 percent of multiemployer funds were more than 80 percent funded.

However, the investment losses incurred as a result of the 2008 global financial disaster now threaten the financial viability of a small but significant minority of multiemployer plans. In addition, the impending sunset of multiemployer funding provisions of the Pension Protection Act of 2006 presents an opportunity for more fundamental restructuring of some of the basic precepts of ERISA law in order to reduce or eliminate the drastic financial risks being incurred by contributing employers.

This restructuring, including the elimination of withdrawal liability for future service, would remove many of the disincentives to retaining current contributing employers while providing an opportunity to attract new contributors, thereby strengthening the long-term financial health of such plans for both the current and future generations. The multiemployer world solutions to address unfunded liabilities, such as increased contributions, can also boost an employer's potential exposure to withdrawal liability because the higher a contribution rate results in a higher assessment rate for withdrawal liability.

Another risk occurs when an employer goes bankrupt and the employer's liabilities cannot be collected. This adds to the cost of the remaining employers in the plan who become understandably nervous about their fellow employers' financial health.

Withdrawal liability was designed to discourage employers from leaving the plans, but because of the more stringent funding rules imposed by the PPA, it is now having an opposite and perverse effect whereby some employers will be able to avoid even greater future exposure by paying their current withdrawal liability and leaving the plan rather than improving the funding of the plan by continuing their contributions.

So in order to protect multiemployer retirement security and to avoid any semblance of taxpayer bailout, labor and management in the construction industry have worked hand in hand to formulate a reasonable and workable package of solutions. Through the offices of the National Coordinating Committee for Multiemployer Plans, we formed the Retirement Security Review Commission.

This commission involved the participation of dozens of representatives of over 40 labor and employer associations, multiemployer plans, and large employers. The resulting set of recommendations is contained in the report titled "Solutions Not Bailouts."

The commission was driven by two primary objectives: one, that any recommendations for change to the existing system of multiemployer plans must still provide regular and reliable lifetime retirement income for multiemployer plans participants; and two, that any changes to the existing system be structured to reduce or eliminate the financial risks to contributing employers.

We feel strongly that our recommendations satisfy both of these concerns and we clearly and fully acknowledge that these recommendations come with some measure of pain for the rank and file members and retirees that I represent as well as our contractor employers. What we seek from this committee and from this Congress is your willingness to help remove the obstacles that are currently preventing us from fixing our own plans without any infusion of taxpayer dollars.

Having said that, though, I would also like to take this opportunity to suggest to this committee that this committee explore ways to immediately and effectively address the funding shortfalls currently being experienced by the PBGC. Absent such action, our plan participants and our contractor employers will be forced to endure additional and substantial financial burdens on top of those associated with our commission's recommendations.

Taken together, the solutions that have been put forth by both labor and management in the construction industry will improve retirement security and enhance the ability of plans to retain contributing employers by limiting financial volatility. Further, our Solutions Not Bailouts plan will work to prevent the need for future taxpayer assistance by dramatically reducing the agency's expose to plan failures, thereby improving the financial outlook of the PBGC multiemployer insurance program.

Thank you for the opportunity to express these views here today, and I will be happy to answer any questions the committee may have.

[The statement of Mr. McGarvey follows:]

NORTH AMERICA'S
BUILDING TRADES UNIONS

Value on Display. Every Day.

Testimony to the Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor and Pensions

Hearing on

"Strengthening the Multiemployer Pension System: How Will Proposed Reforms Affect Employers, Workers, and Retirees?"

Thursday, October 29, 2013

Submitted by:

Sean McGarvey
President
North America's Building Trades Unions

Chairman Roe, Ranking Member Andrews, and Members of the Committee:

My name is Sean McGarvey. As President of the Building and Construction Trades Department of the AFL-CIO and Chairman of the Board of Directors of the National Coordinating Committee for Multiemployer Plans (NCCMP), I appreciate the opportunity to appear before the Subcommittee today to urge Congressional action on a comprehensive set of self-help recommendations to reform and strengthen the rules governing the multiemployer retirement system.

These recommendations, which appear in the report titled ***"Solutions not Bailouts: A Comprehensive Plan from Business and Labor to Safeguard Multiemployer Retirement Security, Protect Taxpayers and Spur Economic Growth"*** are the product of well over a year of intensive analysis of the strengths and weaknesses of the current system by over forty stakeholder organizations across the multiemployer community who were part of a group known as the Retirement Security Review Commission (or Commission). They include representatives of labor and employer organizations, plans, major contributing employers and advocacy organizations whose objectives were clear and concise: that any recommendations for change to the existing system must still provide regular and reliable lifetime retirement income to multiemployer plan participants; and that any changes to the existing system be structured to reduce or eliminate the financial risks to contributing employers.

The genesis of the Commission was borne of several contributing factors:

- the need to respond to new funding requirements of the Pension Protection Act of 2006 (PPA) and the sunset of such funding requirements for multiemployer plans at the end of 2014;
- unprecedented cost pressures brought about by the precipitous asset losses caused by the Great Recession and exacerbated by the prolonged sluggish economic recovery; and
- dramatic new financial disclosures that jeopardize contributing employers' ability to access essential credit markets.

These factors prompted the stakeholders to face the realities confronting the continuation of the present multiemployer system. While the majority of plans have recovered to so-called "Green Zone" status,[1] most stakeholders have been sensitized to the realities of their respective situations and the need to evolve if their long-term objectives are to be realized:

[1] Recent studies show that the more than 60% of all multiemployer plans have regained Green Zone status (above 80% funded and not facing a funding deficiency within the next seven years or less).

- current contributing employers often contemplate ways to exit without being assessed withdrawal liabilities that can literally overwhelm the entire net worth of their companies and move to a system without residual exposure;
- that same concern over withdrawal liability has made recruiting new contributing employers nearly impossible, leaving a continually shrinking contribution base that threatens the long-term viability of many plans;
- active employees have seen their accrual rates decline to a mere fraction of their previous levels while contributions have risen to multiples of their previous levels, giving rise to intergenerational resentment; and
- a rapidly growing number of plans face inevitable insolvency under current law, eventually requiring them to reduce benefits to the meager levels provided by the PBGC multiemployer guaranty fund without the ability to take early action, even if such action could ultimately provide higher long-term benefits and avoid insolvency.

The Commission's recommendations are designed to address technical corrections to the Pension Protection Act of 2006, preserve benefits above those provided under current law for participants in "deeply troubled" plans headed for insolvency and encourage new plan designs that will enable the continuation of multiemployer plans for decades to come. A complete recitation of those recommendations here is unnecessary as the document stands on its own. Nevertheless, we welcome the opportunity provided by this hearing to underscore the broad support of those recommendations by members of the multiemployer community, including both the labor and employer communities who engaged in this process of self-help to enable this private sector system to continue to provide modest, but important retirement benefits to future generations.

For reasons described more precisely in the following pages, the Commission's recommendations for enactment of all aspects of the proposal provide the greatest opportunity to preserve benefit security for all participants.

North American's Building Trades Unions

We are an alliance of 13 national and international unions that collectively represent over 2 million skilled craft professionals in the United States and Canada.

Due to the nature of the construction industry, whereby the vast majority of our members move from project to project, and from employer to employer, our health and pension benefit plans are structured as local, regional or industry-wide plans that are maintained pursuant to collective bargaining agreements which require contributions from more than one employer. These are known as multiemployer plans and have been the dominant structure for plans in industries characterized by mobile work forces since World War II. Such plans enable workers to move from employer to employer throughout the year – or their career – and retain their eligibility for benefits by remaining in the same benefit plans. Multiemployer retirement plans have been providing retirement income security to tens of millions of Americans for over 60 years. Traditionally, such plans have been conservatively managed and well-funded. In fact, over the 35-year history of the Pension Benefit Guaranty Corporation, only 74 multiemployer funds have ever received financial assistance from the agency. During the late 1980s and 1990s over 75% of such plans were so well funded they had to raise benefits to increase plan costs sufficiently to preserve the current deductibility of contributions that employers were contractually required to make.

Even after the market losses suffered during the first years of the 21st century, as recently as 2007, over 75% of multiemployer funds were more than 80% funded. However, the investment losses incurred as a result of the 2008 global financial disaster now threaten the financial viability of a small, but significant minority of multiemployer plans.

In addition, the impending sunset of the multiemployer funding provisions of the Pension Protection Act of 2006 presents an opportunity for more fundamental re-structuring of some basic precepts of ERISA law in order to reduce or eliminate the drastic financial risks being incurred by contributing employers.

This restructuring, including the elimination of withdrawal liability for future service, would remove many of the disincentives to retaining current contributing employers while providing an opportunity to attract new contributors, thereby strengthening the long-term financial health of such plans for both the current and future generations.

The recommendations set forth in that report describe a variety of additional tools developed by the Commission to meet the varied needs of the nearly 1,450 multiemployer defined benefit plans that provide retirement plan coverage to over 10 million current, former and retired employees served by the multiemployer system. Together, these proposals will ensure that working men and women will continue to receive the modest but dependable retirement income they have earned during their working career by removing many of the existing obstacles to the long-term solvency of many plans.

We need to maintain the delicate balance between the needs and desires of plan participants with the economic realities of the marketplace so that the contributing employers can remain competitive and profitable.

Informed Recommendations from Affected Stakeholders

Since publishing its report in February, a number of groups have raised concerns over the Commission's recommendations and their likely effects on current and future pensioners. The process whereby the consensus recommendations were derived was specifically designed to ensure that concerns over participant protections could be aired and addressed. We recognize, however, that observers outside the process may not understand this specific dynamic of the process and therefore, offer the following observations for your consideration in response to such concerns.

You have heard from some groups outside the multiemployer community that the Commission's recommendations abandon a sacred promise enacted in ERISA that accrued benefits may never be reduced. We commend those groups for their unwavering commitment to the individuals served by our and other employer sponsored plans; however, we must point out both the factual inaccuracies of that statement and the more fundamental notion that in order for individual pensioners to receive benefits from our plans, the plans themselves must be preserved. We would remind them that the existing rules enacted by Congress when creating the multiemployer guaranty plan ***require*** the reduction of accrued benefits to the statutory guaranty level for all participants in insolvent plans[2] as well as the rollback of benefit improvements adopted in the past five years. We would also remind them that trustees of financially distressed plans that fall into "Critical Status" as defined in the Pension Protection Act of 2006 (PPA) are permitted to roll back certain subsidized benefits for active and recently retired employees, including early retirement benefits, joint and survivor benefits and benefit improvements adopted in the past five years. These, too, were accrued benefits which had

[2] Plans whose assets drop below the level where they can pay one year of benefits will receive financial assistance from the PBGC multiemployer guaranty fund in the form of a loan.

previously been subject to anti-cutback rules, but which were considered by Congress and by the multiemployer community to be necessary measures for severely distressed plans to regain their financial stability.

Contrary to what these groups would have you believe, the Commission recommendations are clearly designed to ***preserve higher benefits*** for participants whose benefits would otherwise be subject to more drastic reductions under current law by enabling those same trustees who are required to act when the plan becomes insolvent[3], to take action when, after having taken all reasonable actions to avoid insolvency, their plans are projected to become insolvent. Where that is demonstrated, the Commission recommends that those same trustees be authorized, within specified conditions to protect participants[4], to take pre-emptive action rather than spending down the plans' assets, so that the plan can avoid insolvency and ensure that benefits paid are higher than those which would be payable had the plan experienced insolvency and become wards of the PBGC.

Another point made by those same groups is that some participants who would never experience reductions under current rules because they would die prior to the date of insolvency, would be adversely affected under this proposal. While no one can determine specifically who might fall into that category, the Commission recommendations specifically address the ability of trustees to exclude certain "vulnerable populations" (*e.g.* including those of advanced age or whose payment effective dates were prior to certain dates) in formulating their action plan to avoid insolvency, provided the other conditions – preserving plan benefits above the statutory guarantee levels while preserving the plans' long-term solvency – are satisfied.

Finally, another group would have you believe that the solution is simply to inject cash into the PBGC. We have heard directly from you, the leaders and members of this subcommittee and others that no such bailout would be forthcoming. The Commission's recommendations are designed to ***avoid plan failures*** by plans that meet the specified requirements. Rather than providing an easy way for plans to balance their books by reducing pension benefits, the protections built into the Commission's recommendations will preserve plans and the benefits that will be paid to participants of those plans. We in the multiemployer community recognize the agency will need additional resources to address their commitments to participants of plans

[3] The Commission's recommendations do not represent a broad expansion of the ability to reduce benefits to plans that are not facing insolvency, however, they would empower those plans to intervene earlier, provided the plan had exhausted all reasonable measures to avoid insolvency, the reductions are only as deep as required to avoid insolvency (but may not reduce benefits below 110% of the current statutory guaranty levels provided by the PBGC multiemployer guaranty fund), and after the application of such reductions, the plan will avoid insolvency.

[4] Protections include government oversight of plans designed to avoid insolvency to ensure that due diligence was exercised in determining the need for such action and designing the plan of reform.

which become insolvent. Nevertheless, ***by definition, an insolvent plan is a failed plan***. We believe that any methodology for revising the premium structures must be coupled with, and recognize the cost savings to the agency by enabling significant numbers of plans, including some of the largest in the country, to avoid insolvency by enactment of the other tools included in the Commission's report. To do otherwise would be to drive other plans into the very insurance system which is unable to meet its current obligations.

In concluding its deliberations, the group confirmed its consensus on the complete set of recommendations. We recognize that with the passage of time, others may choose to refuse to face the grim realities of some of the most deeply challenged plans in their own industries hoping that simply saying they disagree will somehow either forestall the inevitable, or eventually force the government to intervene prior to the day of reckoning. The Commission believes such an approach is little more than wishful thinking and is neither advisable, nor constructive and urge prompt Congressional action to adopt the set of recommendations in its entirety.

Conclusion

In conclusion, we applaud the Committee and Subcommittee on its interest and active engagement with this issue. You have taken numerous opportunities to engage the community to learn the concerns and proposed solutions developed by those closest to the system and most directly affected by its long-term health and, most of all, have done so in a spirit of cooperation and problem solving. As leaders of the multiemployer community and its stakeholders, we appreciate your concern and thank you for your efforts.

As your deliberations enter the next phase, we hope that you will be able to maintain the same level of commitment to resolving the problems facing this important aspect of our nation's retirement income security so that it can continue to provide these important benefits. We welcome your continued inquiries and offer our continued support to the process.

I look forward to your questions and thank you for the opportunity to be with you here today.

Respectfully submitted,

Sean McGarvey
President
North America's Building Trades Unions

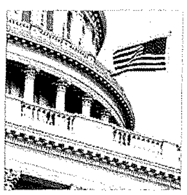
Chairman
National Coordinating Committee

for Multiemployer Plans

Pensions&Investments

Congress must act to save multiemployer pension plans

By: Stephen Sandherr and Sean McGarvey
Published: September 26, 2013



Retirement security for millions of skilled American workers is at stake without Congress taking action to shore up multiemployer plans.

Tight credit markets and a slowly recovering American economy are wreaking havoc with employers that contribute to multiemployer defined benefit plans and to these pension programs.

Business and labor leaders, recognizing the challenge ahead, spent 18 months working together, culminating with a report issued early this year, to find private-sector solutions to shore up these plans and protect benefits for current and future retirees and preserve sponsor companies that provide jobs for active members.

These solutions, which are supported by both business and labor, are outlined in "Solutions Not Bailouts: A Comprehensive Plan from Business and Labor to Safeguard Retirement Security for Multiemployer Plan Participants, Protect Taxpayers and Spur Economic Growth," issued last February by the National Coordinating Committee for Multiemployer Plans. While this report calls on Congress to give employers and employees the tools they need to make tough choices to preserve these plans, what it does not do is call on American taxpayers to bail them out.

Multiemployer pension plans hold nearly $500 billion in assets that play a significant role in generating broader economic activity. If these plans fail, our economy will suffer a devastating blow. These innovative retirement plans for decades have allowed skilled workers to move from job to job while providing portability by maintaining their ability to contribute to a pension.

Conflicting tax policies made it harder for employers to maintain the solvency of these plans. In addition, current law prevents employers and employees from taking common sense steps to secure them.

For years, tax laws actually prohibited firms from overfunding their plans. At that time, more than three-fourths of fully funded plans had to increase benefits to increase plan liabilities and avoid paying tax penalties. As a result, even greater liabilities were created that needed to be funded from future contributions or investment returns. Today, because of the recession and these misguided rules, nearly a quarter of all multiemployer pension plans are categorized as "critical" — requiring the adoption of aggressive rehabilitation plans to return to financial health — and nearly a quarter of those, including some of the oldest and largest plans, are facing insolvency in the next 10 to 20 years.

What happens if these plans fail? The Pension Benefit Guaranty Corp. is legally obligated to backstop these plans from the multiemployer guaranty fund. The PBGC itself is facing insolvency and could leave workers and retirees at serious risk of dramatic and unnecessary benefits cuts, sticking taxpayers with the bill.

For example, a participant who retired at age 65 with 35 years of service, who would normally receive a benefit of $2,000 per month, would see that benefit reduced to $1,251 per month if the PBGC takes over their plan, and to as low as $125 per month if the PBGC becomes insolvent.

The challenges facing multiemployer pension plans can be overcome without costing the taxpayers a dime. Congress should give us the tools we need to preserve benefits, as well as strengthen and secure the current multiemployer system for the long term.

The "Solutions Not Bailouts" plan provides early intervention for the small percentage of deeply troubled multiemployer plans, allowing workers and retirees in those plans to maintain benefits above the PBGC guaranteed amount, and strengthens the majority of plans that have successfully weathered the recent economic crisis and are not threatened.

Using the same example noted above, the "Solutions not Bailouts" plan could maintain lifetime benefits at amounts far greater than the $1,251 – or $125 – guaranteed by the PBGC. If the plan required benefit reductions of just 5% to maintain solvency, those benefits would be preserved at $1,900 per month, and if 15% reductions were required, benefits would be preserved at $1,700 per month. Even under the most extreme case, participants' benefits in this hypothetical plan would never fall below $1,375. Of course, any plan modifications would not be approved without agreement from both labor and management and would only be adopted if the results were materially better for workers and retirees than plan insolvency.

Millions of Americans rely on the retirement security provided by multiemployer plans while many millions more benefit from the investments those plans make throughout our economy. We don't want a taxpayer bailout. We need Congress to embrace reforms that give employers and employees the tools to work together to fix their pension plans.

Tools such as innovative plan designs can insulate contributing employers from financial volatility in the future and shield participants from risk by requiring greater funding discipline. We also think any plan should include safeguards to guarantee regular and reliable retirement security as well as a way to support the long-term preservation of benefit levels above the PBGC guarantee. "Solutions not Bailouts" includes these provisions, and as Congress begins to craft and consider legislation on this topic in the coming months, we hope the policymakers heed these recommendations and this critical moment. By taking these steps, we can make retirement more secure for millions of Americans and protect our emerging economic recovery.

Stephen Sandherr is the CEO of the Associated General Contractors of America and is based in Arlington, Va. Sean McGarvey is the president of the Building and Construction Trades Department, AFL-CIO, and is based in Washington.

Original Story Link: http://www.pionline.com/article/20130926/REG/130929886/congress-must-act-to-save-multiemployer-pension-plans

Chairman ROE. Thank you, Mr. McGarvey.

Now, Mr. Nyhan, you are recognized?

STATEMENT OF MR. THOMAS NYHAN, EXECUTIVE DIRECTOR, CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS PENSION FUND, ROSEMONT, ILLINOIS

Mr. NYHAN. Thank you, Chairman Roe, Ranking Member Andrews, and other members of the subcommittee, for the opportunity to testify today.

Central States is the second-largest multiemployer plan in the country with over 410,000 participants and 1,800 participating employers, 90 percent of which are small employers with 50 or fewer employees. For 30 years the fund's investments have been exclusively managed by major financial institutions, screened by the Labor Department, and approved by the federal court.

Since its inception, the fund has paid out over $60 billion in pension benefits with an average current benefit of about $15,000 per year. Since the deregulation of the trucking industry, there has been a dramatic consolidation in the transportation industry. As a result, thousands of employers have gone out of business without meeting their funding obligations, leaving the pension fund and the surviving employers with the obligation for the unfunded liability.

Central States continues to be the primary insurer of the unfunded pensions of retirees for employers who have simply failed. Literally speaking, the pension fund has stood in the shoes of the PBGC for 30 years.

In 1980 there were four actives for each inactive participant. Today that is reversed, with nearly five inactives for every active participant. Last year we collected $700 million from employers and paid nearly $2.8 billion in benefits. The $2.1 billion annual shortfall must be made up with investment returns or the plan will spiral into insolvency.

The fund has done a lot to try to correct these problems. After the first market meltdown the fund reduced future benefit accruals by 50 percent and froze unreduced early retirement subsidies. Additionally, contribution rates have been ratcheted up from $170 per week back in 2003 to over $340 a week, or $8.50 an hour.

As a result of these measures, the fund increased its annual revenue and reduced its projected liability. As of January 1, 2008, the fund actuaries projected the fund would be fully funded in 2029, assuming normal investment returns. However, as we know, 2008 was not a normal investment year; it was devastating, particularly for a mature plan that is dependent on investment returns in order to pay benefits.

The fund experienced an investment loss of nearly $7.6 billion and paid out 1.8 billion in benefits above contributions received from employers. Since 2008 the fund has earned positive investment returns but its current financial condition remains troubled.

Unless the fund substantially reduces its liabilities or receives a large influx of assets, it is projected to become insolvent within 10 to 15 years. And at this point our options are very limited.

The fund would need to earn at least 12 to 13 percent each and every year in order to avoid insolvency. That is not a realistic investment return assumption.

The actuaries project that any additional cuts in benefits of the active employees or further contribution increases above those that have already been mandated will accelerate insolvency. Under the existing legal landscape we simply can't manage the problem.

Additionally, the PBGC itself is in dire financial condition. For the last several years we have supported legislation to update the PBGC's partition authority and appropriate the necessary funding as a remedy that would preserve the fund's solvency.

That legislative proposal, had that been enacted, the benefits of our participants would have been protected. But that legislation was not enacted and no similar legislation has been introduced in this Congress.

As a result, in 2012 the PBGC multiemployer program had $1.8 billion in assets but booked more than $7 billion in liabilities. Moreover, the PBGC itself projects it will incur an additional $38 billion in new claims over the next 9 years.

Not surprisingly, the PBGC and GAO recently released separate reports indicating there was a substantial risk that the PBGC's multiemployer program will itself be insolvent within 10 years, before the projected insolvency of Central States.

If these projections are correct, the retirees covered by the fund face the stark and tragic reality that their pension checks could be eliminated in their entirety when the fund becomes insolvent. So today we are faced with the Hobson's choice of either supporting legislation that allows us to use our own assets to provide long-term retirement security at reduced levels or doing nothing and facing the substantial risk that the retirement checks will disappear completely upon insolvency.

If we do nothing and the PBGC fails we will pay out $28 billion through date of insolvency. However, if we act our participants will receive over $72 billion over the next 50 years.

I know others argue that benefit reductions should be avoided at all costs by appropriating new revenue through taxes or premium increases. I agree. Our preferred solution has always been one that would generate additional revenue to alleviate the funding shortfalls, as evidenced by our vigorous support of past legislative proposals.

But the fact of the matter is these legislative proposals got little or no support from either house, from either party, or from the administration. Rest assured, if such legislation were ever enacted in the future we would take full advantage to restore the benefits of our participants.

But the retirement security of our participants is too important to gamble on wishful thinking. Open-ended and vague theories as to how to resolve the funding problems need to give way to timely, concrete, and realistic proposals.

The truth of the matter is there is no funding source anywhere on the horizon that deals with shortfalls of this magnitude, and time is running out to craft a solution. In light of that reality, we believe the only solution is one that permits us the remedy of remedying the shortfall ourselves.

Thank you.

[The statement of Mr. Nyhan follows:]

CENTRAL STATES
SOUTHEAST AND
SOUTHWEST AREAS
HEALTH AND WELFARE AND PENSION FUNDS

October 29, 2013

Testimony on

"Strengthening the Multiemployer Pension System: How Will Proposed Reforms Affect Employers, Workers and Retirees?"

House Committee on Education and the Workforce

Subcommittee on Health, Employment, Labor, and Pensions

Submitted by

Thomas C. Nyhan
Executive Director and General Counsel,
Central States Southeast and Southwest Areas Pension Fund

Statement of Thomas C. Nyhan, Executive Director and General Counsel, Central States Southeast and Southwest Areas Pension Fund Before the Subcommittee on Health, Education, Labor and Pensions, Committee on Education and the Workforce, United States House of Representatives October 29, 2013

Chairman Roe, Ranking Member Andrews and other Members of the Subcommittee, I would like to thank you for this opportunity to testify at this hearing on "Strengthening the Multiemployer Pension System: How Will Proposed Reforms Affect Employers, Workers, and Retirees?". My name is Thomas Nyhan and I am the Executive Director and General Counsel of the Central States, Southeast and Southwest Areas Pension Fund (the "Pension Fund"). I will talk to you today about how the deregulation of the trucking industry and the economic turmoil of the past decade have affected the Pension Fund. I will also address how Congress needs to act now to either provide the Pension Benefit Guaranty Corporation ("PBGC") the resources it needs to meet its commitments or to provide additional tools to the Pension Fund so it can solve its own problems. Action now is essential to protect the pensions of hundreds of thousands of participants in the Pension Fund, as well as the tens of thousands of jobs of those Americans employed by businesses that contribute to the Pension Fund.

Overview of Central States Pension Fund

Multiemployer pension plans are pension plans funded by a number of contributing employers. They are administered by joint boards that include an equal number of employee and employer representatives, and are maintained through collective bargaining agreements between employers and unions.

The Pension Fund is one of the largest multiemployer pension plans in the country, providing (as of September 30, 2013) coverage to 410,000 participants across the country, including approximately 70,000 active employees, and approximately 340,000 retirees, survivors and deferred vested participants. The Pension Fund's participants are located throughout much of the United States, but predominantly in 35 states in the Midwest and South.

The Pension Fund paid approximately $2.8 billion in benefits in 2012. The average benefit payment is just over $15,000 per year. These benefits and Social Security are the primary sources of retirement income for our participants. Since its inception, the Pension Fund has paid almost $60 billion in retirement benefits to its participants and beneficiaries. The Pension Fund's Trustees also administer a large, growing and financially secure multiemployer health and welfare fund, the Central States Health Fund (the "Health Fund").

Approximately 1,800 employers contribute to the Pension Fund. Nine out of 10 of these employers are small businesses with fewer than 50 employees. Although these employers are in a variety of industries, including trucking/freight; car haul; tank haul; warehouse; food processing distribution (including grocery, dairy, bakery, brewery and soft drinks) and building and construction, historically there has been a heavy concentration of employers in the trucking industry.

Operations of the Pension Fund

In 1978, the management and operation of the Pension Fund was restructured as a result of a consent decree entered into with the Department of Labor ("DOL"). Since then, the Pension Fund has operated under U.S. District Court and DOL supervision.

Under the consent decree, after vetting by the DOL, the U.S. District Court appoints an independent special counsel to the Pension Fund. The Independent Special Counsel has unrestricted access to the Pension Fund's records, attends meetings of the Pension Fund's Board of Trustees and submits quarterly reports to the Court and to the DOL concerning the Pension Fund's activities. In addition, the Pension Fund's investments are managed by major financial institutions initially screened by the DOL and approved by the U.S. District Court. These financial institutions have *exclusive* management and control of the Pension Fund's investments. A named fiduciary, currently Northern Trust, has exclusive control over selection and oversight of active investment managers. The Pension Fund's passively managed investment accounts are currently managed by the Bank of New York Mellon, which has also been vetted by the DOL and approved by the U.S. District Court.

Funded Status and History

In 1980, there was one retiree or inactive employee for every four active employees in the Pension Fund. Today, that ratio has been completely reversed – now there are nearly five retirees and inactive employees for each active employee. A major reason for this dramatic shift has been the increased competition and reduced margins in the trucking industry that followed on the heels of trucking deregulation in 1980. Of the 50 largest employers that participated in the Central States Pension Fund in 1980, only 4 remain in business today. More than 600 trucking companies that contributed to the Pension Fund have gone bankrupt since 1980 and literally thousands of others have gone out of business without filing formal bankruptcy. Also in 1980, Congress passed the Multiemployer Pension Plan Amendments Act of 1980, adding withdrawal liability obligations to employers that stop making contributions to an underfunded multiemployer pension plan. Because employers are fearful of incurring withdrawal liability, the Pension Fund has not been able to attract many new employers to replace the ones that failed.

As result of these trends, roughly 50 cents of every dollar the Pension Fund now pays in benefits goes to retirees who were employed by an employer that went out of business without meeting its funding obligations. This means that the Pension Fund is acting as the primary insurer of the unfunded pensions of employers that have gone out of business. It also means that the remaining employers in the Pension Fund are responsible for funding the pensions of their defunct competitors' employees – or the pensions of retirees from a completely different industry.

The cost of funding these orphan benefits has grown to unaffordable levels. As an example, trucking industry employer contribution rates under the National Master Freight Agreement have increased from $170 per week in 2003 to over $340 per week today (nearly $8.50 per hour in a 40 hour week). Approximately half of this weekly contribution is required to fund the benefits of retirees whose employer went out of business without meeting its funding obligations. Other contributing employers have been subjected to similar increases. Requiring additional contribution rate increases (beyond those already established by the Pension Fund) would carry a grave risk of driving additional contributing employers out of business, thus renewing the cycle of employer bankruptcies, defaults on the employers' obligations to pay their share of the Pension Fund's unfunded benefits and the creation of additional liabilities left at the Pension Fund's doorstep.

Because of the increasing number of retirees and decreasing number of active employees, the Central States Pension Fund's benefit payments to retirees have exceeded employer contributions in every year since 1984. In 2012, the Pension Fund paid approximately $2.8 billion in benefits while receiving regular employer contributions and withdrawal liability payments of approximately $700 million. This left an "operating deficit" of $2.1 billion that must be funded by investment returns.

Investment returns, however, are unlikely to provide the level of financial support needed for ongoing benefit payments because of two perfect storms that occurred between 2000 and 2010.

2000-2002 Bear Market

Following deregulation, and prior to 2000, investment returns exceeded expected returns and the Central States Pension Fund's asset base grew despite paying annual benefits to retirees that exceeded annual contributions. But, during the declines in the financial markets from 2000 through 2002, the Pension Fund investments lost money, and asset values declined. This had a dual effect on the Pension Fund of not only reducing assets through market losses, but also requiring the Pension Fund to use principal, instead of investment returns, to pay the benefits of pensioners. This depleted the asset base on which the Pension Fund could earn returns.

The financial problems caused by investment losses experienced during this period and the need to pay benefits out of principal were compounded by a significant decrease in covered employees due to employers going out of business. With the bankruptcy proceedings of Consolidated Freightways and Fleming Foods in 2003 and their failure to pay more than $403 million in withdrawal liability, the unfunded liabilities of the Pension Fund increased.

These bankruptcies illustrate the role the Pension Fund has played as an insurer of pensions owed to the employees of now defunct employers. For example, at the time of its bankruptcy, Consolidated Freightways participated in two defined benefit plans, one for its unionized employees covered by the Central States Pension Fund and another "single-employer" plan for its other employees. When it went out of business in 2002, the PBGC assumed responsibility for Consolidated Freightways' single-employer plan, which was underfunded by $276 million. By contrast, when Consolidated Freightways liquidated and withdrew from the Central States Pension Fund, the Pension Fund and its remaining employers assumed responsibility for $319 million in unfunded vested benefits owed to rank and file employees.

Faced with these investment and contribution losses in the early 2000s, the Pension Fund took aggressive action to deal with underfunding. The Pension Fund froze "early out" benefits and cut the rate of future pension accruals in half. Beginning in 2005, the Trustees mandated contribution rate increases of approximately 8% per year. In addition, participants covered under the major national contracts had monies that had been earmarked for other areas reallocated to the Pension Fund from 2004 through 2007. As a result of these measures, the Fund increased its income by several hundred-million dollars a year by the end of 2007 and reduced its projected liabilities. As of January 1, 2008, the Pension Fund's actuaries projected that the Fund would be fully funded by 2029, assuming normal investment returns.

2008 Financial Markets Crisis

As the Subcommittee Members know, global financial markets plummeted again in 2008. The steep declines experienced by financial markets in 2008 directly impacted the Pension Fund's asset base. The Pension Fund incurred an investment loss of $7.6 billion in 2008 and also paid out $1.8 billion more in benefits than it received in contributions that year. As a result, the Pension Fund had to spend $1.8 billion in principal just to pay benefits. The Pension Fund's net assets decreased by approximately $9.4 billion in 2008, leaving the Pension Fund with assets of $17.4 billion and a funded ratio of 48.5 percent.

Since 2008, the Pension Fund generally has experienced positive investment returns. From 2009-2012, the Pension Fund's average annual investment return was 13.8%, which helped offset the Pension Fund's approximately $2 billion per year operating deficit over this period. As of October 24, 2013, the Pension Fund had net assets of nearly $18.7 billion, a year to date net increase of $918 million as the result of a 16.0% investment return to that date in 2013. Despite these recent gains, the Pension Fund's current funded percentage, using the market value of assets, is approximately 53%.

In 2008, when the multiemployer plan provisions of the Pension Protection Act of 2006 ("PPA") came into effect, the Pension Fund was certified to be in the PPA "critical zone," and therefore the Pension Fund adopted a "rehabilitation plan" as the PPA requires. Acting under the authority of the PPA, the Pension Fund increased the minimum retirement age to 57 for *new* retirees under its rehabilitation plan, and enacted rules eliminating the early retirement benefits for any active participants whose employers either (1) "bargain out" of participation in the Pension Fund during 2008 and subsequent years (or end their participation in the Pension Fund in a number of other ways), or (2) refuse to agree to the Pension Fund's "primary schedule" of contribution rate increases, which begins with an 8% annual contribution rate and increases for five years. However, all these benefit reduction measures are only applicable to participants in the Pension Fund who are in active employment and currently having contributions made to the Pension Fund on their behalf. The PPA expressly prohibits any reductions in benefits for participants who were already retired in 2008 – even though these retirees represent 85% of the Pension Fund's pension benefit obligations.

In addition, the Pension Fund has instituted measures designed to shore-up its contribution base and to retain currently contributing employers. For example, some employers leave the Pension Fund because they are concerned about *future growth* in their contingent obligations for statutory withdrawal liability. Therefore in 2011 the Pension Fund obtained approval from the PBGC to apply a "hybrid" withdrawal liability method to employers that are willing to pay their existing withdrawal liability. The employers can then continue to participate in and contribute to the Pension Fund on behalf of their workforce, but their future potential withdrawal liability will be calculated in a way that generally limits an employer's liability to any underfunding generated by its own employees' participation in the Pension Fund. About 60 employers have so far paid or committed to pay in the aggregate approximately $250 million to satisfy their current withdrawal liability while also promising to continue to contribute to the Pension Fund under this hybrid method program. This and other innovative measures are helpful in addressing funding issues and protecting contributing employers.

Assessing the Damage

Despite positive investment returns over the last several years and the many changes described above in benefits, contributions and withdrawal liability rules, the Pension Fund's financial position remains troubled. Unless the Pension Fund substantially reduces its liabilities, or receives a large infusion of assets, or both, the Pension Fund is projected to become insolvent within the next 10 to 15 years. The actual date of insolvency will depend primarily upon the Pension Fund's investment experience. And, as one of the largest multiemployer funds in the Nation, the impact of the Pension Fund's insolvency would be devastating to the Pension Fund's participants and their beneficiaries, whose benefits are at risk, and to contributing employers, the PBGC, and many other multiemployer plans—since many of the employers that currently contribute to the Pension Fund also do business in other geographic regions and contribute to other multiemployer plans.

At this point, the Pension Fund's options are very limited. It is extremely unlikely that the Pension Fund will grow its way out of insolvency through outsized investment returns. Currently, the Fund's actuaries project that the Fund would need to earn at least 12% a year, *each and every year,* to avoid insolvency. This is not a realistic investment return assumption.

The Pension Fund also does not currently have the necessary tools to solve the problem. Because the PPA prohibits benefits reductions with respect to participants who retired prior to 2008, the great majority of the Pension Fund's actuarial liabilities are off limits. Moreover, the Pension Fund's actuaries project that any further reductions in the benefits of active employees (while continuing to exempt the pre-2008 retirees from the benefit adjustment process) would not have a meaningful impact on plan funding and likely would accelerate insolvency. In the existing legal landscape, we simply do not have the tools to manage the problem ourselves.

In addition, as described above, the Pension Fund also has already doubled employer contribution rates under the National Master Freight Agreement since 2003. Further increases of this magnitude are unsustainable. In any event, even if it were feasible to maintain an annual eight percent contribution rate increase in perpetuity that would serve to postpone insolvency *by only two months*. And, of course, a plan merger is not an option given the Pension Fund's financial condition and the lack of a viable and willing merger partner.

In short, the Pension Fund has reached a point where it requires legislative action to avoid insolvency.

Multiemployer Plan Partition

In the 111th Congress, the Pension Fund actively supported legislation (H.R. 3936; S. 3157; the "Create Jobs and Save Benefits Act of 2010") that would have updated the PBGC's current authority to "partition" a multiemployer plan – *i.e.*, to remove from the plan pension liabilities that were earned with failed employers that have gone through formal bankruptcy proceedings – and thereby provided a mechanism by which the Pension Fund could have avoided insolvency. Under the legislation, the Pension Fund and a very limited number of other multiemployer plans that met strict requirements could have elected a "Qualified Partition" under which the responsibility for the vested benefits of participants earned with employers that filed for bankruptcy or otherwise went out of business, together with a share of plan assets, would be transferred to a separate plan backed by the PBGC. During those legislative efforts we highlighted the fact that strictly controlled partitions would allow plans like the Pension Fund to avoid insolvency and the PBGC to better protect the benefit payments of *all* participants. Such an approach also would have protected thousands of employers – most of them small employers – and preserved tens of thousands of jobs. By preventing plan failures that would undermine the entire multiemployer program, it also would have protected other multiemployer plans and the PBGC.

Unfortunately, this legislation was not enacted and has not been reintroduced in the current Congress.

Qualified partition or any other meaningful assumption of liability or infusion of assets by PBGC would require that Congress fund the PBGC. This is because, in 2012, the PBGC Multiemployer Program had only $1.8 billion in assets but had booked more than $7 billion in liabilities, a deficit of $5.2 billion. And the PBGC's $7 billion in booked liabilities does not include the Pension Fund's approximately *$17 billion* in unfunded liabilities. Earlier this year, the PBGC and the Government Accountability Office (GAO) released separate reports indicating that there is a substantial risk that PBGC's Multiemployer Program Insurance Fund will be exhausted within the next ten years – *prior* to any projected insolvency of the Pension Fund.

For decades, federal regulations have required the Pension Fund to provide plan participants summary plan descriptions stating in plain English: "Your pension benefits under this multiemployer plan are insured by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency." And, Central States has paid $60 million in premiums to the PBGC. Nevertheless, 410,000 hardworking Americans covered by the Pension Fund face the following stark and tragic reality: even though participants were told repeatedly that their benefits were guaranteed by PBGC, and even though Central States paid for that insurance, their pension checks could be eliminated entirely if the Pension Fund becomes insolvent.

NCCMP Commission Proposal for Plans in Critical and Declining Status

While funding the PBGC and strengthening its partition authority has been our preferred solution, the Pension Fund is realistic about the current appetite in Washington for this type of action. Put simply, the only remaining option to avoid insolvency and secure the future of the Pension Fund is to provide the Pension Fund with the tools it needs to solve its own problems.

For this reason, the Pension Fund supports the NCCMP Commission's proposal on deeply troubled multiemployer plans.

The NCCMP Commission's "Solutions Not Bailouts" proposal for "Critical and Declining Status" Plans would allow the Pension Fund's trustees and bargaining parties to provide long-term retirement security at adjusted levels to all of our participants and beneficiaries. Under the proposal, deeply troubled plans are defined as plans projected to become insolvent within 20 years, or within 15 years if the ratio of retired to active participants is less than or equal to 2:1. The proposal would provide deeply troubled plans with the ability to suspend any type of benefits for participants as long as a number of important protections for participants are in place. Under the proposal, even after trustee action, benefits would have to be at least 10 percent *above* the PBGC guarantee level, and any benefit suspensions would have to be distributed equitably across *all* populations of participants. Importantly, benefits could only be suspended if the suspension would allow the plan to avoid insolvency and if the plan sponsor had taken all other reasonable measures to forestall insolvency. The plan sponsor would have to obtain the approval of the PBGC before implementing the suspensions. The proposal also would limit the ability of the plan to make future benefits increases without first restoring the value of suspended retiree benefits.

In evaluating the NCCMP proposal, it is important to remember that it is not a question of benefit suspensions if the proposal is enacted versus no benefits cuts if it is not enacted. If the Pension Fund goes insolvent, participant's benefits *will* be cut across the board, and given the lack of funding of the PBGC, it is likely that the benefits will be reduced far below the PBGC guaranty or eliminated in their entirety. In contrast, the NCCMP proposal would allow plans facing insolvency to preserve the maximum possible benefits for the maximum number of participants over the long term. In fact, the Fund's actuaries project that the Pension Fund would pay participants and beneficiaries $72 billion in benefits over the next 50 years if the NCCMP proposal is enacted as compared to $28 billion in benefits if the Fund goes insolvent.

Conclusion

The continued solvency of the Central States Pension Fund requires increased assets, reduced liabilities, or some combination of the two. Because the PBGC plainly does not have the resources needed to pay benefits at the PBGC guarantee levels and meet its obligations to the workers and retirees participating in the Central States Pension Fund, Congress must act *now* to preserve, to the maximum extent possible, the pensions of participants in deeply troubled pension plans.

Multiemployer plans like the Central States Pension Fund need enhanced tools to reduce liabilities so as to avoid insolvency and continue to provide secure retirement benefits far into the future. Congress and the Administration should enact legislation that includes the NCCMP proposal to permit plans that are facing imminent insolvency to suspend benefits. Such an approach would preserve the maximum possible benefits for participants in plans facing insolvency, allowing them to maintain benefits far above what they would otherwise receive under existing law. While these benefit suspensions are not to be undertaken lightly, they reflect the economic realities, while still preserving the benefits of retirees to the greatest extent possible.

We know that others argue that benefit suspensions must be avoided at all costs by appropriating new revenue through taxes or premium increases. We sympathize with that view because our preferred solution has always been an approach that would generate additional revenue to alleviate the funding shortfalls, as evidenced by our vigorous support of legislative proposals for the last several years. And if such legislation were ever enacted we would take full advantage of it to maintain or restore full benefits of our participants. But as stewards of the Pension Fund focused on protecting its participants and beneficiaries, we must be realistic about the current appetite in Washington, D.C. for this type of action. The truth of the matter is there is no funding source anywhere on the horizon to deal with shortfalls of this magnitude and time is running out to craft a solution. In light of that reality, we believe it is our obligation to find a way to preserve a measure of retirement security for all of our participants. That solution requires that we remedy the funding shortfall ourselves while there is still time to take action.

Doing nothing, at this juncture, would result in the worst possible outcome. Without timely intervention, workers in the most deeply troubled plans are at risk of seeing the benefits they have earned drastically reduced or even eliminated entirely. The NCCMP Commission's proposal on deeply troubled plans would provide the Fund's trustees and bargaining parties the tools needed to avoid insolvency and thereby stave off the drastic cuts that would otherwise occur automatically.

We strongly urge Congress to take action on the NCCMP Commission's proposal in the near future.

* * *

Thank you for this opportunity to address the Subcommittee. I will be happy to answer any questions that the Subcommittee Members may have.

Chairman ROE. Thank you. A great job of the committee.

I will now yield to the committee chair, Mr. Kline?

Mr. KLINE. Thank you, Mr. Chairman.

I want to thank the witnesses for being here today.

I want to identify myself with the remarks of Mr. Andrews concerning the bipartisan effort that we have here. Both sides recognize a problem that needs to be solved, and so I appreciate the work that Chairman Roe and Mr. Andrews have put into this and their determination to reach a solution.

Great group of witnesses.

Ms. Duncan, I thank you for pointing out the challenges facing employers who are doing everything within their power to run good companies and provide for their employees and yet facing withdrawal liabilities that are just staggering and, as you pointed out, perhaps more than the value of the company itself. And I am hearing that from employers back in Minnesota.

And, Mr. McGarvey, I am really glad that you are here today, and your presence here speaks volumes about the recognition of employees to the dangers that are facing them.

I am extremely impressed that a very diverse group of employers and employees and labor unions have come together here.

This group, Mr. McGarvey, includes quite a variety of labor organizations. I am just reading them through here: Bakery and Confectionary Workers Union, the Iron Workers, the Mine Workers, the Electrical Workers, the Bricklayers, the Operating Engineers, the Carpenters, the United Food and Commercial Workers, the Machinists, the Teamsters, and others. And the vast majority of those organizations have been very vocally and powerfully supporting the efforts today to find a solution here.

I am also aware that a couple of those organizations whose names are in this report, and some who I just named, have once again abandoned the group supporting reform. And despite the failure of previous legislation, they have apparently deluded themselves into thinking that self-help is unnecessary because the federal government will bail out these plans. And I don't see that as an option. We have seen the press reports, and I am afraid that sometimes the leadership is just not being honest with their members.

Again, I commend you, Mr. McGarvey, for facing the hard truth that the ultimate solution to this problem—and it is a problem, very well articulated by Mr. Andrews—is not likely to come in the form of a government bailout. Do you have any insight as to why some have now stepped back from supporting what was a very solid effort?

Mr. MCGARVEY. Congressman, I—you know, insight—I will just say that the labor movement is probably much like caucuses in the parties in Congress, that strong coalitions are built and then frayed at times, and decisions are made to withdraw support or give support to different proposals. We very rarely, believe it or not, in the labor movement have unanimity on any issue, and this——

Mr. KLINE. Actually, I believe that, so——

[Laughter.]

Mr. MCGARVEY.—this is no different. But there is a strong group of multiemployer unions out there that are fully supportive of this program and looking to you and this Congress to help us craft the solutions that are going to give viability and predictability in the long term to our existing retirees and to our future participants in the construction industry.

Mr. KLINE. Thank you. That is well put. You would have some potential here for this dais.

Mr. Nyhan, boy, you have got your hands full. We don't ever talk about this problem without talking about Central States, so I very much appreciate your remarks and your weighing in on this to help us reach a solution—truly a bipartisan solution, as we try to hammer this out.

So again, thanks to all of you for being here today, for your testimony. We appreciate your knowledge, your insights, and your being here to answer our questions.

And, Mr. Chairman, I yield back.

Chairman ROE. Thank the gentleman for yielding.

Mr. Andrews, you are recognized?

Mr. ANDREWS. Thank you, Mr. Chairman.

I would like, again, to thank the witnesses for their contributions here this morning.

And, Mr. Certner, I think you deserve credit for putting forward some alternatives and solutions. I think it is very important to add that to the dialogue, and we appreciate that.

I wanted to walk through a couple of those with you so I could fully understand them. On page four of your testimony you say that we should require steps that plans can take now to be taken before they consider any benefit adjustments. Is that a fair statement of your position?

Mr. CERTNER. Yes.

Mr. ANDREWS. And you talk about the ability to cut back adjustable benefits as part of that package. What are adjustable benefits? Who receives them? And do you think we should require that adjustable benefits be reduced before anything else is done?

Mr. CERTNER. Well, the adjustable benefits are already permitted in the law to be adjusted under the PPA. Now, I am not saying we are completely comfortable with removing any of these accrued benefits, but at least you have steps in the law that are permitted today. For example, early retirement subsidies are adjustable benefits.

So we think certainly we should be looking at those benefits that in the law today can be adjusted before we look at cutting back accrued benefits——

Mr. ANDREWS. So is it your position that someone who has already received an adjustable benefit could have it reduced or that someone who has not yet received it could be deprived of it?

Mr. CERTNER. Again, we are uncomfortable with eliminating any of these adjustable benefits, but these are certainly preferable to looking at these kinds of benefits prior to looking at the benefits of current retirees in paid status.

Mr. ANDREWS. So although I—again, I understand that we would share your discomfort of having to do that. I want to be clear: Would you want the law to require that a fund reduce adjustable benefits before it would consider any other benefit cut?

Mr. CERTNER. Absolutely. And let me just state, we recognize what a difficult problem this is and what difficult choices we are making here. Many of us don't like any of the choices that are on the table. But clearly when we have provisions in the law that allow you to reduce adjustable benefits already, those steps are far preferable to take before we go ahead and start reducing the accrued benefits of retirees.

Mr. ANDREWS. What do you think, and this is not a rhetorical question, what do you think the difference is morally? I know what the difference is legally, but what do you think the difference is morally between an adjustable benefit and an unadjustable benefit, as those terms are used in the 2006 law? What is the moral difference?

Mr. CERTNER. Well again, I am not sure there is necessarily a moral difference. Right now we certainly have a legal difference because one is permitted under the law, and——

Mr. ANDREWS. Right.

Mr. CERTNER.—I think that it is important to understand that the anti-cutback rule is a fundamental provision in the law, and to go and say to retirees and workers that, "Hey, you know, that promise that we have made to you, that guarantee we have made to you that when you earn a benefit you are going to get it? Well, you know, that may not be as solid as we have said it was and, you know, we are going to allow people to go ahead and take away your benefits when you retire," is really a step too far.

Mr. ANDREWS. You recommend, and I think it is an interesting recommendation, about encouraging mergers between relatively healthy plans and relatively unhealthy ones, and you talk about us clarifying or increasing the tools of the PBGC to do that. What kind of tools would you like to see us give the PBGC to facilitate more mergers between healthy and unhealthy plans?

Mr. CERTNER. We certainly don't know the whole range of plans that are out there and what exists and how much help these can be. In fact, these are some of the things that we want to recommend the committee look at. And there may be some, for example, fiduciary rules right now that may prevent some of the combinations of plans or mergers and alliances that could possibly be helpful.

But again, if we are looking at a series of difficult choices then we want to make sure that we are looking at choices that are at least better than cutting accrued benefits. I am going to keep coming back to that refrain here.

Mr. ANDREWS. Speaking as a layperson here on this—I don't have the experience you do, but my instinct tells me that healthy plans are really not likely to merge with unhealthy plans because they don't want to catch the virus the unhealthy plans have. I mean, even if we gave the PBGC those tools do you think it is very likely that many people would take advantage of it?

Mr. CERTNER. Well, in some instances here I think we have overlapping employers who have both these healthy and unhealthy plans, and I think that is the first place we would want to look. But again, I think these are difficult issues, and I am sure—and we don't want to see healthy plans really put in a situation where they also become unhealthy because——

Mr. ANDREWS. One other thing I was—you mentioned increases in PBGC premiums, and I think we should clearly consider those. But it is true, isn't it, that even if the PBGC has more income that would simply reduce the deficit numbers, it wouldn't increase the benefit that a pensioner receives if his or her pension is dumped into the PBGC, is that right?

Mr. CERTNER. Well, depending on how much we raise the premiums, yes.

Mr. ANDREWS. But it would—you would have to raise the premiums by a factor of 10 just to take care of the existing deficit to protect existing benefits. Isn't that right?

Mr. CERTNER. Under the PBGC's numbers, yes, I think that is true.

Mr. ANDREWS. So we would have a 10-fold increase that would just put us where we are right now, which is a huge benefit cut for people thrown into the fund, right?

Mr. CERTNER. Again, we are not talking about easy choices here.

Mr. ANDREWS. We sure aren't.

Mr. CERTNER. When we are talking about, you know, people potentially seeing their benefits cut by 40 percent——

Mr. ANDREWS. Right.

Mr. CERTNER.—and losing thousands of dollars a year and you are telling me that, you know, maybe a premium increase could go from $10 a person to even 100 a person, that to me still seems like a better choice than cutting somebody's benefits and pay stubs.

Mr. ANDREWS. We appreciate the positive alternatives you have put forward today. Thank you.

Chairman ROE. I thank the gentleman for yielding.

Dr. DesJarlais, you are recognized?

Mr. DESJARLAIS. Thank you, Mr. Chairman.

And appreciate you all being here today. I would like to start with Mr. Nyhan.

Without changes to the law, when will the Central States plan become insolvent?

Mr. NYHAN. We are projecting insolvency in 10 to 15 years. I think the current deterministic projection is in 2024 or 2025.

Mr. DESJARLAIS. Okay. What tools are available to plans to prolong their ability to pay benefits?

Mr. NYHAN. The tools we currently have available is to raise contributions or to reduce benefits to the extent legally possible. It is a complicated question, however, when you take a look at reducing, for example, ancillary benefits, as the gentleman from AARP suggested, because many times that dissuades active members from continued participation in the plan. When that happens you lose your actives.

A great portion of the contribution earned by the active going into the plan is used to subsidize the benefit of the retiree. So as you lose actives you actually accelerate your spiral towards insolvency. Our professionals have looked at it and determined we have cut benefits, for example, that we can, and any further reductions in the benefits will incent people to leave the plan and accelerate insolvency.

Mr. DESJARLAIS. Thank you. And thank you, Mr. Nyhan.

Ms. Duncan, that kind of leads into a question I had for you. As Mr. Nyhan suggested, one suggestion for ensuring plan solvency is to continually raise contributions. Can you explain whether we can solve plan funding issues simply by requiring larger contributions?

Mr. DUNCAN. By increasing the contributions it would effectively make companies like mine noncompetitive with those that aren't even paying into a pension plan. And right now you have an issue where the premiums that we are paying in that were 30 or 40 percent less than they were 10 years ago and the pensioners that have retired, the apprentices are getting far less money in their pension going forward and they are—if they, you know, realizing that, there is no reason for them to stay in the industry if they don't think that they are going to get the benefit that the guys that have already retired are going to get.

So by increasing the benefit, the benefit isn't really going to the employee; it is going to more the retiree and to the unfunded liabilities.

Mr. DESJARLAIS. So how do you stay competitive?

Mr. DUNCAN. That is a good question. It is something I deal with every day, and it is just trying to think of, you know, new ways to be better and trying to keep the guys going.

Mr. DESJARLAIS. Thank you.

Mr. McGarvey, as you know, the commission has recommended creating different types of new pension plans. Some of these designs include lower guaranteed benefits with an opportunity to benefit from market appreciation, as in the traditional defined contribution plan; others might feature more conservative funding requirements.

Would you recommend that the bargaining parties agree to a contract that included one of the NCCMP's alternate plan designs?

Mr. MCGARVEY. First and foremost, you know, the situation is that the vast majority of multiemployer plans are well funded and won't need a lot of the tools that are provided in the commission's report. Those that will, if legislation is enacted, I would certainly encourage to look at using all the tools, including new plan design, going forward. Because our goal, particularly in the building trades goal, is to make sure that we have sustainable, predictable retirement security for the members who come through our industry and the contributions that are made on their behalf by their employers. That is our goal in this whole thing. We are not looking to cut anybody's benefits; we are looking to maintain what we have got and grow it for the participants that are in our plans.

Mr. DESJARLAIS. Thank you.

That is all I have, Mr. Chairman. I yield back.

Chairman ROE. Thank the gentleman for yielding.

I now will recognize Mr. Andrews?

Mr. ANDREWS. Yes, just for a couple of housekeeping opportunities. I did want to acknowledge the presence of a mentor and friend and very powerful, thoughtful labor leader. Tom Buffenbarger of the International Association of Machinists is with us. We appreciate his presence.

I would ask unanimous consent that testimony that Mr. President is submitting for himself and his members be admitted to the record?

[The information follows:]

STATEMENT OF
THE INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS
ON
'STRENGTHENING THE MULTIEMPLOYER PENSION SYSTEM:
HOW WILL PROPOSED REFORMS AFFECT EMPLOYERS, WORKERS, AND RETIREES?'

BEFORE THE
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS
OF
THE COMMITTEE ON EDUCATION AND THE WORKFORCE
UNITED STATES HOUSE OF REPRESENTATIVES

OCTOBER 29, 2013

The International Association of Machinists and Aerospace Workers (IAM), a broadly diversified manufacturing and transportation union representing nearly 700,000 active and retired members, believes strongly in the necessity of a defined benefit pension in order for workers to have a secure retirement. We are pleased to comment on the subject of today's important hearing, particularly on the affect the proposed changes to the multiemployer pension system will have on workers and retirees.

We in the IAM have experienced firsthand the benefits of a well-run multiemployer pension plan. The IAM's National Pension Fund has over 1,750 contributing employers and is the sixth largest multiemployer plan in the U.S. With assets of over $9.2 billion, the IAM National Pension Fund provides retirement security to over 80,000 retirees and beneficiaries.

Multiemployer pension funds possess a number of substantial benefits for both workers and employers. Risk is shared among many employers so the failure of one business cannot bring down the entire pension fund. Employer costs are predetermined and, unlike single employer plans, those costs are a predictable hourly rate.

Professionally managed multiemployer plans pool investment risk for workers and are more efficient than 401(k) savings plans in delivering a comparable level of benefits.

It is important to note that pensions are not gifts from employers, but rather deferred wages that employees have sacrificed for the promise of a secure retirement after a lifetime of work. For example, in the IAM National Pension Fund a worker deferring $3.00 per hour in wages would earn $120.44 per month per year of service. For a thirty-year career the $3.00 per hour contribution would provide a pension of $3,613 per month, or about $43,400 annually.

An essential part of the American Dream is a secure retirement after a lifetime of toil. For many Americans that dream has turned into a nightmare of uncertainty and fear as incomes have stagnated and the number of workers receiving defined benefit pensions has shrunk. Worse yet, the unwise proposal, Solutions Not Bailouts, by the National Coordinating Committee for Multiemployer Plans (NCCMP) to allow "deeply troubled plans" to drastically cut the pensions to current retirees would break the promise of a secure retirement that so many workers have sacrificed hard-earned wages and benefits for.

As a participating member of the NCCMP, the IAM applauds NCCMP's attempts to find ways to strengthen the multiemployer system, but we unequivocally reject any proposal that allows multiemployer plans to have the ability to slash retirement benefits for existing retirees. NCCMP's scheme allows cuts to 110 percent of the Pension Benefit Guarantee Corporation's (PBGC) maximum guarantee of $35.75 per month per year of service. At 110 percent of the maximum guarantee, someone with a thirty year career could see his or her pension reduced to only $1,180 per month, or $14,157 per year. For a worker planning on receiving a monthly benefit of $3,613, this would mean a 67 percent cut in promised benefits. A bigger pension would result in an even larger cut (see attachment). We have no idea how an eighty-year-old retiree would be able to make up such a loss.

While no data has been provided as to how the proposal to allow cuts down to the 110 percent level was determined, we do know that such an extreme cut is unconscionable and breaks a central tenet of the Employee Retirement Income Security Act (ERISA). ERISA's "anti-cutback rule" permits reductions in future benefit accruals by current employees, but prevents reductions in vested benefits including pensions being paid to retirees and their surviving spouses. This rule is derived from a fundamental understanding that, since the overwhelming majority of retirees do not have the means to increase their income, changing ERISA to allow cuts in promised benefits is a ticket to poverty and dependence on government assistance. Likewise, workers within a decade of retirement do not have the ability or the time to make significant changes in their careers or savings to ensure a secure retirement.

NCCMP's proposal to "harmonize" the ERISA's current normal retirement age of 65 with Social Security, which increases to age 67 for those born in 1960 or later, will also have a negative effect on future retirees. Many of our members in the IAM work in physically demanding and often dangerous jobs and their bodies are simply worn out by age 65. Furthermore, as we have seen during this so-called recovery, it is very hard for older workers to find new employment. Raising the normal retirement age would only create additional hardships for older unemployed workers since it would delay and/or reduce their retirement benefits.

Perhaps the central flaw in NCCMP's proposals derives from its lack of regard for the wellbeing of current and future retirees, both of whom appear to be sacrificed in order to help some "deeply troubled plans," particularly the badly underfunded International Brotherhood of Teamster's Central States Pension Fund. The Central States Pension Fund is described in the Solutions Not Bailouts report as a "transportation, communications, and utilities" fund with a net liability of $20 billion as of September 30, 2012. According to the report, the other pension fund with a significant liability, $6 billion, would not be helped by the proposal to slash retiree benefits.

Disturbingly, as a red zone plan, the Central States Pension Fund appears to have not yet availed itself of all the tools afforded it under the Pension Protection Act. According to the April 29, 2013 Quarterly Report of the Independent Special Counsel, the Central State Trustees "...concluded that mandating further benefit reductions [for future retirees] or contribution rate increases at this time would be counterproductive to the Fund, and would not constitute 'reasonable measures' to be adopted or pursued." Yet, the Central States Pension Fund's yawning deficit and its potential impact on the Pension Benefit Guaranty Corporation's (PBGC) guaranty fund constitutes a major justification for NCCMP's "solution" of cutting retiree pensions. If a potentially insolvent fund finds that reducing the benefits of future retirees and increasing contribution rates are "counterproductive," then why would any "deeply troubled plan" want to cut benefits to those who can least afford such cuts as NCCMP proposes?

Retirees lack the same clout as active employees, in both their former workplaces and in their unions. This presents a potential conflict of interest for plan trustees, who in NCCMP's proposal would not have to take into consideration the impact of the cuts on retirees when doing "due diligence" prior to making any such cuts. While the PBGC could review and negate any proposed cuts, the PBGC has a vested interest in reducing its potential financial liabilities so it would have an incentive to approve benefit reductions. Nor is the PBGC required to consider retirees when reviewing proposed cuts. According to the NCCMP proposal, if the PBGC does not respond to the trustees' request to cut pensions within six months then the cuts are automatically approved. This hardly constitutes a rigorous review and approval process.

Americans are rightly concerned about their financial futures. The Retirement Research Center estimates that working Americans face a retirement income deficit of $6.6 trillion dollars. Small wonder then that a poll by the Pension Rights Center found that the biggest financial concern for Americans is a lack of retirement security, and that a majority of Baby Boomers fear outliving their retirement savings even more than death.

Last week Wells Fargo released its annual Middle Class Retirement study which vividly detailed the retirement anxiety that many Americans face. Over 40 percent of survey participants indicated that both paying bills and saving for retirement was impossible, and barely half felt that they would be able to save enough to actually retire. A stunning 37 percent of survey participants stated that they would have to work until they were too ill or died.

Allowing draconian cuts in retirement benefits will not ease these concerns nor provide for a more secure retirement. Alternatives must be explored that preserve the fundamental promise of ERISA that your pension will be there when you need it and that your pension cannot be taken away from you. Examples of these alternatives include facilitating the merger of poorly funded plans with healthy plans and increasing plan premiums to the PBGC.

A more significant remedy would include Congress appropriating sufficient funds to the PBGC to cover any additional liabilities that premium increases and other alternatives may not cover. After all, taxpayers bailed out the Wall Street speculators who were primarily responsible for the 2008 economic collapse and our on-going economic crisis; a collapse that has devastated the retirements of countless Americans and put many pension plans under undue stress. If we can help the rich and politically powerful on Wall Street, then certainly we can lend a hand to the over forty-four million Americans on Main Street who are depending on their pensions for a secure retirement.

Whether it is in Detroit, a state capitol, or in a private sector multiemployer pension plan, the pensions of hard-working Americans are under attack. It is time to end this open season on workers' pensions. Congress must not be swayed by the easy temptation to cut hard earned benefits. Retirees and working Americans deserve better.

PBGC Multi-Employer Plan Guarantee

Monthly Benefit Per Year of Service		% Guaranteed	$ Guaranteed
1st	$11.00	100%	$11.00
Next	$33.00	75%	$24.75
Above	$44.00	0%	$0.00
Maximum Guarantee			$35.75
Maximum Annual			$429.00
Example - Maximum with 30 Years			
Per Month			$1,072.50
Per Year			$12,870.00

NCCMP Proposal

Cuts as low as 110% PBGC Guarantee

PBGC Maximum Guarantee		110% of Max
Per Mo Per Yr.	$35.75	$39.33
Annual Per Yr.	$429.00	$471.90
Monthly with 30 Yrs.	$1,072.50	$1,179.75
Annual with 30 Yrs.	$12,870.00	$14,157.00

Impact of NCCMP Proposal

Current $ Per Mo. Per Yr. Service	NCCMP Proposed at 110%	Potential Reduction $ Per Mo. Per Yr. Service	% Reduction
$50.00	$39.33	-$10.68	-21%
$60.00	$39.33	-$20.68	-34%
$70.00	$39.33	-$30.68	-44%
$80.00	$39.33	-$40.68	-51%
$90.00	$39.33	-$50.68	-56%
$100.00	$39.33	-$60.68	-61%

Example with 30 Years

Current $ Per Mo. Per Yr. Service	Annual with 30 Yrs. Service	NCCMP Proposal 110% for 30 Yrs.	Potential Reduction $ Annually with 30 Yrs.	% Reduction
$50.00	$18,000	$14,157	-$3,843	-21%
$60.00	$21,600	$14,157	-$7,443	-34%
$70.00	$25,200	$14,157	-$11,043	-44%
$80.00	$28,800	$14,157	-$14,643	-51%
$90.00	$32,400	$14,157	-$18,243	-56%
$100.00	$36,000	$14,157	-$21,843	-61%

Chairman ROE. Without objection, so ordered.

Mr. ANDREWS. And we also have testimony from the International Brotherhood of Teamsters. Would I ask the same request?

[The information follows:]

Statement for the Record by
Teamsters for a Democratic Union

Submitted to the

Education and Workforce Committee
Of the U.S. House of Representatives

On

Strengthening the Multiemployer Pension System:
What Reforms Should Policymakers Consider?

October 29, 2013

Teamsters for a Democratic Union
P.O. Box 10128
Detroit MI 48210
313-842-2600
www.tdu.org

Introduction

On behalf of Teamsters for a Democratic Union, we respectfully submit this statement for consideration by the members of the Committee.

Teamsters for a Democratic Union (TDU), along with our sister organization, the Teamster Rank and File Education and Legal Defense Foundation (TRF), is the reform movement within the Teamsters Union, and has been for the past 37 years. Our organization includes active Teamsters as well as retired Teamsters, each with a voice and vote within our organization.

TDU has many members who are active participants or retirees in Teamster-affiliated multi-employer pension plans, including the Central States, Southeast and Southwest Areas Pension Fund.

For many years, TDU has taken an active interest in protecting and defending the rights of Teamster retirees and plan participants. We have testified before Congressional Committees on pension issues, and have sponsored litigation to protect the rights of Teamster members and retirees in pension plans.

With respect to the Central States Fund, as far back as 1978 we sponsored litigation to change how the fund was operated. We have also sponsored litigation regarding overly restrictive "reemployment" rules of Central States, which have prevented retirees from doing many types of work while collecting pension benefits they have earned.We have sponsored litigation to gain public – and retiree – access to reports filed by the Independent Special Counsel to the Central States Fund with the federal district court.

We approach the issues raised by the Solutions Not Bailouts document with a hopeful but critical perspective.

As others have noted, many of the proposals, in particular those summarized as "Technical Corrections and Enhancements to PPA and Prior Laws" are for the most part helpful proposals.

But the centerpiece proposal of the document, the proposal to alter the anti-cutback provisions of ERISA to allow multi-employer plans to cut pension and already-accrued benefits, is dangerous to retirees, to the principles of ERISA, and should be rejected or at the very least delayed until positive alternatives can be explored.

Protection of the Most Vulnerable

It should be noted that the anti-cutback rule protects those most vulnerable: retirees.

In the Teamsters Union, and in many other unions, retirees have no right to vote. Thus the officers of the union are accountable only to the active members still working, not the retirees, who have no voice in the union or in selection of the union trustees to pension funds.

The retirees in the Central States Pension Fund (which is a central subject of the proposal to amend the anti-cutback rule for "deeply troubled" plans) have not been consulted or even informed that the fund is backing a proposal to change the anti-cutback rule. Indeed, spokespersons for the fund have flatly denied their support for the NCCMP proposal. At a meeting in Kansas City, with some 3000 retirees in attendance, an executive of the fund stated that the Solutions not Bailouts document is "just an idea" and that the fund would not support amending the anti-cutback rule.

Teamster retirees deserve a voice in this process, which they have not had.

It is worth noting that in the Teamsters Union, the pensions of retirees never increase. The Central States Fund, as well as other major Teamster-affiliated pension trusts, provides a flat-rate pension for life. Thus a truck driver who is forced into retirement at say, 63, years old, will be receiving the same dollar amount, without any adjustment for inflation, some 25 years later.

This makes any threatened cuts to older retirees even more offensive.

Furthermore, the Central States Fund, along with many other Teamster-affiliated plans, imposes a restrictive "reemployment" rule, which prohibits many retirees from supplementing their pension benefit with work in a "Teamster core industry," such as trucking, warehousing, delivery, construction or food distribution and processing.

It is also worth noting that in the Teamsters Union, and in many other union settings, the retirees themselves in effect paid for their own pensions. Each time the Teamsters Union agrees to a contract with employers in national or local bargaining, they divide up the economic pie between wages and pension contributions to the pension fund. Thus Teamster retirees have deferred their own wage increases, over a lifetime of work, to provide the pension contributions to the fund.

These pensions were paid by moneys to the fund in lieu of wages, which could have provided substantial money to a retirement account, but instead went into the pension fund.

We Oppose Changing the Anti-Cutback Rule

Thus we oppose the proposal to change the anti-cutback provisions of ERISA to allow "deeply troubled" plans to make drastic cuts the pensions of retirees who are already in pay status.

ERISA most fundamentally stands for the principle that accrued pensions cannot be cut. This is the centerpiece protection for members of a pension fund. Future accruals can be cut, and the Teamster Central States Fund has done that, though not to the full extent the law would allow. But benefits already being paid, or earned and vested, cannot be cut.

This bedrock principle should be preserved.

Alternatives to Cutting Accrued Pensions

We submit that alternatives to altering one of ERISA's most fundamental safeguards have not been explored sufficiently to warrant consideration of destroying or weakening the anti-cutback rule.

A number of alternatives to be explored have been described in the AARP's Statement for the Record, submitted to the Committee on June 7, 2013. These include

- **Partition,** to segregate and cover separately so-called "orphan" participants. Many Teamsters, including in the Central States Fund, have been forced into retirement due to trucking deregulation and trade policies which have led to the bankruptcy of many companies.
- **Increased Funding for the PBGC,** including 1) consideration of low-interest loans by large banks and investment funds, especially those which received TARP funds; and 2) Public guarantee of private loans.
- **Increased PBGC premiums.** The present low-level of $12 per year per participant could be greatly increased, perhaps to ten times this level. The PBGC has projected that an increase to this still-modest level would reduce the likelihood of PBGC insolvency by 2022 to zero. We further suggest that the integrity of the PBGC be given the status of the FDIC, by backing it by the full faith and credit of the United States.

No doubt there are other alternatives as well, but these indicate positive solutions to the problems of the Central States Fund and other troubled pension funds, without resorting to taking a hatchet to ERISA's baseline protection in the anti-cutback provisions.

The Solution Must Not be a Hatchet

The <u>Solutions Not Bailouts</u> document requests that the Central States Fund be permitted to cut retirees in pay status drastically, down to 110 percent of the PBGC limit.

The PBGC maximum for a 30-year Teamster at full retirement age is $12,870. As the attached testimonials illustrate, a cut to 110% of this level would slash the pensions of some Teamsters who spent a lifetime earning and contributing to their pension by some 66%.

And Central States' own reemployment rules would prevent that retiree from returning to similar work, even if they are still capable of performing difficult blue-collar work.

It should be noted that the average pension payment of the Central States Fund is $1,109 per month (as of the year-end 2012 Financial and Analytical Report on the fund), hardly a luxury pension by any means.

The NCCMP Executive Director Randy DeFrehn was quoted in the media two weeks ago citing a hypothetical example of a "5 percent haircut" given to these retirees to shore up a pension fund. But the proposal does not request the ability to cut by 5 percent. It asks for the ability to make unlimited cuts to pensions for retirees and their surviving spouses as long as the benefits are not reduced below 110% of the PBGC maximum. This is not a haircut but rather a decapitation of Americans who spent a lifetime of hard work moving, sorting, and delivering our freight to keep our economy humming.

The Central States Fund itself has noted that drastic cuts would harm to the Fund's ability to sustain its present membership, and could lead to a death spiral of exits, thus worsening its situation.

The Independent Special Counsel report on the Central States Fund of April 29, 2013, noted that, "The Trustees also concluded during the 2012 update process that <u>any further or additional benefit reductions</u>, or the imposition of additional requirements for increased contributions (beyond those already set forth in the Rehabilitation Plan) would entail too great a risk of irreparable harm to a large number of contributing employers, or <u>would otherwise risk prompting an undue and harmful number of withdrawals from the fund</u>." (Emphasis added)

Indeed, drastically cutting already-earned credits no doubt would cause many Teamsters to urge that employers to withdraw from the fund.

Raising the Retirement Age is Inappropriate

The NCCMP proposal to raise the full retirement age from 65 to "harmonize" with social security is inappropriate for very important reasons.

First, Teamsters in the Central States Fund are primarily engaged in physically demanding jobs, such as over-the-road trucking, warehouse work with strict quotas of tonnage to load per hour, and other work unsuitable for the majority of 67-year old persons. In fact, many if not most Teamster retirees leave employment before the normal retirement age already.

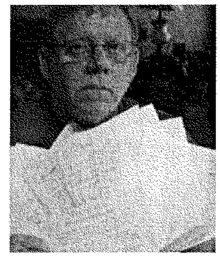
Second, many have been forced to retire due to plant closures and downsizing, and a 65-year truck driver's employment prospects are slim to none.

Finally, this proposal amounts to a back-door way of gutting the anti-cutback rule, by cutting back the number of years an earned pension is provided.

Conclusion

We support many of the technical proposals advanced by the NCCMP. However, we oppose any change to the anti-cutback rule which would allow pension fund trustees to drastically cut the pensions of retirees in pay status or of already-earned pension credits. We believe the proper course is to explore positive alternatives, long before considering such a drastic change to the established pension law and policy of the United States.

Teamster Testimonials



"Why should we sacrifice our retirement just because we worked under the Central States pension? We need the same Teamster pension that others in freight will get working in the Western Conference or Chicago Locals 705 and 710. I distributed a petition to Holland Teamsters and got 369 signatures from nearly twenty terminals and locals. We need to make a stand to save and secure our pensions."

Greg Brown, Holland
Local 413, Columbus, Ohio

I've worked in Teamster Freight for nearly thirty five years. I planned on retiring after 30 years of back breaking work but they changed it just before I reached the goal. So I went to 57.

Because of YRC's bad management & financial decisions, we were forced to take concessions on our wages and benefits, and I had to change plans, again. But I'm still counting on getting the FULL pension I earned. I know it's going to take organizing with my Teamster brothers and sisters to ensure we get it.

I had breakfast recently with former co-workers who have retired from Yellow Freight. My goal was to catch them up on what's possibly coming down the pike with our pensions. Not one had heard or knew anything about the lobbying effort by the IBT and Central States, which proposes cutting pension benefits. Even for retirees!

At the breakfast, I passed out the petition to protect our pensions and got names and signatures.

We all need to get the info and the petition out to working and retired Teamsters. The NCCMP proposals should be called "No Solutions, Just a Cop Out." We need to remind Hoffa that he campaigned in 1996 on a "25-and-Out" and he needs to make sure we get our promised pension, not help to gut it.

Tim Pagel, YRC
Local 988, Houston

I went to work for Murphy Warehouse Company right after Labor Day 1976. I worked locally delivering freight of various kinds to distribution centers, mostly grocery warehouses in the St. Paul/Minneapolis metropolitan area.

After 23 years at Murphy, I worked for a short time for a regional trucking company and then, for 11 years, a ready mix company. My wages (adjusted for inflation) remained essentially flat throughout my working career. But the health benefits and pension were the saving grace. Through it all, my employers were paying contributions to my pension.

I counted on the pension and social security as a savings plan for my retirement.

Then came the Great Recession of 2008 and construction took a nose dive. My income and work were cut by 80%. We lost our house and incurred additional tax liability because of the refinancing. For lack of work, I quit my union job. I went to work non-union in the oil fields of North Dakota. I worked 80-hour weeks to try to keep our heads above water.

I'm now 75, still working to pay off my debts, and collecting a pension of $2,300/month.

Now the Central States Pension Fund is part of a big lobbying effort to get Congress to change the law to allow them to cut my pension. Is that just and fair after all the years I sacrificed to earn a decent retirement? Congress needs to stand up for the little guy, those of us on Main Street America, and make sure that we get what we were promised.

Bob McNattin, Cemstone
Local 120, St. Paul, Minn.

To Members of Congress:

I am outraged by the effort to convince Congress to allow reductions in pension benefits. Please try to think of retirees who have planned our lives based on our pensions.

I've been retired for 9 years after working for over 36 years moving freight across the country. In 1980, due to government deregulation, many companies went out of business in the freight industry. I worked for ten companies at one time (on call) to make sure I stayed active to receive monthly or weekly contributions to the pension. I earned my pension the hard way as I have a clear memory of giving up many possible wage increases so that money could go towards benefits.

I am also a past President of Teamsters Local 407 and represented 7,500 members at that time. I fear that that proposed legislation to change pension law will be devastating to these members I served and so many more. I know any cut will harm my household. I am a cancer survivor and my wife has health issues as well. We count on my pension to keep us going.

I am currently a councilman in Maple Heights, Ohio and try to represent my constituents fairly. I expect the same from Congress. You bailed out the banks and their executives didn't lose a dime. Unlike the bankers, we have done no wrong.

Don't be afraid to lend a hand to people who worked hard for their pensions.

Respectfully,

Alex Adams, Yellow Freight
Local 407 Retiree
Councilman, Maple Heights, Ohio

We have all earned our Pensions....

I worked for 32 years at Roadway Express/YRCW. I am now retired. As a young man when I hired in, I liked the wages, insurance and most of all, the pension. It was hard work, but the benefits made it worthwhile. The pension offered my wife and I security and a way to live comfortably into our old age. In 1980 deregulation of the trucking industry was put into place and the union truck lines began to fall like dominoes. We gave up raises and increased money to the pension fund.

Many of the fellow Teamsters I have talked to are in disbelief that Congress might allow our pensions to be cut. Some were moved to tears, frightened, while others became fighting mad. The NCCMP proposal is a slap in the face to every Teamster. I have read the 3-page report from the Pension Rights Center and the 10-page report from the AARP. The AARP plan outlined many ways our pensions could be saved. I support the AARP approach. The NCCMP proposal only supports cutting our hard earned pensions as a fix.

Dave Scheidt, Roadway, Retired Teamster
Local 41, Kansas City

I initiated into Teamsters Union Local 128 that later merged into Pittsburgh Local 249. I was a Roadway freight driver and moved to Harrisburg Local 776 with a change of operations. Later, another change took me to Youngstown Local 377. That terminal closed and had another change to Miami Local 769. Why all the moves? I needed to remain in a Teamster pension plan. The promise was $3,000/month after 30 hard years.

I will fight along with my union and TDU to preserve those benefits I earned. Congress better hear us loud and clear. Don't cut our pensions!

Solidarity, brothers and sisters,

Mike Schaffer, Roadway
Local 769, Miami

After working 31 years, I thought I had a secure retirement. I wasn't planning on living it up but felt I could comfortably pay my bills on my monthly pension check.

I earned my pension as a Teamster. For ten years, I worked for a land survey company and was a member of Local 299 in Detroit. The following 21 years I worked as a UPS delivery driver in Teamsters Local 243.

I probably racked up an extra 10 years of overtime hours put in over those years, wearing out toe joints, knees and shoulders. None of those hours counted towards my pension.

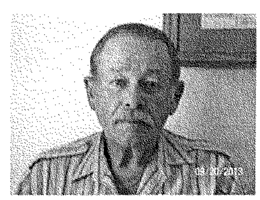
Over the years we watched our budget. We kept our cars 10 years or more, went on a few simple vacations now and again, and made our boys pay a good part of their own college expenses.

I viewed my pension as a savings plan, tucked away, where I could live off it in my old age. Now I'm hearing this may not be the case.

I'm told that the pension I earned over those long years will likely be cut without any say on my part. I earned my pension under the contract. Each and every time, we accepted a lower pay raise so more money could go to the pension. We were told we could count on that money when we retired. I trusted that the system was secure. I played by the rules and did nothing wrong.

In conclusion, I would hope that Congress would take every measure to protect the pensions of so many retired people like myself that are now left in great jeopardy by threats to our retirement security.

George W. Balog, UPS Retiree
Local 243, Auburn Hills, Michigan



I worked for over thirty years as a union truck driver, with the goal of being able to have a comfortable lifestyle once I retired. Take a look at my work history and you get a pretty good picture that I earned my pension.

1964-70: Air National Guard – Honorable Discharge

1968-69: Roethlisberger Transfer Steel Division – Teamsters Local 40

1972-74: Case Driveway Inc. – Teamsters Local 505

1974-75: Spector Freight System – Teamsters Local 92 and 142

1975-1984: General Highway Express – Teamsters Local 40

1992: ABF – Teamsters Local 40

1992-2009: USF Holland – Teamsters Locals 20, 24, and 40

Government deregulation of the trucking history had a big impact on my career. I followed the work, and had to move my family, to keep earning towards my Teamster pension. Please do not change the law to allow my pension to be cut.

Larry Kuhn, Holland Retiree
Local 40, Shelby, Ohio

I've been a Teamster in the trucking industry for 38 years. I retired with 36 ½ years of pension contributions. I had 30 years of contributions to Central States. In each contract, we gave up wage increases for the money to go to health insurance costs and our promised pension benefit. Now Central States is pushing for changes that would allow them to cut my benefit. That proposed change to pension law will have a terrible impact on me and thousands of other Teamster retirees. That's not what we earned or what we were promised.

Carl Hansen, ABF Retiree
Local 200, Waukesha, Wisconsin

To Members of Congress:

My tax dollars paid for 140 billion in bailout money just for bonuses to bankers who screwed up. Defined benefit plans were ruined by these same people. Our taxes funded bailouts for automakers and tax breaks for companies like Apple and GE.

Let's stop giving tax breaks to "Job Creators" who don't create any jobs. Let's stop breaking promises to the poor and middle class. Please stop this class war.

I can't keep delivering 300 pound treadmills until I'm 80 years old. This seems to be the new American dream. I paid into a pension for 23 years but there's no one to help me. It used to be you were a bum if you didn't work. Now you're a bum if you want to get what you paid into like a pension or social security. The talkers on the radio say that seniors are on the dole and firemen and teachers who want their pensions are greedy.

Even the inventor of the 401k says they were not meant for retirement. They were meant to be a way to delay tax payments for the super wealthy. A secure retirement should not hinge on timing a stock market bubble in order to work. Forcing us to work longer also shrinks the pool of jobs for younger folks.

The NCCMP seems to be just another group of employers trying to get out of paying what was promised to their employees.

The PBGC should keep a promise and maintain benefit levels and create jobs by allowing us to retire. I'm not sure why destroying the middle class is the goal of today's government. I don't think it's a good idea. We spend the little money we have.

I've been funding tax breaks for the wealthy for decades now. Is it too much to ask for what I gave up in wages toward a truly modest retirement after 40+ years of work?

Paul Host
Teamsters Local 200 – ABF
Milwaukee, Wisconsin

Chairman ROE. Without objection.

Mr. ANDREWS. And from the Boilermakers, the same request to be put on the record?

[The information follows:]

**STATEMENT OF
THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,
IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS
ON
STRENGTHENING THE MULTI-EMPLOYER PENSION SYSTEM
HOW WILL PROPOSED REFORMS AFFECT EMPLOYERS,
WORKERS AND RETIREES?**

**BEFORE THE
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND
PENSIONS
OF
THE COMMITTEE ON EDUCATION AND THE WORKFORCE
UNITED STATES HOUSE OF REPRESENTATIVES**

OCTOBER 29, 2013

The International Brotherhood of Boilermakers (IBB) is a diverse union representing workers throughout the United States and Canada in industrial construction, repair, and maintenance; manufacturing; shipbuilding and marine repair; railroads; mining and quarrying; cement kilns; and related industries.

With its headquarters in Kansas City, Kansas, the IBB unites over 240 local lodges throughout North America, with the purpose of protecting and advancing the interests of our membership. We are pleased to comment on the subject of today's hearing.

In 1960, the IBB, in cooperation with a group of employers, created the Boilermaker-Blacksmith National Pension Trust to ensure financial security for our participants upon retirement. Our pension plan is a defined benefit plan administered by a board of trustees.

Participating employers make contributions into the fund on behalf of each Boilermaker as determined by collective bargaining agreements. The pension plan grows tax-deferred and ensures that eligible participants receive a specific monthly benefit at retirement. The pension also provides early retirement, disability, death and survivor benefits. For over 50 years, the IBB has remained steadfast in our commitment to providing our members a secure retirement.

One of the major successes of the American Labor Movement has been the ability to negotiate wage packages that not only provide many union members with the ability to live a solid, middle-class lifestyle, but also provides them with health care benefits and pensions.

Eighty-eight percent of workers in unions participate in pension plans versus just forty-nine percent of nonunion workers. Seventy-seven percent of union workers have guaranteed pensions, compared with just seventeen percent of nonunion workers.[1]

Earlier this year, the National Coordinating Committee for Multiemployer Plans (NCCMP) issued a proposal, "Solutions not Bailouts,[2]" which attempted to address ways to strengthen the multi-employer pension system. This proposal is the primary focus of today's hearing. While we agree that a minority of multi-employer plans face a difficult future and we support efforts to help them maintain their solvency, we have significant concerns with this proposal.

---

1 http://www.aflcio.org/Learn-About-Unions/What-Unions-Do/The-Union-Difference

2 http://www.solutionsnotbailouts.com/

Our primary concern is with the "Remediation" section of the NCCMP proposal. Here, NCCMP would amend the Employee Retirement Income Security Act (ERISA) "anti-cutback rule" to permit "PBGC-approved" reductions for existing retirees – reductions as low as 110% of the Pension Benefit Guarantee Corporation (PBGC) maximum guarantee – in "deeply troubled plans."

We can think of no more serious breach of trust to our Boilermaker retirees – our brothers and sisters who spent their lifetimes working in physically demanding occupations – than to support a proposal that could undermine the security of the retirement they earned and were promised.

Our members have relied upon – and planned their futures around – the assurance that benefits earned and vested could not be taken from them after retirement. We are steadfastly opposed to the NCCMP proposal because it removes that assurance and creates uncertainty among a vulnerable segment of our society. The very threat of losing all or part of their retirement will cause needless grief to our retirees if not outright financial ruin. It is unconscionable to inflict such uncertainty at this stage in people's lives.

The problems with most of our Taft-Hartley plans were not the fault of the plans themselves. In the current circumstance, the real fault lies with those financial institutions whose actions nearly brought down the United

States financial system. If anyone should carry the burden of refunding these plans, we contend it is those who broke the system in the first place.

We also disagree with NCCMP's proposed option of changing the normal retirement age in a manner consistent with Social Security. Again, due to the physically demanding nature of the work that many Boilermakers engage in, often from the age of 18 or 20, early retirement is not a luxury but a necessity. Many of them simply cannot physically work until 65 or later.

Our over-arching concern with the NCCMP's proposal is that while the tools they suggest for "deeply troubled plans" to remain solvent are characterized as strictly "voluntary," our years of experience in managing a large multi-employer plan leave us concerned that plan trustees might feel pressure, under the weight of their fiduciary responsibility, to make decisions contrary to the real interests of retirees, whether or not the plan(s) are facing an immediate financial burden.

The IBB understands there is no single, perfect answer to the problems facing certain pension plans. We strongly urge the committee to examine any and all proposals related to multi-employer pension plans with close and careful scrutiny. While we know many proposals are well-intentioned and on the face appear reasonable, we remain concerned that the wrong decisions will destroy the financial security of men and women who worked hard all their lives, played by the rules, and are owed what they were promised.

Chairman ROE. Without objection.

Mr. ANDREWS. Tom, we are happy to have you with us.

Chairman ROE. Welcome.

I will now recognize, I think, Dr. Loebsack?

Mr. LOEBSACK. Thank you, Dr. Roe.

Well, I do want to thank all of you for being here today to discuss this issue that I think we can all agree is extremely critical for the hardworking middle class across the country, middle class families, and I think we—all of us here can agree that something really has to be done. I think we are at that point.

Something has got to be done to shore up the multiemployer pension plans that are at risk of failing. And certainly in these difficult economic times it is more important than ever that those—I believe, at least—those who have worked hard their entire lives and have contributed to their pensions receive the benefits that they have come to expect, and I would argue that they, in fact, deserve.

I think it is particularly important for those who are near retirement and have made important financial decisions at age 60, 62, whatever, based on an expected pension. I think it is really, really critical for those folks in particular. I think we need to think about the ability of these individuals to adapt to any kind of fundamental changes that might come to multiemployer pensions.

I also believe that this really, at its core, is a fairness issue. How do we determine what size of a cut is fair for which workers, and how do we justify taking away earned benefits from a worker whose plan has gone under through no fault of their own? I think that is a really critical question.

I think we need to think very carefully—and I appreciate what you folks have had to offer today—think very carefully moving forward so I want to be sure that we fully understand what this proposal would mean for workers.

So, Mr. McGarvey, if you can, and if you can't today, I will take a response in writing, but if you can, walk us through how these cuts would specifically affect a retiree who has worked 30 years, 15 years, and 5 years at a participating employer. And I would like to know, if you can give us the number today, how much their average benefit is now and how much they would see cut if their plan went under—those different levels: 30, 15, and 5 years. You may not have that off the top of your head, and I will take it in writing if you don't, but if you could address that question.

Mr. MCGARVEY. Well, some of it I do not have off the top of my head, but basic premise is, I mean, it is a situation I have in my own family. My father is a pensioner for one of these troubled plans. The potential that he is going to wind up in PBGC or, with enacted legislation, give the trustees the tools—and I think that is the key here: We are not asking Congress to make the decisions, and nobody is asking us on this panel to make the decision. The decisions will be made by the board of trustees in that local area that runs that local pension. They will determine, based on the advice of the professionals, where the proper changes and adjustments to make to the plan to keep the plan's solvency and mitigate any damage to the existing participants of the plans and the existing retirees.

That is not going to be a decision made in Washington, D.C.; that is going to be a decision that is made in some communities. And again, going back to my earlier statement, the vast majority of our plans don't need that tool. There are lots of tools in this proposal besides that tool that you describe there.

In those situations where they have it will be boards of trustees made up of union representatives and contractor representatives on the advice of professionals which will determine, certainly with the input of the membership and the existing retirees in that pension fund, on the changes that they have to make and what is most palatable and what mitigates the most damage to the existing and future participants in the plan.

Mr. LOEBSACK. I think that up here, though, you know, we are going to have to make a decision. We are going to have to vote for or against whatever legislation may be presented to us and we are going to have to have as much information as we possibly can have from those folks who are crafting whatever legislative proposal we are talking about, so that is why I asked for specific examples, if I can get that down the road.

I understand that there are going to be folks at the local level that are going to be making these decisions, but we are going to have to have as much information about how those decisions may get made, as well. So can you give us some idea of what kind of factors those folks at the local level would be taking into account to make the kinds of decisions and be able to answer the question that I asked at the outset?

Mr. MCGARVEY. Well, I don't have the data but we will provide all that data to you as soon as we can get it up to you.

Mr. LOEBSACK. Can any other member here want—does any other member of the panel want to weigh in on that, what kinds of factors that might be taken into account?

Mr. NYHAN. Well, if I might, I think the NCCM proposal is illustrative of some things that we need to take into account, but it is not prescriptive. And we would, of course, encourage the Congress to be a little bit more prescriptive in some of the things you should consider.

Clearly, and while our trustees haven't weighed in on this yet, we would consider age, whether somebody is disabled, whether somebody is a surviving spouse, whether the time that they spent with the plan is very minimal. So they have an accrued benefit, they spent 5 years on the plan and went out and earned a law degree and they are not really depending on the benefit would be a different category than somebody who had spent 35 years in the industry.

I think you would have to take into—we also, in our particular industry we have what we call reciprocity, so many members earn a small benefit in our plan and they earn a larger benefit in a different plan. You might want to treat those people a little differently than people who are in our plan and have their entire benefit in our plan.

Mr. LOEBSACK. Thank you.

Mr. NYHAN. So there are quite a few items I think we would think about in terms of coming to a conclusion as to how to do this.

Mr. LOEBSACK. Thanks to all of you.

And thank you, Dr. Roe, for indulging——

Chairman ROE. I thank the gentleman for yielding.

I will now yield to Mr. Salmon, 5 minutes?

Mr. SALMON. Thank you.

Mr. Certner, AARP opposes the reform proposal which would allow distressed plans to reduce accrued benefits. I understand that. But for plans that have taken all responsible measures but are still facing impending insolvency, do you have another proposed alternative other than beefing up or increasing funding for PBGC?

Mr. CERTNER. Our written statement suggests some potential alternatives to look at that I have described before—looking at ancillary benefits, looking at mergers and partitions and alliance, looking at perhaps low-interest loans from the government or from the private sector to help bridge this gap. Again, we are talking about something that is very difficult. There are very difficult choices being made.

But fundamental rules like the anti-cutback rule, which say if you have earned a benefit it can't be cut back—these rules were intended to apply not when things are easy but when they are hard, to make sure that people do get their benefits. And we have just heard a description here about how, you know, under projections of insolvency maybe 15, 20 years from now for these plans, you know, the alternatives of cutting people's benefits now who are living on relatively meager benefits versus working on options and alternatives over time help extend the lives of these funds seems to us very much falls down on the side of protecting current accrued benefits.

Mr. SALMON. On the proposals that you have put forward, has anybody at AARP crunched the numbers to determine whether these approaches are viable or realistic? And has anybody else vetted these same proposals?

Mr. CERTNER. I don't think that—we certainly haven't had time to crunch numbers on these. We have tried to put forward alternatives, and we have looked around and talked to people to see what is possible, what is out there, what might work, what could help the situation.

Again, we don't know the different scenarios that all these plans face. It is very difficult to actually even get solid information as to exactly what the financial status is of some of these plans.

But we think going forward that this committee, and perhaps with the help of the Pension Benefit Guaranty Corporation, needs to look at these options. And certainly I think there are other creative options that are out there.

Mr. SALMON. I understand that the funding provisions in the Pension Protection Act for multiemployer plans is going to expire at the end of 2014. Would you be supportive of Congress extending those provisions or do you think we should revert to pre-PPA law?

Mr. CERTNER. Again, if it is going—we are happy to look at any options that may help forestall cuts to current accrued benefits for people.

Mr. SALMON. Okay.

Mr. Nyhan, would raising employer contribution rates work towards solving Central States funding problems?

Mr. NYHAN. No. We have modeled—our actuaries have modeled this and determined if we increased employer contributions at 8 percent a year for each and every year in perpetuity that would move our insolvency date by 60 days at the end of the 10-or 12-year period.

The problem is that there are so fewer participating—I mean, 1,800 sounds like a lot, but compared to the size of the fund that had 10,000 participating employers, the size of the retiree group is so much bigger than the active group, raising contributions or cutting benefits on a very small group of actives or participating employers just does not move the needle. It doesn't move the needle.

Mr. SALMON. Tell us more about the withdrawal liability. Is this a feasible option for most employers?

Mr. NYHAN. Withdrawal liability is getting incredibly difficult for many of these employers. The numbers are very, very large, particularly with the downturn in 2008, and you combine that with the rehabilitation plans or funding improvement plans that were mandated by the Pension Protection Act has increased the contribution requirements by contributing employers, and that combined has raised the present value of the withdrawal liability astronomically, all things being equal.

So it is a very difficult thing. It is hard for employers to go out and get credit. It is hard for employers to actually transact business with the size of the contingent liabilities associated with the plan.

Mr. SALMON. Thank you.

I yield back the balance of my time.

Chairman ROE. I thank the gentleman for yielding.

I will now recognize Dr. Holt for 5 minutes?

Mr. HOLT. Thank you, Chairman Roe.

Part of what we are talking about today, of course, is a proposal that is out there that maybe as we speak is falling apart, but it is worth discussing because it is what is on the table in front of us. There seem to be some assumptions that are widespread out there, and that is that, well, families will just have to swallow hard and take cuts, that defined-benefit plans are a thing of the past, that multiemployer plans are always mismanaged, and that bailouts are off the table.

I guess I would ask why that, for each one of those points, why that idea is out there. I think that, well, there is question about those assumptions in each case. I think it is part of a larger crisis.

Bailouts are off the table except when they apply to other sectors. You know, we are talking about 10 million, I think it is, employees who are affected by these. And it is, as I say, part of a larger crisis in retirement plans.

Let me ask a couple of things.

First of all, let me ask Mr. Certner. What do you think would be the implication for other defined-benefit plans—single-employer plans and individual plans—if the proposed changes were made? Are there implications for those plans? Would insurers want to get off the hook in those other plans?

Mr. CERTNER. Well, I think what is important here is we are talking about a very fundamental principle of ERISA, that an earned benefit, an accrued benefit, can never be taken away. And to violate that basic piece of ERISA for this area and in this circumstance really, I think, sets a precedent and opens a door that we certainly don't want to see opened.

I think it has been very clear over the years in the pension law that if you earn a benefit, you have an accrued benefit, that benefit cannot be cut back, cannot be taken away. And I think it is a fundamental mistake if we changed that rule in this circumstance because it would open the door to other circumstances, as well.

Mr. HOLT. Mr. Nyhan and Mr. McGarvey, what will be the advantages of the various administrative savings that have been proposed? Mr. Andrews asked the question of whether mergers are likely or attractive, but I guess I would like to know what might be the benefit of mergers if they were to take place on a large scale?

Let me start with Mr. Nyhan.

Mr. NYHAN. In our case there is no viable merger partner whatsoever. I think Ranking Member Andrews had it correct. Healthy plans don't want to dilute their assets and merge with plans that are in trouble. So I don't, you know, it——

Mr. HOLT. Let's put aside the motivation there of whether they would sign up. If they did, do you see administrative savings, and therefore benefit?

Mr. NYHAN. If two plans merge you will have administrative savings, yes.

Mr. HOLT. Give me a sense of the scale. Is it enough to affect the overall——

Mr. NYHAN. Well, our total GNA, for example, all of our salaries, all of our buildings, all of our computers, et cetera, et cetera is, what, $25 million a year, you know, over 10 years towards insolvency. That is $250. And we have an unfunded liability of $17 billion. So it really, it doesn't impact.

Mr. HOLT. Mr. McGarvey?

Mr. MCGARVEY. I have actually, in a former life, worked on consolidation in a lot of cases of trust funds, particularly health care funds and pension funds, when those things were described made sense, and we did lots of them. So if you had, you know, five small pension funds and you could merge them together into a sixth bigger pension fund, the net result of that on administrative costs is you get rid of five attorneys, five actuaries, five accounting firms, and you can negotiate better cost for investment services for the fund. You can consolidate staff; you can consolidate computer systems; you can do a a lot of different things to cut down your administrative expense.

And that has been done and continues to be done today out there. There is no prohibition against merging of pension funds that exists out there today.

But to really deal with the amount of unfunding in some funds, those administrative reductions in cost wouldn't move the needle, as my colleague said.

Mr. HOLT. Thank you.

Well, my time is expired. I hope you will find a way to address, either today or in writing to the committee, what could be done, other than cutting benefits, with regard to loans at low interest and bond guarantees—government-guaranteed bonds, and other such proposals.

Thank you.

Chairman ROE. I thank the gentleman for yielding.

Mr. Guthrie?

Mr. GUTHRIE. Thank you, Mr. Chairman, for having this. This is an important hearing.

And thank you guys for coming. I appreciate it.

My dad worked at a defined-benefit plan. He worked for a plant that closed. And unfortunately for him, he moved—he worked himself into the management side so he has actually seen his pension erode some, but the guys that coached me in little league, the people I grew up with, fathers of the people I grew up with—mostly fathers—are, you know, worried. I mean, they retire, they leave a place that they work with a defined benefit.

And I always remember talking to my father one time and I said, does anybody ever—did you ever tie to it, or people didn't really tie to it, but the ongoing economic viability of the enterprise secures the pension going forward. And that when you leave work on the last day when you have earned your benefit and, you know, what happens in your business going backwards is important to what you have going forward. But people have organized their lives around these pensions. And so whether or not their business is as successful after they left or not is a concern, but they have organized their lives around so the things that I know Mr. McGarvey has talked about being able to do so that people can continue the benefit that they have.

And you said, when you were talking, you said we weren't looking for a bailout but for us to remove obstacles. Are there a couple of obstacles—I know in your written testimony you talk about some, but just to highlight that we could do that would make it easier for you now that is not, you know, taking taxpayer money into it but just obstacles to make you—where the commission can do what needs to be done?

Mr. MCGARVEY. Well again, in the proposal it gives—makes changes in ERISA that gives trustees more authority to make tough decisions in some cases that it would make. Right now they are prohibited.

The ancillary benefits that were spoken about a lot and in testimony, the answer to that question is, just about in every case in just about every multiemployer pension across the country that has a pressing liability issue, those changes have been made. Those decisions have been made. The early retirement provisions that were in there and other things, they have been taken away.

Increased contributions, okay, to help fund those pension funds, particularly in the construction industry—in most cases that has been done, okay? My colleague over here, Ms. Duncan, described increased contributions and what that means to remain competitive in a very competitive marketplace.

Mr. GUTHRIE. Right.

Mr. MCGARVEY. We are in some places past the point for some funds for the contributing employers to remain competitive, okay? They are, in some cases, contributing $15, $16, $17 an hour into a pension fund where the participant who is having that money contributed on his or her behalf is only accruing 4 worth of benefits. You know, we are hitting that ceiling in some cases.

And I want to reiterate that the vast majority of multiemployer pension systems are on sound footing, even with what we have been through over the investment downturns in the late 1990s, early 2000s and 2008. I think that speaks volumes on the work that the professionals and the trustees on these plans have done to deal with those two catastrophic situations in a 10-year period and still keep viable pension plans where the overwhelming majority are in pretty good financial shape.

There are some that, you know, that, you know, really need some tool for trustees to be able to use to help them bridge the next gap.

Mr. GUTHRIE. Well, thank you for that.

And in Kentucky—I am from Kentucky—the coal industry has seen the problems that you are having with the last man standing kind of problem. Who is going to be the last coal business standing is going to be responsible for all the retirees, and it just continues to add to the downward spiral that is happening—you know, I won't get into what is happening here to the coal industry in other committees that I am on—an Energy Committee—so it is very serious stuff.

And I have actually, Ms. Duncan, had a friend of mine in Owensboro, that I met serving into his plant and he is concerned about passing down his business to his children. And the biggest liability he has is the pension liability that his children may not be able to run their business. And I know—you are a family business, I believe, right? Are there people in your area that have concerns about the ability to multigenerational because of the liability going forward?

Mr. DUNCAN. Absolutely. Absolutely. It is part of your estate planning and there are exit strategies going on every day, and you—it is a last man standing situation. You don't want to be the last man standing but you—to have the uncertainty of what that—you know, the pension liability is going to be for my daughter is something that is just unfathomable when it even exceeds the value of your company.

And you look at those figures over a year, well I only contribute to two plans. Some contractors contribute to 10 or 12. So I can look at my calculations and just in the last 2 years it has risen by millions.

Mr. GUTHRIE. Yes.

And that is what hopefully I—thanks for having this, Mr. Chairman. I know that you have got two things. One, that people on your side that are funding this and the last man standing is a real issue because you just can't afford to do so. And you have people who showed up for work every day doing what they were expected to do with a benefit that was promised and now—or, because we are living longer, too, it is doing that with a lot of the systems that we have here in the—so being serious about it and something that I take to heart because I have seen it happen to people.

And I hope we can come to some solutions and help you solve the problems.

Mr. DUNCAN. No one on either side could have anticipated the economic situation that we ended up in.

Mr. GUTHRIE. Exactly.

Thank you, Mr. Chairman. I yield back.

Chairman ROE. Thank the gentleman for yielding.

I will now recognize Mr. Scott for 5 minutes?

Mr. SCOTT. Thank you, Mr. Chairman.

Ms. Duncan, one of the things that you have kind of alluded to is the fact that he last man standing rule and that creates a disincentive for companies to join these plans. Is that right?

Mr. DUNCAN. Absolutely. No new employer will join a plan where there is unfunded liability that you are going to sign up for straight up. And with the new provisions that we are putting forth there would be no liability going forward, or less liability going forward. So you would be able to attract new employers into these plans, which would help—as we can build hours and build the employees it is going to make all the plans healthier if we can increase the membership.

Mr. SCOTT. Thank you.

Ms. Duncan, do you say what—how much difference a premium of $120 would make? Because that is what PBGC has said that would reduce to less than 1 percent the chance of insolvency of the PBGC in 10 years.

Mr. DUNCAN. I can't specifically address the ounce that the premium paid to the PBGC is paid through the health trust trustees. I am not a pension trustee; I am a health trustee.

But I do know that the premiums have been low and that——

Mr. SCOTT. Well, I mean, would that—just as a matter—just multiplying by the number of employees you had, would that create a significant hardship to your company?

Mr. DUNCAN. No, I don't believe so.

Mr. SCOTT. Thank you.

Mr. Nyhan, one of the things that I had looked at as a possibility of a different premium based on whether you are in the green, yellow, or red zone, is that something that would help?

Mr. NYHAN. Absolutely not. We have paid premiums now for many, many years—$60 million over the last 30 years—and we have no coverage whatsoever. And the more the premiums go up as it relates to my plan, all I am doing is taking assets out that are otherwise payable for benefits and putting it into the PBGC to pay other benefits. We won't see any benefit out of the thing.

And the 120 number, by the way, deals with the projected insolvency over 10 years not including Central States. So that doesn't include the $17 billion if Central States went insolvent. So that $120 only gets you out 10 years.

Mr. SCOTT. And one of the things you mentioned was a significant loss in assets during the stock crash.

Mr. NYHAN. Right.

Mr. SCOTT. Would that have been prevented if you had been limited in your investment portfolio to insurance options and annuities where the risk of a stock market collapse, which is going to happen every 10, 20, or 30 years, would accrue—that that risk would go to the insurance company, not to the pension plan?

Mr. NYHAN. As I indicated, the assets are managed by independent asset managers—independent fiduciaries appointed by the court. The board itself had no control over how assets are managed.

But the asset allocation portfolio of Central States was not too different than any other major single-employer plan out there. I mean, most plans——

Mr. SCOTT. All of them are at risk to a stock market collapse that would put the plan in jeopardy?

Mr. NYHAN. All plans assume a degree of risk with their investments, whether in the fixed-income or whether they are in the equity markets. You know, right now one might argue that having a lot of money in the fixed-income market is a big risk right now because if interest rates start moving up the market value of the fixed income goes down. So you are going to have to—you can't hide from risk.

Mr. SCOTT. Yes, but you can insure the risk by buying products where the insurance company or the investors take the risk, not the pension plan, where they guarantee an annuity, for example, and the risk of the market going up and down is on the insurance company, not on the pension plan.

Mr. NYHAN. I am not aware of that being done on the scale we are talking about with a plan the size of Central States where the plan would go out and buy annuities. That is a very expensive way of going about it, though, because what the insurance company is going to do is the same thing the plan does but then layer a premium on top of it. And you just need a pretty big insurance company that will make sure they can make good on their word.

Mr. SCOTT. An insurance company would have reinsurance so you would have kind of backing up, then you would have the PBGC behind that. What would you do with a low-interest loan?

Mr. NYHAN. I can't pay a loan back. Who is going to make a low-interest loan to us? I mean, I think that is our problem. I mean, I would be happy to take a low-interest loan. I would turn it over to my main fiduciaries and have them invest it as they see fit.

But the problem is I really don't have an ability to pay it back. If I am looking at insolvency there is no lender in his right mind that is going to lend us money. That is the problem.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman ROE. Thank the gentleman for yielding.

I now will yield to Mrs. Roby for 5 minutes?

Mrs. ROBY. Thank you all for being here today.

Ms. Duncan, your testimony noted that your husband is retired and he is drawing his retirement from a multiemployer pension plan, so can you explain to us just, you know, in your own words your frustration and uncertainty that your family feels regarding the benefits? And what would you like to see done to preserve them?

Mr. DUNCAN. Any type of benefit cut would be tough. You know, we are like anybody else. We have planned our pensions and we have planned our living on this set amount of income that we thought was going to be coming in.

But unfortunately, I guess, in my experience, I understand—and I think very few people do—the alternative, as if the plans do fail his pension would be cut even more severely. And from him going from maybe a $60,000-a-year pension to a $13,000-a-year pension if it failed and went to the PBGC—if the PBGC was still here, if it was not, you know—hadn't gone insolvent.

I would rather see the benefits taking the small actions going forward and planning ahead of time rather than waiting until it was too late to make those decisions.

And I would also just like to state that, you know, we talk about the pensions, the benefits being taken away, but we have to realize that there was a point where if our plans were 100 percent funded we had to increase those benefits. We had to give them a higher accrual rating; we had to promise more benefits to keep our plans tax deductible. And those benefits, once given, can never be taken back.

Mrs. ROBY. Thank you.

Mr. McGarvey, your testimony makes reference to a rise in intergenerational resentment. Can you explain what that means and what reforms could be made to alleviate that issue?

Mr. MCGARVEY. Yes, ma'am. You know, the fact of the matter is that our unions are participatory unions. The craft unions historically is a mentorship operation, where skill sets are transferred from an older generation to the new generation over time, where there are sometimes two and three and four generations, five generations of families and family-owned businesses in a particular craft in a particular city.

So as the younger generation gets more and more agitated over the increased cost to provide the benefits for the older generation, which has always been part of our system; you know, we are all in it together and the young take care of the old and we all look out for each other, cradle to grave type of trade unionism is what we have.

But as these costs increase and they are not accruing benefits and you know, everybody thinks that they are, you know, they watch CNBC, they think they are a sophisticated market investor that they are seeing these dollars being put into a pension fund that they are not really accruing benefits and they start to look at the opportunities if they had those dollars in their pockets to invest in the marketplace, and they start to resent that they are paying these outsized obligations because of, you know, quite honestly, like I said, two horrific market meltdowns in a 10-year period or a 9-year period, and on top of that, the worst—in the construction industry we didn't go through a recession in 2008, we went through a depression and we are not out of it yet.

So not only are they paying increased contributions to make up these shortfalls in these funds when they have the opportunity to work, in a lot of cases over the last 5 years they haven't even had work. So it is causing stress within the organizations at the local level. And there is a lot of intertwined family in a lot of these organizations so it gets ugly from time to time as we try to work our way through these things.

Mrs. ROBY. And should the goal of reform be to make sure that the PBGC is funded or to prevent plans from becoming insolvent in the first place?

Do you—yes, sir?

Mr. MCGARVEY. I believe both of those are very important goals.

Mrs. ROBY. And do you agree with those that say that the system can be saved by charging a $250 fee per plan participant?

Mr. MCGARVEY. I do not believe that.

Mrs. ROBY. I have maybe 30 seconds, but Mr. Nyhan, just to confirm your testimony, what annual return on investments would Central States need to receive in perpetuity in order to remain solvent?

Mr. NYHAN. 12 to 13 percent each and every year.

Mrs. ROBY. And is that reasonable in relation to historic returns?

Mr. NYHAN. Not according to our professionals, no.

Mrs. ROBY. Okay.

Thank you. I yield back.

Chairman ROE. I thank the gentlelady for yielding.

Mr. Hinojosa, you are recognized for 5 minutes?

Mr. HINOJOSA. Thank you, Mr. Chairman.

I want to yield a minute to Congressman Scott?

Mr. SCOTT. Thank you.

Mr. Chairman, I ask unanimous consent that a statement from the United Steel Workers be entered into the record for the hearing?

[The information follows:]

Statement of
The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)

On

'Strengthening the Multiemployer Pension System: How Will Proposed Reforms Affect Employers, Workers, and Retirees?'

Before the
Subcommittee on Health, Employment, Labor, and Pensions
Of
Committee on Education and the Workforce
United States House of Representatives

October 29, 2013

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) is North America's largest industrial union representing 1.2 million active and retired members. We are pleased to comment on the subject of today's important hearing, and review our concerns with the committee regarding some of the topics in today's hearing.

Retirement security, or the lack thereof, for a majority of working Americans is an issue that requires serious discussion and the NCCMP should be commended for developing a proposal to begin the process. The US Congress Joint Economic Committee in December of 2012 noted that the Great Recession reduced household net worth as much as 54.4% for 35-44 year olds to 32.6% for near retirees.[1] The failure of individual savings accounts to adequately prepare workers for retirement highlights the importance of maintaining well-run defined benefit plans, including multi-employer pension plans.

While the majority of multi-employer pension plans have weathered the recession as well as can be expected given the economic downturn, some plans face significant financial burdens. The effort by employers, plan trustees and some unions to address the issues within the multi-employer pension system has led to the National Coordinating Committee for Multi-employer Plans' (NCCMP) proposal which is a primary focus of today's hearing.[2]The NCCMP has produced significant areas of agreement to strengthen the multi-employer pension system and provide innovative

[1] http://www.jec.senate.gov/public/index.cfm?a=Files.Serve&File_id=4bc4e022-4bc8-476c-a91a-268852d8ff0e
[2] http://webiva-downton.s3.amazonaws.com/71/59/b/39/1/Solutions_Not_Bailouts.pdf

retirement structures for future generations. However, USW has several areas of concern with the proposal.

First, the proposal to raise retirement age to sixty-seven for plans willing to make the change runs counter to our union's efforts to maintain a reasonable retirement age for workers, many of whom work in environments which often require an earlier retirement. There is a reason blue and white collar workers have different actuarial mortality rates. While plans would have the "option" to raise the age, the fiduciary responsibility of plan administrators and trustees will likely force them to make decisions such as raising the retirement age even when plans are not facing an immediate financial burden.

Proposals which lower benefits for existing retirees also deserve significant scrutiny and the NCCMP maximum threshold to lower plan benefits causes significant unease within USW. While USW agrees with NCCMP that the Pension Benefit Guaranty Corporation (PBGC) benefit levels are too low, the NCCMP proposal to cut benefits to as low as 110% of the PBGC level is not the only answer, and not the first one, lawmakers should seek for the retirement security of millions of Americans.

The NCCMP proposal also suggests that PBGC review for approval any proposed multi-employer benefit reduction. If the PBGC fails to act, the proposal would be deemed approved. The process runs counter to the PBGC's mission of protecting and insuring pensions plans so that workers will receive the benefits to which they are entitled. "Entitled" is the key word in the PBGC's mission. Workers and retirees have contributed to these plans for decades often by deferring direct wages though collective bargaining for these future benefits. Workers and retirees should be entitled to these earned benefits that were promised and the PBGC should do all that is necessary to preserve benefits.

USW would encourage the Education and Workforce committee to explore additional alternatives other than cutting accrued benefits to multi-employer plans. On June 17, 2013 the AARP submitted a statement to your committee regarding the NCCMP proposal and USW would support many of the proposals in the statement.[3] Some of the suggestions such as partition of benefit obligation and availability for the PBGC to access lower lending rates are efforts which the United Steelworkers would support in the drafting of significant changes to the Pension Protection Act.

Finally, while it may not be politically feasible to provide direct federal financial assistance in today's current political climate, with most seniors living off of a median household income of $35,107, seniors would likely find any discussion to lower monthly income as significant concern to their well-being. Perhaps " bailing out" those with the least of means is a solution worth exploring.

[3] https://tdu.org/sites/default/files/2AARPStatementOnMulti-EmployerPensionFunds.pdf

Chairman ROE. Without objection, so ordered.

Mr. HINOJOSA. I reclaim my time.

Mr. Certner, in your testimony you explained that AARP is adamantly opposed to giving plan trustees the broad discretion to cut accrued benefits for participants to achieve solvency. Will any of the alternative proposals you described in your testimony be sufficient to preserve the multiemployer pension system or does more need to be done?

Mr. CERTNER. Mr. Chairman, I think we have tried to put forward a number of suggestions and alternatives. I don't think by any means that we have exhausted the potential alternatives that are out there.

And our view certainly is that before we begin to look at any cuts to retirees, any cuts to accrued benefits, we should look at the alternatives I put forward and that the other alternatives that are out there, and some other creative thinkers I am sure can come up with additional suggestions, as well.

We just think this rule is so very important that we shouldn't be starting with a plan that puts retirees right at the top of the list, that we ought to look at everything else possible before we even consider looking at retirees' benefits.

Mr. HINOJOSA. Well, let's see. Let me ask Sean McGarvey, president of the AFL–CIO Washington, D.C. office, why is the preservation and protection of multiemployer pension plans important to your union's members?

Mr. MCGARVEY. They are important to our unions and our members and generations of our members that have come before. They have provided secure retirement benefits for our membership and their families for decades upon decades.

And with the stress and strain on the retirement security safety net in this country, we want to continue to be in the business of providing predictable, secure, fair retirement benefits for people that work 30, 40, some cases 50 years—not that many because the construction industry is, as you well know, Congressman, is a very difficult racket that is hard on a body over a 30-year period in the cold and the heat with the stresses that we take to make sure that we have got a good retirement security program for our membership.

And our contractors, who are our partners, want to provide that, too. They are long-term employees of the companies who have helped to make those companies successful and they want to make sure that they get what they earn and they enjoy that retirement in a fair way that we all strive for in this country.

So we are wholly committed to the continuation of these kinds of benefit plans for our membership and future generations in the industry that are going to come later on.

Mr. HINOJOSA. I am concerned in what I saw from 2008 when the deep recession kicked off and it is probably the worst in 50 years for our country and so many businesses went out of business and many pension plans were lost. So this hearing today is something of great interest to us here in this committee.

To what extent did the process of drafting the National Coordinating Committee for Multiemployer Plans' recommendations incorporate the views of both unions and employers? To you, Mr. McGarvey.

Mr. MCGARVEY. Are you asking me the question is that happening?

Mr. HINOJOSA. Yes.

Mr. MCGARVEY. I believe it is.

Mr. HINOJOSA. Say that again?

Mr. MCGARVEY. I believe that is happening, that proposals are being drafted into legislative language.

Mr. HINOJOSA. And are you comfortable enough that is going to protect the participants of those employees?

Mr. MCGARVEY. Well, I don't believe that you could ever create a piece of legislation that would be failsafe. There are lots of issues that this Congress will have to deal with as they work their way through it. But we are comfortable that the proposal that we put together through our commission, with all the private sector experts from across this country and all the people that are participating and managing multiemployer pension funds, that there is a good base of ideas on how we can attack some of the problems and, again, insure the future of multiemployer pension funds.

Mr. HINOJOSA. I yield back, Mr. Chairman.

Chairman ROE. I thank the gentleman for yielding.

I now recognize Ms. Wilson for 5 minutes?

Ms. Wilson of Florida. Thank you, Mr. Chair.

This is a very difficult issue that we are discussing today, but we must find a solution, and so we have to research and brainstorm until we can all come together and reach a solution.

But as we begin addressing this very difficult issue, let's not forget one simple fact: We would not be in this position were it not for the dangerous risk-taking behavior that led to the 2008 financial crisis. And we as a society, we have an obligation to ensure that elders who have worked hard their entire lives are not forced to bear the burden of Wall Street's recklessness.

In my district of Miami-Dade County, Florida there are thousands of retirees on fixed incomes who literally cannot afford changes of the kind we are contemplating today. With America's seniors living off of a median household income of less than 35,000, few could handle even minor reductions without sacrificing food, medicine, or housing.

While it may seem unfeasible in today's political environment, I believe we must consider the options of, number one, Congress stepping in to rescue the seniors with the least means. I would like to associate myself with Mr. Scott and ask that we submit to the record testimony from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union that suggests this is an important option.

[The information follows:]

Statement of
The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)

On

'Strengthening the Multiemployer Pension System: How Will Proposed Reforms Affect Employers, Workers, and Retirees?'

Before the
Subcommittee on Health, Employment, Labor, and Pensions
Of
Committee on Education and the Workforce
United States House of Representatives

October 29, 2013

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) is North America's largest industrial union representing 1.2 million active and retired members. We are pleased to comment on the subject of today's important hearing, and review our concerns with the committee regarding some of the topics in today's hearing.

Retirement security, or the lack thereof, for a majority of working Americans is an issue that requires serious discussion and the NCCMP should be commended for developing a proposal to begin the process. The US Congress Joint Economic Committee in December of 2012 noted that the Great Recession reduced household net worth as much as 54.4% for 35-44 year olds to 32.6% for near retirees.[1] The failure of individual savings accounts to adequately prepare workers for retirement highlights the importance of maintaining well-run defined benefit plans, including multi-employer pension plans.

While the majority of multi-employer pension plans have weathered the recession as well as can be expected given the economic downturn, some plans face significant financial burdens. The effort by employers, plan trustees and some unions to address the issues within the multi-employer pension system has led to the National Coordinating Committee for Multi-employer Plans' (NCCMP) proposal which is a primary focus of today's hearing.[2]The NCCMP has produced significant areas of agreement to strengthen the multi-employer pension system and provide innovative

[1] http://www.jec.senate.gov/public/index.cfm?a=Files.Serve&File_id=4bc4e022-4bc8-476c-a91a-268852d8ff0e
[2] http://webiva-downton.s3.amazonaws.com/71/59/b/39/1/Solutions_Not_Bailouts.pdf

retirement structures for future generations. However, USW has several areas of concern with the proposal.

First, the proposal to raise retirement age to sixty-seven for plans willing to make the change runs counter to our union's efforts to maintain a reasonable retirement age for workers, many of whom work in environments which often require an earlier retirement. There is a reason blue and white collar workers have different actuarial mortality rates. While plans would have the "option" to raise the age, the fiduciary responsibility of plan administrators and trustees will likely force them to make decisions such as raising the retirement age even when plans are not facing an immediate financial burden.

Proposals which lower benefits for existing retirees also deserve significant scrutiny and the NCCMP maximum threshold to lower plan benefits causes significant unease within USW. While USW agrees with NCCMP that the Pension Benefit Guaranty Corporation (PBGC) benefit levels are too low, the NCCMP proposal to cut benefits to as low as 110% of the PBGC level is not the only answer, and not the first one, lawmakers should seek for the retirement security of millions of Americans.

The NCCMP proposal also suggests that PBGC review for approval any proposed multi-employer benefit reduction. If the PBGC fails to act, the proposal would be deemed approved. The process runs counter to the PBGC's mission of protecting and insuring pensions plans so that workers will receive the benefits to which they are entitled. "Entitled" is the key word in the PBGC's mission. Workers and retirees have contributed to these plans for decades often by deferring direct wages though collective bargaining for these future benefits. Workers and retirees should be entitled to these earned benefits that were promised and the PBGC should do all that is necessary to preserve benefits.

USW would encourage the Education and Workforce committee to explore additional alternatives other than cutting accrued benefits to multi-employer plans. On June 17, 2013 the AARP submitted a statement to your committee regarding the NCCMP proposal and USW would support many of the proposals in the statement.[3] Some of the suggestions such as partition of benefit obligation and availability for the PBGC to access lower lending rates are efforts which the United Steelworkers would support in the drafting of significant changes to the Pension Protection Act.

Finally, while it may not be politically feasible to provide direct federal financial assistance in today's current political climate, with most seniors living off of a median household income of $35,107, seniors would likely find any discussion to lower monthly income as significant concern to their well-being. Perhaps " bailing out" those with the least of means is a solution worth exploring.

[3] https://tdu.org/sites/default/files/2AARPStatementOnMulti-EmployerPensionFunds.pdf

Ms. Wilson of Florida. Mr. Certner, could you speak to the possible options for Congress to step in to rescue the most vulnerable retirees if the political will were there?

Mr. CERTNER. I think what you have outlined does set up the problem correctly, which is that people who have worked hard and earned a pension were in an industry and under circumstances, both with the economy and with the stock markets that were, you know, quite frankly, historic and have put people in a very difficult situation.

And there are options out there for the federal government, should they choose to weigh them too, right? I mean, there are potential loans; there are potential additional funds that could be applied here to help some of these what I understand are to be a small number of troubled funds in an entire industry. There are, I think, additional tools you could give the PBGC to allow them to step in to enable and help some of these plans.

And we can foresee some of these options for the plans for the federal government, and one of the things that we are having a lot of difficulty, though, is seeing options for a 75-year-old. I mean, what are they going to do? They are not going to be able to, you know, go back to work or continue to work longer. They are not going to be able to save more.

They don't have options. And so that is why we think that there are—it is just impossible for us to think that there are not other options out there between what Congress can do, what the plans can do, what current participants can do, what the employers can do that can protect the accrued benefits of retirees.

Ms. Wilson of Florida. Thank you.

This is a question for everyone. Can you describe how due diligence must be exercised in deciding when and how to cut benefits? What is your opinion of due diligence?

Mr. CERTNER. Let me just take it from one perspective, which is——

Ms. Wilson of Florida. Okay.

Mr. CERTNER.—one of the pieces in this plan that troubles us is that this proposal talks about cutting retiree benefits, and yet there are very little protections in place in that decision-making process. So the trustees of the plans are being given extremely broad discretion to cut benefits.

So we are talking about benefits that have been earned over a lifetime under a very heavily statutory regulated ERISA regime, and suddenly we are just giving over to trustees broad discretion to make cuts with what I think are fairly few parameters. It is not clear to us what kind of a voice retirees have. Are they part of these discussions? Are they represented? Do they have information? Are they able to make the case for themselves?

We don't see any of those protections for retirees. We don't see any distinction between retirees and other participants. We don't see differences in perhaps class of retirees. None of this is spelled out at all.

So even if you were going to go that direction, which again, we think is the wrong direction, to do with such a vague and broad grant of authority to trustees to us seems to, again, fly in the face of ERISA's statutory protections.

Mr. NYHAN. May I speak to that issue?

You know, I agree with my colleague over here that one of the fundamental rules of ERISA was the anti-cutback rule. But that is another fundamental rule that is going to trump that and that is called arithmetic. It is not a question of if there are going to be benefit cuts. There are going to be benefit cuts. The question is when and how they are going to happen.

And the question we need to determine, is there a way to provide a measure of retirement security—maybe not at the level that people thought they were going to get, but a meaningful measure of retirement security going on into the future? That is what we are dealing with here.

I have been trying to protect pensions my entire life. I am all in favor of a massive bailout. If Congress were to enact it I would be the first person in line for it.

But we tried for several years and we really didn't garner any support from either party, from either house, or the administration. So at this point I think we need to deal with reality, and the reality is that there are going to be some very substantial cuts to people to the point that they may have no pension whatsoever unless we do something. And that is what we are focused on.

Ms. Wilson of Florida. Thank you.

I yield back the balance of my time.

Chairman ROE. Thank the gentlelady for yielding.

I will now yield myself 5 minutes.

And I want to start off by saying that I am 100 percent committed to trying to work this out to where we work the best solution for retirees that are out there. I have told you all and I have said this in the committee before that my father worked in a factory, was a union member, and before ERISA his job went away after World War II, almost 30 years in the plant, he got almost nothing in his retirement.

I have been down that road. I was a young Army officer overseas at the time, and I didn't realize the struggle that my parents had. They were 50 years old. They didn't have a lot of time to recover. So I understand that.

When I started my medical practice I made sure that we put the best pension plan we possibly could—and we have it 37 years later—for the people that have worked for me. I have people who have worked for me for 37 years and we have provided them pension benefits, health benefits, dental, and so on, because that is the way you attract good workers.

Here is the reality in the world we live in—and I remember when this—2008 I was the mayor of Johnson City, Tennessee and we were undergoing a big building boom. We had some—at our schools—we added about $50 million to $60 million in construction in schools.

We had looked at the square footage cost of a new elementary school and we calculated it would be an $18 million school. That school was actually bid out for 13.5 million when it actually came to bid because people needed the work. That is how desperate the construction industry was in. So just to keep their people working they probably bid this at a loss.

And so what the multiemployer plans have found themselves in is the ultimate Catch-22 and it probably is industry-specific. If you look at Mr. Nyhan and the trucking industry, back in 1980 the trucking industry was doing very well and the construction industry, and what you said, Mr. McGarvey, it wasn't a recession; 25 percent unemployment. That is a depression in that industry and it hasn't recovered yet, and our economy, I don't think, will totally recover until construction recovers.

So right now Mr. Nyhan has a situation where he has 410,000 people he is providing benefits for but only 70,000 paying in—half of those are orphaned—companies that went out of business that are providing no benefit for him. So he has done an amazing Houdini job to keep it where it is, I think.

And I think the other ultimate Catch-22 was when times were roaring during the 1990s. By law you had to—you couldn't—because I remember that if you had a defined-benefit plan you couldn't put more money or you were overfunded. That has subsequently been changed, and therefore you had to pay more benefits out, which you couldn't then because of the anti-cutback rule. That was the ultimate Catch-22.

The other Catch-22 you find yourself in is that, Ms. Duncan, in your business where you are providing, you have been great. You have paid for retirement benefits and you are paying for someone else's sins, and the more you pay the more it costs you to get out. So why would anybody get in if you have that sort of a scenario?

So we have really created a perfect storm for these to downward spiral, and I think, Mr. McGarvey, I heard several things—and from Mr. Nyhan, too—that made a lot of sense to me, is to let—you are the one the closest to your retirees. You know them better than anybody. And I think to be able to save what benefits you have and to make them at the highest level, you will do that. I trust you to do that. You know more about what is going on in your plans than we will ever know.

And I think, Mr. Nyhan, you brought out several great ideas that I would be willing to listen to. For instance, maybe means testing. Maybe somebody worked in a trade—drove a truck for 5 years and now they are a successful attorney, or whatever. And that makes sense to me. Age, disability, sole survivors, length of time working—all of those are pieces of the puzzle that you can use, I think, to be able to solve this.

This is our fifth hearing. Again, I have learned a lot at every hearing. I have learned we have got a difficult problem ahead of us and there are solutions out there if we turn you all loose to make them.

I am going to finish, because I have talked all my time up, to make any comments that you all have about what I have just said. I think I have summarized the problem. Any comments?

Mr. Nyhan?

Mr. NYHAN. Well, I would just end by saying that the last thing we want to do as a pension fund is to cut anybody's benefits. That is not what we do and I don't believe there is anybody on either side in either party that wants to see that happen.

The question is, how can we preserve what we have in light of today's reality, and this is what we see—this is the path that we see that we can preserve some measure. And it is not a matter of cutting, as people suggest, to PBGC minimums or 110 percent. It is to get the highest benefit we possibly can and maintain solvency, which is above that number.

But I might add, the longer we wait the deeper the cuts have to be.

Chairman ROE. Well, just to finish out, to show on bidding for a contract, for instance, the cost—and this is Mr. Nyhan's comments in his testimony: The cost of funding these orphan benefits has grown to unaffordable levels. In an example, trucking industry employer contribution rates under the National Master Freight Agreement have increased from $170 a week in 2003 to over $340 per week—nearly $8.50 an hour for a 40-hour week. That is about $16,000 a year per——

Mr. NYHAN. Yes. And it is putting our employers at a very competitive disadvantage.

Chairman ROE. And they can't get the contract and, like you said, and they can't contribute, and——

Mr. NYHAN. Exactly right.

Chairman ROE. I see the problem, and I absolutely understand it well.

I will now yield to Mr. Andrews for any closing comments?

And first of all, before I do, thank the panel. You all have done a terrific job. You have stayed under your time limit better than I have, and thank you for that.

Mr. ANDREWS. Well, I would like to join in thanking each of the four of you for your preparation and eloquence today. I would like to thank those that submitted statements for the record, which will be reviewed in all respects.

I want to thank Josh Gotbaum for being with us today, who has to deal with this problem every day as leader of the PBGC. His interest is appreciated and his partnership is appreciated.

We have heard many diverse views today but I think we have heard some unifying ideas. Number one is that this is a real problem. It is not being exaggerated or trumped up; it is a real problem for a lot of people and has to be addressed.

Number two, I think there is a shared goal to eliminate or minimize the reduction of any benefit for any retiree under any circumstances. No one here wants to do that.

Number three, there are a lot of tools that could be considered to achieve that objective. Some are in the plan, some aren't in the plan, as it has been drafted thus far. And I think it is up to us to consider all those tools to try to achieve the best result.

Number four, there is a taxpayer interest here. The PBGC is not very healthy right now, and if we don't do something to fix its health, the nature of our approach to this issue over the years is that somehow or another taxpayers are going to wind up on the hook for this. This country is not going to let 10 million or 12 million people go without a pension check and it is going to reach into the federal treasury some way or another to fix that.

I would rather do it smarter and earlier than later and worse, and I think that is one thing we ought to be considering.

And finally—this is to the chairman's credit—that the five hearings we have had on this have been hearings that are designed to learn about the problem and try to fix it, not hearings that are designed to score political points on either side. The witnesses have been very much in that spirit today, and I appreciate that very, very much. And I am hopeful that we can go forward and listen to each other, listen to all voices in this and achieve the objectives that I have laid out here this morning.

You know, I was on a call 5 years ago—when you were mayor of Johnson City I was here—and it was a small group, 12 or 15 members, on a conference call with Chairman Bernanke from the Fed and with Secretary of Treasury Paulson at that time. And on this call the two of them said literally they thought we would have a global depression if the Congress did not act quickly to prop up the U.S. banking system.

And we did. And although that was a very controversial vote, I think I cast the right vote by supporting it. Not one person lost $1 from an FDIC-insured account in this country because that decision was made. This is a smaller problem but it is equally important to 10 million or 11 million people across this country in its intensity, and they deserve our intensity.

And I know that with your leadership we will work together and achieve that.

Chairman ROE. I thank the gentleman. I associate myself with your comments.

And just in closing, I want to thank the, again, the panel and all the panelists that have been here to sort of define this issue and problem. And the objective, as Mr. Nyhan clearly pointed out, is to maintain—and Mr. McGarvey—the highest benefit level that can possibly be done.

And I think that can be done. I believe it can be. I think we have a commitment from both sides of the aisle to do that. I think both the chairman and ranking member of the full committee agree with that, and we are here to do that.

And look, and I certainly understand with a 91-year-old mother at my house now that she can't go out and be the greeter at Walmart. I got that. I understand that. And we need to look at that, I certainly—and think our folks that have created this great country we have, we owe them an obligation—10.5 million people—to do the very best job we can.

And I want to ask you all, too, to help educate our colleagues. Because there are a few of us in here that are very well versed on this, but probably most of the Congress are not. So when you go around and speak to them that would be very helpful to us.

I think the solutions we have heard, they are painful, they are not what any of us want, but I want to thank this committee today. I think you all, and certainly Ms. Duncan, coming all the way from Oregon to Washington to testify, I appreciate that, and certainly the AARP years.

And then, Mr. McGarvey, I know you have chaired a very difficult committee, and thank you for all the hours and work you have put in on this issue and will continue to do so.

And, Mr. Nyhan, you have had a very difficult situation with the $17 billion or so liability.

I thank you for being here. I thank you. We will continue to listen. And we have a sort of a deadline. We know the PPA, some of the provisions run out at the end of 2014, which in Congress time is a short time—just a little over a year. So we don't have a lot of time to get this done and I look forward to working with a solution.

With no further, this meeting is adjourned.

[Whereupon, at 11:42 a.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

PENSION RIGHTS CENTER

PROTECTING AND PROMOTING RETIREMENT SECURITY
1350 Connecticut Ave., NW, Suite 206 | Washington, DC 20036-1739
P: 202-296-3776 | F: 202-833-2472 | www.pensionrights.org

**STATEMENT OF
THE PENSION RIGHTS CENTER
ON
"STRENGTHENING THE MULTIEMPLOYER PENSION SYSTEM:
HOW WILL PROPOSED REOFRMS AFFECT EMPLOYERS,
WORKERS AND RETIREES?"**

**BEFORE THE
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS**

**COMMITTEE ON EDUCATION AND THE WORKFORCE
UNITED STATES HOUSE OF REPRESENTATIVES**

OCTOBER 29, 2013

The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to protect and promote the retirement security of American workers, retirees, and their families. We commend the Subcommittee for the interest it has shown in the topic of multiemployer plans and for holding this hearing today.

Multiemployer pension plans provide an essential source of retirement income to millions of Americans and will provide retirement income to many million more current workers after they retire. The benefits paid by these plans, combined with Social Security benefits, have allowed hard-working Americans to retire with the confidence that they will be able to maintain a reasonable standard of living throughout their retirement years.

Despite the success of the multiemployer system for so many people, there are now a number of multiemployer plans, including several large plans, that face substantial financial issues that must be addressed. Some of these plans were considered adequately funded less than a decade ago and some of them may find themselves in improved financial shape at some point in the future simply because of changes in the economic climate. But the issue today is how to shore up these plans to minimize the potentially calamitous economic consequences of plan insolvency to current and future retirees.

The National Coordinating Committee on Multiemployer Plans (NCCMP) has produced a report that has jumpstarted a dialogue on this difficult and important subject and for that we commend it. The report itself, *Solutions not Bailouts,* includes many innovative ideas relating to the future of multiemployer plans, including the idea for alliances and clarifying PBGC authority to facilitate mergers; the possibility of discontinuing a 13th check in certain industries; a proposal to help certain widows who have been unfairly denied survivor's protections; and recommendations to foster new types of innovative pension plan design structures to provide secure benefits while sensibly allocating market and actuarial risks among participants and plan sponsors. These aspects of the NCCMP report help make possible new thinking about the future of multiemployer plans.

But we are deeply troubled by the document's suggestions for deeply-troubled plans, which endorse the unprecedented and dangerous step of empowering plan trustees in ongoing and still solvent plans to slash benefits of men and women who are already in retirement and who have no opportunity to replace lost benefits.

The NCCMP contends that its proposals will result in shared sacrifice, but we are concerned that most of the true sacrifice will be borne by those who are already retired or are close to retirement. Multiemployer plans should not balance their books on the backs of retirees, particularly given that many of these plans were adequately funded when current retirees left the workforce.

Pension policy and pension law has long recognized that pensioners deserve the strongest protections. Retired individuals typically cannot go back into the job market to make up lost pension income. Benefit reductions would force many retirees into impoverishment. And the law reflects this. Under Title IV of ERISA, plan assets are effectively paid first to those who have already retired (or could have retired), both in single and multiemployer plans. The NCCMP proposal abandons this key and sacred principle of pension policy, which would have very much surprised the Congress that enacted ERISA in 1974.

There are three crucial points relating to the NCCMP proposal that are not well understood but deserve attention before Congress makes decisions about how to address multiemployer funding issues, particularly as this proposal affects retirees.

First, the rationale underlying the NCCMP proposal for deeply-troubled plans is that cutting some retiree benefits now will prevent the necessity of larger reductions later should the plan fail. This is not, however, necessarily true for all retirees. Under current law, the plan would pay every dollar of promised benefits to those retirees who die before plan insolvency, which might not occur for 15 or 20 years, or more. Retirees who are 80 or 85 years old will simply not be able to pay for utilities, medical expenses, and other daily necessities if their benefits are cut. For such retirees, the NCCMP proposal is all pain and no gain. And in all or almost all cases, no retiree will fare better under the NCCMP proposal than they would under current law.

Second, multiemployer plan guarantees are already much lower than guarantees for single-employer plans, which generally will not reduce normal retirement benefits if they are below the maximum guarantee level, currently $57,477 for a single-life benefit. In contrast, the maximum guarantee for a retiree with 30 years of service in a multiemployer plan is only $12,870 and the guarantee for the many retirees, who have fewer years of service and lower monthly benefits, will be still lower. Only very modest monthly accruals are fully guaranteed.[1]

The NCCMP proposal would give trustees the discretion to cut a retiree's benefit to 110% of the PBGC guarantee. How would that affect retirees? As a *Wall Street Journal* article noted, a retired truck driver now receiving a pension of $36,268 a year, would have his benefit reduced to $13,200 – a loss of $23,012 a year. But the NCCMP would also allow plan trustees to cut smaller benefits. For example, a retiree who earned a $12,000 benefit after working 10 years could see her benefit by more than 50 percent. And a retiree who earned a $12,000 benefit after working for 20 years could see his benefit cut to under $9,500. Giving the trustees the power to cut benefits of this size by this much, when the plan may be capable of paying full benefits for another 15 or 20 years, is grossly unfair to retirees. Yet the NCCMP would allow the trustees almost unreviewable authority to do just that.

---

[1] The PBGC fully guarantees only the first $11 monthly annual benefit accrual and guarantees only 75% of the next $33 of monthly accrual. The PBGC does not guarantee any portion at all of benefit accruals in excess of $44 per month.

Third, the NCCMP proposal would permit trustees to slash retiree benefits more severely than they cut benefits for active employees and would permit them to cut retiree benefits without cutting benefits for active employees at all. Moreover, even seemingly across-the-board cuts would impact retirees far more severely than active employees on a present value basis.

The proposal does ask trustees to consider the impact of any reductions on "vulnerable populations," but provides no guidance on the definition of this group. Instead, it leaves decisions about whose benefits to cut and how much to the discretion of the trustees, who often will have their primary allegiance to active workers, contributing employers, and the long-term continuation of the plan. Moreover, although the factors the trustees are directed to consider include "compensation level of active participants relative to the industry, competitive factors facing sponsoring employers, and the impact of benefit levels on retaining active participants and bargaining groups," these standards say nothing directly about protecting retirees or even protecting older retirees or retirees with modest benefits.

Moreover, the NCCMP proposal will undermine the confidence of active workers in their retirement plan. We have talked to younger workers who are appalled at the notion that the trustees could slash the benefits of those who are already retired. They apparently understand what the NCCMP proposal does not seem to acknowledge: retirees generally do not have the option to go back into the workforce and make up their losses. One young truck driver told us "How can we trust anything if it's okay to start breaking pension promises to the guys who came before us?" The NCCMP says worker confidence in the system will be undermined if plans cannot cut benefits, but the reality is that allowing trustees to cut retiree benefits will destroy faith in the system.

As we already observed, there is no question that a number of multiemployer plans are in serious financial trouble, and we very much appreciate the hard work of NCCMP's Commission members in developing their recommendations to address this issue. However, we also believe that we need more information about the extent of the problems and there should be far more serious exploration of alternatives before the trustees of such plans are licensed to slash the benefits of retirees, the most vulnerable group of participants in a plan and the participant group to which Congress extended the greatest protections.

To that end, there is a need for greater understanding of the problem:

1. How many plans are truly deeply troubled? How many active and retired participants are in these plans?

2. How many plans are expected to become insolvent over the next 10 years? 15 years? 20 years? And how large are the benefits in such plans? How deeply would these benefits likely be cut under the NCCMP proposal?

3. Are there industry-specific solutions that would shore up some of these plans?

4. How many of these plans improved benefits within the last five years and how many are now paying so-called 13th checks? Would reducing or eliminating these benefits address the financial problems of some plans? If so, how many? And how many active and retired participants would be affected?

5. Could plan partitions and mergers relieve funding stress from some plans? If so, how many plans and how many participants would benefit? Which industries would benefit from these approaches?

And we should consider solutions other than benefit cuts, such as:

1. Identifying new sources of revenue to improve the funding status of troubled plans. In many cases, plans have become underfunded because of unforeseen circumstances, such as the move away from coal to cleaner energy sources and the deregulation of the trucking industry. Would Americans who have benefited from these changes as consumers be willing to pay a small fee to protect the benefits of retirees who helped build this country's economy? Another approach would be to recognize that plans are facing funding stresses in large measure because of the actions of financial institutions that caused the recession. Our country infused money into those institutions. Should consideration be given to assisting troubled pension plans that are facing problems not of their own making?

2. Increasing PBGC's premiums, both to strengthen its ability to meet its guarantee commitments and to increase guarantee levels for multiemployer plans. Current PBGC premiums for multiemployer plans are only $1 per month for each participant, or $12 a year. Would participants in deeply-troubled plans be willing to contribute additional amounts as special "retiree/worker premiums" to stave off much more extreme cuts to their pensions?

3. Developing industry-specific solutions such as giving the PBGC greater authority to help certain trucking industry plans through partition (recognizing that additional revenue would have to accompany this strategy), facilitating mergers in manufacturing plans, eliminating 13th checks in the construction industry plans, and providing government guaranteed loans for certain plans.

Finally, we note that the NCCMP proposal itself is procedurally flawed, offering retirees virtually no protections other than the good will of the plan trustees and imposing no meaningful objective standards for how plan insolvency is projected or how plan rehabilitation is to occur.

There is no one magic bullet to address the situation but we must as a nation, and as responsible citizens, try to find ways of meeting basic promises to retirees. If we allow cuts in retiree benefits of multiemployer plans, what is to stop future cuts to retirees in single-employer plans and in public plans, and then where does this lead? If these promises are broken, the very foundation of our nation's retirement system will inevitably crumble.

The Pension Rights Center is committed to helping preserve multiemployer pension plans and we, our board of directors, and our advisors are happy to work with this Subcommittee to develop alternatives to the retiree benefit cuts that are currently under consideration.

Statement of the

National Electrical Contractors Association

to the

Subcommittee on Health, Education, Labor and Pensions

Committee on Education and Workforce

U.S. House of Representatives

For a hearing on

"Strengthening the Multiemployer Pension System: How Will Proposed Reforms Affect Employers, Workers, and Retirees?"

October 29, 2013

NECA

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

NECA is the voice of the $130 billion electrical construction industry that brings power, light, and communication technology to buildings and communities across the U.S. NECA's national office and 119 local chapters advance the industry through advocacy, education, research and standards development.

NATIONAL ELECTICAL CONTRACTORS ASSOCATION
412 First Street, Suite 110 • Washington, DC 20003 • Phone: (301) 657-3110 • FAX: (301) 215-4500

Statement of the National Electrical Contractors Association
to the
Subcommittee on Health, Education, Labor and Pensions
Committee on Education and Workforce
U.S. House of Representatives
For a hearing on "Strengthening the Multiemployer Pension System: How Will Proposed Reforms Affect Employers, Workers, and Retirees?"
October 29, 2013

The National Electrical Contractors Association (NECA) appreciates the opportunity to submit a statement for the record ahead of the Subcommittee on Health, Employment, Labor and Pensions of the House Education and Workforce Committee's hearing entitled "Strengthening the Multiemployer Pension System: How Will Proposed Reforms Affect Employers, Workers, and Retirees?" NECA commends the Committee for holding a hearing on this important subject to examine the reform proposals put forth by the National Coordinating Committee Multiemployer Plan (NCCMP) Retirement Security Review Commission report entitled "Solutions not Bailouts: A Comprehensive Plan from Business and Labor to Safeguard Multiemployer Retirement Security, Protect Taxpayers and Spur Economic Growth." NECA strongly supports this proposal as it affirmatively addresses the multiple challenges facing the multiemployer pension system in the wake of the expiring provisions in *the Pension Protection Act of 2006*.

NECA is the nationally recognized voice of the electrical construction industry, comprised of over 80,000 electrical contracting firms, employing over 750,000 electrical workers and producing an annual volume of over $125 billion in electrical construction. NECA represents 119 U.S. chapters in addition to several affiliated international chapters around the world. NECA chapters are signatory to 359 local unions. NECA member companies contribute to both a national plan, the National Electrical Benefit Fund (NEBF) and 123 local or regional pension plans covering Electrical Workers in the construction industry, with total assets of roughly $30 billion.

NEBF, a successful and well-managed pension plan, is the third largest Taft-Hartley Pension Plan in the United States which benefits participants, retirees and surviving spouses in the electrical construction industry. It serves over 502,000 participating individuals, with 119,120 of those individuals receiving either a retirement or surviving spouse benefit. The Plan has nearly 10,000 contributing employers, resulting in over 370,000,000 hours worked in covered employment.

In addition to our national plan, 165 local areas participate in 123 separate local or regional defined benefit pension plans. A report developed by Horizon Actuaries Services, LLC analyzed key trends in the electrical construction industry and how our plans have evolved over the past decade.

Geographic Region	**New England**	**Mid Atlantic**	**Midwest**	**South**	**West**	**All-Region Total**
Number of Plans	9	38	39	13	24	**123**
Total Assets	$ 974	$ 15,649	$ 5,994	$ 473	$ 6,819	**$ 29,910**
Number of Participants	14,782	598,226	96,422	17,005	88,375	**814,810**

In total, there are over 800,000 participants and beneficiaries of these plans across the country. While the majority of the NECA/IBEW local plans have been well-managed and continue to be well-funded, the electrical construction industry continues to face uncertainty in the marketplace as it continues to recover from recession, stagnant unemployment, an aging workforce, unprecedented increases in health care costs, and unsustainable pension contributions. Despite these unprecedented challenges, our trustees nationwide have taken action to ensure our plans remain healthy with the resources available under current law. While nearly 60 percent of the

NECA/IBEW plans took advantage of the much needed relief that was provided through the Worker, Retiree and Employer Recovery Act of 2008 (WRERA) and again through the Pension Relief Act of 2010 (PRA), additional relief is sorely needed. Consequently, comprehensive pension reform is NECA's top priority for the 113th Congress, as the multiemployer funding rules contained in the Pension Protection Act of 2006 (PPA) will sunset on December 31, 2014.

NECA Supports the NCCMP Proposal: *Solutions Not Bailouts*

The NCCMP Retirement Security Review Commission Reform Proposal, entitled *Solutions Not Bailouts,* lays out a comprehensive plan that will ensure these plans would have the tools available to them to continue to provide a promised and reliable retirement benefit to the millions of Americans in these plans while enabling the employers who fund them to remain strong contributors to the national economy. The proposal offers recommendations that strengthens current funding rules, offers additional tools for the deeply troubled plans heading toward insolvency, and creates new flexible plan design options aimed to reduce employers risk and eliminate withdrawal liabilities.

We must work to not only extend the changes enacted by the PPA, the current funding rules of the PPA must be strengthened as well. While the PPA provided some relief to multiemployer pension plans and helped companies recover losses incurred as a result of the financial crisis, we believe that further changes to the PPA are necessary to improve the health and viability of these plans. The proposal offers an array of technical provisions that will improve the current system by providing flexible rules to allow trustees of plans facing financial instability to adapt to changing economic and market conditions as they occur.

The NCCMP proposal would allow the creation of new flexible plan designs. As we have stated, a transient workforce, an aging population, and a weak economy have led to unsustainable pension contributions and unfunded withdrawal liabilities that continue to put a strain on contributing employers. These growing concerns led the Commission to recommend two new plan designs. Both of the new plan designs are distinguished from a traditional defined benefit plan because they have shared risk amongst the employer and the employee and they significantly reduce an employer's exposure to withdrawal liability. NECA believes these new plan designs will be the future of multiemployer benefit plans and will maintain secure retirement for plan participants.

Finally, the NCCMP proposal provides additional assistance for deeply troubled plans heading toward insolvency. Severely troubled plans that are projected to become insolvent need more tools to prevent the plans from exposure of the Pension Guaranty Benefit Corporation (PBGC). This proposal would provide the plan trustees the tools needed to prevent insolvency. Under the PPA, plan trustees were granted the authority to temporarily reduce benefits for active participants. Unfortunately, there remain plans where those suspensions were not enough to avoid insolvency. In these exceptional circumstances, these additional tools will grant plan trustees additional authority to take appropriate measures to partially suspend accrued benefits for active and inactive vested participants. Such suspensions would be limited to the amount of time essential to prevent the plan from insolvency; the benefits could never go below 110 percent of the PBGC guaranteed amounts.

The Pacific Coast Pension Plan: A Case Study

To date, nearly 70 percent of NECA/IBEW pension plans are in the green zone. However, more than 12 percent of the plans remain in the red zone and continue face challenges with unfunded liabilities and decreasing market share. Severely troubled plans that are projected to become insolvent need more tools to prevent the plans from exposure of the PBGC. The *Pacific Coast Pension Plan,* a local electrical worker pension plan is among the small percentage of multiemployer plans that require immediate intervention in order to preserve benefits for beneficiaries. The employers of the Pacific Coast Pension Plan have paid benefits in a timely manner in an effort to give their employees a good retirement since 1965. However, due to no fault of their own, the employers are saddled with an unfunded liability greater than the net worth of their companies, making their businesses impossible to sell or transition to new ownership. While a huge burden on contributing employers, unfunded liability may not be the biggest threat to the electrical construction industry. The required recovery schedule mandated by the PPA caused contribution rates to skyrocket to over $10 per hour and it is on course to reach $32 per hour. Since the start of the recovery schedule, NECA members have lost 27 percent overall market share in the area. It is simply not tenable for the trustees of this plan to wait for their plan to fail before Congress acts to address these pressing issues. The NCCMP proposal would provide the plan trustees the tools needed to prevent insolvency. These additional tools would grant plan trustees further authority to take appropriate measures to partially suspend accrued benefits for active and inactive vested participants. Such suspensions would be limited to the amount of time essential to prevent the plan from insolvency; the benefits could never go below 110 percent of the PBGC guaranteed amounts.

Impact on Job Creation in the Electrical Construction Industry

It is clear unfunded withdrawal liabilities continue to put a strain on contributing employers. In fact, the median costs of unfunded liability in the electrical construction industry have nearly tripled since 2004. Consequently, the challenges in ensuring our pension plans are well-funded continue to have a tremendous impact on the day-to-day decisions of NECA members, including, opportunities for keeping electrical workers employed, creating new job opportunities, and keeping NECA contractors in business. As Congress continues to move forward towards enacting pension reform, job preservation and job creation must be taken under high consideration. Enacting the recommendations of the NCCMP's proposal would help lower the overall cost of contributing to pension plans for participating employers while ensuring plans are well funded and ensures all employees and beneficiaries receive their promised benefits. Reducing those costs would make more capital available to reinvest in their companies, which will help NECA contractors be more competitive, and enable them to have the opportunity to bid for more work. This will help not only keep existing jobs, but also help create more job opportunities for electrical workers nationwide.

Concluding Remarks

NECA thanks the Subcommittee and the full Committee for its continued commitment to hold hearings to closely examine the health of the multiemployer pension plan system. We remain committed to seeing comprehensive reform legislation passed during the 113th Congress. NECA appreciates the opportunity to submit this statement for the record in conjunction with this hearing and we look forward to continuing to work with the Committee on this critically important issue.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001

KEN HALL
General Secretary-Treasurer

202.624.6800
www.teamster.org

October 28, 2013

The Honorable John P. Kline, Chairman
The Honorable George Miller, Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Kline and Ranking Member Miller:

I have been asked by people that I respect enormously – leaders of my union and other unions, labor trustees of many of our multi-employer plans, and many of your colleagues in the U.S. House and Senate – for the IBT's position on the proposals contained in the document, "Solutions Not Bailouts," drafted by the Retirement Security Review Commission of the National Coordinating Committee for Multiemployer Plans (NCCMP).

I have carefully studied the proposals in the document and commend the NCCMP for undertaking the work that was required to develop ways to protect the multi-employer plans that millions of working families depend on and will depend on in the future. The NCCMP deserves enormous credit for moving the discussion of the crises facing our multi-employer plans forward.

"Solutions Not Bailouts" is an extremely thoughtful and sophisticated document. And the IBT supports many of the proposals in the document. Nevertheless, after much discussion and consultation with Teamster officers and fund trustees, as well as pension experts and administrators, we cannot at this time support any proposal that would cut accrued benefits of participants, including cutting the pension benefits of current retirees in endangered plans, despite the fact it could potentially prolong the life of plans heading toward insolvency and, perhaps, allow retirees to receive their pensions for longer periods of time at levels that exceed the PBGC guaranteed minimums.

October 28, 2013
Page 2

We have reviewed the viewpoints of those supporting the NCCMP proposal and understand that the political obstacles to an alternative solution that would save these plans from ultimate insolvency are enormous. Nevertheless, our union does not believe that this is the time to accept these obstacles as insurmountable.

Our Teamster participants in multi-employer plans are not alone. The crisis facing many of our plans is taking place at the same time as the pensions of millions of public employees and millions of private sector employees in single employer plans are also threatened. The IBT is at the forefront, along with many other unions, in the campaign to stop the reduction of promised pensions to our retired public employees. We cannot, then, turn around and support a proposal that would lead to a cut in the pensions of Teamster retirees in private sector multi-employer pension plans, plans on which many of our officers serve as trustees.

In our view, the pension crisis is part of a larger retirement security crisis in our nation that requires a comprehensive national solution. American workers who played by the rules and were promised decent retirement benefits, with assurance in the form of federal legislation creating the PBGC that those benefits would be protected, should not be forced to bear the burden of failed government economic policies (deregulation, export of jobs, deindustrialization, unfair trade) and a failure of government itself to provide sufficient backstop to now endangered plans.

Now, under the NCCMP proposal, workers with vested pensions may suffer significant financial sacrifices, with no effective avenue to recover their loss of promised retirement income.

Therefore we cannot support a proposal that makes cutting of vested benefits of retirees and near-retirees a key component of the solution to the projected insolvency of the PBGC and many multi-employer pension funds before waging an all-out national campaign to save these plans and protect these retirees.

We must be more creative in dealing with the specific issues confronting multi-employer plans before we take the draconian step of cutting benefits. For example, we read with great interest the submission to the House Education and Workforce Committee by the AARP (June 17, 2013). We believe that we should further analyze several of the proposals to determine their viability to increase funds for multi-employer plans as well as for the PBGC. We are sure that if we work together we can find other alternatives.

October 28, 2013
Page 3

At the end of the day, however, this issue is about basic economic fairness and the kind of country we want to live in. Differing from the NCCMP approach, we believe that it is the federal government's responsibility to solve the problem of insuring the promises made to our retirees in ERISA plans and simultaneously to insure the solvency of the PBGC.

The question is whether as trade union leaders we accept the status quo and attempt to maneuver within it, or whether we are prepared to fight for changes that will ensure that the right to a dignified retirement remains sacrosanct. We challenge ourselves and our trade union and community allies to build a movement that will reverse the mad rush to destroy what little semblance of retirement security exists in this country, and restore to solvency the pension plans that millions of American workers in both the public and private sectors depend upon.

Sincerely,

James P. Hoffa

James P. Hoffa
General President

JPH/pa