

**THE MULTIEMPLOYER PENSION PLAN SYSTEM:
RECENT REFORMS AND CURRENT CHALLENGES**

HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
ONE HUNDRED FOURTEENTH CONGRESS
SECOND SESSION

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MARCH 1, 2016
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Printed for the use of the Committee on Finance

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U.S. GOVERNMENT PUBLISHING OFFICE

23-589—PDF

WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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**THE MULTIEMPLOYER PENSION PLAN
SYSTEM: RECENT REFORMS
AND CURRENT CHALLENGES**

TUESDAY, MARCH 1, 2016

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:35 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Grassley, Crapo, Thune, Burr, Isakson, Portman, Heller, Scott, Wyden, Schumer, Stabenow, Cantwell, Cardin, Brown, Bennet, Casey, and Warner.

Also present: Republican Staff: Sam Beaver, Professional Staff Member; Marc Ness, Detailee; Preston Rutledge, Tax Counsel; and Jeff Wrase, Chief Economist. Democratic Staff: Kara Getz, Senior Tax Counsel; Joshua Sheinkman, Staff Director; and Eric Slack, Detailee.

**OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S.
SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The Finance Committee will come to order.

I understand that some people are here who have strong feelings about the subjects we are talking about here today. That is fine. The First Amendment guarantees your right to express your views. But we have to allow a civil discussion to occur in the context of this hearing.

So for our friends who are protesting, I ask that you respect the rights of others, respect this committee, and remain quiet so that the hearing can continue.

The committee will be in order. Comments from the audience are inappropriate and out of order. If there is any disruption, I am going to call it out and raise a little bit of a fuss here.

So let us abide by the rules. We know there are some hard feelings and tough feelings in some of these areas. That is one reason we are holding the hearing. So we will just go from there.

I would like to welcome everyone to this morning's hearing to examine the multiemployer pension plan system. As I said at a recent hearing, financial security for workers and their families, from their retirement policy in particular, has never been more important. While we have enjoyed a number of successes in this area, today we will be talking about an area of retirement policy that,

for a number of reasons, has not delivered on the pension promises made to workers and retirees.

A multiemployer pension plan is a collectively bargained pension plan set up by a union and two or more unrelated unionized employers. In this system, the employers make contributions to the plan and pay premiums to the Pension Benefit Guaranty Corporation, or PBGC, to insure the plan. Multiemployer plans are operated by a joint board of union and employer trustees that, among other things, sets the amount of the pensions. Or, in other words, these boards make the promises.

Ten million Americans are covered by multiemployer pension plans, and currently more than one-third of those people are in plans that are critically underfunded. Many are in danger of default. In the case of a default, the PBGC would pay out pensions to retirees. Those payments are capped by law and would be no greater than \$12,870 per year. In fact, in many cases, they would be far less. That would be a steep drop for a retiree who was promised an annual pension of \$30,000 or \$40,000 in a plan like the Central States Teamsters plan, one of the plans we will be talking about today.

That sounds pretty bad, but the problems in the multiemployer pension system are even worse than what I just described. There are several plans, like the Central States and United Mine Workers plans, for example, that would bankrupt the PBGC if they were to default. The PBGC insurance program for multiemployer plans just cannot handle that load, and if the PBGC's insurance assets are ever exhausted, pension plan payment will drop to nearly zero.

The response to this crisis by Congress and the President in 2014 was to enact the Multiemployer Pension Reform Act, or MPRA. At the request of multiemployer pension plan managers, employers who contribute to multiemployer pension plans, as well as many unions representing employees, the MPRA gave pension plan trustees the ability in extreme cases to petition the Treasury Department for approval to cut pensions in the near term in order to avoid insolvency and larger cuts down the road. Now, this law is, to say the least, controversial, and the committee will hear from both defenders and critics of the MPRA today.

Now, this is a sobering moment for our country, the pension community, and, of course, the retirees. Beyond the hardship for retirees in multiemployer plans, this moment also highlights the challenge of delivering on the promise of pensions and defined benefit plans across the board, both public and private, and the stakes for retirees if these systems fail.

Today we will hear testimony from a Central States beneficiary, a retiree whose husband recently passed away who is scheduled to receive a 40-percent cut in her survivor's pension if Treasury approves the application of the plan's trustees to implement the reductions. Her annual pension would be reduced from more than \$30,000 to just under \$18,000. Her case is the very definition of hardship in the context of the pension system.

We will hear testimony today about the United Mine Workers Pension plan, another financially strapped pension plan that, even without additional cuts, provides a relatively modest pension, around \$6,000 per year, on average, for its beneficiaries.

In addition, we have witnesses who will address the hard truth that, without the MPRA, future pension cuts will be even worse. We will hear that the MPRA allows many plans that otherwise would fail entirely to keep their benefits from dropping all the way to PBGC levels, or perhaps to no pension at all.

Now, we know that there are some who advocate a taxpayer bailout of the PBGC's multiemployer pension program. In my view, that will be very difficult to achieve if recent history is any guide. The idea of a PBGC bailout was proposed by unions, employers, and multiemployer plans back in 2010. Back then, the House, Senate, and White House were all controlled by Democrats, and the proposal got absolutely no traction whatsoever. I have a hard time seeing how such a proposal would move forward in the current environment. But for the sake of argument, let us imagine that there was another way outside of premiums to finance the PBGC.

What then? The cuts would still be larger. Older retirees and disabled retirees who today cannot receive cuts at all under the MPRA would be cut all the way down to the PBGC level. Even the retirees whose pensions are eligible for cuts under the MPRA are at least assured of always receiving at least 10 percent more than the PBGC level and perhaps much more.

But without the MPRA, even that minimal level of protection would vanish. Ultimately, the critics of the MPRA have to recognize that, when dealing with this problem, there were really only three choices—bad, worse, and worst of all.

In 2014, a bipartisan majority in Congress and the President went with bad. No one is happy with that choice. I suspect that it was the best option available to us at the time.

The question we have to consider now is, how can we avoid these problems in the future? Today we will hear testimony about how the design and funding of multiemployer plans led us to this point. Not surprisingly, I suspect we will hear that it is easier to promise pensions than it is to fund them.

We will hear that, because of lax rules in the current system, there is a great temptation for plant managers to make unrealistic actuarial assumptions and take on excessive investment risk. And we will learn about disturbing parallels between multiemployer pensions and the defined benefit pension plans run by many State and local governments.

Finally, I want to say another word about the Mine Worker pension plan. I promised Ranking Member Wyden that I would work with him on this issue, and I have kept my promise. I have done my best to advance legislation introduced by Senators Capito and Manchin, which is—given the already low pension payments, the Obama administration's war on the coal industry, and the depressed state of the economy in most of coal country—in my view, the best option for us. I plan to continue that effort.

Now, with that, let me just make it clear that if we are going to have people cause a ruckus in here—I do not want to see that happen, and I will not permit it to happen.

So the committee is going to be in order, and the comments from the audience are inappropriate and out of order, and we do not want to have to call on the police to restore order.

So let us hope we do not have anybody get out of order here in this hearing today. This is an important hearing. We ought to all be very interested in whatever we can gain from this particular hearing. We have been working on this for a long time.

With that, I will turn to my ranking member, Senator Wyden, for his opening statement.

[The prepared statement of Chairman Hatch appears in the appendix.]

**OPENING STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you, Mr. Chairman. And you are right, we have been working together, and I look forward to getting this key legislation passed.

This is an extraordinarily important time for our country, colleagues, because there is a longstanding principal of pension law that says you do not take away benefits that our workers have earned. But unless the Congress acts soon, that guarantee is about to be broken. There are more than 1,000 multiemployer pension plans around America, and millions of Americans rely on them for economic security in retirement. Yet, many of those plans are now in dire financial straits.

I want to begin this morning by focusing on one group of workers who are particularly at risk. Thousands of coal miners' pensions are hanging in the balance, and the clock is ticking down to disaster for retired coal miners in the coming months.

Over decades of perilous, backbreaking work, fueling the American economy, our miners earned retiree health benefits and pensions. There is, however, a serious risk thousands of miners are going to lose their health benefits by December of this year. By December of 2017, miners' pension benefits could be at risk as well.

Now, I come from a State that does not mine coal, but there are communities across my home State that have historically been resource-dependent, and a lot of those communities are experiencing the same kind of economic pain you see in mining towns in other parts of the Nation. You cannot turn your back on the workers and retirees in these communities when times get tough. When Mrs. Lewis speaks—she is from Ohio—members are going to get a real sense of the stress that families face when they are looking at losing their pension rights.

If the worst happens, retired miners may have nowhere to turn, and the Pension Benefit Guaranty Corporation, which insures multiemployer pension plans, is under extraordinary pressure and is at risk of insolvency down the road.

Colleagues, we are very pleased that Senator Manchin is here. Senator Manchin and Senator Capito, who represent West Virginia, have come together on a bipartisan basis and produced a Miners Protection Act. Senators Brown and Casey and Warner have talked to me again and again about the importance of this issue to their States. It is my view that this committee and the Congress should move on this bill as soon as possible.

Now, of course, it is also critical that the Finance Committee take a wider view of the crisis unfolding in multiemployer pension plans around the country. Hundreds of them, accounting for the

pensions of more than a million workers and retirees, were less than 40 percent funded as of 2011.

Unfortunately, a provision that added fuel to the fire was slipped into a must-pass government funding law in 2014, and it passed over my strong opposition. It gave a green light to slashing benefits in a lot of the hardest-hit multiemployer plans, and that is going to make life a lot tougher for a great many seniors across the country who are already struggling to get by.

I will close by saying, Mr. Chairman, that today's hearing, in my view, ought to be just the beginning of a fresh look at our broken retirement system. We have a lot to do. We ought to be looking, for example, at what a number of the States, like my home State of Oregon, are doing, where we are on the cutting edge of retirement policy.

We ought to look, for example, at reforming the common bond provision, which has been a vital part of retirement policy debates in the past. We also ought to be looking at making the Saver's Credit refundable, and a number of colleagues here on the Finance Committee have joined me on this issue.

So what this is really about is making sure that Congress ensures that the promise that pension benefits are all about is protected, and it is an enormous challenge, and there is not any silver-bullet policy that is just going to fix everything right away.

But we are talking here, colleagues, about the economic security of millions of Americans. So today we are going to look at a number of important issues. I know my colleague is going to talk about the miners question. I have mentioned other questions that we ought to be looking at, particularly the role of the States in reforming common bond, and making the Saver's Credit refundable.

The Finance Committee is a place where Democrats and Republicans can come together to find solutions to the enormous retirement challenge in America. As you know, Mr. Chairman, the Finance Committee Democrats and I sent a letter to you outlining many of our concerns, and I think it would be fair to say, Mr. Chairman, that Democrats very much want to work with Republicans on a bipartisan basis to meet this challenge.

Thank you.

[The prepared statement of Senator Wyden appears in the appendix.]

The CHAIRMAN. Thank you, Senator.

I would like to take a few minutes to introduce today's witnesses. I will introduce the entire panel and then give each witness 5 minutes for opening remarks.

We also have Senator Manchin here, who would like to introduce one of the witnesses. Senator Brown would like to also join in. We will do that before we turn to the witnesses themselves.

Our first witness is Joshua Gotbaum. Mr. Gotbaum writes and advises on retirement finance and budget issues as a guest scholar in the Economic Studies Program at The Brookings Institution. From 2010 to 2014, Mr. Gotbaum served as the Director of the U.S. Pension Benefit Guaranty Corporation, or PBGC. That is a 2,300-person agency responsible for investment \$80 billion of assets and insuring pensions for more than 40 million Americans.

Before heading the PBGC, Mr. Gotbaum ran and reorganized Hawaiian Airlines, served as CEO for the September 11th Fund, and was confirmed on a bipartisan basis to presidential appointments in the Treasury and Defense Departments and the Office of Management and Budget during the Clinton administration.

Mr. Gotbaum is a fellow of both the National Academy of Public Administration and the National Academy of Social Insurance. He has degrees from Stanford, Harvard Law School, and the Kennedy School of Government.

Our second witness is Mrs. Rita Lewis, a beneficiary of the Central States Pension Plan. Mrs. Lewis is the widow of the late Butch Lewis, who worked 40 years for USF Holland, an Ohio-based trucking company.

Mr. Lewis, who was a leader of the Southwest Retirees Pension Committee, was a participant of the Central States Pension Plan and, unfortunately, passed away last New Year's Eve from a massive stroke. Mr. Lewis became a truck driver after facing life-threatening injuries he suffered in the Special Forces Army Rangers while deployed in Vietnam.

Mrs. Lewis currently works for the Police Department of West Chester, OH, where she also resides.

We are very sorry for your loss, Mrs. Lewis, and appreciate your willingness to be here today.

My understanding is that Senators Portman and Brown want to make a brief introduction of their constituent, Mrs. Lewis.

So let us recognize you, Senator Portman, first, and then we will recognize Senator Brown.

**OPENING STATEMENT OF HON. ROB PORTMAN,
A U.S. SENATOR FROM OHIO**

Senator PORTMAN. Thank you, Mr. Chairman.

I want to welcome her to the committee today. As Rita knows, I got to know her late husband, Butch, last fall in working on these issues and was inspired by him. He had fierce determination.

As you said, he was a Vietnam Veteran. He was a proud patriot. He must have been a very good soldier, because he was a straight-shooter and he understood, Mr. Chairman, some of the problems you are talking about with the system, but he also understood the unfairness of the process that has currently got Rita in a tough situation, and she will talk about that in a moment.

But I thank her for being here. I thank her for being someone who is willing to work with us to try to find a solution. She has been terrific.

I would also like to thank a couple other Ohioans who are here. Mike Walden, I see there. Whitlow and Barb Wyatt are here; Tom and Linda Krekeler. They have also worked hard with us on our legislation and on how to find ways to help protect these earned pensions.

Then I would also like to acknowledge a couple other Ohioans. Dave Dilly from Fresno, OH is here and Norm Skinner of Dresden, OH. As Mr. Roberts knows, these are coal miners from Ohio who are here to talk about the coal miners pensions issue, and they are hardworking guys who deserve better than they are getting from their pensions, and I look forward to hearing from them about the

legislation I am supporting that Senator Manchin will talk about today too.

So thank you, Mr. Chairman, for giving me that privilege. We look forward to hearing your testimonies.

The CHAIRMAN. Thank you, Senator Portman.
We will now turn to Senator Brown.

**OPENING STATEMENT OF HON. SHERROD BROWN,
A U.S. SENATOR FROM OHIO**

Senator BROWN. Thank you, Mr. Chairman.

I echo my colleague's kind words about Rita Lewis. Thank you so much for joining us and for speaking out. I know the grief and hurt are still so close to you, and I am so sorry and hope that this will help you some knowing that you are fighting for what Butch fought for his entire life.

Rita lives in West Chester, OH. Her husband was a legend to Ohio Teamsters. He understood that a strong, vibrant union movement created the middle class in this country. He was always fighting for something bigger than he was: for his family, for your two children, for your grandchildren, and for our State. In an era of declining wages, he understood that pensions and health care and wages were all about the union movement, and I so thank you for that and Butch for that.

He was drafted by the Pittsburgh Pirates to play baseball. Instead, he went to Vietnam. He was a Special Forces Army Ranger. He had life-threatening injuries in Vietnam. He came back and became a Teamster, and he was a leader of the Southwest Retirees Pension Committee.

This morning, Rita said earlier that Butch said the cuts being forced on retirees amount to war against the middle class and the American dream, and that is what he devoted his life to. Rita is facing 40-percent cuts to her already-reduced widow's benefit. She says she is fighting not just for herself, but the 270,000 other retired truck drivers.

That is what Butch did. That is what Rita does. For that we are grateful.

This hearing, Mr. Chairman, is also about doing the right thing for the mine workers. I am glad to see someone is here to make that case and numbers of other mine workers, as Senator Portman said, from Ohio and around the country.

So thanks to both of you. And, Rita, we really look forward to hearing you talk about Butch and his mission in life. Thank you so much.

The CHAIRMAN. Thank you, Senator Brown.

At this point, we will recognize our esteemed colleague from West Virginia to make his introduction, if he would like to.

**STATEMENT OF HON. JOE MANCHIN III,
A U.S. SENATOR FROM WEST VIRGINIA**

Senator MANCHIN. Mr. Chairman, let me thank you and Ranking Member Wyden and my friends for taking this up. This is an important piece of legislation to all of us.

First of all, Mr. Chairman, I would like to ask that the handout that I have distributed be entered into the record.

The CHAIRMAN. Without objection.

Senator MANCHIN. All the members should have a copy. It is the Brief Chronology of the UMWA Health and Retirement Funds and the History of the U.S. Government's Involvement. So this is more than just the piece of legislation we are asking for. It is basically to honor the commitment through law that starts back in the 1930s.

So I think we have a tremendous story to be told here.

[The chronology appears in the appendix on p. 63.]

Senator MANCHIN. The thing I want to say is, Mr. Chairman, first of all, you are a product, born and raised in the coal fields in southwestern Pennsylvania and close to West Virginia, as you know.

The CHAIRMAN. And in Utah. We have a lot of coal.

Senator MANCHIN. Absolutely, in Utah too. But there is not a more proud, patriotic group of people than the men and women who mine the coal.

This is a resource that we have taken for granted. The history is not being told, and children today are not learning about the country they have and how they got it. It came at the sacrifice of the most plentiful resource we have had that fueled the Industrial Revolution, that defended this country, made the steel that built the guns and ships, defended this country, and won every war.

It is so important to know the chronology of this law signed by Harry Truman, and it has moved up from the 1940s all the way into the present day.

So I am here, and I have the honor of introducing my friend, but also a friend to every miner in America and the most committed person I know in this movement for the United Mine Workers, Mr. Cecil Roberts.

He is a sixth-generation coal miner from Kanawha County, WV. He has been the president of the United Mine Workers of America since 1995. He was reelected to his fifth full term as the international president in 2014. In fact, he is the second longest standing president of the United Mine Workers of America, next to John L. Lewis.

Mr. Roberts is here today on behalf of our Nation's coal miners, and we have them from all over the Nation, and we are so proud that they are here with us today. They have answered the call whenever that call came, not only in the mining field, but most of them are veterans and have fought in the wars. So they know the patriotic duty and responsibility they have.

When our economy was stagnant, these miners fueled the growth and expansion. They kept their promise to us, and now it is time for us to honor ours, the promise that President Truman made to our country and to our miners. These miners are now facing multiple pressures on their health-care pension benefits as a result of financial crises and corporate bankruptcies. Despite being well-managed, the UMWA 1974 Pension Plan is now severely underfunded and on the road to insolvency, and the Miners Protection Act which we have before you will cure that.

That is why I joined Senators Capito, Casey, Brown, Warner, Roberts, Kaine, and others. This is truly a bipartisan movement to

the Miners Protection Act, and I want to thank all those who have joined as cosponsors.

Mr. Roberts is going to speak on the importance of the bill and provide an overview of the history of the promises that the U.S. Government and coal operators have made to the miners of this country. The bill honors the promise of lifetime health care and pensions made by the U.S. Government and coal operators. It simply seeks to protect the pension and health benefits of retired miners and their dependents.

This bill is particularly important to my home State of West Virginia, Mr. Chairman and Ranking Member Wyden, because West Virginia has more retired union miners than any other State. And I would like to say this: there is no State that has been hit harder economically than we have today with the transition that is going on. But the undue pressure by this administration has wreaked havoc on West Virginia families.

Out of 90,594 retired UMW workers in the country in 2014, more than 27,000 of those people lived in West Virginia. I would also note that one of our West Virginia miners, Mr. Levi Allen, is with us. He has traveled to support this legislation. He is from the northern part, Marshall County, WV. It is a Murray Energy Marshall County mine, formerly known as the McElroy Mine. It was a CONSOL mine, the McElroy Mine.

I want to applaud Mr. Allen and my friend, Mr. Cecil Roberts, for their tireless efforts. I want to thank you both for your commitment to moving this legislation forward. It truly is a commitment to the promise that we all made.

This country depended on this energy, the most abundant energy. It is the only energy, next to nuclear, that gives you a base load. It runs 24/7. Nothing else does it in America.

As this transition is going on, West Virginia is not fighting the transition. We know that coal is going to be a staple fuel. We want to make sure we do it better, cleaner, with more technology. We are accepting all of that. But do not put at risk the lives and futures of these miners who have given their life to the industry that we have today, to the energy that we have today, and to the country that we have today, sir, and that is all we are asking for.

The Miners Protection Act is a fix. It is a fix that works not only the miners, but for America.

So with that, I am excited to be here on behalf of my friend and to get a chance to introduce him, president of the United Mine Workers of America, Cecil Roberts.

The CHAIRMAN. Thank you, Senator Manchin.

I think it is high praise for you, Mr. Roberts, and Senator Portman's and Brown's comments here today are very important.

I was raised in coal country, and I understand. A lot of my friends were coal miners as well. So it is a big problem to us, and I just want to express my gratitude that you would take time to show up and testify.

Our final witness today is Dr. Andrew Biggs, a resident scholar at the American Enterprise Institute, or AEI. Dr. Biggs studies Social Security reform, State and local government pensions, and public-sector pay and benefits.

Before joining AEI, Dr. Biggs was the Principal Deputy Commissioner of the Social Security Administration and Associate Director of the White House National Economic Council and served on President George W. Bush's Commission to Strengthen Social Security.

Dr. Biggs holds a bachelor's degree from Queen's University-Belfast in Northern Ireland, master's degrees from Cambridge University and the University of London, and a Ph.D. from the London School of Economics.

I want to thank all of you for coming. We will hear witness testimonies in the order that they were introduced.

Senator Manchin, you do not have to stay.

Senator MANCHIN. I would surely love to, but I have another meeting. As we know, they double-park us every time, and I have to go. But I am just so proud of everybody here and everybody who made an effort to come here.

So with that, thank you again, Mr. Chairman.

The CHAIRMAN. We know that you are busy, and we also know that you have a lot of duties, and we appreciate you taking time to come and speak here today.

So with that, we will turn to you, Mr. Gotbaum. Please proceed.

**STATEMENT OF HON. JOSHUA GOTBAUM, GUEST SCHOLAR,
ECONOMIC STUDIES PROGRAM, THE BROOKINGS INSTITUTION,
WASHINGTON, DC**

Mr. GOTBAUM. Mr. Chairman, Senator Wyden, members of the committee, thanks very much for the opportunity to talk about these plans, about the more than a million people whose lives will be affected by what you do to them, and what Congress can do to help. Since you all have my written testimony, I am going to summarize it. I am going to try to summarize it with four points.

The first point, sadly, is that Mrs. Lewis is far from alone. More than a million people and their families could lose their pensions if this system goes down.

Second, this is not a case of bad people or bad plans. This is mostly a case of bad luck.

Third, the Multiemployer Pension Reform Act, controversial though it is, offers some plans the chance to preserve benefits by avoiding having everyone's pensions cut down to PBGC levels.

Repealing MPRA would not make things better. It would make them worse. It would guarantee the collapse of the multiemployer system.

So, rather than repealing MPRA, there are some other things that Congress can do that I hope you will consider. One is, you can enable the PBGC to do its job, which is preserving these plans, by letting it collect adequate premiums.

Secondly, you can help plans survive by allowing new plan designs, but while making sure that the move to new plans does not doom the existing plans.

Let me talk a little bit about this piece of legislation, MPRA, that none of us likes, but some of us think is necessary for the moment.

Most multiemployer plans have a large group of employers. When one becomes underfunded, there are others who can make up the shortfall. But in some plans, the employer base has shrunk. It

shrank because of trucking deregulation or because of consolidation in foods, hotels, or coal mining, and in those plans, many retirees earned their benefits working for companies that are no longer around.

The term that is used, although it is a term that no one likes, is orphans. When these plans become underfunded, the companies and workers that are still active in the plans are being asked not only to pay for their underfunding, but to pay for the underfunding of orphans as well.

Now, one thing that the committee should know is, very often they do. They reach into their pockets and they take money out of their pay to cover the shortfall for employees of other plans. But when there are more orphans than actives, at some point, the burden just becomes too great.

The result is a death spiral. Employers that can withdraw, like UPS did, they do so. And then the burden on the remaining employers becomes intolerable. They withdraw too, and the plan runs out of money.

When that happens, all benefits are cut down to PBGC levels. Hidden in my testimony on page 3 is a microscopic chart that gives you an idea of what it means to go down to PBGC levels. And in one example in that chart, that is a 50-percent cut. MPRA gives some plans a chance to avoid that 50-percent cut, to preserve benefits above PBGC levels.

Central States, for example, has proposed an average cut of 23 percent. That is a tragedy. Nobody thinks that that is a good thing. But it is better than 50 percent. But even getting 50 percent from PBGC is optimistic, because PBGC is projected to run out of money in 8 years, and, once PBGC's own fund runs dry, it will only be able to pay a fraction of benefits, maybe 10 percent. That is not a 50-percent cut, that is a 90-percent cut.

So I hope you do not repeal MPRA, but what I hope you do is make sure that PBGC has the resources to do its job and preserve plans. No one likes to pay higher PBGC premiums, but without them, PBGC will not be able to do its job. Fortunately, multiemployer premiums are much lower than the premiums that 90-plus percent of plans already pay. Multiemployer premiums are now \$27 a year. The average plan outside of the multiemployer system pays \$140 per person a year. So there is room for growth.

The second thing you can do is to allow the new plan designs, but pay attention to the details. In pensions, these matter. Unfortunately, the proposals for new plan designs, the new idea for legacy plans, is to weaken them. It makes it easier for employers to withdraw from them. It puts them at greater risk of failing.

So, while I very much hope that you will allow new plan designs, because they are necessary, I also hope that you will make sure to pay attention to the safety of the old plans in several ways.

One is by making sure that the actuaries do not get too optimistic, because that is when plans fail, when actuaries get too optimistic; and in addition, making sure that the move to new plans does not eliminate the PBGC premium base so that they have to come back to you hat in hand again just to do their job.

In closing, thanks very, very much for holding this hearing and for your interest. More than a million Americans are in your debt.

If, as you proceed, I can help, I would be honored to do so.

Thank you.

[The prepared statement of Mr. Gotbaum appears in the appendix.]

The CHAIRMAN. Thank you so much.

Mrs. Lewis, we will take your testimony now.

**STATEMENT OF RITA LEWIS, BENEFICIARY, CENTRAL STATES
PENSION PLAN, WEST CHESTER, OH**

Mrs. LEWIS. Chairman Hatch, Ranking Member Wyden, and members of the committee, thank you so much for inviting me to speak, and I am honored to be part of this most distinguished panel.

My name is Rita Lewis, and I live in West Chester, OH, and I am here representing my dearly beloved late husband, Butch Lewis, who worked 40 years for a Midwestern trucking company. Butch worked with thousands of retirees across the country until his last dying breath to stop the shameful and unfair cuts authorized under the Multiemployer Pension Reform Act, known as MPRA.

I am here not just for myself, but to speak on behalf of 270,000 retired truck drivers, widows, and spouses who will be devastated if the Central States Pension Plan is allowed to go through with these cuts. And this is not a partisan issue. We are Republicans, we are Democrats, and we are Independents. This is an issue of fundamental American values, of keeping earned promises to this Nation's retirees.

I understand that if Central States can cut our benefits, there are another 100 to 200 underfunded plans that are just waiting to cut their own retirees' benefits, and I urge you today to find a solution to protect our pension benefits before this becomes a huge national crisis.

Here is my story. My husband and I were married for 40 years after being childhood sweethearts. After high school, Butch gave up a baseball career to volunteer in Vietnam, where he served in the Special Forces Army Rangers. He got hit in the knee by mortar shells and came home with life-threatening injuries. When Butch returned home, he got a good-paying job in the trucking industry. He joined the Teamsters Union. And we got married and started a family and had a good life.

Over 40 years he went to work driving a tractor-trailer, which is hard, stressful work, and he did this even though he had 37 surgeries to fix the knee that he had injured in Vietnam. He worked hard so he could earn a good pension, and this pension was not a gift. He worked hard for every penny. He gave up wages and vacation pay and other benefits in exchange for a lifetime retirement income.

Last October, Butch got the letter from Central States stating that his pension was being cut over 40 percent, from just over \$3,000 a month to \$1,998. Butch made it his mission to stop these cuts, but after fighting hard, he died of a massive stroke last New Year's Eve. This was the happiness that I had that I am never going to have again.

Now, I am left without my husband, who was the love of my life, and facing cuts to my survivor benefits, also by 40 percent, from \$2,500 a month to \$1,498. If my benefits are cut, I will have to sell the house that Butch and I had made our dream home, and I will have a harder time taking care of my dad, who has stage IV lung cancer, and I will not be able to help pay for my grandchildren's college, a promise that we made to them.

But luckily, I am in better shape than many of my fellow retirees. Whitlow Wyatt of Ohio, he is going to lose 60 percent of his pension. His wife now has stage IV breast cancer, and they are not sure how they are going to make it.

Ava Miller of Flint, MI, she is facing cuts of 58 percent, and she is probably going to have to sell her home.

And Ron Daubenmeier of Iowa is facing cuts of 60 percent. He does not even know how he is going to make ends meet. And there are thousands of stories just like these.

I know that Central States says that the average cuts are around 22.5 percent, but just about everyone that I and my husband have talked to, they are facing cuts of 40, 50, 60, even 70 percent. And I was pretty stunned to hear that, while proposing all of these cuts, the fund's director, Tom Nyhan, got a \$32,000 raise and is making a total compensation of over \$694,000 a year. That is why we are respectfully requesting a forensic audit.

Senators, as you know, MPRA was negotiated behind closed doors without any input from the retirees and the widows who are going to be the most affected. And as I understand it, MPRA erases 40 years of Federal protection, which states that plans cannot cut back the benefits of retirees unless the plan completely runs out of money.

But our benefits are being slashed right now, 10 to 15 years before Central States is expected to run out of money. And some say it is better to get a haircut today than a beheading tomorrow, but this is a beheading for most of us. And those of us facing these pension cuts, we are in our 60s and our 70s and we do not have the time. And who is going to hire us to make up for that lost income? And let us face it, a lot of these retirees, like my husband, will be long gone before Central States runs out of money.

MPRA blames all of us for the financial problems of the multiemployer pension plans, even though we did not cause any of this, and this is plain wrong. A promise is a promise.

I just want to thank my own Senators from Ohio who are working to help us. Senator Sherrod Brown, from the bottom of my heart, thank you for supporting the Keep Our Pension Promises Act, which would solve the whole problem of underfunded multiemployer plans. My husband had great respect for you.

I also want to thank Senator Rob Portman for sponsoring the Pensions Accountability Act, which will fix the broken voting process in MPRA.

Gentlemen, time is running out. Please, please, I am begging you, do not let politics get in your way. We need a comprehensive bill that both parties can support, that truly fixes the problem for current and future retirees.

My husband, Butch, was a hero who fought for this country and loved this country and the American values that we all hold so

dear. And now I am asking you to be heroes too, by fixing this problem and saving our pensions. Thank you for taking the time to listen to me today, and I will be happy to answer any questions that you may want me to address. But I would also like to extend a thanks to the IBT and AARP for their support and, also, Senator Grassley. We will be forever indebted for all of your efforts and everything you have done to try to help us.

Thank you very much.

[The prepared statement of Mrs. Lewis appears in the appendix.]

The CHAIRMAN. Thank you so much.

Mr. Roberts, we will take your testimony.

STATEMENT OF CECIL E. ROBERTS, JR., INTERNATIONAL PRESIDENT, UNITED MINE WORKERS OF AMERICA, TRIANGLE, VA

Mr. ROBERTS. Thank you very much. Chairman Hatch and Ranking Member Wyden, I want to thank you on behalf of 90,000 UMWA retirees for having this hearing, but most of all I think I should express to everyone here that this has been a bipartisan effort on your part and Senator Wyden's part and many people on this committee. I am not going to start naming names, because I think I would have to call the names of most of the people on this committee who have worked in a bipartisan way to try to save the 1974 Pension Plan of the United Mine Workers of America.

I think this is a plan that absolutely should be saved, and I would like to take a moment to express why. But if I could just have 5 seconds of my time to commend the courage of Mrs. Lewis for coming here today. I believe that your husband was a true American hero, and thank you for coming here today. You are an inspiration to all of us.

This is obviously a problem of great magnitude across the United States of America as we come here today. As you might notice, I am kind of a little bit out of my element. This is a long ways from Cabin Creek, WV. Although I have been president for a long time, I get a little overwhelmed every time I come here.

Both of my grandfathers died in the coal mines. I never met either one of them. My father was a coal miner, and Senator Manchin was so kind to say that I am a sixth-generation coal miner.

I know many of these people we are talking about. I am not President Roberts to most of them. I am just Cecil when they see me. I have had the opportunity to eat dinner in their homes, and we go to rallies together, church together. So this is a very personal thing for those of us in the coal fields.

They say everybody in West Virginia knows everybody else. There is a lot of truth to that. So when Sago exploded, you saw outreach across West Virginia, and the same thing at Upper Big Branch.

Coal miners have made a tremendous sacrifice to this Nation, Mr. Chairman, members of this committee. As we come here today, there are 107,000 of us who have been killed in this Nation's coal mines trying to energize this Nation so everybody else could have a decent way of life and everybody else's economy could prosper. Another 107,000 of us died choking from pneumoconiosis, and as we are in here today, there is somebody dying right this minute

from pneumoconiosis or from injuries they sustained in a coal mine.

The U.S. Government has a long history here of being involved in the 1974 Pension Plan. At the end of World War II, the President of the United States seized the coal industry—a lot of people do not know this part of the story. The first pension plan was not negotiated with the coal industry. It was negotiated with the U.S. Government over at the White House, and it was the White House that said, if you coal miners will go back to work and let the Nation prosper after this war, then you will be rewarded with pensions and health care.

That was not the first time that the government was involved in this pension plan. Throughout the 1970s and throughout the 1990s, the government has stood up for and been a part of this pension plan, promising these benefits to miners.

I think the most important thing that I could say to you today, members of the committee, is it is my belief that there is broad support here to fix this. I want to applaud the two Senators from West Virginia for sponsoring this bill. This is a bipartisan bill not only in the U.S. Senate, it is a bipartisan bill in the House of Representatives. For one time, we have bipartisanship here, and it is a struggle to try to figure out how we cannot move from point A to point B when everybody says this is the solution.

The one thing that I would ask you to look at is, if we do not do anything, sometimes reality hits us between the eyes here, and maybe we should talk about that before my time is up.

If you go to page 6 of my written testimony, there you will see a graph depicting one of three things that is going to happen here. First of all, Congress can fail to act and we can do nothing, and then the 1974 Pension Plan is going to go insolvent. The cost to the taxpayers of this country of insolvency is \$4.6 billion, and I do not think that is a good way to approach this problem. The second thing is to take advantage of MPRA, which has been discussed here today, and the cost of that is \$3 billion. If you pass this legislation that has been proposed in a very bipartisan way, the cost to the U.S. Government is \$2.2 billion, \$1 billion cheaper than any other way to fix this problem.

I must submit to the members of this committee that no matter where you come from on this issue, if you are very much concerned about the taxpayers' money, then you should pass this bill. If you are concerned about pensioners, you should pass this bill. If you are concerned about health care, you should pass this bill, because every other way that has been suggested here is pretty bad and is more costly than any other way to fix this.

I must ask for consideration too of the fact that there are 21,000 retired miners who are going to lose their health-care benefits by the end of this year if Congress does not act. From 2020 to 2027, somewhere in that neighborhood, this plan is going to go insolvent, and 90,000 retirees are going to lose their benefits.

One thing I must stress to you is, in addition to what I have just said, there is \$1 billion a year that flows into the most depressed areas and hardest-hit areas of our economy in Appalachia from the health retirement funds. If these plans collapse, then we will lose another \$1 billion. We have lost 25,000 jobs in the coal mining in-

dustry in the last 3 or 4 years. We have been dealing with bankruptcy after bankruptcy after bankruptcy. We have gotten fewer and fewer people paid into these plans and more and more people are at risk for losing their health care as we come here today.

I urge this committee to start this process of fixing this problem and passing this legislation on to their colleagues in the United States Senate.

This is a desperate time for coal miners. I think the coal miners in this country have been promised these benefits. These coal miners in this country have earned these benefits. These coal miners in this country have sacrificed greatly to this Nation so all of us can have a better way of life, and we urge consideration of this.

Thank you, and I will be happy at the proper time to answer any questions that are posed to me.

[The prepared statement of Mr. Roberts appears in the appendix.]

The CHAIRMAN. Thank you, Mr. Roberts.

Dr. Biggs, we will turn to you.

STATEMENT OF ANDREW G. BIGGS, Ph.D., RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE, WASHINGTON, DC

Dr. BIGGS. Thank you very much. Chairman Hatch, Ranking Member Wyden, and members of the committee, thank you for the opportunity to testify today regarding the challenge of making multiemployer pension plans effective and sustainable for the future. The story of how multiemployer pensions became so underfunded is a familiar one. Instead, let me paint a picture in alternate history which might point toward a better future of retirement security.

Imagine if, instead of being covered by a multiemployer defined benefit pension plan, employees instead had participated in a state-of-the-art 401(k) plan. Employees would be automatically enrolled at reasonable contribution rates. They could take their savings with them from employer to employer within their industry as they could with a multiemployer pension plan. They could also carry it to a new field as jobs within their industry became scarcer.

They could diversify against risks by not holding stocks within their own industry, a contrast to multiemployer plans in which industry risk is compounded. Those workers could be sure each year that their employer had made his contribution simply by looking at their account balance. With any defined benefit pension, by contrast, it is difficult to tell whether an employer has fully funded its obligations or if it is relying on accounting tricks, such as assuming a high rate of return on the plan's investments.

I make these points not because we can rewrite history. We are where we are with multiemployer plans, and it is likely that everyone from retirees to plan sponsors to the Federal taxpayer will suffer. Policymakers need to approach these issues with soft hearts for those who have suffered through no fault of their own, but also with hard heads to avoid future errors.

My point in discussing 401(k)s is to know how we got here, through poor plan design that failed to fully fund and failed to diversify against risks that were diversifiable, and, most important, to avoid choices that could lead us there again. That is why I am

skeptical regarding ideas for hybrid or composite pension plans that have been proposed to take the place of defined benefit multi-employer pensions.

These hybrid plans appear to offer the best of both worlds. Like a true defined contribution plan, the composite is aimed at providing a stable, affordable contribution level to employers, which defined benefit plans cannot do. On the other hand, these plans aim to stabilize retirement benefits against market risks by smoothing changes over generations.

My concern, which is based on extensive work I have done modeling the finances of State and local pension plans, is that this magic simply cannot be done. So long as a plan is taking significant investment risk—and these composite plans would by investing mostly in stocks—then something is going to be volatile, be it contributions or benefits.

State and local pensions operate under very forgiving accounting rules that allow them to smooth investment returns and take decades to pay off unfunded liabilities. And even with these rules, State and local pensions cannot get on top of their investment risk.

There is no reason to believe that composite plans, which aim to restore full funding within 15 years after a market drop, could do any better. I just do not believe that these composite plans can deliver the benefit stability they promised. Worse, if plan trustees are given discretion to put off benefit cuts, it becomes more likely that future retirees remain even worse off, and then we could end up right back where we are today, figuring out who will bear the losses.

Saving for retirement is not rocket science, but neither is it magic. There is no way to get the high returns from risky investments like stocks without bearing the risk.

So, while I do not have an easy answer to the problem of how to deal with multiemployer plans or how to treat the participants in these plans, I do believe I have some valuable advice to prevent it from reoccurring. Do not believe in magic solutions. Believe in simple, responsible designs where everyone saves as they should, and the people who choose to take risk are the ones who bear that risk.

That does not sound very magical, but the alternatives are often worse.

Thank you again for the opportunity to speak today.

[The prepared statement of Dr. Biggs appears in the appendix.]

The CHAIRMAN. We are going to give 5 minutes to each Senator.

Let me just ask you, Mr. Gotbaum—you say in your written testimony that the MPRA is the best alternative available for addressing the Teamster retiree pension crisis. Could you please explain why the MPRA is the best alternative for the retirees, even if the Federal Government decided to bail out the PBGC?

Mr. GOTBAUM. The main reason why I think that MPRA, miserable though it is, which it is, is the best alternative is because it gives plans a chance to keep benefits above the PBGC guarantee levels.

And there are a lot of judgments in that, Mr. Chairman. One is that Congress won't and that the industry won't support raising PBGC guarantee levels to the level that we would like. But accept-

ing that we are already having a heck of a time getting Congress to allow PBGC to charge what it needs to charge just at the current level of guarantee, the reason I say that MPRA is a better alternative from a dog's breakfast of alternatives is because it offers the chance that people will not get cut all the way down to PBGC levels, because PBGC levels are low.

Let me take another instance from the mine workers. The PBGC benefit depends on how long you work. So if you work 30 years, the PBGC benefit is good. But suppose you are a mine worker who goes out on disability after 5 years. Then because you have only worked for 5 years, under the PBGC rules, you only get one-sixth of the maximum benefit.

So they are very low. There is no one who likes the idea of MPRA, no one at all, but I would rather have Mrs. Lewis talking about \$2,000 a month than \$1,000 a month, and that is the reason why I say we do not like it, we do not love it, but we hope you will not repeal it, because the difference in her case is probably the difference between \$2,000 a month and \$1,000 a month.

The CHAIRMAN. Thank you, sir.

Mrs. Lewis, my heart goes out to you. Your husband was a true hero. We will just have to see what we can do.

Mr. Roberts, you mentioned recent increases in employer contribution rates have shored up the funding in the 1974 Pension Plan, with rates climbing from \$2 per hour as recently as 2007 to \$6.05 today.

Should it become necessary, what is the prospect of further increases in that hourly contribution rate by employers, and how many employers are still contributing to the mine workers plan?

Mr. ROBERTS. The answer to that, Mr. Chairman, if I may, is I think additional increases in the contribution rate are out of the question. As you have just noted, they have gone up 100-and-some percent since, I think, 2007 or thereabouts.

What has happened is, we have had one company go into bankruptcy twice and then go out of business. We had another company in Alabama that went out of business, and another company has come in in their place, but they do not pay into the 1974 Pension Plan. They would not do that.

We have probably the second or third largest company in the United States, Alpha Natural Resources, that has filed for bankruptcy, is in the middle of that process now, and they will cease paying into the 1974 Pension Plan. If you take those three bankruptcies together, it is a 40-some-percent reduction in contributions.

The coal industry is seeing a horrific drop in the amount of paid coal that we use in this country. There are 200 million tons of overcapacity in the United States as we sit here today.

The second thing is, we have seen a terrible drop in price. So those things working against each other have not caused a recession in the coal fields, but have caused a depression, as Senator Manchin just mentioned.

So coal companies, if asked to pay more, will not, and if they did, they would be gone.

The CHAIRMAN. Thank you, sir.

My time is up, Senator Wyden?

Senator WYDEN. Thank you very much.

Mrs. Lewis, first of all, thank you for the very powerful wakeup call that you have delivered to the committee this morning. It is so important that the committee move and move quickly, and I think you have really laid out how urgent this business is.

As I understand it, the first that you heard about these very substantial cuts in your benefits, the very first time was after Congress passed this ill-advised law that I was so strongly opposed to.

The reason I am asking the question—and my background is working with older people and pension issues—the rule always was that people had a chance to kind of plan for retirement. In other words, you were able to think about your choices and, just as you said, you and your late husband gave up that vacation and maybe a boat or whatever it was, because you knew you had a secure retirement.

Mrs. LEWIS. Absolutely.

Senator WYDEN. And the very first time—and I think it would be important to get this for the record—the first time you heard about anything was after Congress acted. Is that true?

Mrs. LEWIS. Yes, sir, it was.

Senator WYDEN. And so, for you and your husband, obviously, it must have been incredibly hard kind of swallowing the news.

Mrs. LEWIS. Yes, sir, it was.

Senator WYDEN. Part of what your husband was dealing with was the stress of trying to figure out how you all could put the pieces in your life back together again.

Mrs. LEWIS. Not so much us. He was worried about the hundreds and thousands of other retirees who were going to be affected. For instance, one of his friends whom he had known, by the time he paid the insurance, because he was not quite 65 yet to be eligible for Medicare, he was going to have to take out insurance policies on both himself and his wife, and, by the time that he got that accomplished, with what was left of his pension check, he was down to \$300 a month. And in this country, that is not the way it is supposed to work.

We were always raised to believe that when you work hard, your reward is a good pay or a pension that was promised. There was never any doubt that our money was going to be there. Otherwise, we would have made other financial provisions. We would have taken out an IRA, or we would have invested in the stock market. But we were always, always told that.

That is why so many of them stayed in the craft so long. When you figure what they did for a living—they had to keep their bosses happy, they had to handle the traffic on the street, they had to keep their customers happy, they had to stress—who would want to be out in weather where it is 50 below zero or 120 degrees? And then they had to worry about their safety record. They took time away from their families because of what we were promised.

There was never, ever any suggestion that that money was not going to be there, and we played by the rules and did everything that we were supposed to. If we had known any differently, I am sure we would have all come together like we have now, and we would have had some solutions.

But it is like all of this was just dumped on us overnight like a tsunami.

Senator WYDEN. I admired you, Mrs. Lewis, even before I asked the question, and I admire you even more because I asked about the challenge for you and your husband and you began by talking about what it meant for everybody else.

Mrs. LEWIS. Yes.

Senator WYDEN. You laid out what this means for thousands and thousands of other retired people, and my hope is—and your Senators and others have been constantly bringing this up with the chairman—that the wakeup call that you have delivered this morning really results in a bipartisan solution, and fast.

Mrs. LEWIS. And if I could just say something else. We are going to be essentially the last generation that is going to have any money, and thank God for the union. People can say whatever they want about unions, but they provided us a nice lifestyle.

My dad started in a union starting at \$0.69 an hour, and all seven of his brothers were working in the union. But by the time my husband and I got married, we had a salary, we had nice health and welfare, and a nice pension.

But that was promised to us. And when you turn your money over every week like you are supposed to, and they tell you that your promised pension is going to be there, you put your faith in those people. And the only thing, if we are guilty of anything, is we put too much faith in the people who were supposed to be looking out for us, and they let us down.

We did not have any discussions when we were getting these letters that the pension was in critical status. We were not allowed to have any input, and we have a lot of intelligent people in this organization, and we all come together and we all find a solution of some kind.

But, yes, that is what we were promised, and a promise is a promise.

Senator WYDEN. Mr. Chairman, my time is up. If we could have Mr. Roberts answer just very quickly—what is the drop-dead date when Congress needs to act, Mr. Roberts?

Mr. ROBERTS. Probably tomorrow sometime. [Laughter.]

We all know that is not going to happen. But let me paint this picture, if I might.

The health-care benefits of, as I said, 21,000 people will be lost, in my opinion, by the end of this year. That is number one. If we do not act soon, the benefits of this legislation are not going to be as great as they would be if this law passes this year.

If this goes down a couple years, the amount of funding provided for in this legislation may have a difficult time funding the 1974 Plan. So we may not be able to avoid insolvency.

Insolvency, by the way—the one thing that I did not say, if you want to hear something scary here—will collapse PBGC. If our 1974 Plan goes into insolvency and PBGC is required to pick up those benefits, even at the PBGC level, it is estimated—not by me, but by PBGC—that 2 to 3 years down the road, PBGC will collapse.

So the question is not just fixing our plan here this morning. The question is, do we want to avoid the 1974 Pension Plan ending up

in PBGC, which is going to make things worse for the entire United States?

Senator WYDEN. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Warner?

Senator WARNER. Thank you, Mr. Chairman. Thank you and the ranking member for your hard work in this area and the work that Senator Brown and Senator Casey and I and others have done.

I think the testimony of you all has been extraordinarily powerful. I think sometimes we scratch our heads and we cannot fully explain everything that is taking place in the political process right now. Well, Mrs. Lewis's testimony probably explains better than anything why certain things in the national political process seem to be going so off the rails, because people wonder whether the government and those who are involved in trying to make sure promises are kept are actually going to keep those promises.

Mrs. LEWIS. Absolutely. Absolutely.

Senator WARNER. And I think a lot of us are kind of scratching our head to a degree. I would say my colleagues on the other side, but both political parties, seem to be going off the rails a little bit, and, boy, oh, boy, I cannot think of anything that would do more to restore some level of trust than to make sure that we honor these commitments.

Mrs. LEWIS. And not just that, but the commitments to our families.

Senator WARNER. Yes, ma'am.

Mrs. LEWIS. I mean, most of us, as grandparents, we contribute to either our children's, or our grandchildren's welfare in some way. And I have asked the retirees to ask their kids, if this comes into effect and they are cut the way we were cut, do the children have the financial resources to take care of them? And they do not, and it is a domino effect. And there are going to be more people dying, just like my husband died. One man committed suicide over this. Another man, John DeWitt, in the early part of February, he had a massive stroke, just like my husband did. And my husband was only 64 years old.

We were planning on our retirement. I was going to retire in 2 years. Look at the rest of my life. The love of my life is gone. And then to have to live and—he fought a war in Vietnam, and then he had to fight this war, and I think that is totally unfair.

Senator WARNER. We also see—and this is why I think so many of us are working on this. We have a couple of other miners here from Virginia who also have had their lives and their families affected. I do think the Miners Protection Act, which is bipartisan, takes a step in solving this issue. I know there are other issues involved as well.

I guess I would also just say, Dr. Biggs, you had some, I think, good comments prospectively, but the truth is, we have to honor a commitment to folks who have paid in year-in and year-out.

Mr. Roberts, I want to thank you for always being articulate on this, but I guess I would like to drill down a little bit.

Senators Casey and Brown and I raised this, along with Senator Wyden awhile back, and I cited a couple of Virginians who had enormous health-care issues and got the word today that one of

those Virginians got a really horrific medical diagnosis even since a couple weeks back.

I think at times—Cecil, if you would not mind taking a moment, we kind of sometimes lump together health and pension benefits. Can you speak to the fact that this is two separate funds, they cannot be commingled, and how critically important it is to maintain both of these sets of benefits?

Mr. ROBERTS. It has been spoken to here primarily by Mrs. Lewis about people relying on these promises year-in and year-out.

I think it is important to note with respect to—this is not something that we consider a handout here. I think she articulated that so well. Miners could have very easily had higher wages, more time off, more vacations, maybe had their own money to help fend off some of this, but they relied on this promise of health care.

And the thing to remember about coal miners is, they are sicker than the rest of us. As bad as you might think some other occupations are, you ought to try working underground for 40 years in a very dangerous environment. Most miners suffer from pneumoconiosis, most miners have had injuries over their lifetime. Their medical bills are higher than the average person across this United States of America of ours.

So they relied so heavily on this promise of health care. If you read my testimony, it suggests to folks that they knew upon retirement that they were going to need health care, and they also knew it would be hard to purchase. So they relied on the promise year-in, year-out, year-in, year-out, over a 30- or 40-year career, that the one thing that was going to happen is, if they got sick and had a \$500,000 health-care bill, that it would be paid.

Senator WARNER. I just want to close with maybe one last comment from you, Mr. Roberts.

I believe strongly in making sure we deal with our balance sheet issues. But the notion is that we would, in effect, be taking a revenue stream, taking \$1 billion out of some of the most economically distressed communities, and the ripple effect that would have and the reliance then upon other taxpayer-supported programs—do you want to make one quick comment?

Mr. ROBERTS. I think it is extremely important to speak to that. It is in my testimony. But if you go back and ask yourselves, well, why in the world did the government ever get involved in this process to start with, first of all, at that point in time, coal miners and their union were the most powerful organization in the United States of America, and if John L. Lewis had put coal miners on strike in those days, it would have shut down the economy of the country.

But they being the most patriotic people in the world, coming back from World War II themselves, Lewis did not want to do that. Harry Truman did not want that to happen. The Congress did not want that to happen. So one thing that Lewis was asking for was a retirement plan and health care for these miners who never had it.

So we took the money—I say we—our union took that money and invested it in the coal fields. How did they invest it in the coal fields? They brought doctors into the coal fields who had never

been there before. They built 10 hospitals in the coal fields that had never been there before. They brought specialists in.

They treated these miners who had lost their limbs and been walking around on stumps and without arms and without legs and sent them to places and had artificial arms and legs put on them. This has been a godsend to the most hard-hit areas of this country.

Now, what we are suggesting doing here—let us go back to the way it was in 1944 and 1945.

I am telling you, the domino effect here is going to be—and I think you know this very well, Senator; you spend a lot of time down in southwest Virginia—you are going to have clinics and hospitals and doctors leave these areas, and people are going to have difficulty finding places to go.

The one thing that has happened is, the State of West Virginia—just to report here this morning—has lost more citizens than any other State in the Union. Why is that? It is the collapse of the coal industry. Now, we are talking about taking away something the retirees who want to stay in these coal fields have. We are talking about taking their pensions away from them, talking about taking their health care away from them, and talking about taking away the places they go to get this treatment.

I just do not—I am sorry. I get somewhat passionate about it, but I know you feel the same way that I do. You spend time down there talking to these people just like I do. This is a tragedy that is unfolding in this country, and there is something we can do about it here if we all act together.

The CHAIRMAN. Senator Portman?

Senator PORTMAN. Mr. Chairman, thank you, and thank you to Senator Wyden for holding this hearing and for your interest in working with us on solutions.

I cannot wait to talk to you, Rita, but let me just ask Cecil a quick question.

One thing that has not been talked about, Cecil, is how the funding can be used from the abandoned mine land fund to help fund the Miners Pension Protection Act, which I am a cosponsor of—and thank you for your work with our coal miners throughout eastern Ohio. As you say, they are getting hit from all sides, let's face it.

You can go to war on coal, you can go to battle on coal, I do not care what you call it, but we are losing coal miners every single day, and the retirees are getting hit now because of the pension.

So \$495 million is what I see currently in the mine land fund, and they have been spending less than half of that. Can you talk a little about that?

Mr. ROBERTS. I think it would be good to lay just a little foundation here, because the premise of this legislation is to draw from what is already there.

This is another role that the government has played in these plans over the years. In 1992, legislation was passed and signed by a Republican President, George Bush, that allowed for any miner who retired prior to October 1, 1994 to have their health care guaranteed by the U.S. Government off the interest money of the abandoned mine fund. This law was amended in 2006. It also established a permanent appropriation of \$400-and-some million, and

the theory behind that was that the coal industry was paying this amount of money in taxes on leasing.

So there are two funding sources that have been available here since 1992 to fund the health care, and now we are proposing not to add anything else to that legislation other than to just give us a right to have access to the amount of money that was appropriated on a permanent basis in 2006.

So we are not without a solution to this, and that is the only thing that this legislation is asking to be done. So there are two sources of funding here, but the interest money off of the abandoned mines fund, plus—you make a good point, Senator. There is additional money in the abandoned mines fund itself that has not been used, but we have access as we gather here today to the interest money off of that, plus we have permanent appropriations established by the Congress of the United States in 2006 for health-care purposes.

If we extended that to pension purposes, we could fix this problem. That is pretty much what this bill does.

Senator PORTMAN. Well, that is a really important point to make, and I thank you for letting us know that there is a solution out there that is, I think, very reasonable.

Rita, thank you again for coming and for your testimony. You are here for everybody else, and I thank you for that. You have been terrific.

I am just thinking, Mr. Chairman, if there were hundreds of thousands of Social Security beneficiaries getting their retirement benefits cut by as much as 70 percent, there would be a national outrage. Right?

Mrs. LEWIS. Absolutely.

Senator PORTMAN. And these Teamsters played by the rules, as was talked about today, did exactly what they were told to do, and worked long hours and many years with the expectation that this would be there, and yet that is exactly what is happening to them.

Look, I get the math, and we talked about it earlier. This is tough. Central States' liabilities exceed their assets by tens of billions of dollars, according to Mr. Gotbaum. They are on a course toward bankruptcy. I get that. But MPRA is just not fair.

It was not fair in the way it was done, without transparency, without hearings, without this committee ever taking a look at it. It was slipped into a bill in the dark of the night. I voted against it. Others voted for it. I am not here to point fingers on that at all, but I will say we now need to work together. We need to figure this out.

It is not fair in terms of the result, and people say, "Well, you are just worried because it is Ohio." It is not just Ohio. I had my team do an analysis that you have seen that goes through every State and every congressional district in America to show what the impact is, and it affects everybody in this hearing room.

I think the Pension Accountability Act that we put together helps, because it fixes a broken process. It says the difficult decisions have to be made, but everybody deserves a seat at the table, if that is the case. Again, it is about fairness. It is really about making it democratic.

Workers and retirees are given a binding vote under our legislation on any pension cuts, not just a show vote, which is what it is now for any big plan. Treasury can overrule it. It also makes sure that there is a fair vote by counting the ballots that are actually returned rather than counting all unreturned ballots as a “yes.” To me, that is outrageous, and that is what occurs now. If you do not return your ballot, it is an automatic “yes.” That makes no sense.

A bunch of us would not be elected here if that was the case in our democracy. So the purpose is not to stop the process of fixing it, but to ensure that everyone is at the table, and I am convinced we would get a better result if that was true.

Mrs. LEWIS. Absolutely, we would.

Senator PORTMAN. And that is why I think this legislation is an important step. It is only the first step. But to get a fair result for Rita and the hundreds of thousands of other people who are seeing these dramatic cuts to their pensions with no notice is just—

Mrs. LEWIS. It is not a democratic process, as far as we are concerned.

Senator PORTMAN. No, it is not.

Mrs. LEWIS. And this is supposed to be a democracy. And before I forget—this is my first time testifying—I would like to make a special thank you to the IBT, AARP, and the Pensions Right Organization.

My husband wrote a wonderful speech, and he started out with the three most important words in the Constitution, which are “We, the people.” And a lot of people have read it, a lot of people have seen it. And having his three most important words, what I would like to add on to that is, we are guaranteed certain inalienable rights of life, liberty, and the pursuit of happiness.

If the cuts come to fruition, we are not going to have a life. What kind of life will we have? Not what we thought the American dream was supposed to be, not what we thought when we were putting in all those hours, when our husbands and spouses were working.

Our life, our quality of life, is going to be diminished. I am going to be living a substandard life, which I do not think is fair, just because my husband is gone.

The liberty—we are not going to have the right to go and do whatever we want, because our financial resources are going to be stripped from us. And the pursuit of happiness—all of those ideas of happiness and the dreams that we believed in in this country and why so many people came to this country, and our forefathers signed into the Constitution, those are no longer going to exist.

I just do not know how, in good conscience, people can go to bed at night and not see what is going to happen, the domino effect, the catastrophic effect that is going to happen in this country.

There are going to be people dying, not just from the stress of this, but they are not going to be able to buy their medication, which is going to lead to stress, which is going to lead to death. There are going to be more people applying for public assistance. That is going to put a burden on the government.

There has to be a bipartisan solution to this problem, and I know that you can all work together and come together and do it. I believe that. We have to. We have to save this generation. We are the

last generation that is ever going to have money. Our kids are not going to have it. They are struggling now.

So it is up to us to set the precedent and say, you know, we are going to be here, we are going to keep fighting until we get a solution that is fair to all of us who have given everything, especially—like I say, there was a gentleman who committed suicide when this first came out. Mr. John DeWitt had a massive stroke just like my husband did, and then my husband. There are going to be more and more people dying, and that is going to be blood on the hands of someone who will not step forward and help us.

We worked hard. We built these economies. We contributed so much to the economy. When 87 percent of the economy is driven by the middle class, what is going to happen when we are gone? Has anyone thought that far ahead to see what is going to happen? The bottom line is not always the dollar. There is a human aspect and element to this as well, and I thought that that is what this country was founded on. And that is all I would like to say.

The CHAIRMAN. We appreciate it.

Senator PORTMAN. Thank you. Let me just, if I could, Mr. Chairman, say you are speaking not just for yourself, but as Butch did in his life, you are speaking for hundreds of thousands of others, and I have met with hundreds of those pensioners of the Teamsters in Ohio, and you have given a voice to them today, and you are now the face of this battle.

Mrs. LEWIS. Please do not forget us, please. I am begging you. Please, do not forsake us.

Senator PORTMAN. And remember, on the House side, there is a companion bill that was also introduced after our bill over here, and it is bipartisan, and this does not mean that we do not continue to look for other sources of funding, including ways to replenish these funds that could be raised inside the multiemployer pension system, working with—you mentioned the Pension Right Center—working with them and others.

Mrs. LEWIS. Yes, they have been a great help.

Senator PORTMAN. I look forward to continuing to work with you.

Mrs. LEWIS. Thank you so much. Thank you, all of you.

Senator PORTMAN. Thank you. God bless you.

The CHAIRMAN. Senator Heller?

Senator HELLER. Mr. Chairman, thank you and the ranking member also for your concern on this particular issue and for holding this important hearing.

I want to thank those who are on the panel today for your expertise to help us better understand. Mrs. Lewis, thank you for being here, for being a public face and a public voice on this issue. It makes a big difference, and you have made a difference today.

I am the chairman of the Social Security, Pensions, and Family Policy Subcommittee. I share Chairman Hatch's and Senator Wyden's concerns and their commitments to ensure that all seniors receive safe and stable retirements that they have earned and that they deserve.

More than 14 percent of my home State's population is over the age of 65. I am from Nevada, by the way. And I hear on a daily basis the importance of retirement programs like Social Security and pensions. I appreciate members on our committee and other

Senators who are working to try to fix this problem. Senator Portman talked about his Pension Accountability Act. Obviously, Senator Manchin was here earlier with the Miners Protection Act.

I do not know if my statistics are equal to what Senator Portman had, but there are hundreds of participants, hundreds of participants in my State, who receive their pension through Central States. Worst case scenario, that is over \$56 million that would be a total loss of retirement income to my constituents. So your concerns are my concerns, and I share those with you.

For decades, it has become too common for Congress to use the Social Security Trust Fund as a piggybank for government programs. All the while, businesses have mismanaged their pension funds. So now, as the baby boomer generation retires, seniors are facing significant consequences and not receiving the retirement security that they had planned on. So we need to start taking a good look at these promises that we made to these retirees, and I think this hearing is a great start.

So thank you very much for your help and support throughout this hearing.

I do have a question for Dr. Biggs. I appreciate you being here. How familiar are you with the Nevada Public Employees Retirement System?

Dr. BIGGS. I have done some work on the Nevada plan several years ago.

Senator HELLER. The reason I ask is that you had a published report in 2014, and you found that Nevada's public pensions are one of the richest in the Nation: \$64,000 a year or more than \$1.3 million in lifetime benefits.

I guess the question that I have and that I share with you and others who have contacted my office is, how sustainable is this as you compare it to others?

Dr. BIGGS. Well, State and local pensions like Nevada's share some characteristics with multiemployer plans in terms of the accounting standards that they work from. Both of them are allowed to, what is called discount their liabilities, using the expected return on a risky portfolio of assets, meaning mostly stocks.

So they will value their liabilities using the expectation of getting between a 7- and 8-percent return. Literally, 98 percent of economists think that is wrong, that it dramatically understates the liabilities of these plans.

If you were to look at the multiemployer plans, I think probably a third of participants now are in these dangerously underfunded plans. If you used accurate accounting, it would be more than half of—

Senator HELLER. Let me stop you right there. Just because of the statistics, I know the public pension has over \$10 billion in unfunded liabilities, the Nevada pension plan. Basically, it has been somewhere between \$6 billion to \$10 billion for the last 25 years.

Dr. BIGGS. They are underfunded even using very, very forgiving accounting standards. So the amount of financial risk they are facing is significant.

The State and local plans pose the same issue as the multiemployer plans. They are too big to fail. If they go under, legally speaking, it is the retirees who are going to get hit, or the State

governments will take the hit. The reality is, the Federal Reserve is called a lender of last resort. In reality, it is the Federal taxpayer who is going to be a lender of last resort, except they will not get repaid.

So my point in this is, we really, really need to find a way to get on top of these issues. We are where we are. We have a lot of innocent people who did what they were asked to do.

I am from an area of rural Oregon that was devastated economically by the loss of the logging industry. So I agree with Mr. Roberts on what will happen to West Virginia if these plans go under.

But my point is, we cannot continue making the same mistakes over and over again.

Senator HELLER. Are you in a position, Dr. Biggs, to determine whether or not Nevada's pension system is healthy or not? How would you grade it?

Dr. BIGGS. If Nevada's Public Pension System had to use the same accounting standards as a private-sector plan did, which it should, and if it were graded using the same categories that are applied to private-sector plans, from green to red, it would probably be in the red zone, meaning not very well-funded at all.

Senator HELLER. Thank you. Mr. Chairman, thank you.

The CHAIRMAN. Thank you, Senator.

Senator Stabenow?

Senator STABENOW. Thank you, Mr. Chairman. And thank you, to all of you.

Obviously, Mrs. Lewis, thank you very much for being here and, President Roberts, for speaking for all of your members as well.

This is an issue, when Treasury Secretary Lew came before us not long ago, that I raised with him as well, because it is absolutely unacceptable what is happening to pensions in our country. And whether it is the United Mine Workers, whether it is Central States, it is just not acceptable, period, and it needs to be fixed.

We all say a promise is a promise, but a promise *is* a promise, and so it needs to be kept. Everything you said in terms of what is happening to people is devastating and unacceptable. We have to have a permanent fix to this.

I also want to add another dimension to this that, as I have looked into it on behalf of retirees in Michigan and have heard more and more of their concerns, I find really adds insult to injury, and I would welcome your thoughts on this as well, because while retirees and those who are going to be retirees are going to be suffering as a result of these pension cuts, some people are not suffering as a result of this: the people who made the decisions.

Mrs. LEWIS. Right. That is true.

Senator STABENOW. So in 2014, the Central States Pension Fund CEO was paid \$694,786. There have been people getting bonuses while things have been cut. Other executives are getting hefty salary increases. In 2014 alone, before the Multiemployer Pension Reform Act passed, the Central States Pension Fund also spent \$568,000 in pension plan assets to lobby Congress to pass that bill. I had no idea when folks were coming before us that that is what was happening.

So while I strongly support the broader solutions that you are talking about, I also intend to introduce legislation, based on what

I have heard from constituents in Michigan, to address what I view as abuses of the pension funds in the form of high executive salaries and raises and bonuses of the same people who are making these decisions.

If pensions are going to be cut, then those people's salaries and benefits should be cut as well. And I also think that we should not see pension funds being used to lobby.

So I know there is a great deal of frustration, Mr. Chairman and Mr. Ranking Member, about this particular issue, adding real, what I view as insult to injury here, and it needs to be addressed.

Mrs. Lewis, would you want to speak to how you feel about that?

Mrs. LEWIS. Yes, because what Thomas Nyhan got in his raise, that is twice what I am going to be getting as a widow in survivor's benefits. And the thing was, there was never any transparency. There was never any input from us. It is like we handed over our money, but we did not get any feedback, and if you would try to contact them, there was no response.

Even when we would get the letter saying it was in critical status, there was never any kind of communication about having us meet with them to talk to them. We had no part in the decision about financial advisors. It was like we were handing our money over to them, and they could do whatever they wanted with it.

And even when you meet with a financial planner, you sit there one-on-one with him and you discuss your portfolio. We never had that option.

Senator STABENOW. That is absolutely unacceptable, in my mind.

Mrs. LEWIS. It is. It is.

Senator STABENOW. Mr. Chairman, I have one other issue I do want to raise, whether it is multiemployer pension plans or single-employer pension plans.

Over the years, what we have seen happen to jeopardize and undermine pensions is also not acceptable. I remember reading the book "The Retirement Heist." Author and investigative journalist Ellen Schultz highlighted a number of changes over the years, whether it was accounting changes or law changes, that have allowed employers to begin treating their pensions differently.

I am very concerned more broadly that we are seeing employers cut or freeze pension plans even when they are doing well, selling pension assets in mergers, using the assets to finance downsizing, working aggressively to, quote, "de-risk" their pensions by shifting the responsibility for paying pension benefits to private insurance companies or switching to defined contributions.

So, Mr. Chairman, as we go forward, we have immediate things to answer, but then if we want to reverse this for the future, I think there is a broader discussion that needs to happen here about the undermining of the middle class in this country by undermining the pension system.

The CHAIRMAN. Thank you, Senator.

I am going to have to leave, but I want you to know that I am going to do everything in my power to try to help here.

Mrs. LEWIS. Thank you.

The CHAIRMAN. We appreciate all the testimony we have had today on this issue, and let us see what we can do.

Mrs. LEWIS. Thank you.

The CHAIRMAN. Senator Scott, and then Senator Brown.

Senator SCOTT. Thank you, Mr. Chairman.

Thank you to the panel for being here today. And, Mrs. Lewis, certainly, our hearts go out to where you are and what you are facing and certainly to so many people who are here today and are faced with a similar situation. The numbers are going down when the promises are going up.

There are a couple of realities here that we seem to be missing. One of the realities is too many union leaders, too many employers, and Central States specifically, have overpromised, and they will continue to under-deliver, and there is clear evidence to this fact.

Part of the challenge that we see with our situation with these pensions is simply that just a few years ago, the payout on pensions was about \$2.8 billion. The revenue coming in from people paying into their plan was around \$750 million.

I am not sure which actuary you can talk to to figure out how you get the type of returns necessary to support the system. It is basically impossible for us to get there. And then you put on top of that the administration's regulatory burden on specific industries where the employees are highly unionized, like the coal miners. Here is a classic example where the regulatory burden is running folks out of the business. So in other words, fewer employees to support the pensions that have been promised.

This is frustrating, it is irritating, and it is illogical. We need a panoramic view of the situation, the crisis that exists for so many employees.

I know that in South Carolina alone, some 3,000 to 4,000 employees have created a lifestyle based on the promises made to them that they expect will be promises kept. Unfortunately, what we are hearing today, from you and so many others who have called into my office, is too consistently, the promises made are the promises broken.

The reality of it is, if we think about that number of \$2.8 billion in benefits being paid out and only \$750 million in the same year coming in, it is unrealistic for us to have a conversation about keeping the system solvent when, in fact, we know, based on basic math, we are looking down a very steep, steep road.

I would hope that at some point we become realistic. So if these pensions go insolvent, we can guarantee that next the PBGC will also find itself in the same situation.

So we should be looking for a new sales pitch to attract employees into the industry so that they are paying into the plan, because ultimately, if, in fact, we are going to continue to sell a defined benefit as a reality based on those numbers that I just quoted, we know that we will be having this conversation with more widows on more days in the future, and that is unfair and perhaps even immoral.

Dr. Biggs, a quick question for you. If multiemployer pension plans had used the same interest rates and life expectancy assumptions as single-employer plans and contributions were calculated accordingly, how many of the multiemployer plans would be deemed critical today? Or maybe a simpler question is, would we be in a better position?

Dr. BIGGS. My guess is, I think about 25 percent or so of plans are critically underfunded now, about a third or so of participants, maybe a bit more than that.

If multiemployer pensions were required to use the same accounting standards as single-employer plans, which are a more rational standard, I think the majority of plans and participants would be in that kind of dangerously underfunded zone.

So as bad as things look for multiemployer plans on paper, it is an unrealistically optimistic view, because they get to use accounting standards that other pension plans do not use.

Senator SCOTT. So it just ain't gonna work.

Dr. BIGGS. It ain't gonna work.

Senator SCOTT. I want to keep it simple. Now, the composite plan that we have heard so much about, basically a hybrid between defined benefit and defined contribution, some are skeptical about how that works out.

Having spent 25 years of my professional life in the insurance business and a smidgeon in the retirement benefit business as well, it seems to me that if you are looking for a composite plan to be the panacea, you are probably on the wrong track.

Dr. BIGGS. Well, if you were to structure a plan, say, for instance, Senator Hatch's proposal with the safe annuity plan, where State and local governments could purchase deferred annuities to provide a guaranteed benefit for retirees, that is something that can provide that kind of security.

The composite plans are proposed as sort of the best of both worlds. They will have stable contributions for employers, and they will have stable-ish benefits for retirees.

The problem is, between the employers' contribution and the retirees' benefits is a whole lot of stocks, and stocks are not stable. I have nothing against investing in stocks, but risk and return go together. I think there is an illusion with the composite plans that you can get the return without the risk. That is the same illusion that hurt multiemployer plans with their accounting. It is the exact same illusion that hurts State and local plans.

We need to get over that illusion.

Senator WYDEN [presiding]. The Senator from Ohio.

Senator BROWN. Thank you, Ranking Member Wyden. Thank you to the panel for being here.

A couple of hours ago, I met in my office—Cecil Roberts was there, but joined by two mine workers: Norman Skinner of Dresden, OH, and David Dilly from Coshocton County. Also, Whitlow Wyatt and Barbara, his wife, were there and their beautiful 11-year-old granddaughter, Isabelle, and she said I could call her Bella. So we are cool. [Laughter.]

But I bring that up because of the comments that they made, echoing really what Mrs. Lewis said in her testimony. At one point, she said that her husband and the union gave up wages and vacation pay to get these pensions and long-term health care.

I remember sitting in a committee room that looked like this—it was the Banking Committee—during the auto rescue, and I remember hearing people across the horseshoe from me critical of these auto workers who had all these legacy costs.

Well, it just makes me think that a lot of people here do not understand the union movement, that legacy costs are about workers saying, "Okay, I will take less today in wages, I will give up maybe 1 week's vacation or a couple of sick days in order to get pensions and health care," as if that is not good for our society.

Mr. Gotbaum's father was a leader in understanding that and how important that is. So I just want to put that on the table. At least the three of you, if not all four of you on this panel, understand that. I just think it is important to lay out.

Let me kind of synopsise something. The crises of both the UMW and Central States pension plans are happening on different time tables, and they have different remedies. I want to lay that out so everybody understands that, folks watching this and on the committee.

For Central States, the most immediate remedy is with the Treasury Department, as we know, which has the power to reject these cuts for justifiable reasons. For the mine workers, responsibility falls with us in this committee first. I am so pleased that Senator Hatch is supporting the effort and that Senator Wyden has spoken out repeatedly, as has Senator Casey and Senator Warner and others, and Senator Manchin, saying that this committee should do nothing until it fixes this. It should be the first priority in this committee to fix the mine workers' pension. We can do it; we know how to do it. It does not cost taxpayers a lot. It will not end up undercutting PBGC, which would be a travesty no matter what State you are from.

I also know from what Mrs. Lewis said, if Wall Street executives were about to lose their Christmas bonuses, they would be marching on Washington. So why aren't we?

So my question—I have one question for President Roberts, and then one for Mrs. Lewis.

A number of us have been focused on this issue because of the impact it has on thousands of workers. Walk through what will happen, Mr. President, to PBGC if the leadership in this Congress fails to act. What happens to PBGC?

Mr. ROBERTS. It has been suggested that we use the math here, so let me use some math. I never was too good at that, but let me give it a try.

This came up a little bit earlier, but we have access to a letter that was written to Congressman McKinley—I do not know if that has been provided to the committee or not—where PBGC answered a question from Congressman McKinley about this issue, and PBGC said to a Representative of the U.S. Congress, Congressman McKinley, that this would collapse PBGC in 2 to 3 years if, indeed, our fund went insolvent.

So the question really in some ways here is whether or not the U.S. Congress wants PBGC to go insolvent along with our pension plan. I think the answer to that, in a bipartisan way, is "no," mainly because it costs more money, using simple math here, to fix this problem unless we just decide as a government that we will just completely get out of the pension business, and that is not going to happen, in my opinion. People across the United States will not allow that to happen.

There are, as Mrs. Lewis pointed out, a lot of people out there who sometimes get upset about certain things, and when you start talking about no one having a pension, I think folks in this country are going to get very upset.

Senator BROWN. Thank you.

Mrs. Lewis, first of all, your testimony was one of the highlights I have seen in this committee in a number of years. Thank you for the passion and the information and just the detail and the understanding of this pretty complicated issue. But you put a face on it, and that was so important.

After cutting 270,000 pensions, Central States managers claim if all the proposed cuts are enacted, the pension will have, they say, a 50.4-percent chance of remaining solvent. So we do these cuts and still have only a 50.4-percent chance.

Put another way, after cutting the pension that your husband and a quarter-million other working people earned over a lifetime of sweat and toil, there is still about a 50-percent chance the pension will fail.

My question is, do you think these cuts are worth it for what amounts to a coin flip?

Mrs. LEWIS. No. I can only speak for myself, but I do not think we should have the cuts. And like I said, I cannot speak for the retirees, but all I know is, they did their part and they did everything right. They gave up wages and vacations.

No, I do not think that it is really going to do any good, because to be honest with you, even when the economy was doing well, from 2008 to 2015 or 2014, we had a 300-percent increase in the stock market, but we were still losing money. We just lost billions of dollars in the last quarter.

If you are doing that poorly and you are managing the fund—and I am sure, Senator Brown, if the manager of our retirement was doing that poorly, you would be calling him in and you would say, “Hey, what is going on here? Why are we consistently losing all this money?” And you would fire him as a fund manager.

Well, we have the same person who has been running our fund for years, and he keeps losing money and we do not have a voice. There is no transparency. There is nothing. It is like we are just throwing our money out the window.

But as far as I am concerned, no, I do not think it will make a difference.

Senator WYDEN. Senator Brown, we are going to have to go to Senator Thune.

Senator BROWN. Thank you.

Senator WYDEN. Senator Thune?

Senator THUNE. Thank you, Mr. Chairman. And I want to thank you and Chairman Hatch for having this important hearing. This is a very timely opportunity for us to discuss multiemployer pension plans, which are a very important element of financial planning and stability for millions of Americans.

I especially want to thank the witnesses for providing their expertise and insights on the state of multiemployer plans at-large, as well as the very real-world negative impacts that the condition of these plans could have on American retirees and their families.

I particularly want to recognize and acknowledge, Mrs. Lewis, you being here and thank you for putting a personal face on these issues and for articulating in a very real way these impacts, and our deepest condolences to you for your loss and for what you have been through this last year—

Mrs. LEWIS. Thank you.

Senator THUNE [continuing]. All the trials and hardships.

Pensions are such an important part, a central part, of our retirement planning. You have workers who have foregone other savings or investments, trusting that their pension would be there at the end of their career. Unfortunately, certain of these multiemployer plans, and even the PBGC itself, are at risk for insolvency.

So before us are several reform proposals, as well as the pressing and sensitive topic of the Central States Pension Fund and what to do about that. The Central States plan has been left severely underfunded by the recessions and so-called orphan retirees whose companies are no longer contributing to the plan. It is now in the difficult position of either reducing participant benefits or likely becoming insolvent or unable to pay any benefits starting in as soon as a decade.

Insolvency in my State of South Dakota would not only harm the more than 1,300 South Dakota participants who are in this plan, but it obviously would pose a significant risk to the PBGC, which we have mentioned earlier.

So, given the gravity of the topic and the impact that these benefit reductions would have on retirees, I want to thank the witnesses for your time today. I also want to express my interest and support for working together to find equitable solutions to the very real hardships that are facing these participants in South Dakota and across the country.

In that light, I would like to direct this question to Dr. Biggs or to Mr. Gotbaum. It kind of comes back to the Treasury plan, which, in consultation with the Department of Labor, they have, I think, until May 7th to review the rescue plan that has been submitted by Central States.

The question is, considering the current outlook for the fund, could you speak to what could happen to participant benefits if the administration were to deny its application or if participants and beneficiaries were to reject it?

Mr. GOTBAUM. Why don't I speak to that? Under the law, the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Department of Labor, has to satisfy itself that the conditions of the law are being met, and there are a bunch of them.

One is, it has to be true that the cuts are absolutely necessary to avoid the plan running out of money. Another one is that the cuts cannot be more than is necessary to avoid the plan running out of money.

So they are now—and I am not an insider on this, I just know the law and some of the folks, et cetera. So what they are doing now is checking the facts, checking the situation, et cetera. They then have to form a judgment as to whether or not the conditions for this admittedly miserable law are met.

If they decide that they are met, they will say so. At that point, there will be a vote. And as Senator Wyden and Senator Portman

pointed out, if a majority of the people who are in the plan in total vote against it, then they go back to Treasury, and Treasury has to decide whether or not they are willing to override the vote, and the judgment that they make then is whether or not the plan is so big that its failure would bankrupt the PBGC and bankrupt the system.

That is the process they are following, even though, I mean, there is nobody on this side of the table who likes the law or likes the process. Part of the reason why I think the law is necessary is because I do not see another way to keep the plan from running out of money entirely. That is really—

Senator THUNE. Would there be time to rework and resubmit a new plan, a rescue plan, if any of that happened, if it was either turned down or if the Treasury denied it?

Mr. GOTBAUM. I am not the right person to ask. I do not have enough inside information to answer that. What I know that they have said is that the work involved in developing a plan, reviewing a plan, getting it reviewed by Treasury, and voting again, would probably take another year.

And as Senator Scott pointed out, each year that they put out a lot more money than they take in, the room they have to keep the plan from going to PBGC goes away. So I cannot tell you that. They can.

Senator WYDEN. Senator Casey?

Senator CASEY. Thank you very much. I first want to say that we appreciate the testimony of the witnesses and your presence here, Mrs. Lewis. Whenever a witness can bring a personal story, that makes a substantial impression on everyone here, and I want you to know how much we appreciate you bringing your own family story to this hearing.

In the interest of time, I will direct my question to the United Mine Workers and President Roberts. I was thinking today not just of the numbers here, 90,000 Americans, just a little bit less than 13,000 in Pennsylvania, but also thinking about some of our history.

Cecil Roberts knows this history well. There was a great novelist by the name of Stephen Crane. Everyone knows him for "The Red Badge of Courage," but he wrote a wonderful essay in the 1890s about a coal mine near Scranton, my hometown, and described in haunting detail all the ways that a miner could be hurt or killed in that mine. He talked about it being a place of "inscrutable darkness, a soundless place of tangible loneliness," and he goes on to describe how difficult it was then.

Now, I realize that the coal mines of even the 1950s, and certainly the coal mines of today, may not have those same dangers, but there are plenty of dangers and plenty of aches and pains that come from years of work.

I just was able to meet two of our Pennsylvanians here today, Tony Bernsack and Dave Van Sickle, both from Fayette County, and we are grateful that you are here with us. Fayette County has more than 2,000 of that 13,000. But Tony and Dave have about 80 years between them in the mines, and we are grateful that they are here as witnesses.

We have much to do, but not a lot of time. We are at a crossroads.

President Roberts, as you know, we have a bill that started with Senator Manchin and Senator Capito, but also with the ranking member, Senator Wyden, and Senator Warner and Senator Brown and I. So we have a good team on this, but we have got to act, and one of the best ways to convey why we have to act is what this means to these miners and to their families.

The benefits are rather modest. They average about \$530 a month.

President Roberts, my one and only question, in the interest of time, is just tell us what this means to those miners and their families. How will it affect them if we do not act?

Mr. ROBERTS. Well, the most immediate effect on these miners will be at the end of this year for the 21,000-plus who will lose their health care completely and would have to rely solely on Medicare, if they are eligible for Medicare.

Remember, they would have to take money out of that \$500-and-some we are talking about here to pay for Medicare, on top of everything else. And we are going to have a reduction immediately to those 21,000-plus people for Medicare.

In addition to that, Medicare does not pay for everything, we know that. So that pension you are talking about, for many of these miners, will be gone completely to pay for health care that they were promised during their working lives as a miner.

In addition to that, there are 90,000 people whom we talked about, one of whom I have never mentioned, but happens to be my 96-year-old mother, who is a widow and still receives a widow's pension from the United Mine Workers fund.

I know literally thousands of these people across this country who are depending on these pensions every month. They go to the mailbox or they go to the Post Office, and that helps them survive. So the effects of losing these pensions would be dramatic.

Now, one thing I think I should say here is, some have implied that these promises were too much, too great. That is not the case here, absolutely not.

In 2007, the coal industry and the union negotiated a contract, and at that time, 93 percent of the benefits in the 1974 Plan were funded, and the actuaries said that we were well on the way to being 100-percent funded. Then something occurred that we could not control and no one in Congress could control, and that was the recession.

The people who made those decisions had nothing to do with coal miners, had nothing to do with the 1974 Pension Plan, had nothing to do with any of the people we are talking about here today, but they had to pay the price.

I do not want to get too far out here, but we did bail those folks out, and the folks who had nothing to do with this are paying the consequences for this.

Senator CASEY. Thank you very much.

Senator WYDEN. Thank you, Senator.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman, and thank you for having this hearing.

I too want to commend Mrs. Lewis for being here, and thank you for putting a human face to this story.

I wonder if you could talk a little bit about what exactly this loss has meant to you, seeing a 40-percent cut. Obviously, people are talking about something even bigger, but what has that meant to you?

The reason why I bring that up is, people want to know why there is frustration in America now. I can tell you why, because when the recession hit and people basically—you know, we bailed out the big banks and they got money, and everybody's 401(k) and pension took it on the chin. And basically, what did we get? Did anybody bail them out?

So now people are left with a long-term retirement instability, and yet we gave billions to those guys, and now they are making billions.

People want to know what we are going to do to make sure that Americans who lost their retirement security are secured for the future. So if you could, talk about what exactly seeing a 40-percent income loss has meant to you on a daily basis.

Mrs. LEWIS. It is pretty drastic. I am going to have to sell my house. I have crunched the numbers. I am taking his insurance policy from when he died, and I am buying a condo.

I will be living a lower standard lifestyle than I did when he was alive. That is not the American dream. I am going to work for the rest of my life, where I had planned to retire with my husband, to spend that time with him, in 2 more years, when I am 65.

I only make \$17 an hour, and I work for a police department. There is no overtime, there are no benefits involved. I am going to have to be self-sufficient for the rest of my life, and the life that we had planned for, that was guaranteed us through our pension, it is like that is a dream and someone snatched it away from us. And that is not the way the American dream is.

We were taught to believe that you work for something, and if someone promises you something, that promise is supposed to be there and it is always supposed to be there for you.

So the home that we had for 40 years, I now have to go through that and all the memories that were there—we had it before we had our two children; we brought them into the house. I had my dad's baptism there. All those memories I have to forego now because of this, and now I have to move into a three-room condo, and that is where I am going to have to live for the rest of my life.

And it is bad enough I lost my husband through all of this stress, and now I am taking another loss financially and emotionally.

It is tragic. It never should have happened. And if these cuts come to fruition, there are going to be hundreds and thousands of people who are going to be dying, and I cannot believe that this government cannot find a solution, and that is what we are looking to all of you for, to help us.

We trusted the people who were supposed to handle our money. They did not handle that money in our benefit. There has to be some accountability there, and that is why we are asking for a forensic audit to shake it out, and whoever is guilty, if the funds were mishandled, those people should be prosecuted.

There has to come a time when we stand and say, this is enough, because we are the guinea pigs, and if we do not get a system in place to say that we are going to be protected, it is going to be a domino effect, and it is going to be other pensions that are going to be in trouble.

And the economy that you count on the middle class to drive, to keep this country going, it is going to be nonexistent. And then what is going to happen to this country? This will not be America anymore. You will have so many people living in poverty.

But the bottom line is, we trusted these people. We did everything right, and then at the last minute, this is thrown in our face. My husband could not have gone back to work. There are a lot of these retirees who cannot go back to work.

And let us face it, my husband was president of his local. There is no way he is going to get a job anywhere else where he is going to make that kind of money. And they want you to go be a greeter at Walmart or Meier's for \$5 an hour to supplement.

That is not what we worked for. That is not what we were promised, and that is what we are here for. And we are looking to you experts to find a solution for us, and if our country has enough money to give to everyone else who looks for humanitarian help, because there is a humanitarian crisis, for God's sake, they have to look and see that we are the ones who are in crisis right now. And if you have enough money to give to foreign countries, you have to have enough money to protect us and the mine workers and everybody else.

Senator CANTWELL. Well, I thank you. My time, or our time, has expired. But no one could have articulated that better, and I thank you for that.

I would just add, though, the program for Teamsters was on its way to solvency in 2007, and I would say that the banking crisis took a big chunk out of this. And yet we bailed them out—I see everybody nodding—so juxtapose that to how much money we spend on foreign aid, and I guarantee you that—the Dallas Fed has estimated that this will cost us trillions of dollars in loss to our economy, and now we are somehow supposed to put together here out of this panel the justification for why we should do something to help this pension.

I do not need a justification. You just made the justification why we owe it to retirees to correct this and not just leave Wall Street with all the cash.

Thank you, Mr. Chairman.

Senator WYDEN. Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman, and thank you for convening this hearing, Senator Hatch.

I want to thank all the witnesses for being here. You are all very distinguished individuals and great leaders.

But, Mrs. Lewis, I particularly want to thank you, because we hear numbers all the time, and it is maybe the case that we are getting immune to them, but when you recognize that every one of those numbers is a person with a family, that makes a big difference. So I particularly want to thank you for having the courage to be here today to tell your story so that we understand how this

affects ordinary families in our community and the dignity of ordinary families in our community.

Obviously, we need to do something about this. Senator Portman and I have been working on pension retirement issues for a long time, because we recognize that we are in a changing economy and that when we developed the pension security system, when we had a lot more people in the workforce relative to those who are retired, the pressures on Social Security were not what they are today.

When we were in a defined benefit world that was based upon actuarial tables that were relevant to its time, that was a different world than today, when there are very few defined benefit plans being created and most people are in defined contribution plans and you have mobility in the employment areas that were not relevant to the pension plans we designed when ERISA was created.

The multiemployer plans, we need to reform them. I think we all agree. But, Mr. Chairman, we have to deal with the problems that exist today before we look at how we are going to deal with multi-employer plans moving forward. We know that the PBGC does not have the resources to deal with the liabilities that are out there, and it is our responsibility to figure out how we can realistically deal with the risk factors that are there.

With the miners, it deals not only with their retirement income, but also their health benefits, and it is pretty urgent. As I understand it, the health benefits are scheduled to be radically changed by the end of this year.

Time is moving forward. We need to act on this as a Nation. I recognized years ago, with Senator Portman, when we were both in the House, that we do not do enough for retirement security in America. When we are looking at today's economy, whether you are a retired miner or whether you are just entering the workforce and now are an Uber driver, it is a different world than it was when we designed the plans decades ago, and it is our responsibility to help configure a plan that will take care of the Mrs. Lewises of the world and provide for younger people today the retirement security when they retire.

We are a wealthy enough Nation to be able to figure out how to do both. It is that type of balance that I hope the Finance Committee will be able to come forward with.

Again, I want to thank all the witnesses for being here. I have listened to the testimony. I do not have any questions, but I just really wanted to thank you all for your testimony.

Senator WYDEN. I thank my colleague. I understand that the Ohio Senators do not have any additional questions at this time. But I think it is just representative of what kind of morning this has been, that we have 13 Senators here. A number of Senators had hectic schedules and just kept coming back, as the two Ohio Senators did, and I think it is because of the extraordinarily powerful statements that we have heard this morning from our witnesses.

I will just end, Mrs. Lewis, by paraphrasing you. To me, in our country, you just do not snatch away pension rights from Americans who never did anything but the right thing. And I just so appreciate what the four of you have contributed this morning.

This is going to be urgent business here in the Senate Finance Committee. You heard that from both sides of the aisle this morning.

We thank you for a morning that really is pretty much unique in this room. I thank all four of you.

With that, the Finance Committee is adjourned.

[Whereupon, at 12:43 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF ANDREW G. BIGGS, PH.D., RESIDENT SCHOLAR,
AMERICAN ENTERPRISE INSTITUTE

The views expressed in this testimony are those of the author alone and do not necessarily represent those of the American Enterprise Institute.

A multiemployer defined benefit (DB) pension plan provides retirement benefits to individuals working for multiple employers, usually in the same industry. A number of large multiemployer plans are significantly underfunded and face insolvency. While these plans are insured by the Pension Benefit Guaranty Corporation, the PBGC does not have the resources to fully cover them. While the U.S. taxpayer is not in any way legally obliged to financially backstop the PBGC, it is hard to imagine that the federal government would not do so if large numbers of pensioners' incomes were put at risk. Policymakers face a difficult situation without any easy answers. At a bare minimum, we should think hard about how we got where we are and how to avoid going there again in the future.

RECENT HISTORY OF MULTIEMPLOYER PENSION PLANS

The terms of multiemployer pension plans are negotiated between employers and unions representing employees. Currently, there are roughly 1,400 multiemployer pension plans covering over 10 million workers and retirees. Importantly, employers are jointly liable for the liabilities incurred under a multiemployer plan. If one employer becomes bankrupt or otherwise drops out of the plan, the liabilities are transferred to other plan sponsors.

A substantial number of multiemployer pensions are very poorly funded. This poor funding places the sponsoring employers, their employees and the U.S. taxpayer at risk. Once plans have reached this state, there is no clear-cut answer to this problem. Sponsors or underfunded plans should raise contributions wherever possible, but some cannot afford to do so without putting their own financial viability at stake. The Pension Benefit Guaranty Corporation exists to protect participants in plans that become insolvent, but the PBGC itself lacks the resources to protect all underfunded pensions.¹

The Pension Protection Act of 2006 (PPA) established "zones" to categorize the funding health of corporate plans and, where necessary, mandate action to address funding shortfalls. Plans in the green zone are deemed to be sufficiently funded that no immediate action is mandated, while plans in the yellow ("endangered"), orange ("seriously endangered") and red ("critical") zones are increasingly underfunded and must take action to address those shortfalls.

Plans in the yellow and orange zones must reduce underfunding by specific amounts over stated periods of time, and are prohibited from taking steps that would increase funding shortfalls. Red zone plans, however, are mandated only to take "reasonable measures" to address funding. While red zone plans are authorized to reduce certain ancillary benefits, they also are exempted from excise taxes on funding deficiencies and thus effectively exempted from funding rules.

¹On this subject, see Brown, Jeffrey R. and Andrew G. Biggs. "Reforming the Pension Benefit Guaranty Corporation." In Brown, Jeffrey R., ed. "Public Insurance and Private Markets." American Enterprise Institute, 2010.

As of 2008, 80 percent of multiemployer plans were in the green funding zone and only 9 percent in the red zone. As of 2013, the share of green zone plans has dropped to 59 percent while the number of red zone plans has tripled to 27 percent.

While plans in the yellow and orange zones have significantly increased contributions to address funding shortfalls, red zone plans have contributed substantially less than sponsors of plans in the green, yellow and orange zones. Thus, the most financially endangered are doing less than others to catch up. Even as a group, contributions to multiemployer plans are equal to only about 60 percent of annual benefit payments.

More recently, the Multiemployer Pension Reform Act of 2014 created a new “deep red” zone, for plans deemed “critical and declining,” meaning that the plan’s fund was expected to be exhausted within 15 years. The MPRA allowed these severely underfunded plans to reduce benefits for younger, non-disabled retirees as a way to restore plans to funding health and reduce potential liabilities to the Pension Benefit Guaranty Corporation. However, benefit cuts may be implemented only if they could be expected to return the plan to solvency. The MPRA also doubled PBGC premiums for multiemployer plans to \$26 per participant and indexed premiums to inflation going forward.

Such benefit reductions could have an important impact on the PBGC’s funding status. If benefits are not reduced or premiums increased, the PBGC multiemployer fund would run out of money in 2024, according to CBO projections, and require \$1 to \$2 billion in additional cash each year thereafter to pay benefits as guaranteed under law. If multiemployer benefits were cut to the extent allowed under the MPRA, the PBGC’s long-term deficit would be cut roughly in half, though premiums would still need to rise substantially. This is important, as it seems near-certain that, should the PBGC run out of money, Congress would step in to avoid precipitous benefit reductions.

FUNDING HEALTH OF MULTIEMPLOYER PLANS

As a group, multiemployer plans report having assets equal to roughly 75 percent of plan liabilities. However, these figures are calculated by “discounting” guaranteed benefit liabilities using the expected rate of return on a risky portfolio of investments, usually 7 to 8 percent. Economists almost universally believe that such an approach is incorrect. Indeed, in a 2014 survey of professional economists conducted by the University of Chicago Business School, 98 percent agreed that such an approach understates pension liabilities and the broader cost of providing pension benefits.²

If a pension promises to deliver a guaranteed benefit, it should discount its liabilities using a low interest rate to reflect that guarantee. When multiemployer liabilities are discounted using the yield on U.S. Treasury securities, which most economists would argue better reflect the costs of providing such benefits, funding ratios average about 45 percent and unfunded liabilities approach half a trillion dollars.³

Moreover, these averages reflect a distribution in which a number of multiemployer plans remain reasonably well-funded while others are far worse. Among plans deemed to be in the red zone, funding ratios on a market-consistent basis are about 37 percent, indicating an extremely poor level of funding. Even a “green zone” multiemployer plan is not nearly as healthy as a single employer plan in the green zone, as the single employer plan must value its liabilities using a corporate bond yield.

The argument for looser multiemployer funding rules was that, if one plan sponsor went bankrupt, other sponsoring companies would take on the liabilities. The problem with this theory, however, is that the financial prospects of companies in the same industry will be correlated. If the industry as a whole declines, the liabilities of a bankrupt company will be shifted to other companies whose own financial health has likely declined as well. As it happened, this is what has occurred in many cases.

²“U.S. State Budgets (revisited).” Chicago Booth IGM Forum. August 26, 2014. http://www.igmchicago.org/igm-economic-experts-panel/poll-results?SurveyID=SV_7aJlg33Q5PfJ0Z7.

³Munnell, Alicia H., and Jean-Pierre Aubry. “The Financial Status of Private Sector Multiemployer Pension Plans.” Center for Retirement Research, 2014.

FUTURE FINANCIAL VIABILITY

It is sometimes argued that while multiemployer plan funding suffered during the recent financial and economic downturn, most plans have recovered and are financially sustainable for the future. My own modeling work on state and local pensions—which operate under very similar funding rules and hold similar investment portfolios—shows this is unlikely to be the case. Though both types of plans use actuarial methods to smooth contributions from year to year, the underlying risk of their investments inevitably leaks through and can require contributions that vary significantly over time. In good times, a plan sponsor may not need to make any contributions and may be tempted to increase benefits. Both multiemployer plans and state and local plans succumbed to that temptation during the late 1990s.

However, the sponsor of a multiemployer plan that holds a risky investment portfolio must also be willing and able to shoulder contributions that in some years will be far above the expected level. Experience in the state and local pension universe shows clearly that it is in these very high-cost years that sponsors are unable to make full contributions, which causes them either to skip contributions or to utilize actuarial methods to reduce costs. In either case, future funding health of the plan suffers.

A general lesson that policymakers should take from this experience is that a financial theory whose effect is to allow pension sponsors to promise more benefits at lower cost while taking more investment risk is likely to be an incorrect theory, and one with significant potential downsides for both plan participants and the taxpayer. In simple terms: a guaranteed retirement benefit is expensive and a cheap benefit is risky. It is better for government, employers and plan participants to digest these trade-offs rather than to pretend they do not exist.

PLAN DESIGN

Companies that became involved with multiemployer plans faced a problem. These companies generally offered traditional defined benefit pensions, in which a participant's benefit is calculated based upon his final earnings and his years of service to the company. Defined benefit pensions are "backloaded," which means that the benefit formula rewards full-career employees but penalizes those who work short or mid-length careers. Under a traditional defined benefit pension, for instance, an employee who worked for two companies for 20 years each would receive a substantially lower benefit than an employee who worked for a single company for 40 years. If employees switched jobs more frequently—note that the average employee today has job tenure of under 5 years, according to the Bureau of Labor Statistics—a traditional defined benefit plan, even if offered by every employer, would not provide a decent retirement income.

The lack of portability in DB pension was a problem when employees shifted between different companies within the same industry. Even if they worked in the same field their entire careers, switching between employers could cost them dearly. So employees needed a retirement plan that was portable. Multiemployer pension plans provided this portability.

But this one advantage was countered by a number of significant disadvantages.

For instance, employees and employers want a plan that isn't highly susceptible to stock market downturns. Anyone who watches the stock market throughout American history knows that bull and bear markets aren't merely a 21st century phenomenon. Multiemployer pensions hold about 70 percent of their portfolios in risky assets such as stocks, real estate, private equity and hedge funds. This is just too much risk to take for plans that offer guaranteed benefits and whose participants are mostly retirees or separated workers. Standard financial practice would point toward a much more conservative investment portfolio, but underfunded pensions cannot afford *not* to take investment risk. Moreover, federal accounting standards, which allow multiemployer plans to "discount"—or value—their guaranteed benefit liabilities using the expected return on a portfolio of risky investments encourages these plans to excessive investment risk.

Were employees instead offered defined contribution 401(k) plans, they could make their own judgments regarding how much investment risk to take. And it is very unlikely that individuals making their own judgments would take nearly as much investment risk as their pension plans are taking on their behalf.

Likewise, employees and employers want a plan that isn't overly susceptible to a downturn in their particular industry. We know from American economic history

that industries rise and decline: the horse-and-buggy makers gave way to auto manufactures; IBM gave way to Microsoft which gave way to Google. The joint liability provision of multiemployer pensions is similar to when Enron's employees foolishly invested their 401(k)s in Enron's own stock: it increases their risk because employees' sources of labor income and investment income aren't diversified. The joint liability provision of multiemployer plans is very similar to a company investing its pension in its own stock. If some change affects an entire industry—be it trucking regulations in the 1980s or environmental regulations in the 2000s—the pension sponsors are themselves in a weaker financial position, plus they bear the liabilities of companies that went bankrupt or otherwise left the pension plan.

Were employees offered a 401(k) plan, they could protect against industry risk by holding a diversified portfolio that did not include stocks from companies in their own industry. Again, this is an example of how multiemployer pension design worked contrary to principles of financial risk management.

Finally, employers and employees would like a plan whose finances are not adversely affected by changing demographics. If employees participate in 401(k)s, it makes no difference whether the average participant is young or old. So long as participants and employers make their contributions, demographics essentially don't matter. It should be the same for defined benefit plans: plan sponsors should fully fund benefit liabilities *as they accrue* and not use money allocated for current workers to pay for current benefits. The fact that many multiemployer plans are worried about their ratios of workers to retirees indicates that they did not fully fund. In essence, they are beginning to look more like Social Security, a pay-as-you-go transfer program, and less like a pre-funded pension plan.

I raise these points not because we can go back and rewrite history. Multiemployer plan sponsors made the choices they made and they are where they are. Plan sponsors, plan participants and ultimately the federal government will have to decide how to allocate the pain, bearing in mind moral considerations toward retirees, the economic importance of the plan sponsors' continuing in business, and the need not to set a precedent that encourages others companies to come to the federal government for assistance.

Rather, I make these points as a way to move toward the next subject, which is where multiemployer plans should go in the future so as to serve their participants and protect employers and taxpayers from financial risk.

HYBRID PENSION PLANS

Employers and unions currently involved with multiemployer plans have discussed replacing certain underfunded plans with new retirement programs. One option currently being discussed is a hybrid between defined benefit and defined contribution plans. These hybrids are often referred to as “collective defined contribution plans,” “composite plans,” “shared risk,” or other terms. While the details vary from proposal to proposal, these plans aim to combine the stable lifelong benefits of DB plans with the fixed employer contributions of DC pensions.

A second option is that sponsors of multiemployer plans should transition employees to state-of-the-art defined contribution plans that build on the experience and research of recent years. Such a plan might be similar to the Thrift Savings Plan offered to federal government employees and could offer simple investment choices, low costs and the option to turn account balances into a lifelong annuity at retirement. Such a plan design would not pretend to have any magic formula for high, guaranteed retirement benefits at low costs to employers and employees. But since such a magic formula does not exist, a state-of-the-art DC plan is less likely to disappoint participants or endanger plan sponsors and taxpayers.

To summarize my own view, so long as plans invest heavily in equities or other risky assets in order to keep contributions low, it will be difficult or impossible to provide a stable benefit for retirees. All investors, be they individuals, corporations or governments, face the same trade-offs between risk and return and there is no actuarial magic that can make those trade-offs go away. If traditional defined benefit plans produced contribution volatility that was unacceptably high for employers, it is not clear why benefit volatility would not be similarly unacceptable for participants in a hybrid pension plan.

A hybrid plan generally pays retirement benefits as a monthly annuity, rather than as a lump sum in the typical 401(k). The hybrid plan targets a given benefit level, but can adjust either benefits being paid or the rate at which future benefits are earned as a means to stabilize funding. In some cases, these composite plans

would pay a base benefit coupled with an additional benefit that could be adjusted before retirement, but remains fixed once the employee had retired. In other cases, all benefits could be adjusted as needed at the discretion of the plan's trustees. While numerous options have been discussed, these two basic approaches are discussed in a 2013 proposal from the Retirement Security Review Commission of the National Coordinating Committee for Multiemployer Plans.

Certain varieties of hybrid plans are already authorized under law, but others would require new legislation. Hybrid plans have a number of attractive features, such as centralized investment to lower costs and automatic annuitization, which offers protection against outliving your assets.

But it is not clear if the advantages of collective DC plans outweigh their downsides. I have done a great deal of work modeling the finances of state and local government pension plans.⁴ These plans aim to offer a stable benefit for retirees while reducing contribution volatility for employers. This goal is not greatly different from hybrid plans' goal of offering a stable contribution to employers while reducing benefit volatility for retirees. What my modeling work on state and local pensions indicates that the investment risk taken by a plan *inevitably* produces volatile employer contribution requirements, with contributions often being so high that even state and local governments cannot meet them. State and local pensions use a variety of long-term smoothing and amortization techniques to reduce their contribution volatility but still they cannot do so. The fact that state and local plans cannot significantly reduce the volatility of required employer contributions, despite smoothing investment returns over 5 years and amortizing unfunded liabilities over 30 years, gives me very little confidence that a composite retirement plan could return to "full funding" over a slated 15-year period without disruptive reductions in employee benefits. When a pension plan invests principally in risky assets such as stocks, private equity or hedge funds, *something*—either contributions or benefits—is going to end up being highly volatile.

A recent analysis of a stylized composite plan by the actuarial firm Segal validates my intuitions.⁵ Segal tested a composite plan's ability to return to full funding within 15 years after being hit with either a small (-5%) or large (-22%) single-year investment loss, coupled with a loss of employment to the industry. Even using these single-year events, changes to employee contributions and benefits were significant. Had Segal Conducted a full "Monte Carlo" analysis of investment returns, which mimics the real world's ability to produce strings of high or low returns over time, I suspect that in a number of outcomes the composite plan's financing and benefit structure would prove untenable.

So I am not confident that composite plans can produce what they promise. The reality is that if you want a stable, safe benefit in retirement you have to invest in stable, safe assets while you are working. For instance, Senator Hatch's proposal to allow state and local governments to purchase deferred annuities for their employees would provide those employees with a true guaranteed retirement benefit along with portability between jobs. Some might claim that these private annuities are "expensive." The reality is that their cost in financial markets reflects the security they provide. Proposals that "cost" less do so by providing less income security. There is no magic formula.

Moreover, I am personally not sure that the annuitized benefits offered by hybrid plans are of great value to the employees who would participate in such plans. Annuities offer valuable protection against outliving your assets in retirement, but at the cost of lost liquidity, of not having cash when you might need it. The low- and middle-income employees who currently participate in multiemployer plans already receive much of their retirement income as an annuity, though Social Security benefits. The value of *additional* annuitization will be far smaller than the first dollar of annuitized benefits. While it is not clear to researchers precisely why so few individuals wish to purchase annuities, the fact that individuals spurn annuities is undisputed. It is easy to argue for overriding individual preferences based upon the notion that individuals are short-sighted and financially illiterate. But defined benefit pension funding, either in the corporate sector or the public sector, did not get where it is by *not* being short-sighted and financially illiterate. I don't accept the view that top-down control produces better retirement funding outcomes than letting individuals make more of their own decisions. One look at the funding of Social

⁴Biggs, Andrew G. "The Public Pension Quadrilemma: The Intersection of Investment Risk and Contribution Risk." *The Journal of Retirement* 2.1 (2014): 115–127.

⁵Segal Consulting. "Composite Plan Stress Testing." January 2016.

Security or state and local government pension plans should disabuse an observer of that notion.

If employers wish to provide a solid plan to supplement their employees' Social Security benefits, they can take advantage of recent enhancements to defined contribution retirement plans. Fifty-nine percent of workplace pensions today automatically enroll employees, versus only 14 percent in 2001.⁶ Automatic enrollment can significantly increase participation in retirement plans. Likewise, 41 percent of today's employees invest their 401(k) plans in target-date funds that automatically reallocate their portfolios to reduce risk as they approach retirement, versus just 19 percent of participants in 2006.⁷ And a recent study from Vanguard showed that, for the 5-year period ending in 2012, individual investors holding target date funds earned the same return as state and local pension plans, which supposedly are much more sophisticated investors.⁸ Administrative costs also are being addressed. More than 80 percent of today's 401(k) plans offer low-cost stock index funds, which helped reduce fees by 20 percent in recent years.⁹ According to the Center for Retirement Research at Boston College, state and local pensions have an average administrative cost of 0.43% of assets, or 43 "basis points."¹⁰ According to a recent study by the Investment Company Institute based on federal regulatory data, large 401(k) plans have an average administrative cost of just 28 basis points.¹¹ There is no reason a defined contribution plan cannot compete on costs. Likewise, the Department of the Treasury recently enacted regulations making it easier for 401(k) plans to incorporate annuities, which convert lump sums into to a guaranteed income that lasts for life.¹²

Perhaps the most important advantages of true DC pensions are transparency and responsibility. In a 401(k)-type plan, it is clear to employer and employee alike what the employer has promised to contribute in a given year. Employees know whether the contribution has been made and they will protest if it is not. Likewise, in a DC plan the party that chooses to take investment risk is the party that bears the consequences of that investment risk, which is the best enforcement mechanism against excessive risk-taking.

Defined benefit plans have neither of these advantages. In a DB plan there are many ways for plan sponsors to put off making contributions, be it through assumptions regarding investment rates of return, labor force growth or mortality. Indeed, we recently have seen sponsors of single-employer pensions lobby Congress successfully to increase the discount rate used to value their liabilities and thus reduce plan sponsors' pension contributions. Likewise, with a DB pension it is very difficult for anyone other than the plan sponsor or their actuaries to know what is going on. Financial manipulation of plan assumptions is common among state and local pension plans. Members of Congress should be aware of this, should the day come when state and local plans come knocking on Congress's door.

My fear with composite plans is that these incentives to put off difficult decisions could lead them to become similarly underfunded down the road. Under some of these plans, Trustees are given discretion to alter benefit accruals or payouts. But the need to make such adjustments depends upon assumptions regarding investment returns, the growth of employee payroll or the life expectancies of retirees—in other words, precisely the assumptions that state and local pensions game in order to reduce their current costs.

For instance, I could easily see the trustees of a hybrid plan taking additional investment risk as a way to forestall the need for contribution increases or benefit

⁶ Chris Arnold, "How Do Companies Boost 401(k) Enrollment? Make It Automatic," National Public Radio, April 21, 2014, www.npr.org/2014/04/21/303683792/how-do-companies-boost-401-k-enrollment-make-it-automatic.

⁷ Investment Company Institute, "Target Date Funds Expand in 401(k) Plans," December 23, 2013, www.ici.org/pressroom/news/13_news_ebri_ici_target.

⁸ Vanguard Research, "Professionally managed allocations and the dispersion of participant portfolios." August 2013.

⁹ Chris Gay, "Can Index Funds Fix Your 401(k) Fee Problem?," U.S. News and World Report, August 15, 2012, <http://money.usnews.com/money/personal-finance/mutual-funds/articles/2012/08/15/can-index-funds-fix-your-401k-fee-problem>.

¹⁰ Munnell, A.H., Aubry, J.P., Hurwitz, J., and Quinby, L. (2011). A Role for Defined Contribution Plans in the Public Sector. Center for Retirement Research.

¹¹ Robert Steyer, "401(k) Plan Costs Decrease as Indexing Becomes More Popular," Pensions and Investments, December 8, 2014, www.pionline.com/article/20141208/ONLINE/141209894/401k-plan-costs-decrease-as-indexing-becomes-more-popular-8212-report.

¹² Jeffrey Brown, "New Treasury Guidance Will Encourage Annuities in 401(k) Plans," Forbes, October 24, 2014, www.forbes.com/fdc/welcome_mjx.shtml.

reductions. But, as we have witnessed with state and local government pensions, such a choice could lead to disastrous outcomes down the road. If a hybrid plan took additional investment risk and lost, future benefit reductions could be even larger. Who will those employees look to if their congressionally-sanctioned and regulated hybrid plan runs short of money in the future?

CONCLUSIONS

The difficult truth with regard to pension funding, whether the plan sponsor is a corporation or a government, is that it is easy to promise benefits but harder to fund them. Complexity of pension plan design allows many avenues for the plan sponsor to avoid paying what it has promised. Complexity of pension design is the enemy of full funding. Across sectors, across time and across countries, there is too long a track record of pension underfunding for me personally to feel comfortable with another design that appears to promise more benefits at lower cost.

What employees need are well-designed, well-run defined contribution plans that offer automatic enrollment at responsible contribution rates coupled with simple and low-cost investment options such as target date funds. The other bells and whistles, which seem to offer something for nothing, pose the risk of delivering the opposite.

QUESTIONS SUBMITTED FOR THE RECORD TO ANDREW G. BIGGS, PH.D.

QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

Question. Dr. Biggs, the retirees in the hearing room today are truck drivers and coal miners who worked for many years under difficult conditions. They worked hard. They paid income taxes. And today they are facing cuts in their pensions. Yet we read in the *New York Times* last week that the administration is saying that in Puerto Rico, where the government has managed itself into a massive financial mess, no pensioner should have their pension unduly impaired, even though retirees who don't get pensions from the Puerto Rico Government but have part of their nest egg in Puerto Rico bonds would have their claims impaired. It seems to me that there is a basic inconsistency of treatment among different groups of retirees in the path we are on, and it makes me uneasy. What do you think?

Answer. Politically speaking, it is almost impossible to default on public employee pension benefits, particularly if there is any other lender whose obligations can be defaulted upon. This was the pattern seen in Detroit, where public employees received only small reductions to their benefits while bondholders received much larger cuts, as well as in the bankrupt California cities of Stockton and San Bernardino. We can expect that Puerto Rico will be no different, whatever Puerto Rico's law may say. The same may end up holding with private sector pensions, should the PBGC's reserves be exhausted.

There is no good solution to these problems. Ideally, government regulation could ensure that pension sponsors fully fund the benefits that they promise. But at both the Federal and State/local levels, the political power of pension stakeholders is often sufficient to lower regulator requirements and allow pension sponsors to short-change their obligations.

Here is an alternate proposal: first, state out right that benefits promised to retirees—whether in the public or private sectors—will be considered senior to debts owed to bondholders. This does nothing more than recognize political reality. But second, pass and enforce accounting rules that will fully and accurately disclose the liabilities of pension plans. If such rules were in place, the unfunded liabilities of State and local government pensions would not be the stated value of about \$1 trillion, but somewhere between \$3 and \$4 trillion. If bond markets are presented with accurate information regarding the true pension liabilities with which they will be competing for repayment, those markets should reward entities that fully fund their pensions and punish with higher interest rates entities that fail to fund responsibly. Market discipline may be able to accomplish what government regulation could not.

Question. Dr. Biggs, your testimony alludes to questionable, or perhaps not fully transparent, assumptions regarding the status of State and local pension plans. As you probably know, some of us here are looking at ways to help the people of Puerto Rico as it faces financial challenges. Those challenges arise from more than \$73 billion of debt, but also from more than \$43 billion of unfunded pension liabilities. Now, if you adopt what the administration is proposing, you'd throw all of those ob-

ligations, totaling more than \$110 billion, into some sort of bankruptcy scheme, and give preference to public pension obligations over Puerto Rico obligations in the form of bonds that are held by retirees in Puerto Rico and in Utah and every other State. We seem to be seeing bigger and bigger municipal bankruptcies, and hiding behind the scenes in one way or another are severely underfunded public pensions. According to many, including officials at the Securities and Exchange Commission, there is not a lot of transparency about public pension funding, which can ultimately affect values of municipal securities in bankruptcies. Do you agree, or do you think that, as things stand, assumptions underlying reported public pension obligations are fully out in the open?

Answer. State and local pensions operate under an accounting scheme that is practically unique in the pension or financial world. Private sector pensions, or for that matter public employee pensions in other countries, generally must discount (or value) their benefit liabilities using an interest rate derived from safe assets, because the pensions' liabilities are themselves very safe. This is how financial markets value almost any liability. Discount rates in the 3 to 4 percent range are common. U.S. State and local pensions, by contrast, are allowed—under rules established by the Governmental Accounting Standards Board—to discount guaranteed benefit liabilities using the assumed rate of return on a portfolio of risky assets, resulting in discount rates in the 7 to 8 percent range. For each 1 percentage point increase in the discount rate, a pension's measured liabilities decline by about 20 percent. This difference in liability valuation implies that U.S. State and local pensions contribute substantially less for each dollar of promised benefits than do corporate pensions or public employee pensions in other countries. The one other pension system that is allowed to value its liabilities using the same techniques as State and local plans is multiemployer pensions. The fact that the two most troubled pension systems use the same lax accounting standards should indicate to policymakers where the troubles lie.

Question. Dr. Biggs, you suggest in your written testimony that Congress, bearing in mind moral considerations toward retirees, will ultimately have to determine how to address the multiemployer pension problem in a manner that does not set a precedent that encourages others companies to come to the Federal Government for assistance. I would like you to comment on whether you think it would be a helpful deterrent if, in the event a plan requires rescue by the PBGC, the plan's joint board of trustees be replaced by PBGC managers as in the single employer pension insurance system, or with new management from some other source?

Answer. As I wrote in my testimony, the decline of multiemployer pension systems was not wholly the result of unforeseen economic events. It was the result of pension design that was not resilient to unforeseen events and pension sponsors and managers—including both company management and employee unions—that failed to fully fund their plans. If a multiemployer plan must be taken over by the PBGC, that is evidence of mismanagement. And the PBGC should do more than write checks to retirees. It should replace the management that helped put the pension into the PBGC's hands in the first place.

Question. Dr. Biggs, in addition to cutting retiree pensions for the sake of PBGC solvency, there has been testimony today that PBGC premiums also must be increased for the sake of PBGC solvency. Historically, only employers have paid PBGC premiums to the multiemployer pension insurance system. Yet multiemployer plans are jointly managed by unions and employers. Is it appropriate that Congress consider requiring unions to begin sharing the sacrifice and by paying part of the PBGC multiemployer insurance premium?

Answer. One witness—the widow of a retired Central States retiree—testified that she was unaware of the plan's funding problems until she received a letter several months ago. And yet, for decades, there have been studies by pension experts concluding that PBGC premiums were insufficient to fund the benefit guarantees the agency provides. But pension sponsors—including both employers and unions—resisted higher premiums and more stringent funding requirements, and their political sway was strong enough to prevent those rules imposed on them. And today we face insolvent pension plans and a PBGC that does not have the resources to cover them.

Pensions should pay sufficiently high PBGC premiums to finance the protections they receive from the agency. I have no objection to those premiums being made more transparent to employees by having them charged to unions—meaning, effectively to employees themselves—as well as to employers. The most important point is that pension liabilities not be transferred to taxpayers.

Question. Dr. Biggs, the UMWA has asked for a taxpayer bailout of both retiree health care and pension benefits. Health care benefits have been bailed out before. To what extent is a pension bailout breaking new ground?

Answer. To date, insolvent pensions have received protection up to limits established by PBGC rules and contingent on the sufficiency of PBGC funding. If a large multiemployer plan becomes insolvent, that could overwhelm the PBGC's resources. At that point, the Federal Government's legal obligations to plans ceases. What plans seem to desire is a transfer of taxpayer resources in excess of PBGC funds. I don't see any reason why the taxpayer should take those costs on. Pensions were warned many times regarding funding. Pensions and unions resisted higher contributions and premiums, yet today some are asking for government protections that they never paid for. The taxpayer deserves protection from such demands.

Question. Dr. Biggs, while the UMWA pension is grossly underfunded and on the road to insolvency, the same is true for other multiemployer plans, as well as State and municipal plans. Do you have any concerns that a taxpayer bailout of the UMWA will become a precedent for bailouts of similarly strained multiemployer and public pension plans?

Answer. Yes.

Question. Dr. Biggs, a number of factors have contributed to the multiemployer pension crisis. Particularly given calls at the hearing (explicit and implicit) for taxpayer bailouts of these underfunded plans, what types of reforms do you think are appropriate in the multiemployer sector. In particular, do you have any views on the following: requiring the PBGC to provide 75-year solvency projections, similar to those provided by the Social Security Administration; requiring multiemployer plans to use more realistic discount rates (as single employer plans are required to use); and providing plan administrators with greater ability to amend benefits, including accrual and eligibility?

Answer. Long-term projections provide a better view of a plan's liabilities. A more accurate discount rate is essential in calculating liabilities of both multiemployer and State and local retirement systems. I am of two minds regarding giving trustees the power to amend benefit. Such a power could help make plans more sustainable. But my own experience viewing State and local government plans is that such a power would often be used to avoid difficult choices today and push costs off into the future, at which point the plan might be beyond recovery. I don't see why a well-designed defined contribution plan would not provide reasonable benefits to participants, greater transparency and certainly for plan sponsors, and better protections for the taxpayers.

PREPARED STATEMENT OF HON. JOSHUA GOTBAUM,* GUEST SCHOLAR,
ECONOMIC STUDIES PROGRAM, THE BROOKINGS INSTITUTION

WHAT CONGRESS CAN DO TO HELP PEOPLE IN MULTIEMPLOYER PENSION PLANS

Mr. Chairman, Senator Wyden, and members of the committee, I am honored and grateful for the opportunity to speak about the sad choices facing some distressed multiemployer pension plans, and about the steps that Congress might take in response, some of which could make life better for the 1,000,000+ people in those plans, and some of which could make it worse.

MPRA IS—AND SHOULD BE—CONTROVERSIAL

There is no question that the Multiemployer Pension Reform Act of 2014 was and remains controversial: it amended the Employee Retirement Income Security Act (ERISA), whose purpose is to *protect* retiree benefits, and *allows some distressed pension plans to cut retirees' benefits—but only if doing so would save the plan and preserve benefits* by preventing even greater cuts in the future.

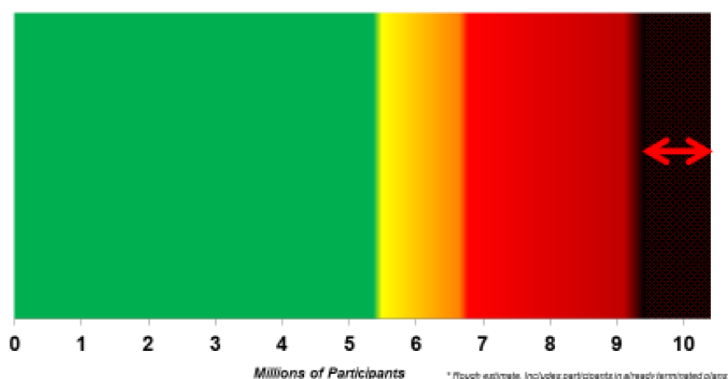
* Hon. Joshua Gotbaum is a Guest Scholar in Economic Studies at The Brookings Institution. From 2010–2014 he was Director (CEO) of the Pension Benefit Guaranty Corporation.

The Brookings Institution's commitment to independence precludes taking institutional positions on issues. This testimony represents my personal views and should not be interpreted as reflecting the views of Brookings, its employees, officers, and/or trustees, or its other scholars.

10+ Million in Multiemployer Plans

3.6 Million in Red Zone Plans

1-1½ Million in Plans Likely to Fail w/o MPRA*



Many pension advocates were, and remain, outraged both at the substance of the bill and the means of its enactment.¹ AARP, one of the best-organized advocates for seniors, organized a nationwide campaign in opposition. They were joined by the Teamsters union, the Machinists union and other advocacy groups. Opponents reminded Congress of ERISA's purpose,² that pensions are a commitment for which people work decades, that many retirees can't afford significant cuts, and that for many the option of going back to work or living on their investments is unrealistic.

Nonetheless, Chairman Kline and Ranking Democrat George Miller—public servants with very different political orientations—decided legislation was necessary and negotiated its terms. The Service Employees International Union (SEIU), the United Food and Commercial Workers Union (UFCW) and many other unions either actively supported the compromise bill or chose not to oppose it.

I believe they did so, not to undermine these pensions—which continue to provide lifetime retirement benefits while other retirement forms increasingly do not—but to preserve them. They also did so to avoid having healthy multiemployer plans be “tainted,” lest employers in healthy plans decide to withdraw and let the entire system collapse.

DID DISTRESSED MULTIEMPLOYER PLANS CAUSE THEIR OWN DISTRESS? NO

Multiemployer plans are negotiated between a union and an employer association, largely in industries like construction or trucking or food stores where there are many small business employers who cannot take on the responsibility of running a pension. The plans themselves are run professionally and businesses and unions are equally represented as trustees.

Throughout the 1990s multiemployer plans, like virtually all pension plans, were under conventional measures fully funded or overfunded. However, since 2001, multiemployer plans were hit by a double whammy: Like virtually all pensions, the stock market crashes of 2001 and 2008/2009 left them seriously underfunded (and,

¹ Given the level of controversy, it is not a surprise that MPRA was negotiated, enacted, and signed into law as part of the omnibus appropriations bill in a post-election session. However, the claim by opponents of MPRA that there had been no hearings or other legislative process is inaccurate. I personally testified at several hearings and attended multiple public meetings on these issues.

² The claim that, prior to MPRA, ERISA had never allowed benefit cuts under any circumstances is inaccurate. Cuts have been allowed under some circumstances ever since the initial multiemployer pension legislation in 1980.

like other pension funds, the underfunding is generally not due to bad investment choices, but to broad market movements).

Unlike other pensions, however, many of the retirees in these plans are “orphans” who worked for companies that are no longer in the plan. The diversified employer base historically has protected multiemployer plans: if one employer went out of business, there were been plenty of others to cover any shortfall. However, some multiemployer plans have experienced widespread losses of employers due to major industry changes such as trucking deregulation or consolidation, so the remaining employer base was now much less diversified.

As a result, the companies and workers still active in the plan are now left holding the (empty) bag. They are being asked to pay not only their own costs but also for the funding shortfalls of benefits to others. To their credit, both employers and employees in most distressed plans have increased their contributions, sometimes very substantially. However, when there are more “orphans” than active participants, at some point the burden becomes too great: employers negotiate to leave the plan and unions, ultimately, accept.

The result is a “death spiral” under which employers that can withdraw do so and the burden on the remaining employers becomes intolerable, leading to mass withdrawal, many bankruptcies, and eventually, plan insolvency. Before MPRA, most plans had no choice but to accept that terrible result. Once they run out of money, all retirees’ benefits are cut to PBGC guarantee levels—which, under ERISA, usually results in cuts from promised benefit levels, sometimes very large cuts.

IS THE RIGHT RESPONSE FOR CONGRESS TO REPEAL MPRA—
OR INSTEAD TO FIND ADDITIONAL WAYS TO PRESERVE PLANS?

Proposals to Repeal or Limit MPRA

It is not surprising that these controversies continue as plans begin to consider and apply for the painful choices that MPRA offers. Several bills have been introduced either to repeal MPRA’s benefit suspension provisions outright,³ or to add additional procedural requirements.⁴

These proposals, while motivated by the best of intentions, would likely result in *greater* benefit cuts and *greater* suffering.

In order to see why these efforts to help the participants in distressed plans will end up hurting them, it’s important to remember that the alternative to a planned benefit reduction under MPRA is an even worse result.

What MPRA did was to allow plans that otherwise would fail entirely *to preserve benefits and keep them from falling all the way to PBGC levels*. Under MPRA, severely distressed plans can propose a plan to cut benefits, but in every case a participant gets at least 10% more than PBGC would provide. In many cases, vulnerable participants suffer no cuts. For example, in the Central States proposal currently being reviewed, about a third of participants would suffer no cuts at all.⁵

Without MPRA, Central States and other distressed plans will become insolvent—and most participants’ pensions will be cut far more.

Even worse, the insolvency of Central States would completely drain PBGC’s multi-employer reserves, so participants would end up being cut far below PBGC guarantee levels. One analyst estimated that, if PBGC becomes insolvent, ongoing premiums would only cover about 10% of Central States pension benefits—that would mean a 90% cut.

No one wants to see pension benefits cut—but the alternative to the MPRA process is much greater pension cuts, and for many perhaps no pensions at all.

³E.g., S. 1631, the “Keep Our Pension Promises Act” sponsored by Senators Sanders, Brown, and Baldwin.

⁴E.g., S. 2147, the “Pension Accountability Act” sponsored by Senators Portman and Burr.

⁵There is an additional group whose cuts will be repaid by their former employer, UPS, so the total percentage that will not suffer pension cuts is considerably higher.

In Distressed Plans Benefits Will Be Cut MPRA Avoids Deeper Cuts

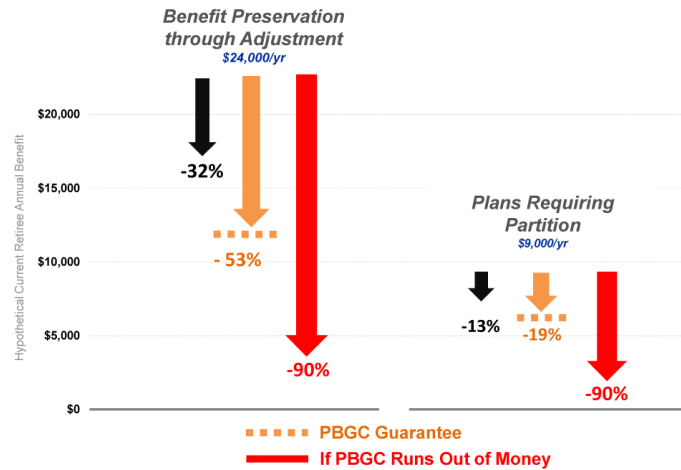


Illustration based on PBGC preliminary staff analysis of estimated benefit levels for future retirees w 25 years of service
Includes partitioned orphans. Excludes plans projected to go insolvent that cannot be saved with any proposed authorities

ADEQUATE PBGC FUNDING IS KEY

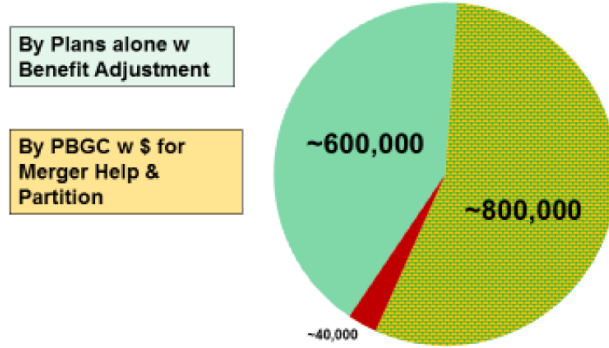
PBGC can preserve plans by financial assistance for mergers and “partitioning.”

In MPRA, Congress recognized that PBGC can play an essential role in preserving distressed plans by providing financial assistance to facilitate plan mergers, and by “partitioning” assuming responsibility for some of a plan’s obligations. Historically, these have been obligations for “orphans,” retirees of companies that no longer contribute to the plan; under partition, PBGC assumes responsibility for some obligations, but pays those obligations at PBGC benefit levels rather than at a plan’s promised levels. MPRA gave PBGC flexibility in both merger assistance and in the design of partitions to minimize the loss that comes from receiving only PBGC benefits. With PBGC financial assistance, either merger assistance or partition, many plans will be able to recover using contributions from the remaining active employers and employees. According to some early analysis, PBGC partitioning and/or merger assistance might help preserve plans covering some 800,000 people.

But PBGC can’t do so if it is underfunded.

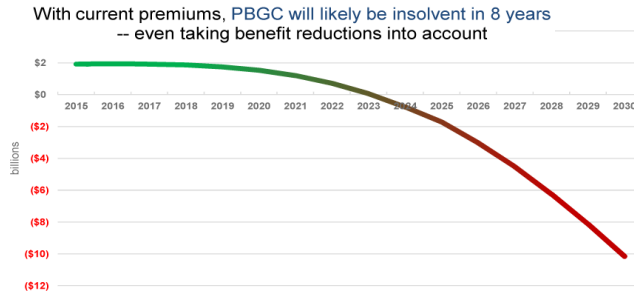
However, MPRA limited PBGC’s ability to partition if PBGC is itself at risk of insolvency within 10 years and if doing so makes that insolvency more likely. Although MPRA increased PBGC premiums to some extent and, by permitting plans to avoid insolvency via benefit reductions, reduced and deferred the likelihood of some plan failures, both PBGC and CBO project that PBGC’s multiemployer program will be insolvent in just 8 years.

Most Plans Could Be Preserved if MPRA is used & PBGC has funding



Source: Very Preliminary pre-MPRA PBGC staff estimates 1

PBGC has insufficient funds to do its job for multiemployer plans. Without higher premiums it will go bankrupt



PBGC Estimates from Budget Supplemental Tables 1

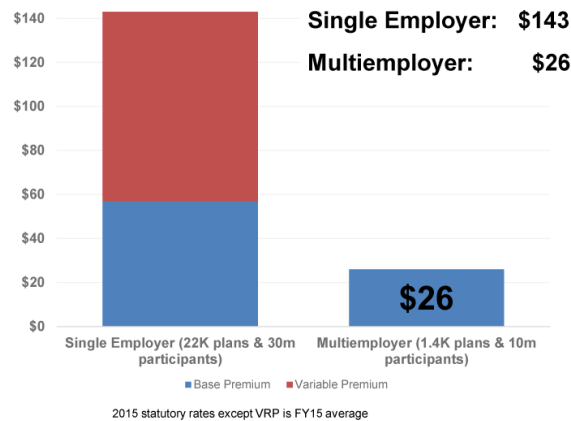
Unless Congress is willing to eliminate this requirement—or to allow significantly increased multiemployer premiums—PBGC’s use of financial assistance for mergers and of partition to preserve most distressed plans cannot be realized.

To preserve the multiemployer system, PBGC must be adequately funded.

MPRA increased multiemployer premiums from \$12 per person per year to the current \$27. This amount is clearly insufficient.

Fortunately, Congress recognized that premiums would need to be increased much more substantially: MPRA required PBGC by this coming June 1 to propose a level that would be sufficient for PBGC to do its job and preserve multiemployer plans. PBGC is also required, every 5 years since 1980, to report on the sufficiency of its premiums; this “quinquennial report” should also provide guidance.⁶

Most plans pay *much* higher PBGC premiums than multiemployer plans do



There will, of course, be claims by both the companies and the unions involved in multiemployer plans that increased premiums are unjustified and unaffordable.

These claims should be treated with skepticism. The most specious argument is that “PBGC won’t run out of money for years.” (This is the sort of claim that, if a private insurance company ever made it, would result in losing all its customers and its management losing their jobs.) It would be cold comfort to the millions of people who expect PBGC to pay benefits for the rest of their lives that they won’t lose their benefits until it’s too late for them to do anything else.

The other argument is that premiums are unaffordable. In the case of multiemployer premiums, the affordability arguments are even more specious, because multiemployer premiums are already far, far below those already being paid by most pension plans. In 2015, for example, multiemployer premiums were \$26 per person per year. By comparison, the *average single employer plan paid PBGC \$143 per person—almost 6 times as much as multiemployer plans do.*⁷

Nonetheless, there are some plans for which significant increases would impose real hardship. That’s why increases should take into account an individual plan’s ability to pay, whether by delegating some ability to PBGC to reduce premiums or developing other kinds of “circuit breakers.”

The administration has recognized the need to increase PBGC premiums very substantially, and has proposed giving PBGC authority to increase multiemployer

⁶By law, PBGC should have produced this report in 2015. Its status has not been reported publicly.

⁷To be sure, under law PBGC’s multiemployer benefits are much less generous than its single-employer benefits. However, the primary argument against PBGC benefits is not the lack of coverage, but the claim that they’re unaffordable. Furthermore, even at the lower level of multiemployer guarantees, it is still the case that more than 1,000,000 people could end up relying on them. If PBGC becomes insolvent and active employers continue to withdraw, then that 1,000,000 people could end up with no pensions at all.

premiums by an average of \$1.5 billion per year. In the end, it will of course be Congress that decides, but I hope the proposals will inform and encourage Congressional action this year. Congressional delay will limit PBGC's ability to preserve multiemployer plans and the millions that depend on those plans.

NEW PLAN DESIGNS CAN HELP, BUT COULD ALSO HARM

In order to encourage employers to remain within the multiemployer system, both unions and employers have proposed to allow new plan designs. Under these proposals, existing plans could be split into a new ongoing plan and a legacy plan. The new plans would be designed so that, if actuarial assumptions prove optimistic or investment returns are poor, the benefits can be adjusted. This ability to adjust benefits without having to go through a MPRA process means that the new design puts market risk on employees rather than employers.

The primary reason for enabling a new plan design is that employers would be willing to participate in the new plan instead of leaving the multiemployer DB system entirely. The new plan design includes lifetime income, pooled professional management, and other features that make it superior to standard defined contribution offerings. It would eliminate the contingent risk and withdrawal liability that employers dislike.

If the multiemployer pension system is to survive, it must be allowed to adapt. Unfortunately, ERISA and the tax code have been written so narrowly that adaptation has been hamstrung. The alternative plan designs would help preserve the multiemployer system.

There are, however, some important caveats. Depending on the particulars, new plan designs could preserve the multiemployer system or hasten its demise.

Legacy Plans Need Much Greater Protection

One of the hardest questions, if employers start a new plan, is how to protect the integrity of the old plan. Unfortunately, the current proposal seems to weaken protections of legacy plans from current law in several respects. For example, underfunded legacy plans could remain underfunded for 30 years while contributions are transferred to the new plan. Furthermore, the proposal would allow employers to withdraw and eliminate any legacy liabilities once a plan is considered fully funded under any "reasonable" actuarial assumptions (however unrealistic they turn out to be in practice). The result, very possibly, would then be mass withdrawal from the legacy plan.

Since most multiemployer plans are already significantly underfunded, the effect of the proposal would be both to weaken funding requirements and to eliminate the active employer base. If, over time, the "reasonable actuarial assumptions" of a legacy plan were not met—an occurrence that has roughly a 50% chance of happening—there would be no option of additional employer contributions. Having been abandoned by employers, the only alternative would be benefit cuts, whether through benefit "suspension" or assumption of the plan by PBGC.

If there is going to be an elimination of withdrawal liability, then the requirement should be that a plan is overfunded, not just "fully funded." Furthermore, the actuarial assumptions used should themselves be conservative, not just whatever a hired actuary thinks are "reasonable." Other protections are probably appropriate as well.

Adequate PBGC Funding

As noted earlier, at current premium levels PBGC's multiemployer program will itself become insolvent within a decade. Unless Congress decides otherwise, the new plans would not involve PBGC premiums and thus would narrow the base from which PBGC can fund its activities. Congress should consider providing some (probably different) PBGC premium for the new plan designs.

In closing, I remain grateful that the committee continues its work to take up the undeniable challenges that some plans now face and to consider how best to achieve the secure retirement that Americans deserve. If I can be helpful, I would be honored to do so.

QUESTION SUBMITTED FOR THE RECORD TO HON. JOSHUA GOTBAUM

QUESTION SUBMITTED BY HON. ORRIN G. HATCH

Question. With regard to new, innovative plan designs, you expressed concern that broad actuarial discretion in funding assumptions could endanger the legacy, traditional portion of composite plans. How would you recommend that Congress restrict that discretion?

Answer. As I noted in my testimony, this is an area where the details matter. I don't know enough about the range of circumstances to prescribe legislation in detail; for that I'd suggest consulting with the technical staff of the PBGC. However, there are clearly some areas that Congress should consider:

A. Don't let plans establish a new composite until they're "green zone"

Green zone status is not a guarantee of financial health (because the actuarial assumptions are not required to be conservative), but plans ought to be able to meet at least those standards before risking the creation of a legacy plan.

B. Impose real funding limits on legacy plans

The proposed bill requires only that legacy plans be on a path to be fully funded in 30 years, using whatever assumptions the actuaries consider "reasonable." This is an even weaker standard than multiemployer plans already use, whereas the standard for legacy plans should be *stronger* (since active employers will no longer be contributing to the plan).

Since they lack an active employer base, the standards for legacy plans should be at least as high as those of single employer plans under the Pension Protection Act of 2006. This has two parts:

- Actuaries should be required to use a conservative discount rate, such as the bond rate required under PPA.
- Underfunding should be funded within 7 years, as the PPA requires.

C. Stricter limits on the ability to withdraw from legacy plans

The proposed bill allows employers to withdraw from legacy plans if the plans are "fully funded." The standards for "full funding" are weak: basically, any assumption that a hired actuary considers "reasonable." Since the consequences of withdrawal are to eliminate the only source of funds to prevent insolvency, consider two protections:

- Require the more conservative PPA discount rate; and
- Require that the plan be 110% funded under those assumptions, not just 100% funded.

D. Require some PBGC premium on composite plans, too

Although PBGC premiums have historically been so low that they don't affect the decision to stay within DB plans or not, if PBGC is to be able to do its job and preserve plans those premiums will have to be raised substantially—perhaps to the level that single-employer plans already pay (which is over \$100 per person per year).

These higher premiums may give an additional incentive for employers to withdraw from legacy plans. However, the incentive to withdraw from legacy plans could be reduced if there were some premium on the composite plans (which would reduce the necessary premium on legacy plans). Congress could, as part of its authorization of composite plans, authorize a premium on those plans. Such premiums would help preserve the entire system.

PREPARED STATEMENT OF HON. ORRIN G. HATCH,
A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R-Utah) today delivered the following opening statement at a hearing examining the multiemployer pension plan system and its effect on unions, employers, workers, retirees and taxpayers:

I'd like to welcome everyone to this morning's hearing to examine the multiemployer pension plan system.

As I said at a recent hearing, financial security for workers and their families, and retirement policy in particular, have never been more important. While we've enjoyed a number of successes in this area, today we will be talking about an area of retirement policy that, for a number of reasons, has not delivered on the pension promises made to workers and retirees.

A multiemployer pension plan is a collectively bargained pension plan set up by a union and two or more unrelated unionized employers. In this system, the employers make contributions to the plan and pay premiums to the Pension Benefit Guaranty Corporation, or PBGC, to insure the plan. Multiemployer plans are operated by a joint board of union and employer trustees that, among other things, sets the amount of the pensions. Or, in other words, these boards make the promises.

Ten million Americans are covered by multiemployer pension plans, and, currently, more than one-third of those people are in plans that are critically underfunded. Many are in danger of default.

In the case of a default, the PBGC would pay out pensions to retirees. Those payments are capped by law and would be no greater than \$12,870 per year. In fact, in many cases it would be far less. That would be a steep drop for a retiree who was promised an annual pension of \$30,000 or \$40,000 in a plan like the Central States Teamsters Plan, one of the plans we'll be talking about today.

That sounds pretty bad, but the problems in the multiemployer pension system are even worse than what I just described.

There are several plans—like the Central States and United Mineworkers Plans, for example—that would bankrupt the PBGC if they were to default. The PBGC insurance program for multiemployer plans just can't handle that load. And if the PBGC's insurance assets are ever exhausted, pension payments will drop to nearly zero.

The response to this crisis by Congress and the President, in 2014, was to enact the Multiemployer Pension Reform Act, or MPRA.

At the request of multiemployer pension plan managers, employers who contribute to multiemployer pension plans, as well as many unions representing employees, the MPRA gave pension plan trustees the ability, in extreme cases, to petition the Treasury Department for approval to cut pensions in the near term in order to avoid insolvency and larger cuts down the road.

This law is, to say the least, controversial, and the committee will hear from both defenders and critics of the MPRA today.

This is a sobering moment for our country, the pension community, and retirees. And beyond the hardship for retirees in multiemployer plans, this moment also highlights the challenge of delivering on the promise of pensions in defined-benefit plans across the board, both public and private, and the stakes for retirees if these systems fail.

Today we will hear testimony from a Central States beneficiary, a retiree whose husband recently passed away and is scheduled to receive a 40% cut in her survivor's pension if Treasury approves the application of the plan's trustees to implement the reductions. Her annual pension would be reduced from more than \$30,000 to just under \$18,000.

Her case is the very definition of hardship in the context of the pension system.

We will hear testimony today about the United Mine Worker's Pension Plan, another financially strapped pension plan that, even without additional cuts, provides a relatively modest pension, around \$6,000 per year on average, for its beneficiaries.

In addition, we have witnesses who will address the hard truth that, without the MPRA, future pension cuts will be even worse. We will hear that the MPRA allows many plans that otherwise would fail entirely to keep their benefits from dropping all the way to PBGC levels, or perhaps to no pension at all.

Now, we know there are some who advocate a taxpayer bailout of the PBGC's multiemployer pension program. In my view, that will be very difficult to achieve if recent history is any guide. The idea of a PBGC bailout was proposed by unions, employers, and multiemployer plans in 2010. Back then, the House, Senate and White House were all controlled by Democrats, and the proposal got absolutely no traction. I have a hard time seeing how such a proposal could move forward in the current environment.

But, for the sake of argument, let's imagine that there was another way, outside of premiums, to finance the PBGC. What then? The cuts would still be larger.

Older retirees and disabled retirees, who today cannot receive cuts at all under the MPRA, would be cut all the way down to the PBGC level. Even the retirees whose pensions are eligible for cuts under the MPRA are at least assured of always receiving at least 10 percent more than the PBGC level, and perhaps much more. But without the MPRA, even that minimal level of protection would vanish.

Ultimately, the critics of the MPRA have to recognize that, when dealing with this problem, there were really only three choices: bad, worse and worst of all. In 2014, a bipartisan majority in Congress and the President went with bad. No one is happy with that choice, I suspect, but it was the best option available to us at the time.

The question we have to consider now is: How can we avoid these problems in the future?

Today we will hear testimony about how the design and funding of multiemployer plans led us to this point. Not surprisingly, I suspect we'll hear that it is easier to promise pensions than to fund them. We will hear that because of lax rules in the current system, there is a great temptation for plan managers to make unrealistic actuarial assumptions and take on excessive investment risk. And we will learn about disturbing parallels between multiemployer pensions and the defined benefit pension plans run by many state and local governments.

Finally, I want to say another word about the Mine Worker pension plan. I promised Ranking Member Wyden that I would work with him on this issue and I have kept my promise. I have done my best to advance legislation introduced by Senators Capito and Manchin, which, given the already low pension payments, the Obama administration's war on the coal industry, and the depressed state of the economy in most of coal country, is, in my view, the best option available to us. I plan to continue that effort.

PREPARED STATEMENT OF HON. AMY KLOBUCHAR,
A U.S. SENATOR FROM MINNESOTA

Chairman Hatch, Ranking Member Wyden, and members of the Senate Committee on Finance, thank you for holding this hearing on the multiemployer pension plan system.

I believe that promises made should be promises kept. The promise that was made to the workers in multiemployer pension plans is simple—that the pension they have earned through their decades of hard work will be there when they retire. Saving for retirement is often described as a three-legged stool—Social Security, a pension, and personal savings. A stable and secure retirement relies on all three legs being strong. But some multiemployer pension plans are facing funding challenges that could weaken one of those legs.

Employers offer pension plans to help their employees save for retirement. According to the U.S. Department of Labor, in 2014, 64 percent of full-time workers participated in an employer-sponsored retirement plan.¹ These plans include defined-contribution plans, such as a 401(k), and defined-benefit plans, which include single employer plans and multiemployer plans. In a multiemployer plan, many employers in the same industry join together under a collective bargaining agreement to form and maintain a pension plan for their employees. Over 10 million Americans participate in a multiemployer pension plan and rely on these pension benefits for a safe and secure retirement.²

Many multiemployer pension plans are facing funding challenges and do not have sufficient plan assets to pay all of the benefits promised. I believe that we need to work together to find solutions that maintain the solvency of these multiemployer pension plans without severely penalizing current retirees, active employees, and beneficiaries.

In December 2014, the Multiemployer Pension Reform Act (MPRA) became law as part of the FY 2015 Omnibus Appropriations Act (H.R. 83). The MPRA allows

¹“Multiemployer Defined Benefit (DB) Pension Plans: A Primer and Analysis of Policy Options.” Congressional Research Service report R43305. July 24, 2015.

²Department of Labor (DOL) Employee Benefits Security Administration, Private Pension Plan Bulletin Abstract of 2013 Form 5500 Annual Reports. September 2015.

underfunded multiemployer pension plans, like the Central States Pension Fund, to cut benefits for current retirees, active employees, and beneficiaries. I did not think MPRA was the right solution when we voted on the FY 2015 Omnibus Appropriations Act (H.R. 83), and I voted against this legislation because of the impact it could have on hundreds of thousands of American workers and retirees.

To address underfunding, the Central States, Southeast and Southwest Pension Plan (Central States Pension Plan) Fund submitted a proposed plan to the U.S. Department of the Treasury on September 25, 2015 that would reduce benefits for current retirees, active workers, and some former workers. The Department of the Treasury has until May 7, 2016 to review the plan and ensure that it meets the requirements established by the MPRA. If the application fails to meet these criteria, the Department of the Treasury would be required to reject the application.

Right now, two-thirds of the nearly 400,000 participants of the Central States Pension Plan face the real possibility that their pensions will be reduced under the provisions in MPRA with some facing cuts as high as 70 percent. In Minnesota, there are nearly 22,000 participants. Ohio has nearly 48,000 participants; Michigan, over 47,000; and Missouri, over 32,000. In fact, the top 10 states with participants facing possible cuts account for 72 percent of the total Central States Pension Plan participants—and 7 of those 10 states are in the Midwest.³

We also know that the size of the potential cuts for workers, retirees and beneficiaries are not fairly distributed. Retirees who are 80 and older and disabled individuals are protected against having their benefits reduced. But for everyone else, the possible cuts would not reward their years of work and contributions. While many are facing cuts of 30 percent, 40 percent or even 50 percent, I think people would be shocked to learn that over 44,000 people are facing pension cuts of over 60 percent and nearly 2,500 people are facing possible cuts of over 70 percent.

I am hearing from people across Minnesota who are facing drastic cuts to the promise of a pension that they worked for and contributed to over decades. I have heard from Michael from Shoreview who is facing a possible cut of 40 percent after 40 years of hard work and contributions. Thomas from Sandstone who is 71 years old and, after paying in to the Central States Plan for 30 years, is facing a possible cut of 60 percent. Steve from Maple Grove wrote me to let me know that he is 69 years old and is unable to return to work but his pension may be cut by 37 percent. And that's just a few examples. These hard working Minnesotans, many who are in their 60s and 70s, should be able to be secure in the retirement they have worked for their whole life. Instead they are now facing the loss of their home, struggles with medical bills and financial insecurity at a time when they can least afford it.

I recently invited Department of the Treasury officials to visit Minnesota and hear firsthand how this proposal would affect the thousands of workers, retirees, and their beneficiaries participating in the Central States Pension Plan and why the proposed cuts should be rejected. I know the Treasury has held similar meetings across the country and heard from workers and retirees in Missouri, Michigan, Indiana, Illinois, North Carolina, Wisconsin, and Ohio. I hope Treasury will seriously consider the views of those with the most to lose—the people who are directly affected by the cuts under this proposal.

Chairman Hatch, Ranking Member Wyden, and members of the Senate Committee on Finance, we need to find a workable solution for underfunded multiemployer pension plans that does not come at the expense of those who have worked hard, paid into the pension plan, and built their retirement based on the promise of a pension. I want to work with you to find a fiscally responsible alternative that protects the promise of a retirement with security and dignity for all.

We all know that delay only makes the solution more costly. The time is here. We can't put it off any longer. We must move forward now to get this done for our workers, our businesses, and our country.

³Based on Congressional District data provided by the Central States Pension Plan. The top 10 states are Ohio, Michigan, Missouri, Illinois, Wisconsin, Texas, Indiana, Minnesota, Florida and Tennessee. The data is available at <http://www.pensionrights.org>.

PREPARED STATEMENT OF RITA LEWIS, BENEFICIARY,
CENTRAL STATES PENSION PLAN

Mr. Chairman, Members of the Committee, thank you so much for inviting me to speak. My name is Rita Lewis, and I live in West Chester, Ohio. I am here representing my dearly beloved late husband Butch Lewis, who worked 40 years for USF Holland, a Midwest trucking company. Butch, a leader of the Retired Teamsters of Southwest Ohio Pension Committee, fought hard, until his last dying breath, to stop the shameful and unfair cuts authorized under the Multiemployer Pension Reform Act of 2014. I am here today to take up Butch's fight, and to make sure that his death was not in vain.

I'm here today to urge you, to plead with you really, to stop the cuts in MPRA and find a bi-partisan solution to shore up underfunded multiemployer plans and protect retirees. I'm here not just to help myself, but to speak on behalf of the 270,000 retired truck drivers, widows and spouses whose lives will be devastated if the Central States Pension Plan is allowed to go through with these cruel and unfair cuts, taking away as much as 40-70 percent of our hard-earned promised pensions. These cuts are unprecedented and are plain wrong.

I want to start with an important point: This is not a partisan issue. This is an issue of fundamental American values, of keeping earned promises to this nation's retirees. We are Republicans and Democrats and Independents. We live in your states—we are your constituents. We worked hard our whole lives and did everything right so we could have a comfortable retirement. Not an extravagant retirement; we just wanted to have enough income to live our sunset years with dignity and independence, to pitch in to help our kids and grandkids, especially in today's uncertain economy, and to continue being productive members of our communities.

I understand if Central States is allowed to go forward and slash our pensions, there are somewhere around 100-200 underfunded multiemployer plans that are waiting in the wings to cut their retirees' benefits, too, potentially affecting at least a million American retirees. Many of you on this committee have already heard from affected retirees, and I expect many of you will hear from additional constituents once the dam breaks and the flood of benefit cut letters begins. I plead with you today to find a solution to shore up underfunded pension plans, and to protect our pension benefits, before this becomes a huge national crisis and your constituents from lots of other plans are sitting where I am today.

Also, I want to say that I, and other Teamster retirees, support the United Mineworkers in also protecting their retired members and we hope and pray there can be a separate solution for them.

Now let me tell you my story. My husband and I were married for 40 years, after being childhood sweethearts. Butch was a professional baseball player after high school and was drafted by the Pittsburgh Pirates. But he gave up that opportunity and volunteered instead to fight in Vietnam when he was only 18 years old. He served in the Special Forces Army Rangers 173 Airborne Division for 2 years, but had been in the jungle of Vietnam for 5 months when his unit came under attack. While carrying his fellow soldiers to safety, Butch got hit in the knee by a mortar shell and he came home with life-threatening injuries. Butch received the Bronze Star and a Purple Heart for his service.

When Butch returned home he never complained. He would say, "Rita, I'm happy to be alive, and we have to look forward, not backwards, and believe that God has a plan for us." So when he came home, he got a good-paying job in the trucking industry, joined the Teamsters union where he stayed a loyal member throughout his life, and we got married and started a family. His dreams of being a ball player were over, but now he had a new dream of being a working man taking care of our family.

Every day for 40 years, he went to work, driving a semi tractor trailer which is hard work. It's like being an industrial athlete, driving long miles, throwing huge packages on to the truck, jumping in and out of the cab. This was back when truck shock absorbers were practically non-existent, and the vibrations of the truck left him with bad hearing. And he did all this without complaining, even while he was having 37 surgeries to fix the knee that was blown out in Vietnam. He never complained about his pain, but I saw it. And he worked every day to earn enough not just to take care of us, but also to earn a good pension so when we were old we could finally enjoy the fruits of our labor. And this pension wasn't a gift. He worked hard for every penny of that pension. He gave up wages, and vacation pay and other

benefits in exchange for a modest, reliable retirement income, because that's what responsible workers do.

Butch was getting his pension for just about a year when he got the letter from Central States saying that his pension was being cut from \$3,348.82 a month to \$1,998.65. Butch couldn't believe it. He was so upset, he couldn't sleep. He started talking to other retirees and he learned that others were even in worse shape, facing cuts that would slash their pensions by 50, 60, or even 70 percent.

Butch had already had a few minor strokes and the doctor had warned him to avoid stress. But Butch wasn't that kind of man. He was a warrior. And just like he did in Vietnam, he fought to right this injustice by working with what are now 50 retirees' committees across the country—all organized to stop the cuts. As he said, this was a war just like he had fought in Vietnam, and the cuts being forced on retirees were a "war against the middle class and American values."

But after fighting hard, Butch died of a massive stroke last New Year's Eve. The doctors said all the stress he was living with because of the impending destruction of our financial future contributed to the stroke.

Now I'm left without my husband who was the love of my life and facing cuts in my own joint and survivor benefit from \$2,511.61 to \$1,498.98 a month. Butch paid for that survivor pension while he was working by giving up wages so I would be taken care of if something happened to him.

So instead of having the life I had envisioned with my husband, enjoying our secure retirement together, I now have to worry about how I will make ends meet. And my husband is gone and can't help me.

I am going to have to sell the house that Butch and I had made our dream home. Right now I am helping take care of my dad who has stage IV cancer, and I worry I won't be able to keep doing that if my survivors' benefits get cut. I won't be able to help out my son and daughter or help pay for my grandchildren's college like we expected.

And believe me, I'm in better shape than many: I have a job, paying me \$17 an hour, with the police department, and I hope, God willing, I can continue working. And the cut to my pension is only 40 percent. As I said, some people are going to lose 50 to 70 percent or more of their pensions.

Let me tell you about some of the others who are affected, some of whom are here with me today:

- Whitlow Wyatt, 72, for 33 years worked for a trucking company that went out of business. His pension is slated to be cut 60 percent, the maximum allowed by MPRA, and his pension will go from \$3,300 a month to \$1,018.16. His wife now has stage IV breast cancer, and they will drastically have to downsize, including selling their house. The Wyatts are among the thousands of retirees and their families in Ohio who will suffer greatly.
- Tom Krekeler, 68, worked for a food company and is facing a pension cut of 52 percent. He and his wife run a small farm in Cincinnati and have enough left over that they often donate to non-profits. They don't know how they'll be able to afford their expenses, and fear they'll have to sell their farm, which they worked a lifetime to buy. He wonders whether he and his wife will have to choose between food and medicine.
- There's Ava Miller of Flint, Michigan, who is now in her 60s. She was a car hauler dispatcher for 42 years. Her pension is being cut 58% because Central States considers her an "orphan" because some of the companies she worked for don't exist anymore and she is being cut the maximum amount. Why should Ava be penalized? She did everything right and yet now, wracked with health problems and soaring bills, she may have to sell her house.
- Larry Maxfield of Winfield, Missouri is 73 and has a heart condition, diabetes, high blood pressure, spinal stenosis, bad knees, COPD, and bronchitis and takes 20 pills each day. Central States told him his pension will be reduced from \$3,100 to \$1,276.03 monthly, a 58% cut—and he has no idea how he'll make it.
- There's Bob Amsden, from Milwaukee, Wisconsin, who worked for 32 years as a road driver, city driver and on the dock for five different companies. Bob has been told his pension will be cut 55.4%. He said if these cuts are allowed to go through, "The life I spent working for my pension will be for nothing."

- Ron Daubenmeier of Cedar Rapids, Iowa, is facing a cut of 60 percent because he worked for Consolidated Freight which went bankrupt—again through no fault of his own or of the other retirees left in the lurch. Ron is 74 and is facing a steep cut of his benefit from \$3,200 to \$1,286.00 a month—which will leave him struggling to make ends meet.
- And, finally, I heard about Clarence Moody, whose pension is being cut to zero—penalizing him because of the way a divorce decree was written.

These are just some of the stories I have heard. There are thousands of stories just like these. I know that Central States says the average cuts are around 22.5 percent, but just about everyone we've talked to has been told their cuts are 40 to 70 percent. These cuts are hitting us like a ton of bricks and none of us has time to prepare for the cuts, or make additional accommodations like we might have done if we were still young. It's cruel to cut our pensions now when few of us can go back to work, leaving us without options to make up the difference in our incomes.

The unfairness of the cuts is magnified when you look at how much the plan pays in administrative and investment expenses. While they're cutting our pensions, many of the people on the staff of the fund make hundreds of thousands of dollars a year, and the Central States Fund's director, Tom Nyhan, recently accepted a raise of \$32,000—almost twice what I'll be getting as a pension. He is now making \$694,786. Need I say more?

When a pension is cut, it's not just about the individual. It also affects multiple generations and communities. If these cuts are allowed to go into effect, folks like me will lose our homes, won't be able to assist our kids and grandkids, won't be able to pay for medicine and supplies, and won't go shopping in the malls or to local restaurants. Those of us who paid for our pensions, and never asked for a handout, may now be forced to go on public assistance. And even if we are able to avoid this fate, many of the kids and grandkids we are supporting will not.

We're asking you today to please help us. The cutback provisions of MPRA are not the right way to solve this problem. As you know, the MPRA was negotiated behind closed doors, without any public hearings on the actual bill, without input from the retirees and employees and their widows and spouses, who will be most affected. If that bill hadn't passed, I know I and others like me would be able to count on our promised benefits for another decade and more. And I'm confident Congress could certainly come up with a better solution to the funding problem during that time.

The bill reverses 40 years of protections from the private pension law ERISA which says that you can't cut back the already-earned benefits of retirees in a multi-employer plan unless the plan completely runs out of money, and even then, retirees are to be protected the most because we are the most vulnerable. Most of us can't go back to work or plan ahead to find other savings. The cuts are happening right now—today—and there's no time for us to adjust.

And our benefits are being decimated now—even though Central States is expected to have enough money to pay our benefits for the next 10 to 15 years.

I've heard the argument used that it's better to get a haircut today than a beheading tomorrow. But I'd like to say that this is a beheading for most of us. Those of us facing pension cuts are all in our 60s and 70s, and we don't have the time to make up for the lost income. And not to be so blunt, but let's face it, a lot of these retirees, like my husband, will be gone long before Central States will run out of money. And why would Congress allow pension plans, like Central States, to try to balance their books on our backs?

It's plain wrong.

I know that something has to be done. And I know that the federal pension insurance program is not funded well enough. I'd like to know why aren't we making that a priority. I understand it was set up to ensure that when plans run out of money, retirees would be the last to suffer, not the first—and yet MPRA blames us for all the financial problems of multiemployer pension plans even though we didn't cause any of them.

So I'm asking you today to please help us. When Detroit faced bankruptcy, everyone came together and struck a Grand Bargain to minimize the cuts. I want to thank my own Senators from Ohio on the committee who are working with us to solve the problem. Senator Brown thank you for supporting the Keep our Pension Promises Act which would solve the whole problem of underfunded multiemployer

plans by getting money into pension plans and the pension insurance program to assist them. And I want to thank you, Senator Portman, for sponsoring the Pension Accountability Act which will fix the broken voting process in MPRA.

But time is running out. I'd like to say to members of both parties, please do not let politics get in your way, we need a comprehensive bill that both parties can support that truly fixes the problem for current and future retirees. The America I know is one that keeps its promises to its citizens, particularly those who are older and vulnerable. My husband Butch was a hero who fought for his country and for the American values we all hold dear. Now I'm asking you to be heroes too and help us solve this problem by finding a solution to support plans, the PBGC and save our pensions.

Thank you for taking time to listen to me today and I will be happy to answer any questions you may have.

SUBMITTED FOR THE RECORD BY HON. JOE MANCHIN III,
A U.S. SENATOR FROM WEST VIRGINIA

Brief Chronology of the UMWA Health and Retirement Funds and the History of U.S. Government Involvement

*The UMWA Health and Retirement Funds "is as much a creature of government as it is of collective bargaining. There is a line running from the original Boone Report to the present system. In a way, the original Krug-Lewis agreement pre-disposed, if not predetermined, the system that evolved."*⁵⁷ Coal Commission Report, 1990.¹

Early 1900s	Prior to the creation of the UMWA Health and Retirement Funds, there was no pension plan for retired coal miners and medical care in the nation's coal field communities consisted of a pre-paid system based on deductions from the miners' paychecks. Under this system, coal companies deducted money from the miners' pay and hired doctors to provide medical services to the miners. Over time, the miners came to view the company doctor system as wasteful and harmful to their interests.
1935	President Franklin Roosevelt appoints a federal Interdepartmental Committee to Coordinate Health and Welfare Activities. He named as chairman of the committee Josephine Roche, who later became neutral trustee and executive director of the UMWA Funds. One of the major activities of the committee was to convene a National Health Conference, at which the UMWA called for the establishment of "group medicine and group hospitalization" in coal mining communities.
1938	The UMWA, through the Good Will Fund of Boston and the Twentieth Century Fund of New York, commissioned a report on medical conditions in the coal fields. The study by the Bureau of Cooperative Medicine ² concluded that there was a pressing need for medical care reform in the coal fields.
1946	When the National Bituminous Wage Conference convened in early 1946, a health and welfare fund for miners was the union's top priority. The operators rejected the proposal and miners walked off the job on April 1, 1946. Negotiations under the auspices of the U.S. Department of Labor continued sporadically through April. On May 10, 1946, President

¹ *Coal Commission Report: A Report to the Secretary of Labor and the American People*, The Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits, November 1990.

² *Medical Care in Selected Areas of the Appalachian Bituminous Coal Fields*, The Bureau of Cooperative Medicine, March 1, 1939.

Truman summoned UMWA president John L. Lewis and the coal operators to the White House. The stalemate appeared to break when the White House announced an agreement in principle on a health and welfare fund.

Despite the White House announcement, the coal operators still refused to agree to the creation of a medical and pension fund. Another conference at the White House failed to forge an agreement and the negotiations again collapsed.

Faced with the prospect of a long strike that could hamper post-war economic recovery, President Truman issued an Executive Order³ directing the Secretary of the Interior to take possession of all bituminous coal mines in the United States and to negotiate with the union "appropriate changes in the terms and conditions of employment." The Executive Order also provided that "All Federal Agencies are directed to cooperate with the Secretary of the Interior to the fullest extent possible in carrying out the purposes of this order." Secretary of the Interior Julius Krug seized the mines the next day and ordered the miners to return to work. The miners refused, and negotiations continued, first at the Interior Department and then at the White House, with President Truman participating in several conferences.

On May 29, 1946 the historic Krug Lewis agreement was announced and the strike ended. The agreement was signed in the White House with President Truman presiding. It created a welfare and retirement fund to make payments to miners and their dependents and survivors in cases of sickness, permanent disability, death or retirement, and other welfare purposes determined by the trustees. The fund was to be managed by three trustees, one to be appointed by the federal government, one by the UMWA and the third to be chosen by the other two. Financing for the new fund was to derive from a royalty of 5 cents per ton of coal produced.

The Krug Lewis agreement also created a separate medical and hospital fund to be managed by trustees appointed by the UMWA. The purpose of the fund was to provide for medical, hospital, and related services for the miners and their dependents.

The Krug Lewis agreement also committed the federal government to undertake "a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary and housing conditions in coal mining areas." The expressed purpose was to determine improvements were necessary to bring coal field communities in conformity with "recognized American standards."

1947

To conduct the study, the Secretary of the Interior chose Rear Admiral Joel T. Boone of the U.S. Navy Medical Corps. Government medical specialists spent nearly a year exploring the existing medical care system in the nation's coal fields. Their report, *A Medical Survey of the Bituminous Coal Industry*,⁴ found that in coal field communities "provisions range from excellent, on a par with America's most progressive communities, to very poor, their tolerance a disgrace to a nation to which the world looks for pattern and guidance." The survey team discovered that "three-fourths of the hospitals are inadequate with regard to one or more of the following: surgical rooms, delivery rooms, labor rooms, nurseries and x-ray facilities." The study concluded that "the present practice of medicine in the coal fields on a contract basis cannot be supported. They are synonymous with many

³Executive Order 9728, Authorizing the Secretary of the Interior to Take Possession of and to Operate Certain Coal Mines, May 21, 1946.

⁴*A Medical Survey of the Bituminous Coal Industry*, Report of the Coal Mines Administrator, 1947.

abuses. They are undesirable and in many instances deplorable.”

Thus the Boone report not only confirmed earlier reports of conditions in the coal mining communities, but also established a strong federal government interest in correcting long-standing inadequacies in medical care delivery. Perhaps most important, it provided a road map for the newly created UMWA Fund to begin the process of reform.

- 1947 The first checks from the UMWA Fund are issued to the widows of the miners who died in the Centralia, Illinois mine disaster.⁵ The checks are signed by John L. Lewis and Captain N.H. Collisson, a U.S. Navy captain who was a trustee appointed by the U.S. government.
- 1947 Nation's bituminous coal mines returned to private owners. UMWA and coal industry begin 2-year struggle over direction of the Fund. After a 7 month stalemate, the neutral trustee resigns.
- 1948 Miners strike to force activation of UMWA pension plan. Court holds UMWA in contempt because miners refuse to return to work. The Speaker of the U.S. House of Representatives, Joseph Martin, asked Fund trustees to meet with him. Speaker Martin proposes Senator Styles Bridges of New Hampshire as the neutral trustee. Senator Bridges, pointing out that nearly 2 years had elapsed since the Krug-Lewis Agreement, voted with UMWA trustee John L. Lewis to activate the pensions. The first UMWA pension check is presented to Horace Ainscough, a retired miner from Rock Springs, Wyoming.
- 1950 Coal operators create the Bituminous Coal Operators' Association (BCOA) to represent the coal industry in bargaining with the UMWA.
- 1950s UMWA Fund recruits doctors from the U.S. Public Health Service to administer the medical care program.
- 1954 A special section 404(c) is added by Congress to the IRS Code to “grandfather” the existing UMWA Health and Retirement Fund to ensure the deductibility of employer contributions and favorable tax treatment for employees and retirees.
- 1955 Recognizing the need for modern hospital and clinic facilities, the UMWA Funds constructed 10 hospitals in Kentucky, Virginia and West Virginia. The hospitals, known as Miners Memorial Hospitals, provided intern and residency programs and training for professional and practical nurses. Thus, because of the Funds, young doctors were drawn to areas of the country that were sorely lacking in medical professionals.
- 1963 Kennedy Administration assists UMWA Funds in selling miners hospital chain to Appalachian Regional Hospitals, providing federal funds to the buyers. Although they were no longer owned and operated by the UMWA Funds, the hospitals continued to serve miners and other residents of coal field communities and contributed to a significant improvement in overall medical care.
- 1971 Federal courts add nearly 20,000 primary beneficiaries to Funds pension and health programs in *Blankenship v. Boyle* and *Kiser v. Huger*.
- 1971 The 1971 negotiations over the National Bituminous Coal Wage Agreement (NBCWA) take place during a period of federal wage and price controls imposed by the Nixon adminis-

⁵The Centralia No. 5 mine exploded on March 25, 1947, killing 111 coal miners. The Bureau of Mines report on the disaster found that “the dusty conditions of the mine and blasting procedures are contrary to the State mining law and to the federal Mine safety Code under which the mine was being operated by the Coal Mines Administrator.”

- tration. The 1971 NBCWA increased labor costs by 15%, driven in part by the doubling of contributions to the UMWA Funds. The U.S. government approved the contract but did not allow an increase in the price of coal to consumers to pass through the increase in the contribution rates.
- 1974 Congress enacts the Employee Retirement Income Security Act (ERISA). ERISA retained and amended Section 404(c) to retain the grandfathering of the existing UMWA Health and Retirement Fund. To comply with ERISA, the UMWA and BCOA create separate pension and benefit plans, creating the UMWA 1950 Pension Plan, the UMWA 1950 Benefit Plan, the UMWA 1974 Pension Plan and the UMWA 1974 Benefit Plan.
- 1977–78 UMWA and BCOA bargain for a successor NBCWA agreement. BCOA proposes individual company health plans to replace the UMWA Funds. UMWA engages in 111 day nationwide strike. Federal government intervenes, attempts to mediate the dispute and obtains Taft-Hartley injunction. Under the NBCWA of 1978, responsibility for health care benefits for active workers and post-1975 retirees shifts from the UMWA Funds to individual companies. UMWA 1974 Benefit Plan is retained to serve as an orphan safety net to provide lifetime retiree health benefits to retirees when their employers go out of business.
- 1978 President Carter appoints President’s Coal Commission to examine the issues that led to the 1978 nationwide miners’ strike, including “health, safety and living conditions in the Nation’s coal fields.” The Coal Commission found that medical care in the coal field communities had greatly improved, not only for miners but for the entire community, as a result of the UMWA Funds. “Conditions since the Boone Report have changed dramatically, largely because of the miners and their Union—but also because of the Federal Government, State, and coal companies.” The Commission concluded that “both union and non-union miners have gained better health care from the systems developed for the UMWA.”⁶
- 1980 Congress enacts the Multiemployer Pension Plan Amendments Act (MPPAA). MPPAA includes provisions exempting the 1950 and 1974 Pension Plans from various withdrawal liability provisions, including the 20-year cap on amortized payments and the 50% cap on liquidation claims and otherwise providing different treatment to those Plans.
- 1981 UMWA Funds enters into an agreement with U.S. Department of Labor to process DOL Black Lung medical claims.
- 1980s Royal-Nobel federal court cases⁷ hold that UMWA retiree health benefits are for life, but an employer’s obligations to pay for that promise expires with the contract. In the Royal II and Nobel decisions, courts hold that lifetime promise rests at the UMWA Funds. Companies begin attempts to dump their liabilities onto the UMWA Funds.
- 1984 Retirement Equity Act exempts the 1950 Pension Plan from requirements relating to Joint and Survivor Annuities and Preretirement Survivor Annuities.
- 1988–1989 Pittston Strike—Pittston refuses to participate in UMWA Funds and terminates health care for 2,000 retirees and widows. Pittston claims that under Royal-Nobel decisions, Pittston retirees are responsibility of UMWA Funds. After

⁶*The American Coal Miner: A Report on Community and Living Conditions in the Coalfields*, President’s Commission on Coal, 1980.

⁷District 29, *UMWA v. Royal Coal Co.*, 768 F.2d 588, 590 (4th Cir. 1985) (“*Royal I*”), District 29, *UMWA v. 1974 Benefit Plan*, 826 F.2d 280, 282 (4th Cir. 1987), cert. denied, 485 U.S. 935 (1988) (“*Royal II*”), *UMWA v. Nobel*, 720 F. Supp. 1169, 1180 (W.D. Pa. 1989), affirmed without opinion, 902 F.2d 1558 (3d Cir.), cert. denied, 498 U.S. 957 (1990).

- working for over a year without a contract, Pittston miners strike in April 1989. Thousands of UMWA supporters engage in peaceful civil disobedience to protest Pittston's cutoff of health care, and more than 4,000 protesters are arrested. UMWA is fined \$64 million by state courts during the strike.
- 1989 U.S. Secretary of Labor Elizabeth Dole visits coal fields to investigate the Pittston strike, appoints "super-mediator" Bill Usery, who mediates an end to the strike on New Year's Eve. Health benefits are restored and UMWA miners return to work.
- 1989 MPPAA is amended to add a special withdrawal liability provision applicable only to the 1950 Pension Plan.
- 1990 Secretary of Labor Elizabeth Dole appoints a federal commission (Coal Commission) to examine the provision of retiree health care in the coal industry.
- 1990 Coal Commission issues findings and recommendations—"Retired coal miners have legitimate expectations of retiree health care benefits for life; that is what they were promised during their working years and that is how they planned their retirement years. That commitment should be honored."⁸
- 1990 UMWA Funds enters demonstration project with Medicare under which the Funds is paid a per capita fee for Part B services, placing the Funds at risk for providing benefits within the level of these payments.
- 1991 UMWA holds retiree meetings throughout the coal fields to rally support for federal legislation. Thousands of UMWA retirees pledge support for federal legislation.
- 1991 Congress holds hearings on Coal Commission recommendations. UMWA testifies that Congress must step in to keep the promise of lifetime retiree health benefits.
- 1992 Coal Act enacted by Congress and signed by President Bush. Pursuant to the Coal Act, companies still in business are required to maintain benefit plans for retired miners covered by the Act. The Coal Act merged the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan into a new Combined benefit Fund (CBF). The Act also mandated the transfer of \$210 million from UMWA 1950 Pension Plan to the new Combined Benefit Fund. The Coal Act also established a new UMWA 1992 Benefit Plan to serve as an orphan safety net for retirees whose employers go out of business.
- 1990s Coal companies mount continuing legal assault on Coal Act, "Reachback companies" form political coalition to repeal or amend the Coal Act. Companies mount more than 70 constitutional challenges and repeatedly seek to relieve themselves of liability through legislation.
- 1994 U.S. Supreme Court unanimously overturns \$64 million fines against UMWA in Pittston strike.
- 1995 AML interest becomes available to fund Coal Act health benefits. UMWA Funds and the U.S. Office of Surface Mining and Enforcement (OSM) enter into a memorandum of understanding on the Coal Act transfers.
- 1996 Alabama federal court issues *NCA v. Chater* ruling,⁹ which reduces premiums paid to the CBF by coal companies by about 10%. Over the long run, this decision will cost the CBF hundreds of millions of dollars.

⁸ *Coal Commission Report: A Report to the Secretary of Labor and the American People*, The Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits, November 1990.

⁹ *National Coal Association v. Chater*, 81 F.3d 1077 (11th Cir. 1996).

- 1997 UMWA Funds demonstration risk agreement with Medicare expands to include Part A services.
- 1998 Supreme Court rules in *Eastern Enterprises*,¹⁰ relieving some companies of Coal Act retiree obligations. Obligations that Congress intended for the companies to pay must now be paid from interest earned by the AML Fund.
- 1999 Alabama federal court orders UMWA Combined Benefit Fund to rebate \$40 million to coal operators.
- 1999 Congress appropriates \$68 million to shore up Combined Benefit Fund.
- 2000 Clinton Administration proposes \$346 million Coal Act legislation, to be funded out of general revenues.
- 2000 Congressman Nick Rahall introduces CARE 21, a bipartisan bill to shore up the financing of the CBF.
- 2000 UMWA Rally in Washington, more than 10,000 UMWA supporters gather on the Capitol steps to Save the Coal Act.
- 2000 Congress appropriates up to \$98 million to cure deficits in CBF.
- 2000 LTV Steel files for bankruptcy.
- 2001 UMWA Funds demonstration agreement with Medicare again expanded to include 3-year Medicare prescription drug study; Funds to receive reimbursement for 27% of its Medicare prescription drug costs.
- 2001 Bethlehem Steel files for bankruptcy.
- 2002 Bankruptcy Court relieves LTV of its retiree health obligations. About 500 retired coal miners and surviving spouses are transferred from LTV's health plan to the UMWA Funds. In addition, LTV ceases paying Coal Act premiums that support nearly 3,000 LTV retirees receiving benefits from the CBF. While the CBF pursues and collects some money in bankruptcy claims, most of the future costs of the LTV retirees in the CBF shifts to the AML fund interest.
- 2002 General Accounting Office (GAO) issues report, reinforcing need for additional Coal Act financing.¹¹
- 2002 House of Representatives enacts CARE 21, Senate adjourns without taking up the bill.
- 2002 National Steel files for bankruptcy.
- 2002 Horizon Natural Resources files for bankruptcy.
- 2003 Supreme Court decision in *Barnhart v. Peabody* requires companies to continue paying for their retirees in the CBF, regardless of when initial assignments are made.
- 2003 Bankruptcy Court approves Bethlehem's motion to terminate benefits for 3,300 retired coal miners, who are transferred from Bethlehem's health plan to the UMWA Funds. In addition, Bethlehem ceases paying Coal Act premiums that support nearly 1,500 Bethlehem retirees receiving benefits from the CBF. While the CBF pursues and collects some money in bankruptcy claims, most of the future costs of the Bethlehem retirees in the CBF shifts to the AML fund interest.
- 2003 Congress appropriates \$34 million to shore up CBF.
- 2003 Supreme Court denies cert. to A.T. Massey and Berwind Corp. in cases where the companies sought to evade liability by claiming they were "substantially identical" to Eastern

¹⁰*Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998).

¹¹*Retired Coal Miners Health Benefit Funds: Financial Challenges Continue*, U.S. General Accounting Office, April 2002.

- Enterprises. The courts rejected those arguments and held that they must continue to pay for their retirees.
- 2003 Bankruptcy Court relieves National Steel of its retiree health obligations. About 750 retirees and their surviving spouses are transferred from National Steel's health plan to the UMWA Funds. In addition, National Steel ceases paying Coal Act premiums that support nearly 570 national Steel retirees receiving benefits from the CBF. The CBF pursues and collects significant money in bankruptcy claims from a solvent related party, so to date the costs of the National Steel retirees in the CBF have not been shifted to the AML fund interest.
- 2004 UMWA Funds commissions a study by Mercer Consulting that found the Funds population was older than and had a significantly higher burden of illness (35% higher) than a geographically comparable Medicare population. When adjusted for these factors, the Funds health expenditures were 7% lower than Medicare.¹²
- 2004 Bush Administration announces extension and expansion of Funds Medicare prescription drug demonstration project. UMWA Funds to receive reimbursement for 60% of its Medicare prescription drug costs.
- 2004 Bankruptcy court relieves Horizon of its obligation to provide retiree health care to some 4,500 UMWA retirees and surviving spouses. The retired miners and their surviving spouses are transferred to the UMWA Funds.
- 2006 Congress enacts the Pension Protection Act (PPA). PPA differentiated the 1974 Pension Plan from other multiemployer plans by placing the responsibility for designing a Funding Improvement Plan or Rehabilitation Plan on the UMWA and BCOA rather than on the Board of Trustees.
- 2006 Congress enacts Tax Relief and Health Care Act of 2006, which contained Coal Act/AML provisions that the UMWA had advocated for several years. President Bush signed the bill into law on December 20, 2006. The legislation expanded the Coal Act to provide financing to cure deficits in the Combined Benefit Fund and to provide support for orphan retirees in both the UMWA 1992 Plan and the UMWA 1993 Plan. The UMWA Funds now has access to AML interest, plus a permanent appropriation of up to \$490 million per year from the Federal Treasury.
- 2007 UMWA 1950 Pension Plan merged into UMWA 1974 Pension Plan.
- 2008–2009 Stock market plummets in response to Wall Street shenanigans, leading to the worst recession since the Great Depression. Pension plans are devastated. The UMWA 1974 Pension Plan goes from being about 92% funded to about 74% funded. Federal government bails out banks responsible for the financial crisis.
- 2009 UMWA Funds commissions a second study by Mercer Consulting that found the Funds population was older than and had a significantly higher burden of illness (32% higher) than a geographically comparable Medicare population. When adjusted for these factors, the Funds health expenditures were 12% lower than Medicare.¹³
- 2010 Bills are introduced in the U.S. House of Representatives and the U.S. Senate (CARE Act) to include the UMWA 1974 Pension Plan in the 2006 Coal Act transfers. The bills would allow the 1974 Pension Plan access to the \$490 million per-

¹²*Health Status Assessment Project*, Mercer Human Resource Consulting, July 2004.

¹³*Health Status Assessment Project*, Mercer, August 2009.

- manent appropriation, after all existing Coal Act health plan and state transfers are met.
- 2010 1974 Pension Plan commissions an analysis by Mercer that showed about half of the retirees in the Plan and 40% of the accrued liability derived from defunct employers that have gone out of business.
- 2010 The 1974 Pension Plan is certified as being in “Seriously Endangered” status under the PPA.
- 2012 Patriot Coal, the second largest contributor to the UMWA Funds, files for bankruptcy.
- 2013 Revised CARE Act bills are introduced in the U.S. House of Representatives and the U.S. Senate to include the UMWA 1974 Pension Plan in the 2006 Coal Act transfers. The bills would allow the 1974 Pension Plan access to the \$490 million permanent appropriation, after all existing health plan and state transfers are met. In addition, the bills would provide Coal Act protection to retirees of companies that shed their retiree health obligations in bankruptcy.
- 2013 Bankruptcy court relieves Patriot Coal of the obligation to provide health benefits to over 11,000 retired miners and surviving spouses. The retiree health obligations are shifted by the bankruptcy court to the Patriot Retirees Voluntary Employees’ Beneficiary Association (VEBA). The bankruptcy court provides \$15 million financing for an estimated retiree health liability is \$1.6 billion.
- Patriot is also relieved by the bankruptcy court of its obligations to all UMWA funds (including the 1993 Benefit Plan) except the 1974 Pension Plan. Primarily as a result of Patriot’s withdrawal, the 1993 Benefit Plan is facing a projected deficit of about \$18 million by the end of 2016, jeopardizing the health benefits of about 3,300 orphan retirees not covered by the Coal Act.
- 2013 UMWA reaches settlement agreements with Patriot Coal, Peabody Energy and Arch Coal to provide nearly \$400 million in additional financing to the Patriot VEBA through 2017.
- 2013 H.R. 2918 is introduced in the U.S. House of Representatives. This legislation, which has substantial bi-partisan support, is similar to the CARE Act with respect to the 1974 Pension Plan but represents an alternative method of providing protection for the Patriot retirees. H.R. 2918 has 41 Republican co-sponsors and 28 Democratic co-sponsors.
- 2014 Senate Finance Committee Chairman Ron Wyden and Ranking Member Orrin Hatch announce agreement to work together to solve the Coal Act problems related to the Patriot retirees and the 1974 Pension Plan.
- 2014 1974 Pension Plan is projected to enter “Critical Status” under the PPA.
- 2014 H.R. 2918 is considered as part of the 2015 Continuing Resolution enacted in the lame duck session of Congress in December, but was ultimately dropped before final passage.
- 2015 A provision based on H.R. 2918 is included in the President’s 2016 Budget proposal released by the White House February 2, 2015.

PREPARED STATEMENT OF CECIL E. ROBERTS, JR., INTERNATIONAL PRESIDENT,
UNITED MINE WORKERS OF AMERICA

Chairman Hatch, Ranking Member Wyden, and members of the committee, I want to thank you for holding this very important hearing today. Later this spring, we will mark the 70th anniversary of the historic agreement between the UMWA

and the federal government that created the UMWA Health and Retirement Funds and established the government's promise to retired miners that their retirement would be secure. I have attached a brief history of the UMWA Funds and the government's involvement in those Funds to this testimony. It is those Funds, and more importantly the people they cover, that I would like to discuss with you today.

Let me start by saying that the U.S. coal industry is in the midst of what can only be called a depression. In the past 5 years, U.S. coal production and consumption have gone down substantially, steam coal and metallurgical coal prices have plummeted and about 25,000 coal miners have lost their jobs. Aggregate stock values of the publicly traded U.S. coal companies have dropped more than 90 percent over the last 4 years.

As a result, the coal industry has experience an unprecedented wave of bankruptcies that have swept over some of the largest producers in the industry, including Patriot Coal (two bankruptcies in 3 years), Walter Energy, Alpha Natural Resources and Arch Coal. Together these companies accounted for about 29% of total U.S. coal production in 2011, producing a combined 316 million tons of coal. There are rumors and speculation that other large employers may be forced to file for bankruptcy.

The bankruptcies jeopardize the retiree health benefits of about 20,000 retired UMWA miners and their families, and threaten the already-tenuous financial position of the UMWA 1974 Pension Plan. Bankruptcy courts have relieved Patriot and Walter of their lifetime obligations at the same time they have awarded their executives with millions of dollars in bonuses. These courts have also directed the UMWA to establish VEBAs to provide health benefits to the retirees. Unfortunately, the bankruptcy courts have not provided anywhere close to sufficient funds to pay for them.

To date, the UMWA has been saddled with the management of lifetime health care benefits of about 12,150 retirees and dependents from Patriot Coal and, just recently, about 2,800 retirees and dependents of Walter Energy. Unfortunately, the funds available to pay those benefits will run out at about the end of 2016 if not sooner. The Alpha bankruptcy is still pending but there is every indication that Alpha, like Patriot and Walter, will seek to be relieved of its lifetime obligations to nearly 3,000 of its former employees.

The bankruptcy courts have also allowed these companies to escape their obligations to the UMWA 1993 Benefit Plan, a plan that provides retiree health benefits to about 3,500 retirees and dependents not covered by the Coal Act. The loss of contributions from these companies will jeopardize the benefits of those retirees as well.

Every court or government tribunal that has ever examined the question agrees that UMWA retirees are entitled to lifetime health care. A federal blue ribbon commission established by the U.S. Secretary of Labor, the Coal Commission, found in 1990 that:

“Retired miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives, and that is how they planned their retirement years. That commitment should be honored.”

But today, there is a looming health care tragedy unfolding in the coalfields, with potentially devastating human effects. In many cases, the loss of health care benefits will be a matter of life and death. In all cases it will be a financial disaster that the retired miners, who live on very meager pensions, will not be able to bear.

In addition to the potential loss of health care benefits, the retired miners are facing a crisis in their pension plan. In 2007, shortly before the Wall Street meltdown in 2008–2009, the UMWA 1974 Pension Plan was about 93% funded and projections showed it heading toward 100% funding over the next decade. The financial crisis blew a gaping hole in those projections, and the 1974 Plan today is projected to become insolvent within the coming decade. With the bankruptcy courts allowing companies to withdraw from the Plan, the insolvency looms ever larger and closer.

WHO IS AT RISK?

Senate Bill 1714, the Miners Protection Act, introduced by Senators Manchin and Capito, would ensure the promise of health care for retired miners is kept for retirees whose companies have been forced into bankruptcy due to the severe downturn in the coal industry. Without the passage of this legislation, about 20,000 retirees, their dependents or widows stand to lose their promise of lifetime retiree health

care within a matter of months. In addition, S. 1714 would provide much-needed support for the 1974 Pension Plan.

These are real people we are talking about. They live on small pensions, averaging \$530 per month, plus Social Security. They rely very heavily on the health care benefits they earned through decades of hard work in the nation's coal mines. Some of them are with us in this hearing room today, from Pennsylvania, Ohio and Virginia. They spent decades putting their lives and health on the line every single day, going into coal mines across this nation to provide the energy and raw materials needed to make America the most powerful nation on earth. And they did that even though they knew they would pay a physical price for it.

Statistics show that UMWA retirees have a much higher level of cardiopulmonary diseases than the general population of people their age. They have more musculo-skeletal injuries. They have higher rates of cancers. Many of them have black lung to at least some degree, and thousands have severe cases.

So, knowing the eventual toll mining would take on their bodies, they demanded that their union negotiate the best possible health care benefits we could. Over many decades of hard and too often dangerous work, they gave up money that could have gone into better wage increases or better pensions and instead demanded that they have high-quality health care when their working days were over.

But now, through no fault of their own, thousands of retirees face the loss of these benefits because of coal company bankruptcies that occurred in 2012 and 2015. Bankruptcy courts have relieved their former employers of the contractual obligations to provide health care benefits for retirees.

These retirees have earned that health care many times over. They performed a critical service to our nation for decades. But more importantly, their government promised that they would have these benefits. They believe the United States Government should keep its promises. But if this legislation does not pass, these retirees and thousands more like them will be confronted with the loss of those lifetime benefits around the end of this year, or sooner. They and their dependents do not have the luxury of waiting any longer for this legislation to pass.

S. 1714 would also ensure that the pensions these members worked to hard to earn will be preserved, as well as eliminating the likelihood of the UMWA 1974 Pension Plan's failure and the resulting failure of the Pension Benefit Guaranty Corporation (PBGC) if it is forced to assume the liabilities of the 1974 Pension Plan. Indeed, the PBGC recently confirmed in a letter to Representative David McKinley that insolvency of the 1974 Plan would hasten the insolvency of the PBGC's multi-employer program.

The UMWA 1974 Pension Plan is a Taft-Hartley multiemployer pension plan that is part of the UMWA Health and Retirement Funds, a group of multiemployer health and pension plans that originated in a contract between the UMWA and the federal government during a time of government seizure of the nation's bituminous coal industry in 1946. That contract, known as the Krug-Lewis agreement, was signed in the White House with President Harry S. Truman presiding. The Krug-Lewis agreement, named after Secretary of the Interior Julius Krug and UMWA president John L. Lewis, promised miners that upon retirement they would be entitled to pensions and health benefits for life.

The 1974 Plan provides pension benefits to coal miners who worked under the National Bituminous Coal Wage Agreement (NBCWA). Other funds administered by the UMWA Health and Retirement Funds provide health benefits to retired coal miners and their dependents under the Coal Act and the NBCWA.

The UMWA 1974 Pension Plan is one of the largest multiemployer pension plans in the country, providing pensions to nearly 90,000 pensioners and surviving spouses who live in nearly every state in the United States. There are also about 16,000 active miners and former miners who will have a claim for a future pension. Its active and retired participants are concentrated in the coal producing states of Appalachia.

The 1974 Plan has been well managed, with investment returns over the last 10 years averaging 8.2% per year, placing it in the 97th percentile of multiemployer plans. However, one key measure shows the demographic problem facing the 1974 Pension Plan: it has a ratio of active participants to retired participants of 0.09, meaning there are more than 10 retired or non-working participants for every working miner under the Plan. This places the 1974 Plan in the lowest 10th percentile among its multiemployer plan peers.

The 1974 Pension Plan is on the path to insolvency. Although the average pension paid by the 1974 Plan is low (about \$530 per month), the plan pays out a significant portion of its assets each year in total benefits. At its last valuation, the 1974 Plan had about \$3.8 billion in assets and pays out about \$600 million in benefits, or over 15% of its assets, each year. Despite being about 93% funded just before the financial crisis in 2008, the 1974 Plan's actuary projects the plan will become insolvent in the 2025–2026 plan year absent passage of S. 1714. The PBGC recently said that some of its actuarial simulations show insolvency as soon as 2020.

While 2020 sounds like there is time to put off this problem for another day, there is not. Delay is not an option. Indeed, the actuarial estimates indicate that absent the transfers called for in S. 1714, the 1974 Plan will be on an irreversible glide path to insolvency very soon, unless a massive infusion of money is found that is significantly in excess of what is available via S. 1714.

The 1974 Plan sponsors have taken steps to address the deteriorating financial outlook of the plan. Contribution rates were increased from \$2.00 per hour in 2007 to \$5.50 per hour in 2011. PBGC has reported that multiemployer plans on average increased their contributions in response to the financial crisis from 2008 to 2010 by 16.3%. Over the same period, the contribution rate for the 1974 Plan increased 42.9%, and from 2007 to 2011 it increased 175%. In addition, the 2011 contract closed the plan to new inexperienced miners hired after 2012, while still requiring the signatory coal companies to pay contributions to the plan on their hours. The contribution rate today is \$6.05 per hour worked.

The timeline for insolvency has accelerated in just the last year as three major coal companies—Patriot Coal, Walter Energy and Alpha Natural Resources—filed for bankruptcy. Two of them have been relieved of their pension obligations and have ceased making contributions to the 1974 Pension Plan. A court decision on the continuing obligations for pension payments for the third company could come within the next few months.

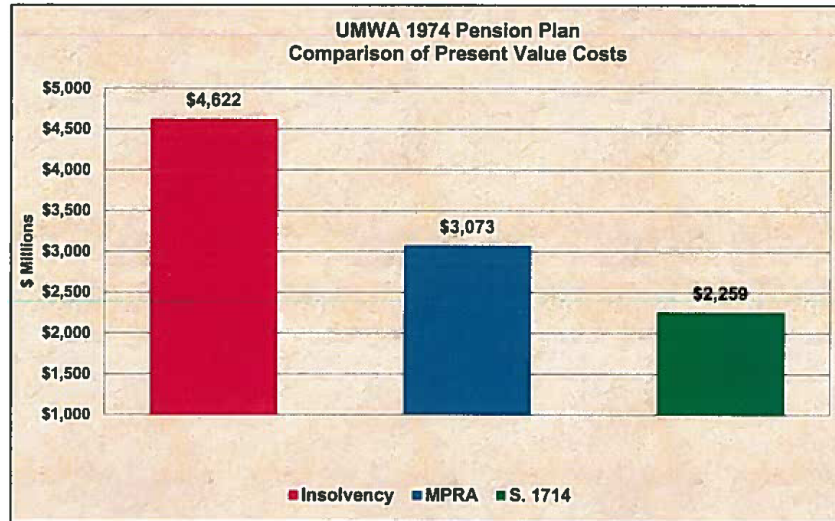
As a result of this, about 45% of the 1974 Pension Plan's 2014 total employer contributions have been, or soon could be lost. Adding to this is the severe downturn experienced by the coal industry the last several years, which has resulted in fewer active miners working for those employers that remain and a corresponding additional drop in contributions. The coalfield layoffs also mean that some miners retire earlier than they otherwise might have, leading to greater pension payouts.

The Multiemployer Pension Reform Act (MPRA) was enacted in December 2014, but it offers no solution to the 1974 Pension Plan, a fact that the primary advocate of the legislation, the National Coordinating Committee for Multiemployer Plans (NCCMP), acknowledged when it initially urged Congress to adopt the law. The MPRA provides that certain plans that are "critical and declining" may voluntarily suspend accrued benefits for retired participants, provided the plan's actuary certifies that the plan is projected to avoid insolvency after taking into account the suspensions.

Actuarial projections show that the 1974 Plan cannot avoid insolvency even if it cut accrued benefits to the maximum extent allowed under the MPRA. Because benefits are very modest under the 1974 Plan, averaging about \$530 per month, cutting benefits for retired participants does not achieve sufficient savings to prevent insolvency. However, pension cuts would be harsh for the individual retirees and for the communities in which they live.

The MPRA also contains a provision to allow for the partition of certain pension plans by PBGC. In order to approve a partition, a plan must first cut accrued benefits to the maximum permitted under the law, and PBGC must certify that granting a partition does not impair the PBGC's ability to meet financial obligations to other multiemployer plans. It appears that PBGC could not certify to Congress that it could meet its financial obligations to other multiemployer plans if the 1974 Plan were partitioned. In addition, partitioning the 1974 Plan would have the same effect on PBGC as insolvency, but at an earlier date.

Most importantly, either letting the 1974 Plan become insolvent or partitioning the plan are more expensive than fixing the problem with S. 1714. We asked an actuary to estimate the costs of these alternatives last year. They concluded, as shown in the chart below, that S. 1714 is less expensive to the government than any other outcome. The cost of an insolvency is projected to have a present value of about \$4.6 billion, compared to about \$2.3 billion for S. 1714. And partitioning the Plan under MPRA, even if PBGC could legally do so, would also be significantly more expensive than S. 1714.



S. 1714, the Miners Protection Act, clearly offers the most cost effective solution to the problems of the 1974 Pension Plan. It provides a solution to the 1974 Plan financial problems without adding to the looming financial problems of the PBGC. Further, S. 1714 does not deprive struggling retirees and coalfield communities of much needed income.

KEEPING AMERICA'S PROMISE

The United States government has a long history of involvement with the UMWA Health and Retirement Funds, dating back to its creation in the White House in 1946. Indeed, the Coal Commission found that UMWA Funds *"is as much a creature of government as it is of collective bargaining. There is a line running from the original Boone Report to the present system. In a way, the original Krug-Lewis agreement predisposed, if not predetermined, the system that evolved."*

I don't know if there is another example of an industry-wide, multiemployer health and pension fund that was established in a contract between private sector workers and the federal government. The Krug-Lewis agreement represented a joint commitment between the federal government and the nation's coal miners. Coal miners made a commitment to provide the nation with much-needed energy, even at the risk of their lives and health in often dangerous conditions. The government committed that upon their retirement they would have pensions and health care for life. The miners lived up their commitment and the federal government has enacted federal legislation on numerous occasions to live up to its commitments.

The pension plan that grew out of the Krug-Lewis agreement is now on the path to insolvency, not because of mismanagement or overly generous benefits, but because of demographic factors that it cannot overcome. On the health care side, bankruptcy courts are relieving responsible employers of their legal, contractual and moral obligations to provide retiree health benefits to thousands of their former workers, creating a new class of orphan retirees. The Coal Act was based on the simple premise that responsible coal operators should continue to provide promised benefits, but federal government support was needed for orphaned retirees. Congress has stepped up to the challenge of orphan miners before in times of crisis. It is time once again for the federal government to fulfill its commitment to retired coal miners. The Miners Protection Act keeps the promise that began in the White House so long ago and has been periodically renewed by Congress over the last few decades, and it does so at a cost that is lower than any other alternative.

I want to personally thank those on the committee who have worked so hard over the last two Congresses to ensure that the promise is kept to the nation's miners. I know that you came very close on two separate occasions to enacting S. 1714. Senators and Representatives from both sides of the aisle have worked hard to secure

passage of this vital legislation because they know the disaster that awaits us in the coalfields if we fail to act. I'm here today to remind you that we are running out of time. S. 1714 must be enacted in this Congress if the promise to retired miners is to be kept.

ATTACHMENT I

THE UMWA HEALTH AND RETIREMENT FUNDS AND THE U.S. GOVERNMENT

The UMWA Health and Retirement Funds (the Funds) was created in 1946 in a contract between the United Mine Workers of America and the federal government during a time of government seizure of the mines. The contract was signed in the White House with President Harry Truman presiding over the historic event.

The UMWA first began proposing a health and welfare fund for coal miners in the late-1930s but met strident opposition from the coal industry. During World War II, the federal government urged the union to postpone its demands to ensure coal production for the war effort. When the National Bituminous Wage Conference convened in early 1946, immediately following the end of the war, a health and welfare fund for miners was the union's top priority. The operators rejected the proposal and miners walked off the job on April 1, 1946. Negotiations under the auspices of the U.S. Department of Labor continued sporadically through April. On May 10, 1946, President Truman summoned John L. Lewis and the operators to the White House. The stalemate appeared to break when the White House announced an agreement in principle on a health and welfare fund.

Despite the White House announcement, the coal operators still refused to agree to the creation of a medical fund. Another conference at the White House failed to forge an agreement and the negotiations again collapsed. Faced with the prospect of a long strike that could hamper post-war economic recovery, President Truman issued an Executive Order directing the Secretary of the Interior to take possession of all bituminous coal mines in the United States and to negotiate with the union "appropriate changes in the terms and conditions of employment." Secretary of the Interior Julius Krug seized the mines the next day. Negotiations between representatives of the UMWA and the federal government continued, first at the Interior Department and then at the White House, with President Truman participating in several conferences.

After a week of negotiations, the historic Krug-Lewis agreement was announced and the strike ended. It created a welfare and retirement fund to make payments to miners and their dependents and survivors in cases of sickness, permanent disability, death or retirement, and other welfare purposes determined by the trustees. The fund was to be managed by three trustees, one to be appointed by the federal government, one by the UMWA and the third to be chosen by the other two. Financing for the new fund was to be derived from a royalty of 5 cents per ton of coal produced.

The Krug-Lewis agreement also created a separate medical and hospital fund to be managed by trustees appointed by the UMWA. The purpose of the fund was to provide for medical, hospital, and related services for the miners and their dependents. The Krug-Lewis agreement also committed the federal government to undertake "a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary and housing conditions in coal mining areas." The expressed purpose was to determine what improvements were necessary to bring coal field communities in conformity with "recognized American standards."

To conduct the study, the Secretary chose Rear Admiral Joel T. Boone of the U.S. Navy Medical Corps. Government medical specialists spent nearly a year exploring the existing medical care system in the nation's coal fields. Their report, "A Medical Survey of the Bituminous Coal Industry," found that in coal field communities, "provisions range from excellent, on a par with America's most progressive communities, to very poor, their tolerance a disgrace to a nation to which the world looks for pattern and guidance." The survey team discovered that "three-fourths of the hospitals are inadequate with regard to one or more of the following: surgical rooms, delivery rooms, labor rooms, nurseries and x-ray facilities." The study concluded that "the present practice of medicine in the coal fields on a contract basis cannot be supported. They are synonymous with many abuses. They are undesirable and in many instances deplorable."

Thus the Boone report not only confirmed earlier reports of conditions in the coal mining communities, but also established a strong federal government interest in correcting long-standing inadequacies in medical care delivery. Perhaps most important, it provided a road map for the newly created UMWA Fund to begin the process of reform.

The Funds established 10 regional offices throughout the coal fields with the direction to make arrangements with local doctors and hospitals for the provision of "the highest standard of medical service at the lowest possible cost." One of the first programs initiated by the Funds was a rehabilitation program for severely disabled miners. Under this program, more than 1,200 severely disabled miners were rehabilitated. The Funds searched the coal fields to locate disabled miners and sent them to the finest rehabilitation centers in the United States. At those centers, they received the best treatment that modern medicine and surgery had to offer, including artificial limbs and extensive physical therapy to teach them how to walk again. After a period of physical restoration, the miners received occupational therapy so they could provide for their families.

The Funds also made great strides in improving overall medical care in coal mining communities, especially in Appalachia where the greatest inadequacies existed. Recognizing the need for modern hospital and clinic facilities, the Funds constructed 10 hospitals in Kentucky, Virginia and West Virginia. The hospitals, known as Miners Memorial Hospitals, provided intern and residency programs and training for professional and practical nurses. Thus, because of the Funds, young doctors were drawn to areas of the country that were sorely lacking in medical professionals. A 1978 Presidential Coal Commission found that medical care in the coal field communities had greatly improved, not only for miners but for the entire community, as a result of the UMWA Funds. "Conditions since the Boone Report have changed dramatically, largely because of the miners and their Union—but also because of the Federal Government, State, and coal companies." The Commission concluded that "both union and non-union miners have gained better health care from the systems developed for the UMWA."

THE COAL COMMISSION

In the 1980s, medical benefits for retired miners became a sorely disputed issue between labor and management, as companies sought to avoid their obligations to retirees and dump those obligations onto the UMWA Funds, thereby shifting their costs to other signatory employers. Courts had issued conflicting decisions in the 1980s, holding that retiree health benefits were indeed benefits for life, but allowing individual employers to evade the obligation to fund those benefits. The issue came to a critical impasse in 1989 during the UMWA-Pittston Company negotiations. Pittston had refused to continue participation in the UMWA Funds, while the union insisted that Pittston had an obligation to the retirees.

Once again the government intervened in a coal industry dispute over health benefits for miners. Secretary of Labor Elizabeth Dole appointed a special "supermediator," Bill Usery, also a former Secretary of Labor. Ultimately the parties, with the assistance of Usery and Secretary Dole, came to an agreement. As part of that agreement, Secretary Dole announced the formation of an Advisory Commission on United Mine Workers of America Retiree Health Benefits, which became known as the "Coal Commission." The commission, including representatives from the coal industry, coal labor, the health insurance industry, the medical profession, academia, and the government, made recommendations to the Secretary and the Congress for a comprehensive resolution of the crisis facing the UMWA Funds. The recommendation was based on a simple, yet powerful, finding of the commission:

"Retired miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives, and that is how they planned their retirement years. That commitment should be honored."

The underlying Coal Commission recommendation was that every company should pay for its own retirees. The Commission recommended that Congress enact federal legislation that would place a statutory obligation on current and former signatories to the National Bituminous Coal Wage Agreement (NBCWA) to pay for the health care of their former employees. The Commission recommended that mechanisms be enacted that would prevent employers from "dumping" their retiree health care obligations on the UMWA Funds. Finally, the Commission urged Congress to provide an alternative means of financing the cost of "orphan retirees" whose companies no longer existed.

THE COAL ACT

Recognizing the crisis that was unfolding in the nation's coal fields, Congress acted on the Coal Commission's recommendations. The original bill introduced by Senator Rockefeller sought to impose a statutory obligation on current and former signatories to pay for the cost of their retirees in the UMWA Funds, require them to maintain their individual employer plans for retired miners, and levy a small tax on all coal production to pay for the cost of orphan retirees. Although the bill was passed by both houses of Congress, it was vetoed as part of the Tax Fairness and Economic Growth Act of 1992.

In the legislative debate that followed, much of the underlying structure of the Coal Commission's recommendations was maintained, but there was strong opposition to a general coal tax to finance orphan retirees. A compromise was developed that would finance orphans through the use of interest on monies held in the Abandoned Mine Lands (AML) fund. In addition, the Union accepted a legislative compromise that included the transfer of \$210 million of pension assets from the UMWA 1950 Pension Plan. With these compromises in place, the legislation was passed by Congress and signed into law by President Bush as part of the Energy Policy Act.

Under the Coal Act, two new statutory funds were created—the UMWA Combined Benefit Fund (CBF) and the UMWA 1992 Benefit Fund. The former UMWA 1950 and 1974 Benefit Funds were merged into the Combined Fund, which was charged with providing health care and death benefits to retirees who were receiving benefits from the UMWA 1950 and 1974 Benefit Plans on or before July 20, 1992. The Coal Act also mandated that employers who were maintaining employer benefit plans under UMWA contracts at the time of passage would be required to continue those plans under Section 9711 of the Coal Act. Section 9711 was enacted to prevent future “dumping” of retiree health care obligations by companies that remain in business. To provide for future orphans not eligible for benefits from the CBF, Congress established the UMWA 1992 Benefit Fund to provide health care to miners who retired prior to October 1, 1994 and whose employers are no longer providing benefits under their 9711 plans.

In passing the Coal Act, Congress recognized the legitimacy of the Coal Commission's finding that “retired miners are entitled to the health care benefits that were promised and guaranteed them.” Congress specifically had three policy purposes in mind in passing the Coal Act:

- “(1) to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry;
- (2) to allow for sufficient operating assets for such plans; and
- (3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.”

Without question, Congress intended that the Coal Act should provide “sufficient operating assets” to ensure the continuation of health care to retired coal miners. However, the financial mechanisms in the Coal Act eventually proved to be inadequate and Congress was required to intervene on several occasions to shore up the CBF, including special appropriations on three occasions in 1999, 2000 and 2003. In addition, the Funds Medicare demonstration programs were expanded to include significant funding for prescription drugs in 2001 by the outgoing Clinton administration, and again in 2004 by the Bush administration.

THE 2006 COAL ACT AMENDMENTS

A wave of bankruptcies in the early 2000s prompted Congress to revisit the Coal Act. The bankruptcies of LTV Steel, National Steel, Bethlehem Steel and Horizon Natural Resources added thousands of orphan retirees into the 1992 Benefit Plan and the 1993 Benefit Plan. In response, Congress adopted the 2006 amendments to the Coal Act as part of the Tax Relief and Health Care Act of 2006. Those amendments expanded the Coal Act to provide financing to cure deficits in the Combined Benefit Fund and to provide support for orphan retirees in both the UMWA 1992 Plan and the UMWA 1993 Plan. The financial mechanisms of the Coal Act were also expanded to include not only interest on the Abandoned Mine Lands fund, but also mandatory spending of up to \$490 million each year. This amount was based on the amount of money estimated to be paid by the coal industry in mineral leasing fees.

ATTACHMENT 2

UMWA Health and Retirement Funds
Benefit Expenditures and Populations by State, CY 2015

State	Total Health Expense	Total Pension Paid ³	Total Health Beneficiaries ⁴	Total Pensioners ⁴
** 1	\$15,392	\$44,841	1	12
AK	\$85,909	\$61,929	7	16
AL	\$11,998,485	\$58,186,593	605	6,075
AR	\$780,820	\$401,913	46	97
AZ	\$817,317	\$903,665	34	164
CA	\$1,282,450	\$362,339	47	92
CO	\$3,378,310	\$2,354,676	186	501
CT	\$106,328	\$33,351	6	10
DC	\$115,622	\$26,899	4	9
DE	\$243,293	\$101,018	15	28
FL	\$8,231,620	\$6,137,265	403	1,175
GA	\$1,386,403	\$1,134,585	76	236
HI	\$0	\$16,891	0	3
IA	\$52,000	\$71,187	4	15
ID	\$204,562	\$98,416	12	29
IL	\$32,812,666	\$64,951,785	1,965	8,807
IN	\$21,472,390	\$22,216,788	1,338	2,848
KS	\$1,523,983	\$900,934	91	164
KY	\$56,414,817	\$52,531,191	3,001	9,511
LA	\$66,220	\$114,633	4	23
MA	\$100,190	\$14,831	2	5
MD	\$1,624,344	\$1,263,897	66	236
ME	\$0	\$23,940	0	4
MI	\$852,383	\$302,328	47	90
MN	\$67,533	\$36,353	2	9
MO	\$1,252,283	\$3,529,424	63	658
MS	\$123,846	\$162,803	10	42
MT	\$293,857	\$104,333	13	30
NC	\$5,688,722	\$4,702,335	304	1,019
ND	\$0	\$5,152	0	3
NE	\$10,499	\$14,970	1	3
NH	\$14,521	\$10,119	1	4
NJ	\$373,582	\$118,645	17	30
NM	\$451,112	\$2,334,078	29	313
NV	\$265,351	\$247,083	13	61
NY	\$782,781	\$209,959	31	55
OH	\$19,772,263	\$39,892,451	1,002	5,810
OK	\$1,046,685	\$816,902	52	198
OR	\$154,534	\$64,738	4	14
PA	\$96,730,615	\$83,646,912	4,960	12,951
PR	\$10,921	\$6,729	1	2
RI	\$65,868	\$13,402	2	3
SC	\$2,530,058	\$2,507,292	137	425
SD	\$0	\$22,366	0	6
TN	\$8,960,426	\$5,325,722	467	1,138
TX	\$1,180,231	\$894,370	55	201
UT	\$4,410,367	\$10,565,439	245	1,153
VA	\$38,145,855	\$42,950,952	2,107	7,507
VI	\$0	\$28,438	0	2
VT	\$42,288	\$5,711	1	2
WA	\$366,386	\$143,927	22	38
WI	\$228,115	\$81,172	8	21
WV	\$187,851,332	\$202,114,914	10,513	27,391
WY	\$274,902	\$258,869	16	48
Total Expense	\$514,660,437	\$613,071,457	28,036	89,287
Total Population				

¹ Unmatched records or beneficiary lives outside U.S.² Total Expense from 12/2015 runoff estimates.³ CY 2015 Pension includes first-time payments, bonuses, and monthly pension paid (data provided by Systems).

⁴Total health and pensioner populations as of 12/31/2015.
A zero population indicates no active population on 12/31/2015, but payment(s) could have been made during 2015.

QUESTIONS SUBMITTED FOR THE RECORD TO CECIL E. ROBERTS, JR.

QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

Question. Mr. Roberts, you say in your written testimony that enacting the bill sponsored by Senators Capito and Manchin is the least expensive way for Congress to address the UMWA pension crisis. Please explain why this is the least expensive alternative for taxpayers.

Answer. Policy makers have essentially three choices before them: do nothing and let the 1974 Plan become insolvent, try to use the tools available under the newly enacted Multiemployer Pension Reform Act (MPRA) or enact S. 1714, the Miners Protection Act. All three alternatives involve costs, but the Manchin/Capito bill is the most efficient, least expensive and least disruptive way to address the problems of the 1974 Pension Plan.

We asked an outside actuarial firm with expertise in multiemployer pension plans, Horizon Actuarial Services, to compare the costs of the three alternatives. Their detailed analysis found that insolvency would impose costs of about \$4.6 billion (in present value dollars). This includes about \$5 billion of liability for the PBGC and about \$1.4 billion in lost income to coalfield communities that otherwise would flow from the 1974 Plan because of the benefit cuts that would be imposed by PBGC.¹ Discounted to today's dollars, that amounts to about \$4.6 billion.

The Horizon analysis found that MPRA does not work for the 1974 Plan² because actuarial projections show that the 1974 Plan cannot avoid insolvency even if it cut accrued benefits to the maximum extent allowed under the MPRA. The MPRA also contains a provision to allow for the partition of certain pension plans by PBGC. In order to approve a partition, a plan must first cut accrued benefits to the maximum permitted under the law, and PBGC must certify that granting a partition does not impair the PBGC's ability to meet financial obligations to other multiemployer plans. It appears that PBGC could not certify to Congress that it could meet its financial obligations to other multiemployer plans if the 1974 Plan were partitioned. Even if the conditions for a partition under the MPRA could be met, the total cost of partition is greater than that of the Manchin/Capito approach. The PBGC would have to take on a minimum direct liability of about \$2.0 billion in 2017 in order to allow the 1974 Plan to remain solvent.³ In addition, coalfield communities would lose nearly \$1.1 billion in income due to the benefit cuts required for a partition under MPRA, for a total present value cost of about \$3.1 billion.⁴

The Horizon study also estimated the cost of the Manchin/Capito approach. Assuming that the 1974 Plan would receive about \$200 million per year under the bill, Horizon estimated the present value costs at about \$2.3 billion. This is about half the cost of insolvency and substantially less than the cost of MPRA, even if the MPRA partition could be legally accomplished. Further, both insolvency and MPRA would impose significant costs on retirees and coalfield communities that are already struggling from the loss of coal mining jobs. S. 1714 would avoid those devastating losses to the coalfield communities. In addition, S. 1714 provides a solution to the 1974 Plan financial problems without adding to the looming financial problems of the PBGC.

¹Pursuant to recent revisions in the House rules adopted as part of H. Res. 5, the macro-economic effects of major legislation are now required to be taken into account in evaluating the overall impact of such legislation on the Federal budget.

²The MPRA was based on recommendations from the National Coordinating Committee for Multiemployer Plans (NCCMP). In its report, *Solutions Not Bailouts*, NCCMP noted that its proposal to permit plans to reduce accrued benefits did not work for certain deeply troubled plans like the 1974 Plan. It noted in footnote 7, "Certain deeply troubled plans, including one of the two plans referenced in footnote 3 above, have problems of such severity that the proposed partial suspension of benefits would be insufficient to address their problems. Consequently, this proposal is not applicable to such plans. Furthermore, such plans in certain industries both require and are more amenable to solutions that take into account both their problems and available industry specific sources of funding." The NCCMP was referring specifically to the 1974 Plan in footnote 7.

³These projections assume that a partition would occur in 2017. A partition assumed to occur later would increase the cost because the 1974 Plan assets are projected to decline faster than its liabilities.

⁴Horizon Actuarial Services, LLC, *Analysis of 1974 Pension Plan*, April 16, 2015.

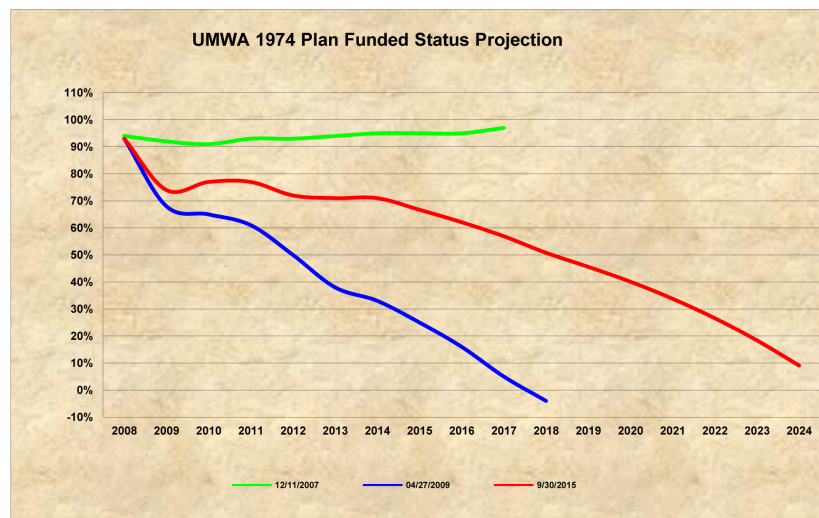
Question. Mr. Roberts, understanding that certain defined benefits have been earned, has UMWA considered a hard freeze on the defined benefit plan and a move to a 401(k) plan to keep from digging the hole deeper?

Answer. The 2011 National Bituminous Coal Wage Agreement (NBCWA) closed the plan to new entrants who began working in the coal industry in 2012. Those miners do not accrue any pension from the 1974 Plan but instead receive employer contributions into a multiemployer 401(k) plan. Despite the fact that these new miners do not accrue any pension credit, the 2011 NBCWA requires companies to pay contributions (currently \$6.05 per hour worked) to the 1974 Plan for the work of these miners.

Question. Mr. Roberts, a number of factors have contributed to the coming UMWA insolvency. Still, do UMWA and the plan's trustees accept any responsibility for the plan's current shortfalls, and if so, has there been any accountability for poor fund management by the UMWA and the plan's trustees that has contributed to such severe underfunding?

Answer. The 1974 Pension Plan has been prudently managed and we do not believe the Plan's financial difficulties are the result of "poor management." In 2007, shortly before the Wall Street meltdown in 2008–2009, the UMWA 1974 Pension Plan was about 93% funded and projections showed it heading toward 100% funding over the next decade. The financial crisis blew a gaping hole in those projections, and the 1974 Plan today is projected to become insolvent within the coming decade. With the bankruptcy courts allowing companies to withdraw from the Plan, the insolvency looms ever larger and closer.

The chart below shows the 1974 Plan actuary's projection for the funded status of the Plan in 3 different years. The green line at top shows the projected funded status in December 2007. The Plan was about 93% funded and the actuary projected that it would approach 100% funded in the coming decade. The blue line at bottom shows the actuary's projection in April of 2009 after the Wall Street meltdown, indicating insolvency around 2017–2018. The red line in the middle shows actual experience through 2015 and projections through 2024. As you'll note, the actual experience of the Plan has been significantly better than what the actuary projected in 2009. Instead of being about 25% funded in 2015 as projected, the Plan was about 67% funded. This chart shows the Plan has continued to be well-managed in the wake of the Wall Street crisis and subsequent recession.



The 1974 Plan historically has performed well compared to its multiemployer peers. The 1974 Plan is one of the largest multiemployer pension plans in the country, ranking in the 97th percentile of multiemployer plans in terms of assets and participants. The 1974 Plan has been well managed, with investment returns over

the last 10 years averaging 8.2% per year, also placing it in the 97th percentile of multiemployer plans.⁵

The major difficulty facing the 1974 Plan is the high ratio of retired miners to active miners and the rapid erosion of the contribution base. There are over 10 retired miners to every active participant in the 1974 Plan. This ratio places the 1974 Plan in the lowest 10th percentile among its multiemployer plan peers. The median multiemployer plan has a participant ratio of 6 workers for every 10 retirees. In general, the lower the participant ratio, the harder it is to affect plan funding by employer contribution increases or reductions in future benefit accruals. Indeed, the Pension Benefit Guaranty Corporation (PBGC) noted in a June 2014 report that “some already distressed plans remain critically underfunded and will not be able to further raise contributions or reduce benefits sufficiently to avoid insolvency.”⁶

Question. Mr. Roberts, Secretary Hillary Clinton recently stated that as President that she intended “to put a lot of coal miners and coal companies out of business.” If she were to succeed, enacting policies that put more coal companies out of business, what would be the potential impact on UMWA’s pension and health care plans?

Answer. Bankruptcy courts have already done serious harm to the 1974 Plan’s contribution base and have relieved employers of the lifetime obligation to provide benefits to approximately 15,000 retirees, surviving spouses and their dependents. Patriot Coal and Walter Energy have already been relieved of their retiree health obligations and have, with bankruptcy court approval, withdrawn from the 1974 Plan. Together they accounted for about 30% of the 1974 Plan contribution base.

Alpha Natural Resources is in the bankruptcy process but it appears they also will seek to follow Patriot and Walter’s lead and terminate retiree health care and withdraw from the 1974 Plan. If they succeed, that will create about 3,000 new orphan retirees and further reduce the 1974 Plan contributions. Alpha accounts for about 15% of the contribution base, so these three bankruptcies alone could reduce the 1974 Plan contributions by about 45%. In addition, Walter and Alpha are contributors to the UMWA 1993 Benefit Plan, which has about 3,600 retirees and dependents not covered by the Coal Act. The bankruptcy court relieved Patriot of its obligations to the 1993 Plan in 2013. The bankruptcy courts relieved Walter of any obligation to pay for these retirees and Alpha may follow suit this spring. The loss of their contributions will mean that those 3,600 retirees and dependents lifetime benefits will be in jeopardy by the end of the year. All told, these three bankruptcies could result in about 21,000 retirees and surviving spouses losing benefits very soon.

The UMWA does not agree that our Nation’s energy and environmental policies should result in putting coal companies out of business and coal miners out of work. There are too many unemployed coal miners in the Nation’s coalfields and too many companies in bankruptcy court. I would note that a few days after making that statement, Secretary Clinton wrote a letter to Sen. Manchin that acknowledged she was mistaken in her remarks and said, in part, that, “I wanted to make the point that, as you know too well, while coal will be part of the energy mix for years to come, both in the U.S. and around the world, we have already seen a long-term decline in American coal jobs and a recent wave of bankruptcies as a result of a changing energy market—and we need to do more to support the workers and families facing these challenges.” I would agree with Secretary Clinton that as a Nation we need to help the people in the coal fields.

PREPARED STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON

Thank you, Chairman Hatch. In this country, there is a longstanding principle of pension law that says you don’t take away benefits that workers have earned. But unless Congress acts soon, that guarantee is about to be broken.

There are more than a thousand multiemployer pension plans around the country, and millions of Americans rely on them for economic security in retirement. But many of those pension plans are in dire financial straits. And I want to begin by

⁵ Comparison data on 1974 Plan and multiemployer peers taken from *The Multiemployer Retirement Plan Landscape: a Ten-Year Look*, a 2013 study for the International Foundation of Employee Benefit Plans (IFEPP) conducted by Horizon Actuarial Services, LLC.

⁶ PBGC press release, *PBGC Report Shows Improvement in Single-Employer Plans, but Underscores Increased Risks to Some Multiemployer Plans*, June 30, 2014.

focusing on one group of workers who are particularly at risk: thousands of coal miners' pensions are hanging in the balance.

The clock is ticking down to disaster for retired coal miners in the coming months. Over decades of perilous, backbreaking work fueling the American economy, miners earned retiree health benefits and pensions. But there's a serious risk that thousands of miners will lose their health benefits by December of this year. By December 2017, miners' pension benefits could be at risk as well.

I come from a state that doesn't mine coal, but there are communities across Oregon that have traditionally been extremely resource-dependent. A lot of those communities are experiencing the same kind of economic pain you see in mining towns in other parts of the country. You cannot turn your backs on the workers and retirees in those communities when times are tough.

If the worst happens, retired miners may not have anywhere to turn. And the Pension Benefit Guaranty Corporation, which insures multiemployer pension plans, is under immense pressure and at risk of insolvency down the road.

Senators Manchin and Capito, who represent West Virginia, have come together on a bipartisan basis to introduce the Miners Protection Act. Senators Brown, Casey and Warner have also championed this issue and put in extraordinary work. It's my view that this committee and the Congress should move on this bill as soon as possible.

Of course, it's also critical that the Finance Committee take the wider view at the crisis unfolding in multiemployer pension plans nationwide.

Hundreds of them—accounting for the pensions of more than a million workers and retirees—were less than 40 percent funded as of 2011. And unfortunately, a provision that added fuel to the fire was slipped into a must-pass government funding law in 2014—despite my opposition. It gave a green light to slashing benefits in a lot of the hardest-hit multiemployer plans, and that's going to make life more difficult for a lot of seniors who are already struggling to get by.

It's my view that Congress ought to protect the promise that you don't take away pension benefits that American workers have earned. This is an enormous challenge, and the fact is, there's no silver-bullet policy proposal apparent at the moment. But with the economic security of so many Americans on the line, it's vital that Democrats and Republicans come together quickly to find solutions to this crisis. The Finance Committee Democrats and I sent a letter to you, Chairman Hatch, outlining many of our big concerns on this issue, and I know I speak for my colleagues on this side in saying that we are eager to work with you on a bipartisan basis to solve this crisis.

COMMUNICATIONS

AARP

Real Possibilities

601 E Street, NW | Washington, DC 20049

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March 1, 2016

The Honorable Orrin Hatch
Chairman
U.S. Senate
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
U.S. Senate
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Wyden:

As the largest nonprofit, nonpartisan organization representing the interests of our 38 million members and all Americans age 50 and older, we commend the Senate Finance Committee for holding a hearing on multiemployer pension plan issues. Approximately 10 million workers and retirees, 25 percent of all defined benefit plan participants, are counting on multiemployer pension plans for their retirement security. Unfortunately, for hundreds of thousands of retirees—who worked decades to earn their pensions—their benefits are now at great risk. We urge the Committee to take action this year to stop proposed plan cuts to retiree benefits until a fairer solution can be achieved.

The affected retirees and their families live across the United States. They provide financial support to hundreds of thousands of husbands, wives, parents, children and grandchildren. Some of the proposed pension cuts are as much as 50–70% of their pensions. If Congress permits the pensions these retirees rely upon to be dramatically cut, their States and communities will bear much of the burden—nutrition programs, Medicaid, nursing homes, and other government programs will be faced with higher costs for these devastated families.

These cuts are a direct outgrowth of the recently enacted Multiemployer Pension Reform Act (MPRA)—which breaks longstanding precedent protecting retirees' earned pensions. Rather than requiring additional plan contributions, MPRA permits underfunded plans to cut the already earned pensions of vulnerable retirees. The MPRA was enacted without the review of the main committees of jurisdiction, including the Finance Committee, and inserted at the last minute at the end of the last Congress in the year-end budget bill. Given this process, the fact that problems have arisen is not surprising. This legislation addressing multiemployer plans, unlike prior legislation addressing the funding shortfall in single employer plans, did not require employers to make the needed contributions. In the single employer world, no employer could evade funding unless it filed for bankruptcy. Upon a bankruptcy filing, the plan would be terminated and the retirees paid first with guaranteed benefits provided by the Pension Benefit Guaranty Corporation (PBGC).

In the year since the MPRA was passed, three pension plans already have filed applications to cut retiree pensions—Central States Teamsters, New Jersey Teamsters and Ohio Iron Workers. If Congress does not act to modify the MPRA, additional filings are likely. Over 50 plans have filed critical funding status notices with the Department of Labor for 2015 and over 100 plans are reported to be in serious trouble, according to the PBGC and the Center for Retirement Research. The MPRA creates a moral hazard that will encourage more plans to cut earned pensions; the more easily plans are able to cut retirees' pensions, the greater the number of plans that will choose to do so. Indeed, as plans and employee representatives work out a path forward, retirees remain unrepresented—and the outcome, while unprecedented, is not surprising. As a result, under MPRA, more employers are likely to cut retirees' benefits and abandon plans altogether.

The Central States application to cut retiree benefits demonstrates the unfair sacrifice. The "compromise" only seeks increased contributions of 2.5% a year from most contributing employers, whereas affected retirees are asked to accept benefit cuts over 50% a year. Some large profitable employers are permitted to leave the plan completely. Active workers may still take subsidized early retirement for another 5 years. The plan itself is counting on unrealistic investment returns—and even then has only a 50/50 likelihood of survival.

Some plan representatives may argue that the sooner they start the cuts, the smaller the pain for everyone. But, in almost all cases, the plans have at least 10 more years of assets. Permitting more time to find a better solution will not significantly change the plan's funding status, but it will significantly protect the income that tens of thousands of retirees now count on. Many of the retirees have publicly stated that they would rather have their full benefits for as long as possible and save what they can for the future if Congress does not come up with a fairer solution.

There are alternative solutions. Multiemployer plan premiums paid to the PBGC—initially set far lower than in single employer plans as funding was not deemed a problem—should be substantially increased. For example, PBGC premiums, which were set too low for too long, now need to rise to make up for the prior inadequacy. Premiums only increased to \$27 per participant this year (compared to base single employer premiums of \$64, and variable premiums which can be as high as \$500 a person). The PBGC should be provided flexible authority to take over or supplement the pensions of "orphan" retirees for employers who completely left the plan. Congress could devise a tax credit to facilitate and offset increased employer contributions. Allowing the PBGC to appropriately take on responsibility for an affordable number of "orphan" retirees, with adequate premiums, will permit both the remaining plans and the PBGC to better meet their ongoing responsibilities.

Some multiemployer plans are interested in converting to a more affordable type of hybrid pension plan. AARP is open to such conversions, provided the former plan is adequately funded, no earned pensions in the former plan are cut, and the plan bears its fair share of the cost of underfunding in the multiemployer system.

We understand solutions are not simple or perfect. But, it is unfair to impose the greatest pain on the innocent retirees who worked hard and bore no responsibility for plan funding and management decisions. AARP stands ready to be part of any process to find fairer solutions for the potentially millions of affected men, women and families.

We appreciate your consideration of these comments. If you have further questions or need additional assistance, please feel free to contact me or have your staff contact Michele Varnhagen on our Government Affairs staff at (202) 434-3829.

Sincerely,

Joyce Rogers
Senior Vice President
Government Affairs

AMERICAN AUTO DEALERS FOR PENSION REFORM
 200 Lothenbach Ave.
 West St. Paul, MN 55118

STATEMENT FOR THE RECORD
For the Senate Finance Committee hearing on
“The Multiemployer Pension Plan System:
Recent Reforms and Current Challenges”
March 1, 2016

Mr. Chairman and Members of the Committee, we appreciate the opportunity to provide a written submission for the record for your hearing on efforts to modernize the multiemployer pension system. The American Auto Dealers for Pension Reform represents potentially hundreds of new car and truck dealers, with franchises, both domestic and international, impacting thousands of U.S. jobs. We are submitting this statement to convey a concern on behalf of our members who have unionized mechanics (and on behalf of many more auto dealers in affected union states that may not even be aware of the pension liabilities they face). Even within dealerships with unionized workers, a greater proportion of the business’s workers are not unionized. Thus, auto dealers are not “traditional” employers as compared to other employers in these plans, nor those who have often participated in the management of the multiemployer plans.

While the Multiemployer Pension Reform Act of 2014 (MPRA) made substantial changes to the current system, the pressing issue of withdrawal liability relief, particularly that for small and non-traditional employers, was not adequately addressed. In fact, the MPRA provides that in order for withdrawal liability relief to apply, employers must continue to contribute for *at least 10 years* after a suspension of benefits has been implemented. For some of our small family-owned auto dealers, waiting another decade for relief is not feasible.

We ask that Congress find a solution to relieve small businesses that wish to exit plans from the crushing withdrawal liability and we believe it is possible to do that without harming the long-term health of the plans. We would ask that any legislation considered by this committee to address issues from MPRA also include language on withdrawal liability relief. We welcome your efforts to provide additional legislation addressing this concern for small businesses and would appreciate any opportunity to meet and explain our concerns in greater detail.

SMALL EMPLOYER MULTIEMPLOYER PLAN WITHDRAWAL ISSUE

Background on Multiemployer Plans

There are approximately 1,500 multiemployer defined benefit pension plans covering large and small employers with 104 million participants. However, 76% of all participants and beneficiaries are concentrated in 168 plans each with more than 10,000 employees (with an average of 786 contributing employers per plan). Very large employers contribute more than 50% of all plan contributions to 80% of the critical status (underfunded) plans. The smallest 610 plans (*i.e.*, plans covering less than 1,000 participants) only cover 3% of all participants.

In March 2013, the PBGC testified that it believed that most plans “appear to be recovering from the 2008 financial crisis.” Much of the underfunding relates to investment losses.

Employers can voluntarily leave multiemployer plans but must pay a withdrawal liability upon leaving (although ERISA provides for an exemption from the withdrawal liability rules from some industries, such as construction, in certain circumstances). Withdrawal liability can be substantial because as other employers terminate plan participation through bankruptcy or liquidation, the remaining employers are left with the financial burden to continue funding benefits for their own employees as well as the employees or retirees of the former employer who terminated plan participation (“orphans”). Total withdrawal liability is generally capped: (a) per year at an employer’s recent annual contribution amount; and (b) limiting overall payments to no more than 20 years. Many other countries with multiemployer plans do not have such significant withdrawal liability requirements as a large withdrawal penalty can act as a barrier for attracting new employers to join plans.

Small Employer Issue

Small employers in multiemployer plans may get locked into these plans with a significant withdrawal liability and their only way out may be to file for bankruptcy or liquidate the business. This liability can preclude a sale of the business as the liability amount can sometimes exceed the entire value of the business. In addition, over the past few years, many small employers' weekly contribution per participant has increased as much as 70% in order to keep these plans solvent. Small employers in non-traditional multiemployer industries (such as auto dealers) are at a larger disadvantage as they generally have no representation in the management of the pension trust and even access to information can be difficult to obtain.¹

Solution

Legislation is needed to help small employers who have these excessive withdrawal liabilities. Such withdrawals by small employers in non-traditional multiemployer covered industries will not harm to any degree a plan's financial situation. Small businesses seeking relief should be required to contribute to such plans upon their withdrawal, while the plans get more financially secure. Thus, an excessive and lengthy withdrawal liability is not needed by the plans from their smallest contributors.

A solution should:

- Ease the transfer of a business within a family by permitting that next generation to avail themselves of the same withdrawal liability rules as would apply to the sale of business assets to an unrelated third party when taking over the family business; and
- Permit an existing small employer to make a lump sum payment to withdraw from the plan based upon either: (a) the average withdrawal liability the plan has historically collected from other employers; or (b) withdrawal liability rules which apply to sales of business assets to unrelated third parties.

Current ERISA law provides some help to small employers but only if business assets are sold to an unrelated third party. Even better relief is available to those in the carpentry trades. Their special rules wipe away all withdrawal liability if such small construction trade employers close down or move their business.

However, nothing exists in current law to help those family-owned small businesses that want to keep their businesses within their families but cannot in good conscience pass along previously unknown huge withdrawal liabilities to their children. It does not make sense that our pension laws would discourage the continuation of family-owned businesses and instead incent businesses to close or sell to owners with no connection to the local community.

Conclusion

Congress must find a solution that does not harm the long-term health of the plans by providing these plans a few additional years to shore up their investments, while relieving the small businesses that wish to exit from a crushing withdrawal liability.

BUFFALO, NY COMMITTEE TO PROTECT PENSIONS
2667 Staley Rd.
Grand Island, NY 14072

To: SENATE FINANCE COMMITTEE

February 28, 2016

The Multiemployer Pension Plan System: Recent Reforms and Current Challenges

March 1, 2016

Dear Senate Finance Committee Members,

In December 2014 the Multiemployer Pension Reform Act of 2014 (MPRA) was enacted into law. This law may seem like a good fix for pensions on the face until you look into the reality of this law. We are in the Teamster Central States Pension

¹An auto dealership might be a good example of a non-traditional employer in a multiemployer plan, with their union mechanics being their participating employees. Thus, dealers would have few employees in the plan and as an industry group represents a small fraction of the total participants in most plans, yet would still have withdrawal liability per dealership in the millions. Recently, this withdrawal liability issue has been cited as a major factor for being unable to sell or transfer dealerships.

Fund; it is a multiemployer fund which has a very low failure rate compared to single employer funds. Our fund was put into "critical and declining" status after James Hoffa (Teamster President) let UPS withdraw from the Central States Fund.

This put the UPS Fund into critical state. The Teamsters Union was under U.S. Government watch for corruption for the last 30 years. Why was this allowed to happen? The Employees Retirement Income Security Act (ERISA) of 1974 was also responsible to oversee the fiduciaries and conduct standards. It also was responsible to protect the funds and make sure the participants receive their benefits. ERISA did not do its intended job, in fact it failed miserably and then was dissolved in December when the MPRA was passed. The government should be taking responsibility to rescue these pension plans right here, without further explanation.

Central States Pension Fund has over \$17 billion in it; it has bounced up and down for years. Participants in the fund were promised an amount they could collect after 30 years of service. We were told by the Teamster fund it is safe, the government said it is safe, ERISA, even the government Pension Benefit Guaranty Corp. (PBGC) said we are safe.

Now when the participants that have put into the fund for 20, 30, 40 years and more are going to collect—this fund began in 1955—the rules are all changing; everyone lied!

The participants in this plan did the responsible thing all these years and took the pension and health insurance benefits instead of the huge pay increases other areas of the country took. The huge increases I mean were double and triple pay increases. We did not want to be a burden to our families or the government in our older years. Most of the participants work weeks were not a 40-hour week; they were 50-, 60- and 70-hour weeks. We earned every penny of our pay and benefits and are proud of our hard work. We played by the rules and expected companies and government to do the same.

Now even the PBGC is saying we are going broke and can't do what we promised; more lies! There has even been talk Representatives John Kline (R-MN) and George Miller (D-CA) who attached amendment MPRA to bill H.R. 83 are heroes. This amendment was brought out on December 9th; the bill was signed into law the 16th and attached to the omnibus government budget and spending bill. Meaning the whole bill would pass or the U.S. Government would shut down for the second time, which was not going to happen.

This was a sneaky middle of the night amendment, lawmakers did not get to look over and see the real impact of this amendment. Furthermore these representatives are not heroes saving pension plans; they have been poorly informed of what will really happen. Who are they being saved for? We the 407,000 retirees are the ones that built the pension fund and the ones meant to collect it.

A typical 30-year pension is about \$3,000.00 a month, not the generous world trip fantasy retirement plan that it is made out to resemble. The cuts to save our plan are estimated to be about 50%, 60%, even 70%, averaging an \$1,800.00 a month reduction. There may be a few who could afford this but most participants are going to be in financial ruin, bankruptcy, home foreclosures and welfare-bound. Pension rules state you cannot work in any capacity after retiring. Others are too old to work and many are disabled from the work we used to perform.

We are asking that amendment MPRA be repealed to start.

That the government investigate why ERISA did not do its intended job.

That the government investigate why PBGC did not raise its insurance premiums years ago to avoid going broke.

That the Teamsters Central Pension Fund and its trustees while under government watch be investigated for not having participants' interests protected.

That government investigate why James Hoffa was allowed by ERISA to let United Parcel Service (UPS) withdraw from the Central States Pension Fund.

We paid into the funds with our money—OUR MONEY—for 20, 30, 40, even 50 years. We fully funded the plan over all those years. Huge amounts of money were put into the plan. The fiduciary responsibility of Wall Street was not to sit by and watch it lose billions and do nothing about it. Then ERISA sat by and let it happen, even after the government allowed Wall Street to run our plan. We did not control our Pension, Wall Street did.

We the pension retirees did nothing wrong. The responsibility should fall on Wall Street, ERISA, the PBGC, and Congress to make this injustice right.

In the end if these cuts are allowed to happen to our and the other Multiemployer Pensions, the government is going to pick up the tab for these affected participants through payments of Medicaid, welfare, food stamps, subsidized housing, etc.

The economic impact is going to be devastating; there are numbers out there right now.

Sincerely,

Michael A. Jablon
Buffalo, NY Committee to Protect Pensions

CENTRAL STATES PENSION FUND
9377 West Higgins Road, Rosemont, IL 60018-4938 | *MyCentralStatesPension.org*

Employee Trustees

Charles A. Whobrey
George J. Westley
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Arthur H. Bunte, Jr.
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Ronald DeStefano
Greg R. May

Executive Director

Thomas C. Nyhan

March 7, 2016

Senate Committee on Finance
Rm. SD-219
Dirksen Senate Office Bldg.
Washington, DC 20510-6200

Dear Members of the Senate Finance Committee:

The Board of Trustees for the Central States, Southeast and Southwest Areas Pension Plan wishes to submit the letters enclosed herein for inclusion in the record for the Committee’s March 1, 2016 hearing, “The Multiemployer Pension Plan System: Recent Reforms and Current Challenges.”

Sincerely,

Arthur H. Bunte, Jr.
Employee Trustees Chairman
Enclosures

Charles A. Whobrey
Employee Trustees Chairman

February 18, 2016

The Honorable Gary C. Peters
The Honorable Debbie Stabenow

Dear Senators:

Thank you for your and your colleagues’ interest in the application to reduce benefits that the Board of Trustees (the “Board”) of the Central States, Southeast and Southwest Areas Pension Plan (“Central States” or the “Fund”) has submitted to the Department of the Treasury.

We share your concerns regarding the negative effect that the proposed pension reductions would have on retirees and their families. The Board is committed to preserving the benefits of participants in the Fund to the greatest extent possible, and we appreciate that Members of Congress are engaged in the same pursuit.

We are disappointed, however, that the letter you and your colleagues sent to Treasury Special Master Ken Feinberg simply opposed the Fund’s rescue plan application without providing any hint of a real solution. The Treasury Department’s rejection of the benefit reduction application would result in the insolvency of the Fund with every participant losing virtually all of their benefits within the next 10 years. We

are writing to instead urge you to support real solutions that will help save the Fund—and protect retiree and participant benefits.

Funded Status and History

There are no easy solutions to the problems facing Central States. Annual benefit payments currently exceed contributions by more than \$2 billion. The Fund is projected to become insolvent and unable to pay benefits in approximately 10 years, and that date could accelerate if the participants and contributing employers withdraw their support for the Fund because they do not see a viable path forward. **The Fund needs \$11 billion in funding to prevent insolvency and meet its long-term obligations; nothing else will save the Fund and prevent benefit losses.**

The major reasons for this funding shortfall are trucking deregulation, which was passed by Congress in 1980, and the two recent severe economic downturns. 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. In 1980, there were approximately 12,000 contributing employers to the Fund, but there are only approximately 1,500 today. Since then, over 10,000 employers have either liquidated or otherwise withdrawn from the Fund without paying for their share of the Fund's liabilities.

Additionally, two major recessions have torpedoed our economy since 2000, driving down the Fund's investment assets and pushing a larger number of employers into bankruptcy. Although the financial markets have rebounded from the 2008 market crash—and the Fund's investment returns since then have been strong¹—it has not been nearly enough to make up for the huge imbalance caused by trucking deregulation and the two severe economic downturns.

No Magic Solutions

The Fund's Board of Trustees, which is composed of an equal number of employer and union representatives, has spent more than a decade trying to save the Fund without reductions in accrued benefits. For the past 7 years, we have been informing Congress that unless the Fund receives a large infusion of cash or substantially reduces its liabilities, it will become insolvent in the near future. In fact, the Fund's Executive Director and General Counsel, Tom Nyhan, testified to this effect before the Senate Committee on Health, Education, Labor and Pensions in May 2010² and the Subcommittee on Health, Employment, Labor and Pensions of the House Committee on Education and the Workforce in October 2013.³

Earlier this year, the Fund's Board of Trustees determined that it was absolutely necessary to use the benefit reduction tools provided by the Multiemployer Pension Reform Act of 2014 ("MPRA") to protect the largest possible number of participants to the greatest extent possible. After many months of long and careful consideration, the Board of Trustees developed a plan—the rescue plan—to implement benefit reductions under MPRA in a fair and equitable manner.

Preserving pension benefits is a "zero sum" problem. The only way to reduce or eliminate the benefit reductions is to provide the Fund with additional assets. Other actions might change which participants experience benefit reductions, but they will not change the total amount of reductions. Simply put, lessening the proposed reductions for one group of participants would mean that the benefits of a different group of participants would need to be subjected to greater reductions.

While painful, without additional funding the Fund's proposed rescue plan is the only realistic option to save the Fund from financial failure and help ensure it is able to continue to pay benefits to all participants and beneficiaries in the future. Under the rescue plan, each participant would receive a higher monthly benefit than he or she would receive under the PBGC guarantee formula. Moreover, the Fund's actuaries have estimated that approximately **80 percent of the participants will be better off under the rescue plan**, with both the Fund and the Pension Benefit Guaranty Corporation (PBGC) multiemployer program becoming insolvent in the absence of the rescue plan. And there is no time for a "do-over" if the rescue plan is rejected. **If the rescue plan is not approved and imple-**

¹ In the 7-year period following the 2008 market crash, the Fund's average annual rate of return was 11.5%.

² <http://www.help.senate.gov/hearings/building-a-secure-future-for-multiemployer-pension-plans>.

³ http://edworkforce.house.gov/uploadedfiles/final_format_nyhan_testimony.pdf.

mented in 2016, benefit reductions under MPRA may no longer save the Fund. This is because each month the plan is delayed will result in larger benefit reductions until the point is reached where the Fund can no longer be salvaged.

The PBGC Does Not Provide Real Coverage to Central States Participants

The PBGC reports that its multiemployer insurance program is currently underfunded by approximately \$52 billion—a figure that understates the true problem because it only includes plans that are expected to begin receiving assistance within the next 10 years. **In January 2016, the Congressional Budget Office released projections showing that it expects the PBGC multiemployer program to be insolvent by 2024.** And the Fund currently pays approximately \$2.8 billion in benefits per year, while the PBGC only receives \$250 million in premiums per year.

Despite the fact that Central States has been paying insurance premiums to the PBGC for more than 40 years, the PBGC lacks the resources to pay virtually any portion of the guaranteed benefits to our participants. This means that the more than 400,000 hardworking Americans covered by Central States face the following stark and tragic reality: if and when both Central States and the PBGC become insolvent, **their benefits will be reduced almost to zero.**

Additional Funding is the Only Alternative Solution

The only way to lessen or obviate the need for benefit reductions is to provide additional funding to Central States. The Fund's actuary has estimated that in lieu of any benefit reductions, approximately \$11 billion of additional funding is necessary to prevent the Fund from becoming insolvent. If members of Congress are serious about helping Central States participants, then they must pass legislation that provides some or all of this funding.

Congress could also protect Fund participants by passing legislation that raises the PBGC multiemployer guarantee while providing the agency with additional funding. Such legislation would ensure that the PBGC is able to support its guarantee in the future, and that the guarantee provides larger benefits than the Fund is able to pay under the rescue plan. Several pieces of legislation have been introduced that would do this in recent years, though none have received serious consideration in Congress. In the 111th Congress, Central States actively supported legislation (H.R. 3936; S. 3157; the "Create Jobs and Save Benefits Act of 2010") that would have provided funding to the PBGC and updated the PBGC's current authority to "partition" a multiemployer plan. The Keep Our Pension Promises Act (H.R. 2844; S. 1631) introduced in this Congress is another similar approach that the Fund supports.

Conclusion

The Board applauds you for making protecting retirement benefits a priority, but encourages you and other members of Congress to focus on real solutions while avoiding half-measures that, despite being well-intentioned, will only make the situation worse. Delaying the implementation of the reductions, or forcing them to be distributed differently than has been proposed in the rescue plan, will not protect participants. **At best these steps will merely shift the burden from some participants onto other participants. At worst, they will lead to participants losing their retirement benefits in their entirety.**

If Congress is serious about helping Central States' participants and beneficiaries, then it must provide additional funding, either directly or through the PBGC. **No other course of action will protect participant benefits.**

We appreciate your attention to this matter. If you have any questions, please contact Tom Nyhan at (847) 939-2400.

Sincerely,

Arthur H. Bunte, Jr.
Employer Trustees Chairman

Charles A. Whobrey
Employer Trustees Chairman

CC: Signatories of February 2, 2016 Letter to Special Master Kenneth Feinberg

February 18, 2016

The Honorable Debbie Dingell
The Honorable John Conyers

Dear Representatives:

Thank you for your and your colleagues' interest in the application to reduce benefits that the Board of Trustees (the "Board") of the Central States, Southeast and Southwest Areas Pension Plan ("Central States" or the "Fund") has submitted to the Department of the Treasury.

We share your concerns regarding the negative effect that the proposed pension reductions would have on retirees and their families. The Board is committed to preserving the benefits of participants in the Fund to the greatest extent possible, and we appreciate that Members of Congress are engaged in the same pursuit.

We are disappointed, however, that the letter you and your colleagues sent to Treasury Special Master Ken Feinberg simply opposed the Fund's rescue plan application without providing any hint of a real solution. The Treasury Department's rejection of the benefit reduction application would result in the insolvency of the Fund with every participant losing virtually all of their benefits within the next 10 years. We are writing to instead urge you to support real solutions that will help save the Fund—and protect retiree and participant benefits.

Funded Status and History

There are no easy solutions to the problems facing Central States. Annual benefit payments currently exceed contributions by more than \$2 billion. The Fund is projected to become insolvent and unable to pay benefits in approximately 10 years, and that date could accelerate if the participants and contributing employers withdraw their support for the Fund because they do not see a viable path forward. **The Fund needs \$11 billion in funding to prevent insolvency and meet its long-term obligations; nothing else will save the Fund and prevent benefit losses.**

The major reasons for this funding shortfall are trucking deregulation, which was passed by Congress in 1980, and the two recent severe economic downturns. 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. In 1980, there were approximately 12,000 contributing employers to the Fund, but there are only approximately 1,500 today. Since then, over 10,000 employers have either liquidated or otherwise withdrawn from the Fund without paying for their share of the Fund's liabilities.

Additionally, two major recessions have torpedoed our economy since 2000, driving down the Fund's investment assets and pushing a larger number of employers into bankruptcy. Although the financial markets have rebounded from the 2008 market crash—and the Fund's investment returns since then have been strong¹—it has not been nearly enough to make up for the huge imbalance caused by trucking deregulation and the two severe economic downturns.

No Magic Solutions

The Fund's Board of Trustees, which is composed of an equal number of employer and union representatives, has spent more than a decade trying to save the Fund without reductions in accrued benefits. For the past 7 years, we have been informing Congress that unless the Fund receives a large infusion of cash or substantially reduces its liabilities, it will become insolvent in the near future. In fact, the Fund's Executive Director and General Counsel, Tom Nyhan, testified to this effect before the Senate Committee on Health, Education, Labor and Pensions in May 2010² and the Subcommittee on Health, Employment, Labor and Pensions of the House Committee on Education and the Workforce in October 2013.³

Earlier this year, the Fund's Board of Trustees determined that it was absolutely necessary to use the benefit reduction tools provided by the Multiemployer Pension Reform Act of 2014 ("MPRA") to protect the largest possible number of participants to the greatest extent possible. After many months of long and careful consideration, the Board of Trustees developed a plan—the rescue plan—to implement benefit reductions under MPRA in a fair and equitable manner.

Preserving pension benefits is a "zero sum" problem. The only way to reduce or eliminate the benefit reductions is to provide the Fund with additional assets.

¹ In the 7-year period following the 2008 market crash, the Fund's average annual rate of return was 11.5%.

² <http://www.help.senate.gov/hearings/building-a-secure-future-for-multiemployer-pension-plans>.

³ http://edworkforce.house.gov/uploadedfiles/final_format_nyhan_testimony.pdf.

Other actions might change which participants experience benefit reductions, but they will not change the total amount of reductions. Simply put, lessening the proposed reductions for one group of participants would mean that the benefits of a different group of participants would need to be subjected to greater reductions.

While painful, without additional funding the Fund's proposed rescue plan is the only realistic option to save the Fund from financial failure and help ensure it is able to continue to pay benefits to all participants and beneficiaries in the future. Under the rescue plan, each participant would receive a higher monthly benefit than he or she would receive under the PBGC guarantee formula. Moreover, the Fund's actuaries have estimated that approximately **80 percent of the participants will be better off under the rescue plan**, with both the Fund and the Pension Benefit Guaranty Corporation (PBGC) multiemployer program becoming insolvent in the absence of the rescue plan. And there is no time for a "do-over" if the rescue plan is rejected. **If the rescue plan is not approved and implemented in 2016, benefit reductions under MPRA may no longer save the Fund.** This is because each month the plan is delayed will result in larger benefit reductions until the point is reached where the Fund can no longer be salvaged.

The PBGC Does Not Provide Real Coverage to Central States Participants

The PBGC reports that its multiemployer insurance program is currently underfunded by approximately \$52 billion—a figure that understates the true problem because it only includes plans that are expected to begin receiving assistance within the next 10 years. **In January 2016, the Congressional Budget Office released projections showing that it expects the PBGC multiemployer program to be insolvent by 2024.** And the Fund currently pays approximately \$2.8 billion in benefits per year, while the PBGC only receives \$250 million in premiums per year.

Despite the fact that Central States has been paying insurance premiums to the PBGC for more than 40 years, the PBGC lacks the resources to pay virtually any portion of the guaranteed benefits to our participants. This means that the more than 400,000 hardworking Americans covered by Central States face the following stark and tragic reality: if and when both Central States and the PBGC become insolvent, their benefits will be reduced almost to zero.

Additional Funding is the Only Alternative Solution

The only way to lessen or obviate the need for benefit reductions is to provide additional funding to Central States. The Fund's actuary has estimated that in lieu of any benefit reductions, approximately \$11 billion of additional funding is necessary to prevent the Fund from becoming insolvent. If members of Congress are serious about helping Central States participants, then they must pass legislation that provides some or all of this funding.

Congress could also protect Fund participants by passing legislation that raises the PBGC multiemployer guarantee while providing the agency with additional funding. Such legislation would ensure that the PBGC is able to support its guarantee in the future, and that the guarantee provides larger benefits than the Fund is able to pay under the rescue plan. Several pieces of legislation have been introduced that would do this in recent years, though none have received serious consideration in Congress. In the 111th Congress, Central States actively supported legislation (H.R. 3936; S. 3157; the "Create Jobs and Save Benefits Act of 2010") that would have provided funding to the PBGC and updated the PBGC's current authority to "partition" a multiemployer plan. The Keep Our Pension Promises Act (H.R. 2844; S. 1631) introduced in this Congress is another similar approach that the Fund supports.

Conclusion

The Board applauds you for making protecting retirement benefits a priority, but encourages you and other Members of Congress to focus on real solutions while avoiding half-measures that, despite being well-intentioned, will only make the situation worse. Delaying the implementation of the reductions, or forcing them to be distributed differently than has been proposed in the rescue plan, will not protect participants. **At best these steps will merely shift the burden from some participants onto other participants. At worst, they will lead to participants losing their retirement benefits in their entirety.**

If Congress is serious about helping Central States' participants and beneficiaries, then it must provide additional funding, either directly or through the PBGC. **No other course of action will protect participant benefits.**

We appreciate your attention to this matter. If you have any questions, please contact Tom Nyhan at (847) 939-2400.

Sincerely,

Central States, Southeast and Southwest Areas Pension Fund Trustees

Arthur H. Bunte, Jr.
Employer Trustees Chairman

Charles A. Whobrey
Employer Trustees Chairman

CC: Signatories of February 1, 2016 Letter to Special Master Kenneth Feinberg

IOWA/NEBRASKA COMMITTEE TO PROTECT PENSIONS
2111 Lake Street, Omaha, NE (402) 612-2339

The Multiemployer Pension Plan System: Recent Reforms and Current Challenges

March 1, 2016

To the wonderful people in the Senate who are addressing the Central States Health and Welfare.

Thank you for taking the time to finally discuss this problem. Better late than ever.

My father found out about this in a newspaper back in February of 2014.

I took on helping him and starting three Committees in Nebraska and Iowa since no one was bothering to inform them of anything. Not even the Retiree Representative, Susan Mauren. By the way, she never informed them of Feinberg, and sent a consultant to only the hearing on the vote, and never bothered to say a word.

There was no communication with the Locals, retiree clubs and certainly none with Central States. It was horrible for these people.

I started researching, and this is what I have found.

1. I am a fiduciary, as I do Real Estate in the State of Nebraska. As a fiduciary I am taught to disclose, disclose, disclose. Now if I know a shopping mall is going to be built across the street, in a year or two, from a house I am writing a contract on, but do not disclose the fact, I will be sued and lose my license.

Thomas Nyhan, director of Central States, knew that this law might happen and never disclosed this to the participants. In fact he was on a board with the National Coordinating Committee for Multi-Employer Pensions, the NCCMP, the so-called "experts on pensions" which in fact is one of the sole reasons the Pension Benefit Guarantee Corporation is in trouble, as they bragged about it on their website, about keeping the contributions down. Some experts they are really turning out to be, with this mess. Nyhan's involvement with them is another non-disclosed fact, as they wrote and passed the bill.

Read Josh Shapiro, Groom Law office Bio online if he hasn't changed it yet, but these guys are arrogant so I suspect he hasn't.

Nyhan also said salaries don't matter, of course he meant to the actuarials, in his conference to the participants, but cutting them would, and that they wouldn't understand. Oh, by the way, Mr. Nyhan refinances his house every 3 or 4 years. As an agent this seems very odd. Usually people who refinance that way, do it because they can't manage money very well. Just curious on that one. Is there some sort of incentive to it? As an agent, inquiring minds want to know.

We also need to talk about the fact that Mr. Nyhan is paid from two sides. Interesting when he started Solutions not bailouts, he took a cut in pay on the pension side, but, Holy Cow, he gave himself a hefty raise on the Health and Welfare side, to the tune of . . . well, he can tell you. Was that because no one was paying attention? Shifting, or shifty, you decide.

1. Go back to the 2007 and 2008 5500 forms. You will see how Wall Street used these funds and no one said a word. Examples include pulling almost 5 billion out of safe savings accounts in 2008 that were there in 2007, and flooding the Real Estate Market with investments. Also BNY Mellon throwing 5.1 into their co-mingled fund in 2008 and that one transaction losing the fund 1.8 billion dollars. What is the date this was done, and where are the questions that should have been asked and the accountability by those entrusted to this fund?

2. Look at the 5500 forms. One would think this fund is being used to help offset the deficit with the money going into foreign governments. Turkey really? Really? Croatia? Are these countries in your private portfolios, ladies and gentlemen?
3. I am from Nebraska. No Berkshire A or B stock? I would love one share of A stock in my portfolio, and B has been a win for many people. Nope, none in 2013.
4. ZERO percent bonds? I have a license to sell swamp land in Nebraska if these fiduciaries want some.
5. My favorite—the African Petroleum Company. Had a million, now down to \$200,000 in 2013 before the oil market fell. What, did someone go to Africa with a weed weasel, stick it in the ground and turn it once or twice and say, nope no oil here, suckers? One has to wonder what insanity goes into playing so carelessly with other people's money. Again, it shows there is no accountability.
6. Yes we checked out the Western Conference, the sister fund of the Central States conference, and it is night and day. More disclosure, dates, transactions, and accountability, hence their success verses this fund, oh and they went through Deregulation, stock market crashes, and everything else that Nyhan uses as an excuse for this funds failure.
7. An \$8 share—that's eight dollars—in a 17.9 billion portfolio, and a \$37,000 investment to a builder in California. Well someone got a garage. What is going on here?

The perspective of the retirees is this. Congress will protect those who do not do their job, at the expense of those who did. MPRA is a prime example of covering problems instead of addressing them.

My Dad worked 10 hours driving, 8 hours sleeping, 10 hours driving, over and over again, weekends nights and holidays. Ice, snow, wind, rain, it did not matter. He did his job, he did it well.

He never made the kind of money these men who sit at nice desks make. His hearing is bad from the sound of an engine and the wind blowing in his ears. His back is bad. They didn't have air ride when Dad drove. I never saw him. We had no beachfront property like some here. We had a Ford Granada, it was the first car they got. We lived modestly, went to Okoboji Iowa every year, the only time I really saw Dad, and we certainly were not wealthy, but we were happy. Dad did what he needed to do.

Nyhan, the NCCMP, the Department of Labor, and the Banks have walked on the backs of men and women, like my father, to make themselves wealthy, and no one cared. The Trustees appointed, were not educated in these matters and are just puppets in this. Keep in mind they were Truckers, and dockworkers, not CPAs or Financial Advisors.

Okay, now the solution. Get these guys out. How did Nyhan get into his position? I have heard three things. He was appointed by the last guy, the DOL, and some board who obviously couldn't pick their noses with their fingers, let alone someone who could manage a fund. If I sound sarcastic, it is because the more you investigate the more unbelievably ridiculous this whole thing gets.

Merge the Western Conference the rest of the money and get rid of Central States altogether. Problem solved. Get more people into the fund, and change ERISA to better protect these men and women, and quit listening to the likes of the NCCMP. Actually I have heard it really stands for nincompoop. I think that is closer to who they really are. Experts of these funds? Look at where their expertise is putting these funds. One has got to wonder why this expertise has depleted funds over the years, and what their motives are. This Government put their eggs into the NCCMP's basket, and it seems that the NCCMP is the only one laying the golden eggs, while they have pretended to be sheep, while they were wolves helping to create the problems not only with the PBGC, but the pension plans themselves.

Again, merge the Western Conference with the Central States fund and let Prudential manage. After all a "Brotherhood" is what the Teamsters are supposed to be. One brother does not let the other go down. Sorry, but this must be looked at as an option.

Get rid of these complacent, arrogant idiots who claim to be experts, and let's get the greed out of the picture altogether.

And it is time for those who got bailouts to pay the piper. The way I see it losses and interest add up to about \$12 billion back into the fund by the bank fiduciaries. Annuities, and more Real Estate investments. Western Conference has all those things.

While I am on a roll, one more thing. Let's talk about Hostess. You know those Twinkies and HoHos?

Well we need to talk about how these Corporations that are sneaking out of their obligations by filing bankruptcy and opening up under a different name.

Come on, Guys, this has got to stop. YRC pays 25% into the fund and yet their CEO's are given bonuses for Christmas. Yes let's walk on the backs of people to get wealthy. This is what you need to be watching.

There is much work to do, but you can fix this. I believe in you. It's going to take time, but you will find a way without these poor men's backs being broken worse than they are.

Get the money from those who broke these men's backs just to have a cushy, care-free life in a one million four hundred thousand dollar home like Nyhan has. Capitalism as some claim it is, while others call it legal theft, but that is for you to decide.

Who do you believe? You believe no one. You research as people like Mike Walden, Bob Amsden and others have done, and you come to your own conclusion based upon fact . . . not half finished statements by those who are and will continue to get wealthy from this venture.

Unfortunately Congress had put its eggs in the wrong baskets. Your obligations are to people like the mine workers, women like Rita Lewis, and Mike Walden, my Dad and the millions of hardworking Americans, not organizations who have had failed management, and then tell you not to repeal a law that throws their terrible management on the backs of people like my Dad or Rita Lewis.

The Hearing Comments—Bad Luck? Josh Gotbaum did nothing. He never argued the NCCMP lobbying techniques that kept the PBGC contributions down. And let's talk about what the single employer part of this pays up to \$60,000 when Multi-Employer plans participants only get up to \$12,000. Really? This is biased, blaming a group and let's just say it like it is. "Josh didn't manage well either." Maybe he is a nice guy, maybe he has titles and college experience, but he failed at his job. This was an insurance plan. Who pays \$8.00 per year for home insurance? No one! Seriously? Bad Luck? This lack of management has been thrown on the back of my Dad, Rita Lewis, and millions. Please quit using the Pension Benefit Guaranty Corporation's bad management, as the excuse to cut benefits for people like my father. Two thousand dollars a month versus \$1,000 per month. Easy to say when you are not the participant. Ask Rita what she wants, wait she already said she wants her money until her money goes insolvent. Mr. Gotbaum, who are you to decide for these people?

Mr. Roberts, white collar versus blue collar: then cut single employer benefits paid out by the PBGC and then raise the rates as any insurance program that insures should have done years ago. What? Those people were paying \$36 a year for up to \$60,000 a year?

Coal miners get what? Who sets this stuff up? People who obviously don't care about people.

MPRA is another scapegoat for greed and bad management by Fiduciaries, the same as the Bailout of 2008 skirted the issues that created the problem.

Take off the blinders. Quit being politically correct at the expense of these people and ask harder questions, and thank you for at least going back and revisiting this issue. It needs to be addressed.

We have options and solutions, listen to us for once. We are not as stupid as people tend to make us. You go, Mr. Portman! You DA man! Ms. Stabenow, you DA Woman!

Please listen to Rita, listen to the participants. There are solutions! We just need to "work hard" and find them, not just do the easiest thing on the backs of others. Rita, you hit the nail on the head about the mismanagement.

Mr. I couldn't see your name. The Government interference is part of the problem especially with the Central States Pension fund more so than any other fund as the Federal Government took this away from the Teamsters and gave it to Wall Street to manage. It is time to get the "greed" out.

There must be investigations into this to solve this. If you don't do this and people are not held accountable for this mess, then you will never solve this problem.

Thank you for listening, and if you want documentation to what I wrote above, I would be more than happy to give you proof to what I say.

Sincerely,

Mary Packett

Iowa/Nebraska Committee to Protect Pensions

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS (NCCMP)
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**United States Senate
Committee on Finance**

**The Multiemployer Pension Plan System:
Recent Reforms and Current Challenges**

Tuesday, March 1, 2016

Comments from:

Randy G. DeFrehn

Executive Director

National Coordinating Committee for Multiemployer Plans (NCCMP)

At the March 1, 2016 hearing on "The Multiemployer Pension Plan System: Recent Reforms and Challenges" you heard testimony from a number of witnesses. Unfortunately, in many respects much of that testimony was misguided or misinformed. Therefore, we would like to address the following points raised that were raised during the hearing, and in particular in Mr. Biggs's comments.

- ***"Red zone plans, however, are mandated to take only 'reasonable measures' to address funding. While red zone plans are authorized to reduce certain ancillary benefits, they are also exempted from excise taxes on funding deficiencies and thus effectively exempted from funding rules."***

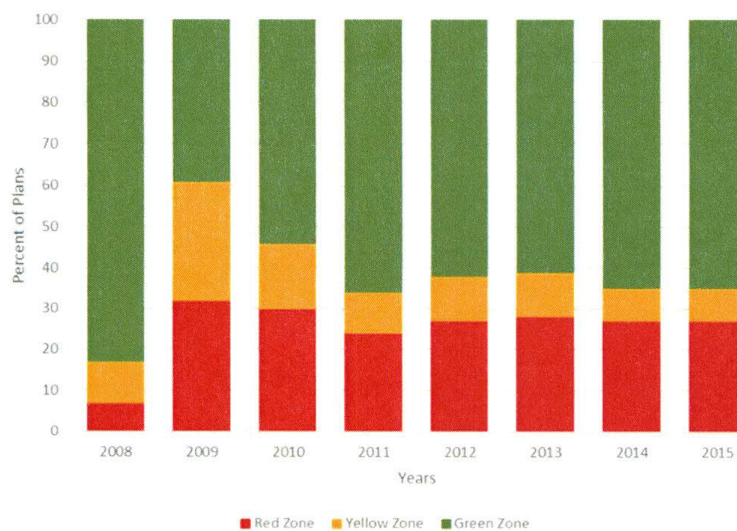
Red Zone plans are not exempted from funding rules. The funding rules governing red zone multiemployer plans differ from those that apply to green zone multiemployer plans, in that red zone plans are allowed more time to recover from their financial challenges. But they must develop schedules that reduce benefits and/or increase contributions by the end of the Rehabilitation Period. It is only after the Trustees determine that all reasonable measures have been taken that the Plan is permitted to extend the recovery period. This is a determination that the Trustees take very seriously, and in fact few plans have taken this option. Most red zone plans are developed expecting to emerge from red zone status within the period required by law.

In addition, red zone plans are exempt from excise taxes only if they continue to make scheduled progress toward recovery as laid out in their Rehabilitation Plan. If they fail to make scheduled progress for 3 years, the previously waived excise taxes must be paid. Therefore, it is misleading to characterize a temporary relief measure that is only effective when a plan is *in compliance* with funding requirements as being "effectively exempted from funding rules."

- ***"As of 2008, 80 percent of multiemployer plans were in the green funding zone and only 9 percent in the red zone. As of 2013, the share of green zone***

plans had dropped to 59 percent while the number of red zone plans has tripled to 27 percent.”

As of 2008, 83% of calendar year multiemployer plans were in the green zone, and 7% were in the red zone. *Solely as a result of the 2008 market crash* in which every sector of the market experienced unprecedented losses, those numbers had declined to 39% of calendar year plans in the green zone and 32% of plans in the red zone as of 2009. From that low, the number of plans in the red zone has *decreased* to 27% as of 2015. The number of plans in the green zone has *increased* back up to 65%. In fact, since 2012 the number of plans in the red zone has held relatively steady as plans make the required and expected progress toward recovery in their rehabilitation plans.



Source: Segal Consulting Survey of Calendar Year Plan's Zone Status 2008-2015

- ***“While plans in the yellow and orange zones have significantly increased contributions to address funding shortfalls, red zone plans have contributed substantially less than sponsors of plans in the green, yellow and orange zones. Thus the most financially endangered are doing less than others to catch up.”***

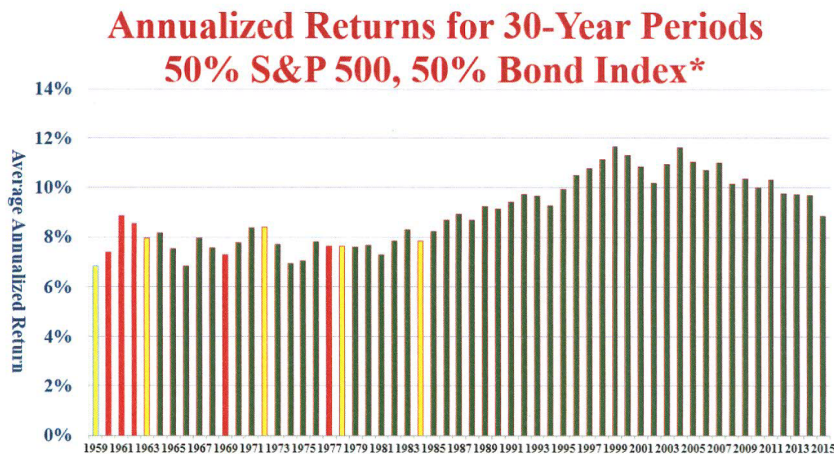
Yellow and orange zone plans have increased contributions, as they are required to avoid a projected deficiency in the funding standard account. This means that their recovery plans are often very front-loaded, in that contributions are increased significantly at the beginning of the period, often to the detriment of the contributing employers to the plan. In contrast, red zone recovery plans often take a more measured approach to contribution increases. This does not mean that red zone plans are doing less than yellow and orange zone plans to recover. In fact, benefits are often reduced as much as necessary in the first few years of the recovery plan as new contracts are bargained. Contribution increases are generally phased-in over a period of years so that employers and participants at the bargaining table can adjust to the new reality of what is required to shore up the funding of the plan.

Yellow and orange zone plans also have only two options to correct their funding challenges—*increase contributions or cut future accruals*. In contrast, red zone plans have additional tools as allowed under the Pension Protection Act of 2006 to help them reach their funding targets—they may reduce what are called “adjustable benefits.” In fact, most plans did all three as part of their recovery plans—*increase contributions, cut accruals and reduce adjustable benefits*.

- ***“If a pension promises to deliver a guaranteed benefit, it should discount its liabilities using a low interest rate to reflect that guarantee.”***

This is a fallacy that does not reflect the fact that multiemployer pension plans are *long-term, ongoing* retirement vehicles. The cash on hand today is not the only money that will be available to pay benefit obligation in the future. Contributions will continue to be made to the plans, and, yes, the assets will continue to earn investment income.

The time horizon of multiemployer pension plans is very long term, typically 30, 40 years or more. As you can see in the graph below, over rolling 30 year periods since 1956 a typical 50% equity 50% bond portfolio earned an annualized yield in excess of 7.5% in 50 out of 60 years. Sixteen of those years showed annualized 30-year returns in excess of 10%. The lowest annualized 30-year return in that period was 6.66%.



30-Year Period Ending 12/31

*1976 - present: Barclays Aggregate, 1926 - 1975: Ibbotson Intermediate Term Government

When you consider the long-term nature of multiemployer pension plans, it does not make sense to focus on the short term volatility of investment returns as Mr. Biggs advocates. And in fact, this is the generally accepted position of the majority of multiemployer actuaries.

- ***“Even a ‘green zone’ multiemployer plan is not nearly as healthy as a single employer plan in the green zone, as a single employer plan must value its liabilities using a corporate bond yield.”***

First, single employer plans are not subject to the same funding rules as multiemployer plans. Therefore, there is no concept of a “green zone” single employer plan.

Second, single employer plans are fundamentally different than multiemployer plans. Only one employer participates in a single employer plan. Therefore, the pension liabilities are more closely tied to the fortunes of the sponsoring company. Multiemployer plans, by definition, are made up of more than one employer—often MANY more employers. If one employer fails, the others are jointly responsible for the pension obligations to the participants of that employer. Therefore, the entire concept of applying corporate bond yields, which apply a monetary value to investors for the risk of failure associated with a single employer standing alone, to a multiemployer plan, in which many employers jointly back the pension obligations of each other, makes no sense.

- ***“In good times, a plan sponsor may not need to make any contributions and may be tempted to increase benefits. Both multiemployer plans and state and local plans succumbed to that temptation during the late 1990s.”***

On the contrary, many multiemployer plans were required to increase benefits during the late 1990s as a result of overly restrictive laws governing the tax deductibility of employer contributions. Contributions to multiemployer plans are set in collective bargaining agreements. Once set, contributing employers are bound by the bargaining agreement to make those contributions. During the 1990s, plans faced a situation in which an employer that made all of the contributions legally obligated under the bargaining agreement to a plan that was fully funded would be subject to an excise tax on a portion of those contributions. This occurred, because the contributions mandated in the bargaining agreements were greater than the maximum amount that could be deducted for tax purposes. Plans increased benefits to increase the deductible limit in order to protect employers from the excise tax.

In effect, despite pleas from the multiemployer community that applying this overly restrictive policy (that was meant to prevent law firms and doctors' practices from sheltering income) to multiemployer plan was ill conceived and that plans should have been able to build reserves in excess of 100% of funding to protect against the inevitable downturn in the markets, overly restrictive tax laws forced plans to spend down the cushion they had developed from greater than anticipated asset returns, and made plans more vulnerable to the combined effects of the 2002/2003 and 2008 market losses. It has been estimated that upwards of 70% of multiemployer plans faced this problem of overfunding in the 1980s and 1990s despite the fact that the notion of negotiating tax shelters for blue collar workers is preposterous on its face.

- ***“These companies generally offered traditional defined benefit pensions, in which a participant’s benefit is calculated based upon his final earnings and his years of service with the company. Defined benefit pensions are ‘backloaded,’ which means that the benefit formula rewards full-career employees but penalizes those who work short or mid length careers. Under a traditional defined benefit pension, for instance, an employee who worked for two companies for 20 years each would receive a substantially lower benefit than an employee who worked for a single company for 40 years.”***

It is this type of broad generalization that demonstrates Mr. Biggs’s lack of familiarity with multiemployer plans and which brings into question the usefulness of his conclusions. In fact, this point is irrelevant to multiemployer plans. Such a formula is almost unheard of in multiemployer plan design. Instead participants earn a dollar multiplier for each year of service or a percentage of contributions. Under this approach, benefits are not backloaded, but are earned equitably over a participant’s career. In addition, a participant with 20 years with two employers will earn the exact same benefit as a participant with 40 years with one employer. This is the entire point of a multiemployer plan.

- ***“It is very unlikely that individuals making their own judgments would take nearly as much investment risk as their pension plans are taking on their behalf.”***

According to a 2014 EBRJ study entitled *401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2013*, “The bulk of 401(k) assets continued to be invested in stocks. On average, at year-end 2013, 66 percent of 401(k) participants’ assets were invested in equity securities through equity funds, the equity portion of balanced funds, and company stock.” This allocation is similar to the allocation used in many pension plans, and is in fact slightly *more* aggressive than the somewhat standard 60/40 equities to bonds mix of multiemployer pension plans.

- ***“If some change affects an entire industry—be it trucking regulations in the 1980s or environmental regulations in the 2000s—the pension sponsors are themselves in a weaker financial position, plus they bear the liabilities of companies that went bankrupt or otherwise left the plan.”***

Please notice that in both examples, it is “regulations” that are weakening the financial position of pensioners. Unintended consequences of regulations are not the fault of the multiemployer plans providing benefits to their participants. Aside from

changing government regulations, it is rare that a change will permanently affect an entire industry.

Respectfully submitted,

Randy G. DeFrehn,
Executive Director

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**“THE MULTIEMPLOYER PENSION PLAN SYSTEM:
RECENT REFORMS AND CURRENT CHALLENGES”**

**COMMITTEE ON FINANCE
UNITED STATES SENATE**

MARCH 1, 2016

The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to promote and protect the retirement security of American workers and their families. We are pleased that the Senate Finance Committee is holding today’s hearing, “The Multiemployer Pension Plan System: Recent Reforms and Current Challenges.” We hope that the hearing will jumpstart a serious conversation on saving critically underfunded pension plans without the cruel and unfair benefit cuts authorized by the Multiemployer Pension Reform Act. In December 2014, Congress passed the Multiemployer Pension Reform Act (MPRA) as part of the comprehensive end-of-year spending bill. MPRA’s cutback provisions eviscerated 40 years of pension law and paved the way for gutting the pensions of hundreds of thousands of today’s retirees and workers.

It is noteworthy that this is the first hearing to be held by any congressional committee on the legislation itself. Hearings were held in one committee of the House of Representatives on a trade group proposal to permit benefit cuts, but the 161-page legislative language was never the subject of hearings and was invisible to the public until its passage was a fait accompli. Retirees and former employees had no seat at the table and no voice in the legislative product, which was only considered in the Rules Committee as an amendment to the rule governing debate on the so-called “Cromnibus” legislation in the House. Neither the U.S. House of Representatives nor the U.S. Senate ever voted separately on the language of this bill, and many Members were unaware of its implications when they voted on the massive funding bill. The process was unconscionable; the legislation would never have emerged from an open, transparent, and democratic process.

Forty-one years ago Congress passed a different law that emerged from almost a decade of legislative and societal debate; a debate driven by government and private-sector failure to ensure that American working people and retirees, and their families, could count on the pension promises made to them.

This law, of course, was the landmark federal private pension law called the Employee Retirement Income Security Act (ERISA). ERISA’s chief goal was to protect the reasonable expectations of workers and retirees. Among its unbending and foundational principles, ERISA ensured that once individuals earned pensions, they could not be reduced absent the exceptional circumstance of the failure of a single employer pension plan, or when a multiemployer plan completely ran out of money. Even then, retirees were provided the maximum protections under the law and had first claim to the plan’s assets, since Congress recognized that they were the most vulnerable participants and would not have time, or the ability in many cases, to go back to work and make up for the lost pension benefits.

MPRA, however, undoes these critical protections by giving plan trustees extraordinary and almost unreviewable power to “suspend”—a euphemism for slashing—already-earned benefits in certain underfunded multiemployer plans, including the benefits of most retirees. Furthermore, these cuts can happen today, 10 to 15 years before even the most troubled plans are projected to become insolvent. Congress would have had sufficient time to consider better solutions during that time. Retiree cutbacks should have been the last option on the table, not the first.

The plan trustees endowed with these new and extraordinary powers are not neutral, objective, and independent actors. Rather, they are appointed by the bargaining representatives of active employees and by the contributing employers, and as such have profound structural conflicts of interest. They will, as the MPRA statute implicitly invites them to do, seize retiree property for the benefit of those they represent. Shockingly, the statute dilutes to almost nothing whatever legal duty the trustees might have had to retirees and even purports to bar retirees from bringing legal actions challenging the trustees' decisions.

The Central States Pension Fund is the first plan to apply to cut benefits, and it graphically illustrates how these conflicts will play out. The cuts to the benefits of retirees and former employees are far steeper than the cuts to active employees, and future financial obligations of contributing employers to the plan have been implicitly reduced. Hence the burden of balancing the books of these plans falls almost entirely on retirees. Indeed, almost a third of retirees face cuts from 40 percent to more than 70 percent (and in a few cases, 100 percent).

And perhaps the supreme irony is that the benefit cuts are unlikely to preserve the plan in the long run. To make its application work, the actuaries for the Central States Pension Fund claim that it is reasonable to believe that Central States will earn a 7.5 percent return on investments going forward, an assumption that the experts we have consulted think is inappropriate in general and for this plan in particular.

The Pension Rights Center has submitted comments to the U.S. Treasury Department urging the agency to reject the Central States' application because we do not believe the plan has met the statutory criteria required for benefit cuts to be permitted. However, we are concerned that if the Treasury decides, against the evidence, to approve the application, it could spur many more plans to submit their own applications to cut benefits. We are concerned that these cuts will be as extreme and as unfairly distributed as is the case for the Central States' participants.

Now that the full effects of the Multiemployer Pension Reform Act have been exposed, Congress simply cannot walk away from MPRA's cruelty and unfairness. If the proposed benefit cuts go into effect, many retirees will no longer be able to pay their mortgages, or pay for medicines or other necessities, or be able to take care of family members who have relied on them. Growing demand for financial support could put increased strain on governments at the federal, state and local levels, in addition to charitable and community support groups that are still overwhelmed by demand in areas where the economic recovery has not yet taken hold.

There are alternatives to this potentially nightmare scenario. Despite the claims of those who wrote and lobbied for MPRA, little effort was made to fashion a different solution to the multiemployer pension plan problem. These lobbyists determined that the brunt of the financial hit from rescuing these plans would be borne by retirees who were not at the table. Once this decision was made, little or no effort was made to explore alternatives that might have spread the financial burden more broadly.

However, the Pension Rights Center has supported alternatives. For example, S. 1631, the Keep Our Pension Promises Act (KOPPA), is currently pending before this Committee and is sponsored by two Committee members, Senator Sherrod Brown and Senator Debbie Stabenow. KOPPA would roll back MPRA's pension-cut provisions, while providing funding to troubled multiemployer plans and the Pension Benefit Guaranty Corporation. KOPPA provides a mechanism for supporting the retirees of these companies, which leaves a manageable liability for the employers remaining in the plan.

A second bill, introduced by another member of this Committee, Senator Rob Portman, is S. 2147, the Pension Accountability Act. This bill was not designed as an alternative to MPRA but addresses one of the more egregious deficiencies in the statute, the lack of a real voice for retirees in the current process, by providing a remedy for MPRA largely illusory voting process.

While the Pension Rights Center has supported both bills, we recognize that time is running short. We believe there is a need for a new comprehensive bi-partisan approach to solve the problem.

We hope that this hearing will be the beginning of this new process. We urge the members of this committee to convene a dialogue to find innovative approaches to fixing the problem by working with retirees, unions, employers and other experts. We strongly believe that ideas that may have been considered but discarded in the

past may find new support in the wake of the devastation that the MPRA cuts will impose on retirees and their communities. We also believe that Members of Congress, working together with all stakeholders, including retirees and their families, have the ability to design a better solution that does not place the burden of preserving these plans on the backs of retirees.

We note the precedent for such a grand bargain in Detroit, where stakeholders from all sides joined forces, Republicans and Democrats working together, to ensure the viability of the Detroit public pension plans while avoiding the 34 percent pension cuts that had originally been proposed. In the end, Detroit's plans reduced civilian retiree cuts to only 4 percent and spared police and firefighters from any cuts. We should follow Detroit's example and find creative solutions to ensure the survival of multiemployer plans, while sparing pensioners from cuts.

We conclude with a word of caution for every member of this committee and of the United States Senate. Those Senators who have Central States Pension Fund retirees as constituents are already well aware of the impact MPRA will have on your constituents. But soon this issue may affect substantial numbers of retirees in every state. Central States was the first multiemployer pension plan to file a plan for retiree benefit cuts, but it is by no means the only plan that will do so. At this time, there are three other plans that have already filed an application, or announced their intention, to cut benefits. But there are more than 50 plans that have filed notices of "critical and declining" status with the Department of Labor—a prerequisite to filing a proposal to cut retiree benefits, and we believe there are another 100 plans that will be eligible to cut benefits over the next several years.

Congress has an opportunity to reverse this ill-conceived and unfair legislation now, before its effects spread and become catastrophic, by pushing the "pause button" on the Central States Pension Fund's proposal and bringing all the stakeholders together to develop a sensible, fair and workable solution. Retirees in multiemployer plans did everything right while they were working, and they are not responsible for the financial situation their plans are in today. They worked hard and played by the rules, and they relied on promises made by their employers—and backed up by a federal guarantee—that they would have a secure income in retirement. These are not wealthy people—they are the heart of middle America—and their futures are our future.

Finally, we want to briefly comment on another subject of this hearing, the so-called composite plans. Composite plans are "hybrid" plans, in which assets are pooled and professionally managed and in which benefits are paid in accordance with a formula, with possible adjustments to reflect plan experience. In concept, such plans reflect a promising new direction, one that the Pension Rights Center has championed. But the success of such plans will depend on the legislative parameters: Are the plans' promised benefits conservatively and responsibly funded? Are retirees and older participants adequately protected from downward benefit adjustments? Is there a minimum floor benefit that cannot be reduced and which is backed by PBGC guarantees? We are also concerned that such plans not be connected to legacy defined benefit plans through overlapping trustees and other plan officials. But we are interested in the idea of hybrid plans and look forward to constructive dialogue with other organizations and stakeholders.

The Pension Rights Center is working on ideas both for a new comprehensive bipartisan compromise bill to solve the issue of underfunded multiemployer plans, as well as an analysis of the composite plan concept. We will be happy to share our findings once they are completed.

SHEET METAL AND AIR CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION

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March 1, 2016

The Honorable Orrin Hatch, Chairman
 The Honorable Ron Wyden, Ranking Member
 Committee on Finance
 U.S. Senate
 Washington, DC 20510

Re: The Multiemployer Pension Plan System: Recent Reforms and Current Challenges

Dear Chairman Hatch and Senator Wyden:

I am writing on behalf of The Sheet Metal and Air Conditioning Contractors' National Association (SMACNA). SMACNA is supported by approximately 3,500 construction firms supplying expertise in industrial, commercial, residential, architectural and specialty sheet metal and air conditioning construction throughout the United States. The majority of these contractors run small, family-owned businesses, many of which are multi-generational, and contribute to the Sheet Metal Worker's National Pension Fund (NPF). Many contribute as well to a local pension fund. Pension funding issues figure prominently in their day to day business decisions and SMACNA appreciates that this hearing will highlight the need for new design options in multiemployer pension plans, which went unfinished in 2014.

For the record, SMACNA employers are doing their part to fulfill their commitment to the NPF. Recent NPF records show SMACNA employers **made contributions of over \$460 Million in 2015; over \$424 Million in 2014; and over \$315 Million in 2012.** But this increasing amount has not been enough to keep the national plan adequately funded, and it currently resides in Endangered Status.

Contractors want to continue to be able to provide lifetime retirement security for their workers but the current Defined Benefit (DB) system is unstable and contractors are worried about the viability of their businesses and are being driven out of the system. As you know, there are large and small DB funds on the verge of collapse. The existing economic realities mean that benefit security under the current DB system is illusory.

The Solution: Composite Plans

Labor and management came together to craft a solution which has the ability to revitalize the multiemployer system with a new type of plan called a "Composite Plan" that bargaining groups would have the option of adopting. Federal law currently allows only a traditional Defined Benefit Plan or a 401(k) style Defined Contribution Plan. Composite Plans are a hybrid plan designed to bridge the gap between the existing options.

So far, SMACNA has not heard any opposition to the new hybrid plan design. There are good reasons for that. Employers like it, workers like it, and its use is strictly voluntary by plan trustees, which have an equal number of labor and management representatives.

Composite Plan Design Features Workers Like:

- **Not Mandated:** Composite Plan design is simply another tool for plans trustees to use to secure long-term retirement benefits for participants.
- **Lifetime Benefit:** Composite plan benefits would be paid as lifetime annuities—lump sums not allowed.
- **Professional Asset Management and Pooled Risks:** Plan assets would be professionally managed without the fees associated with individual accounts, resulting in far greater efficiency than is available in traditional Defined Contribution plans.
- **Benefit Security:** The flexible benefit structure would protect benefits with strict management and funding requirements—most notably plan benefits would be required to be funded at 120% of their expected costs. The attached Segal/NCCMP document illustrates how plans funded at 120% fare under different negative market event scenarios even without the benefit of a normal rebound effect.
- **Safeguards Against Adverse Experience:** In addition to the mandatory 20% funding cushion, Composite Plans will protect retirement benefits that participants have earned by responding to adverse experience by proposing contribution rate increases, reducing the rate of future benefit accruals, and scaling back ancillary benefits such as early retirement and other supplemental benefits.
- **Severe Market Decline Protections:** In the unlikely event market declines exceed the worst predictions, plans will have the important ability to intervene early by reducing benefits to a sustainable level. This step is only available after all other options have been exhausted. A hard lesson that we have learned from recent experience is that when the worst happens, the key to preventing

catastrophic benefit reductions is to empower plans to make modest adjustments as soon as it is clear they are necessary.

- **Already Earned Benefits Protected:** Composite Plans would apply only to benefits earned in the future; benefits already earned in the so-called Legacy Plan would not be lost nor cashed out. Instead, legislative language is being written in a bi-partisan way to tightly protect earned benefits in the transition rules.

Composite Plan Design Features Employers Like:

- **Retain and Attract Employers:** By eliminating unfunded liabilities (withdrawal liability) for employers going forward, the composite design would improve the ability of plans to retain existing contributing employers and would remove a significant barrier for attracting new employers.
- **Cost Predictability:** Composite Plans would provide cost predictability—employers would be required only to contribute the amount negotiated in their collective bargaining agreements and would not take on outside liabilities.
- **Labor Sees Hybrid Plans as a Positive Alternative to Defined Contribution Plan:** Composite Plans are a design that workers would be willing to agree to for the future—whereas they are generally skeptical and unwilling to negotiate to a Defined Contribution plan.
- **Liabilities in Legacy Plans Gradually Diminish:** As time moves forward, liabilities in the legacy plans gradually diminish as benefits are paid out and participants earn accruals in the new plan.
- **Companies Continue to Provide Good Jobs Within a Community:** With a composite plan in place, instead of closing their doors, employers would be able to welcome their children into their businesses with confidence or would be able to sell their businesses when they retire, because the overwhelming burden of uncontrollable, unknowable risk of unfunded liabilities is removed.
- **Private Sector Solution:** The proposal is a private sector solution, not requiring government dollars and is designed to keep the current funding crisis from happening in the future.

Composite Plans will modernize and reinvigorate a multiemployer retirement system that has struggled in recent years. Once Congress authorizes the use of Composite Plans, labor and management will have the option to elect a plan design that would provide a safe and secure lifetime retirement benefit to employees without risking the survival of a sound business that offers good middle-class jobs with important benefits for workers and society. *A more detailed White Paper authored by actuary Josh Shapiro is attached for the record.*

Respectfully submitted,

Dana Thompson
Assistant Director, Legislative Affairs
SMACNA, Inc.
Capitol Hill Office

Composite Plans: A New Approach to Modernizing Multiemployer Retirement Benefits

By Josh Shapiro, Groom Law Group

July 2015

Executive Summary

In 2011 the Retirement Security Review Commission, consisting of stakeholders from both labor and management, met to discuss the future of the multiemployer retirement system. After a long period of discussion and deliberation, the group concluded that revitalizing the multiemployer system requires creating a new type of retirement plan. These plans are known as “composite plans,” and their objectives are:

- Provide adequate and reliable income in retirement to employees.

- Ensure that sponsoring employers are not exposed to financial risks that jeopardize the viability of their businesses.

Federal law currently limits plan sponsors to offering either traditional defined benefit pension plans or 401(k)-style defined contribution plans. Each of these options has certain weaknesses, with defined contribution plans struggling to successfully provide adequate and secure income to retired workers, and defined benefit plans placing financial risks on employers that are driving them out of the system.

Composite plans provide a voluntary way to bridge the gap between these two options, combining the lifetime income payments of defined benefit plans with the predictable cost structure of defined contribution plans. Since composite plans are neither defined benefit nor defined contribution plans, Congress will need to authorize their use before companies can begin to offer them to their employees.

The following key features of composite plans will ensure that they provide employees with reliable and cost-effective retirement benefits:

- No individual accounts—all assets invested in a single diversified portfolio with professional asset management, and all benefits paid as lifetime annuities calculated under a formula established by the plan trustees.
- Funding policy that is required to target 120% of the actuarially calculated costs, which serves as a buffer against market volatility.

Composite plans will also provide the cost predictability that is necessary to protect the financial viability of the contributing employers.

- Contribution obligation limited to the bargained contribution rate, which can only be increased by agreement between labor and management.
- Absence of any withdrawal liability assessments or other fees payable when an employer exits the plan.

Composite plans work by employing a flexible benefit structure that adapts to changing economic conditions. The plan trustees may increase benefit levels when significant gains occur, and subject to a variety of safeguards, they may reduce benefit levels if this action is necessary to maintain a strong long-term funding outlook.

When a group adopts the composite plan model, it will apply only to benefits earned in the future, while the current multiemployer pension rules continue to apply to benefits earned before the composite plan is adopted. The liabilities in the legacy pension plan will cease to grow, and over time they will diminish as benefits are paid out and participants earn accruals in the composite plan.

We know from experience that early corrective action is a key source of benefit security. When the actuarial projections show a funding imbalance, composite plans require early proactive measures to improve funding levels. These measures may include:

- Negotiating additional contributions.
- Reducing the rate of future benefit accrual.
- Scaling back non-core benefits, such as early retirement, spousal subsidies, and disability benefits.

Only after these options have been exhausted can the trustees consider adopting reductions to the core retirement benefits. Just as with current multiemployer plans, all boards of trustees will consist of an equal number of employer and employee representatives, which will further ensure retirement benefits are protected.

Extensive stress testing confirms that the composite plan model will work as intended. The positive experience of the Canadian multiemployer system, which closely resembles composite plans, is further proof of the viability of this approach.

The companies that currently participate in the multiemployer system take pride in the fact that they provide high-quality retirement benefits to their employees. The structure and safeguards of composite plans represent a responsible way for them to continue to do this, without taking on financial risks that threaten the survival of their businesses.

Introduction

Several years ago, representatives from both labor and management formed the Retirement Security Review Commission in order to discuss ideas on how to revitalize the multiemployer pension system. After many months of discussion, analysis,

and debate, the result of this process was a proposal for a new type of retirement plan called a “composite plan.”

Composite plans are a new and innovative approach to providing retirement benefits to multiemployer plan participants. In a time when more and more workers are financially unprepared for retirement, composite plans represent a modernized approach that is viable for the future. These plans have two primary objectives:

- Provide adequate and reliable income in retirement to employees.
- Ensure that sponsoring employers are not exposed to financial risks that jeopardize the viability of their businesses.

In order to accomplish these objectives, the composite plan structure has the flexibility to adapt to both strong and weak economic conditions, which creates benefit security for participants and cost stability for plan sponsors. This is especially important during difficult economic times when plans become underfunded, as the composite plan rules require swift action to improve funding levels, while giving labor and management the flexibility to develop solutions that meet their specific needs.

As with current multiemployer retirement plans, composite plans would be products of the collective bargaining process between labor and management. Current pension law limits employers to offering either defined contribution plans such as 401(k) plans, or traditional defined benefit pension plans. As composite plans are neither, in order for companies to begin offering them to their employees, Congress will need to enact legislation authorizing their use.

Why Are Composite Plans Needed?

Effectively, companies have been forced to choose between protecting their businesses and protecting their employees. Composite plans provide a way for employers to do both. **Composite plans take the best features of the options that are available under current law by combining the predictable costs of 401(k) style defined contribution plans with the lifetime income features of traditional defined benefit plans.**

Composite plans are a voluntary “best of both worlds” approach that will help reverse the recent trend away from pension plan sponsorship by providing an option that truly meets the needs of both the employees and the employers. They will also help to reduce multiemployer plans’ reliance on the insurance provided by the Pension Benefit Guaranty Corporation, as the high degree of adaptability of composite plans makes this insurance unnecessary.

Under current law, the companies that want to provide retirement benefits to their employees face a difficult choice:

- They can offer a traditional defined benefit pension plan, with the knowledge that when economic conditions cause pension costs to increase, they will bear the burden of these increased costs while many of their competitors will not.
- Alternatively they can offer a 401(k) style defined contribution plan, knowing that these plans place risks and burdens on employees who may lack the proficiency to manage them.

The vast majority of companies that sponsor multiemployer pension plans are small businesses, which in many cases have been handed down through several generations of family members. These employers understand the importance of retirement income security to employees, and they take pride in the fact that their employees are able to maintain a decent standard of living in retirement following a lifetime of work. Composite plans represent an opportunity for these companies to continue to provide high-quality retirement benefits to their employees, without taking on financial risks that could ultimately cause the demise of their businesses.

Advantages of Composite Plans

Employee Perspective—*The Advantages of Composite Plans over Defined Contribution Plans*

Professional Asset Management: Composite plans provide for professional asset management and the sharing of risks, both of which enable these plans to provide retirement security to participants far more efficiently than is currently possible in defined contribution plans such as 401(k) plans. Today many defined contribution plan participants struggle with how to manage their investments while they are working, and how to convert those investments into retirement income once they retire. Composite plans possess design

features that address both of these issues, ensuring that they maximize the amount of retirement income they provide while minimizing both cost and risk.

Benefit Security: All composite plan assets are invested in a single diversified portfolio that allows the trustees to negotiate the lowest possible fee arrangements with managers and advisors while maintaining a long-term investment strategy. **Composite plans also have several design features that provide benefit security during periods of economic weakness.** These features include:

- A funding structure that mandates that projected plan assets exceed the expected benefit obligations by 20%.
- The ability for the bargaining parties to negotiate higher contribution levels in order to improve funding without reducing any benefits.
- A requirement that plans protect benefits that participants have already earned by reducing the rate of future benefit accrual as an initial response to funding challenges.

In a 401(k) plan, the employer deposits contributions into employees' individual accounts during their working years, and each individual employee is responsible for deciding how to allocate the contributions among numerous investment options. When investment losses occur, there are no provisions in these plans that provide any protection to participants. A typical multiemployer plan participant is a middle-class worker, who in most cases does not have the time, expertise, or resources that are necessary to develop an investment strategy that effectively balances long-term returns with downside risk management.

Lifetime Annuity: Composite plans pay all benefits as lifetime annuities, which means that it is impossible for retirees to outlive their savings. This feature represents an enormous advantage over 401(k) plans, as it is exceptionally difficult for an individual participant to develop an efficient strategy for drawing down an individual retirement account. Imagine a 60-year old worker who has never had more than a few thousand dollars in the bank suddenly receiving a check for half a million dollars. This money needs to provide income over a retirement that could last anywhere from several months to several decades. How do you prudently spend this money in a way that balances the desire to enjoy the rewards of a lifetime of hard work with concerns about being impoverished at age 85? By paying all benefits as lifetime annuities, composite plans provide longevity protection that will prevent elderly participants from needing public assistance in the final years of their lives.

Employer Perspective—*The Advantages of Composite Plans Over Defined Benefit Plans*

Ability to Provide Secure Benefit for Employees at Predictable Costs: From the perspective of the employers, composite plans have the advantage of predictable costs. In a composite plan, the employers are only obligated to contribute the amounts that are negotiated in collective bargaining agreements, and they do not take on any liabilities outside of these amounts. As such, the primary factors that have made companies reluctant to sponsor multiemployer defined benefit plans are entirely absent from composite plans.

In traditional defined benefit plans, the employers bear the risk of plan asset losses. When the plan assets decline, the employer costs and liabilities rise in response to those losses. The result is that the companies that choose to provide these plans to their employees have unpredictable cost structures, while the companies that choose not to provide their employees with quality retirement benefits have much greater cost stability. The inevitable consequence is that despite their value to employees, employers have been forced to move away from traditional defined benefit plans in order to remain competitive and financially viable. Today very few companies are willing to enter the multiemployer defined benefit system, and many of those that currently participate are looking for opportunities to exit. Composite plans address this issue by strictly limiting the employers' obligations to the amounts negotiated in collective bargaining agreements.

Stable Transition from Traditional DB Plan: In addition, for companies that currently sponsor traditional defined benefit pension plans that are underfunded, a transition to the composite model would allow them to more efficiently address those unfunded liabilities by ensuring that employees' future years of service do not cause the liabilities to grow.

How Composite Plans Work

Composite plans will pay benefits in the same manner as current defined benefit plans. There will be a benefit formula that determines the amount of retirement income each participant receives. Plans may include early retirement provisions, disability benefits, spousal benefits, and other optional features. Like all multiemployer plans, a board of trustees consisting of an equal number of employee and employer representatives will be responsible for setting the provisions of the plan.

A composite plan will determine its funded position by first measuring the assets and liabilities of the plan, and then projecting these values 15 years into the future based on expected contributions, benefit accruals, benefit payments, and asset returns. If the ratio of the projected assets to the projected liabilities equals or exceeds 120%, the plan will be considered to be in good shape and can continue to operate as is. If this ratio is below 120%, the plan will be required to take prompt action to improve its projected funding level.

As with traditional defined benefit plans, the measures used to improve funding levels in a composite plan may take many forms.

- When faced with a funding shortfall, trustees' initial reaction will often be to provide the bargaining parties with an opportunity to negotiate a higher contribution rate that will pay off the shortfall.
- If necessary, the trustees will also respond by reducing the rate of future benefit accrual.
- In the rare cases when these tools are insufficient, plans can also respond by scaling back ancillary benefits such as early retirement subsidies and disability benefits as a way to improve the long-term funding outlook.

Historically, in all but the worst of economic conditions, multiemployer defined benefit plans have been able to correct funding imbalances using only the tools described above, and the same will be true for composite plans. During the most severe of economic catastrophes, such as the 2008 financial market collapse, these tools may not be enough for some plans. In the event that the projected funded ratio of a composite plan remains below the required level after the application of all of the measures outlined above, the trustees of composite plans will have the flexibility to adjust benefits that participants have already earned in order to raise the projected funded ratio. Since both labor and management have equal voices on the board of trustees, this decision will require agreement from both sides.

The ability of a composite plan to adjust benefits that participants have already earned will only be available after the plan has exhausted all other measures to improve its funding level, and can only be utilized with the approval of the employee representatives who make up half of the board of trustees. In the event that extraordinary economic difficulties force a plan into a position where it needs to take this step in order to return to financial health, prompt action is vital to preserving participant benefits. There are currently many traditional defined benefit plans where participants are facing massive benefit losses that could have been avoided if the plans had been empowered to adopt modest benefit adjustments years ago.

The early intervention requirements of composite plans will ensure that if a plan ever becomes severely distressed, it will make the necessary adjustments quickly before the problem is allowed to worsen. The underlying concept is that minor benefit reductions adopted by composite plans long before they become insolvent are preferable to the much larger benefit losses that occur in traditional multiemployer defined benefit plans that are at or near the point of insolvency. If plan experience improves in the future, it is generally possible to restore benefits that were reduced in the past, but once the opportunity to improve funding levels with minor benefit adjustments is missed, it is often gone forever.

From the point of view of an employer, the financial implications of a composite plan will be identical to a 401(k)-style defined contribution plan. The employer will contribute to the plan in accordance with the contribution rate contained in the collective bargaining agreement, and under no circumstances will there be any liability outside of that negotiated rate. In the event the employer ceases to contribute to the plan for any reason, there will be no withdrawal liability or other exit fee.

Current multiemployer defined benefit plans could convert to the composite model prospectively, but the composite plan provisions would not apply to benefits that participants earned prior to the conversion. This means that the benefits that participants earn going forward would not have any withdrawal liability associated

with them and would be subject to the composite plan funding rules. Past benefits earned before conversion, however, would continue to be subject to both the current defined benefit plan funding requirements and withdrawal liability provisions. As newly hired workers replace the current population of active and retired participants, the legacy defined benefit plan will gradually shrink while the composite plan grows.

How Composite Plans Provide Benefit Security

Composite plans contain several features that serve to protect participant benefits. The funding rules for these plans mandate that the contribution rates and benefit levels are structured so that the plan assets are expected to reach 120% of the plan liabilities. In contrast, the funding rules for current defined benefit plans target an asset level that is 100% of the plan liabilities. Further, composite plan sponsors will be required to project the assets and liabilities 15 years into the future, and to take immediate corrective action if the plan is not on pace to reach the 120% funding target. The combination of the 20% funding cushion and the requirement for early corrective action in the event of a long-term funding imbalance will serve to ensure that composite plans are funded in a highly conservative and responsible manner, and will minimize the possibility that plans ever need to rely on the benefit adjustment provisions.

Benefit security in composite plans will also draw strength from the ability of these plans to attract and retain contributing employers. The importance of this objective can be seen in the recent experience of multiemployer defined benefit plans. The Boston College Center for Retirement Research compiled a list of the most severely underfunded multiemployer plans in the country, which they defined as plans that are expected to fully exhaust their assets in the next 15 years.¹ During the period beginning in the year 2000, and ending immediately after the 2008 financial crisis, the workforce covered by the entire multiemployer system contracted by approximately 8%.² But, the plans that Boston College included on the list of the most distressed plans contracted by an average of 48% during this timeframe. In other words, the plans that failed to attract and retain employers in the years prior to the 2008 crisis are the same plans that are likely to experience benefit reductions after the crisis. By providing the cost predictability that employers need to remain profitable, composite plans will be able to maintain strong bases of contributing employers, which in turn provides a valuable source of benefit security to the plan participants.

Composite plans are often compared to traditional defined benefit plans, where the conventional wisdom is that participant benefits cannot be reduced under any circumstances. Unfortunately, recent history has proven that this promise is only valid as long as the plan has sufficient assets to pay full benefits, and it goes away when this is not the case. Composite plans, in contrast, recognize that a promise to pay benefits is meaningless unless the plan actually has the assets necessary to support this promise. For this reason, composite plans emphasize responsible funding policies, early intervention to address funding imbalances, and attracting and retaining contributing employers. **Composite plans will ensure that plans actually have enough money to pay benefits, instead of making promises that last only as long as the plan assets last.**

Viability of Composite Plans

The Canadian Experience: While the concepts behind composite plans are new to the retirement landscape in America, many of the underlying ideas have been used in other countries for years. This fact is most notable in Canada, where nearly all multiemployer pension plans operate under a system that shares many features with composite plans. The employers in these plans are liable only for the negotiated contribution levels, and in difficult economic times the trustees have the authority to reduce past benefits if it is necessary to maintain an adequate funding level. The experience of these plans has been enormously successful. There is an expanding base of contributing employers and the benefit adjustment authority has been rarely used, and only to the modest extent necessary to put plans on a path towards long-term health. **In fact, the system has been so successful that**

¹This data was published in the Washington Post Blog on January 27, 2015. It is available at <https://www.washingtonpost.com/apps/g/page/business/multi-employer-pension-plans-that-could-cut-benefits-to-retirees/1577/>.

²The decline in the active workforce covered by multiemployer plans is based on table M-5 and M-7 from the 2013 PBGC Pension Insurance Data Tables. It is available at <http://www.pb.gc.gov/prac/data-books.html>.

many in Canada are looking for ways to expand this approach outside of the multiemployer system.

Stress Testing: In addition to considering the experience of other countries, the group of labor and management stakeholders that developed the composite plan concepts also engaged an actuarial firm to stress test the model against a variety of economic conditions. This testing found that during most economic scenarios, composite plans operated smoothly and remained in strong financial health. The analysis also showed that during severe downturns comparable to the 2008 financial crisis, composite plans have the flexibility necessary to recover without causing undue harm to either the contributing employers or the participants. The majority of composite plans would have been in a position to recover from the crisis using only negotiated contribution rate increases and prospective reductions in benefit levels. The minority of composite plans that would have also needed to adjust past benefits in order to recover would have been able to do so with modest reductions of less than 10% of participant benefits.

Conclusion

Composite plans will modernize and reinvigorate a multiemployer retirement system that has struggled in recent years. The composite plan model takes the best features of the defined benefit and defined contribution plans that are available under current law, and uses them to construct a new approach to providing employer sponsored retirement benefits. Once Congress authorizes the use of composite plans, the companies that sponsor multiemployer plans will be able to offer safe and secure lifetime benefits to their employees without risking the survival of their businesses.

The Retirement Security Review Commission, a working group established in 2011 and comprised of stakeholders from both labor and management, endorsed Composite Plan designs during extensive discussions on safeguarding multiemployer pension plans.

This White Paper on Composite Plans is presented by “Construction Employers for Responsible Pension Reform” represented by the Associated General Contractors of America, Association of the Wall and Ceiling Industry, Finishing Contractors Association International, International Council of Employers of Bricklayers and Allied Craftworkers, Mechanical Contractors Association of America, National Electrical Contractors Association, Sheet Metal and Air Conditioning Contractors’ National Association, and The Association of Union Constructors.

The primary author of this White Paper was Josh Shapiro, Senior Actuarial Advisor at the Groom Law Group in Washington, DC. Mr. Shapiro is a Fellow of the Society of Actuaries and an Enrolled Actuary under ER/SA. He is the vice-chair of the American Academy of Actuaries Multiemployer Subcommittee and the 2015 recipient of the Wynn Kent Public Communication Award. Mr. Shapiro holds a bachelor of arts degree in mathematics from Cornell University.

UNITED ASSOCIATION OF PLUMBERS AND PIPEFITTERS INTERNATIONAL UNION (UA)
AND MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA (MCAA)

March 7, 2016

To: Senate Finance Committee; Senate Health, Education, Labor, and Pensions Committee; House Ways and Means Committee; House Education and Workforce Committee

Subject: Imperative need to modernize the Nation’s private sector multiemployer defined benefit pension plan system

On behalf of the United Association of Plumbers and Pipefitters International Union (UA), and the national Mechanical Contractors Association of America (MCAA), we urge Congress to act and the Administration to support the adoption of badly needed options for plan trustees to consider modernizing the Nation’s fragile multiemployer plan structure. The UA and the MCAA jointly sponsor some 148 Taft-Hartley defined benefit pension plans covering approximately 434,494 participants. These plans have \$31.35 billion in assets.

A broad national labor/management expert panel, the Retirement Security Review Commission, administered by the National Coordinating Committee for Multiem-

ployer Plans (NCCMP), proposed a comprehensive, coordinated, and long-overdue reform of the multiemployer system providing options for plan trustees. Two of the three major recommendations in the Commission's proposal, ***Solutions Not Bail-outs***, were enacted in the Kline/Miller Multiemployer Reform Act of 2014 (MPRA).

We are writing to urge your active and timely support for the most fundamental and least controversial part of that proposal—the third recommendation that would provide plan trustees with new options to consider. The Commission recommended creating a new type of plan, called a “composite plan,” that is safer and more sustainable for both workers and their contributing employers than defined benefit plans, which provides a significantly more efficient use of pension contributions for pension benefits than is available under the 401(k) model.

While defined benefit plans are the primary form of benefit for participants in multiemployer plans, a number of factors have changed the environment for many contributing employers making continued participation in these plans an unacceptable risk.

These factors include increased market volatility that has produced both real and perceived threats of unfunded liabilities resulting in the re-emergence of withdrawal liability for contributing employers. In addition, new financial disclosures for employers imposed by the accounting profession have negatively affected the ability of employers to access credit markets. This is a critical problem in credit dependent industries including such as construction.

Under the current tax laws, for employers who are not willing to participate in a multiemployer defined benefit plan, the only available alternative to provide any retirement benefits is a defined contribution plan. These plans have their own broadly recognized shortcomings including transferring longevity and investment risk to plan participants, greater fees, lack of professional asset management, reduced opportunities to invest in a full range of investment classes and account degradation through various forms of “leakage” (loans, hardship withdrawals, early distributions, etc. . . .). In addition, many participants receive their benefits in the form of lump sum distributions (instead of annuity income). The result is an inefficient system that leaves workers to manage account balances that are insufficient to meet their lifetime retirement income needs.

Composite plans are designed as a way of preserving the best of both the defined benefit and defined contribution structures. A composite plan is neither a defined benefit nor a defined contribution plan, but is a new plan design that draws from the best of both of the existing structures.

For existing defined benefit “legacy” plans that desire to convert to a composite plan structure, the retirement plan would be comprised of two pieces—the “legacy” defined benefit plan, which would be required to be fully funded as part of the transition to the new composite structure, but which would cease granting future accruals; and the new composite benefit plan for future accruals. The legacy plan portion of the combined plan remains subject to all of the existing ERISA/PPA funding rules, PBGC protections and premium payments, and withdrawal liability requirements. One of the transition requirements in going from the legacy defined benefit plan to the new composite plan would be a required minimum transition contribution that is sufficient to amortize the existing legacy plan liabilities over no more than 30 years. There is no question but that the transition rules must ensure that the legacy plan liabilities are fully funded.

The new composite plan design would resemble that of the current defined benefit plan (typically \$X per month per year of service), but would be self-adjusting (as are all defined contribution plans) based on market performance. As a composite plan is not a defined benefit plan it is not subject to the ERISA funding requirements, PBGC coverage or premiums and contributing employers are not subject to withdrawal liability on benefits earned under the composite plan. The attraction of the composite design, however, is that it is much more efficient and addresses the recognized shortcomings of the current defined contribution system, allowing more of the contribution and investment returns to be paid out to the participants in their retirement benefit. In addition, it will provide *lifetime retirement income* (in the form of annuity payments) and require funding targets designed to moderate market volatility. Most importantly, however, the composite plan will increase long-term retirement security by eliminating the obstacles to new employer participation in the plan. By limiting their obligations to the negotiated contribution amount new employers will no longer fear the emergence of liabilities over which they have no control.

The major features of composite plans are as follows:

- **Requires full funding of the legacy defined benefit plan.** The legacy defined benefit plan remains subject to all of the ERISA/PPA funding requirements to which any defined benefit plan is subject. In addition, at the time of the transition to the composite design, a plan may elect a one-time “fresh start” that would provide a re-set to a single 30 year amortization of all of the existing amortization bases. As an additional funding protection, a plan must meet an additional “minimum transition contribution” under which the remaining liabilities of the legacy defined benefit plan must be funded over 30 years.
- **Allow participants to maximize their payout by pooling longevity risk.** One of the most appealing aspects of traditional defined benefit plans is that the benefit is paid as a life annuity using the group mortality to determine the payout periods and amounts. Conversely, one of the greatest unknowns for anyone who must decide how much to withdraw from their IRA or 401(k) is how long they will live. There is a significant risk that an individual will outlive his or her individual account. The composite plan addresses this problem by eliminating individual accounts and pooling longevity risk, requiring the benefit to be paid out in a life annuity as it would in a defined benefit plan. This will enable higher benefits to be paid than if the participant and spouse had to assume the most conservative mortality as benefits are drawn down and will insure that that participant and spouse do not outlive their retirement assets.
- **Reduce costs by professionally managing investments and negotiating fees.** Defined benefit plan assets are typically large enough to permit plan fiduciaries to retain professional investment managers and consultants, access asset classes that are unavailable to the average individual investor, and to negotiate fees that are only a fraction of those charged to the average mutual fund investor. Over one’s career, these savings could increase benefits paid out by as much as 25%. The new composite model will provide such savings to both the legacy defined benefit and composite portions of the participant’s benefit.
- **Preserve assets for retirement income.** It is often said that participation rates in 401(k) and other defined contribution plans would be significantly lower if workers felt they would be unable to access their funds for other purposes. Nevertheless, one of the factors frequently cited as contributing to low account balances in the current defined contribution system is the problem of “leakage.” Leakage occurs when the plan includes features such as loans, hardship or other early and lump-sum distributions that diminish the assets in a retirement account, defeating the objective of providing lifetime income. Composite plans cover all employees pursuant to the applicable bargaining or other written agreement making individual elections unnecessary and prohibit these other forms of leakage that threaten a participant’s standard of living in retirement.
- **Eliminate barriers to both existing and new employer participation.** As these are not defined benefit but modified defined contribution plans, employers make their negotiated contributions as they would under a 401(k) plan, but have no further funding obligations as they would under a defined benefit plan. As these plans mature, the legacy defined benefit plan liabilities are phased out and no unfunded liabilities are attached to any future service under the composite plan. Therefore, no withdrawal liability would have to be reported on employer financial statements.
- **Requires funding at rates sufficient to protect participants against market volatility.** Recognizing that this approach shifts the entire investment risk to the participants as is the case with any defined contribution plan, the rules governing composite plans seek to mitigate market volatility by requiring target contributions at 120% of the projected actuarial cost to fund the benefit. This funding buffer is evaluated annually using a 15 year projection of assets at market value and the plan’s assumed rate of return to determine whether intervention is required.
- **Requires adjustments when annual funding projections drop below 120% to further minimize benefit fluctuations due to market volatility.** Defined contribution plan benefits automatically adjust immediately when markets fluctuate. Composite plans moderate adjustments by imposing annual reviews and when projections fall below the 120% target, by imposing a hierarchy of modifications to restore funding to the 120% target. Such modifications would begin with the traditional approach of negotiating contribution increases and/or adjusting future benefit accrual rates. More substantial modifications

which resemble changes to adjustable benefits under the Pension Protection Act and Multiemployer Pension Reform Act are available to return the plan to fiscal health if substantial market corrections occur. Under this hierarchy of benefit reductions, the normal retirement benefit paid at normal retirement age would only be at risk in the event of a catastrophic market event such as the recession of 2008–2009 and then, only in the event the plan were projected to become insolvent.

In sum, the proposal would allow (not require) joint labor and management trustees to consider converting their defined benefit plans to a composite plan design that combines the best features of the defined benefit and defined contribution models for workers, and rebalanced plan funding risk for employers contributing to the plans—keeping employers in the system and attracting new ones. By ensuring greater employer participation in secure retirement plans our industry can also address the related problem of growing workforce deficits. Absent these essential reforms ongoing economic and asset value volatility and mounting adverse demographic challenges will continue to erode the stability of the system at an increasing pace. Furthermore, competitive pressures will press employers to leave the system and the active workers who have borne the brunt of the cost increases to fund past generations at the expense of their own retirement security will feel no choice but to consider conversion to a less secure defined contribution plan.

In fact, making proposed composite plan design available can help plan sponsors avoid the fate that currently faces critical and declining plans. The trustees of critical and declining plans have determined that the only option to preserve benefits for all participants above those they would receive if the plans were allowed to become insolvent is to judiciously cut benefits now to preserve plan assets for the greater number of participants and avoid becoming insolvent which would require even more drastic benefits cuts for all.

We are all aware of the devastating impact those remedies will have for affected retirees, and we are truly empathetic that this “least-worst” option had to be adopted in MPRA to avert an overall system meltdown. We believe that the enactment of legislation permitting composite plans will help to preserve existing multiemployer defined benefit plans by keeping employers and employees in the system and committed to funding legacy defined benefit plans. The composite design will insure lifetime retirement income for retirees in place of the current defined contribution alternative to defined benefit plans.

So, in the interest of sound and modern pension policy for the Nation’s 1,400 multiemployer plans covering some 10.5 million participants and their families, please support enactment of the new composite plan design option as proposed in the ***Solutions Not Bailouts*** legislative proposal and help us move our multiemployer retirement security benefit system to much safer ground.

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