STRENGTHENING THE MULTIEMPLOYER PENSION SYSTEM: WHAT REFORMS SHOULD POLICYMAKERS CONSIDER?

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

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C O N T E N T S

STRENGTHENING THE MULTIEMPLOYER PENSION SYSTEM: WHAT REFORMS SHOULD POLICYMAKERS CONSIDER?

Wednesday, June 12, 2013
U.S. House of Representatives
Subcommittee on Health, Employment, Labor, and Pensions
Committee on Education and the Workforce
Washington, DC

The subcommittee met, pursuant to call, at 10:06 a.m., in room 2175, Rayburn House Office Building, Hon. David P. Roe [chairman of the subcommittee] presiding.

Present: Representatives Roe, Wilson, DesJarlais, Bucshon, Roby, Heck, Brooks, Andrews, Scott, Tierney, Courtney, Polis, and Wilson.

Also present: Representatives Kline and Miller.

Staff present: Andrew Banducci, Professional Staff Member; Katherine Bathgate, Deputy Press Secretary; Casey Buboltz, Coalitions and Member Services Coordinator; Owen Caine, Legislative Assistant; Ed Gilroy, Director of Workforce Policy; Benjamin Hoog, Senior Legislative Assistant; Nancy Locke, Chief Clerk; Brian Newell, Deputy Communications Director; Krisann Pearce, General Counsel; Todd Spangler, Senior Health Policy Advisor; Alissa Strawcutter, Deputy Clerk; Aaron Albright, Minority Communications Director for Labor; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; John D'Elia, Minority Labor Policy Associate; Daniel Foster, Minority Fellow, Labor; Eunice Ikene, Minority Staff Assistant; Brian Levin, Minority Deputy Press Secretary/New Media Coordinator; Michele Varnhagen, Minority Chief Policy Advisor/Labor Policy Director; and Michael Zola, Minority Deputy Staff Director.

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

Good morning, everyone. As the title of the hearing suggests, today we will begin to review possible reforms to the nation's multiemployer pension system.

In 2014 provisions of the Pension Protection Act affecting multiemployer pensions are set to expire. For more than a year the committee has looked closely at the challenges facing this pension system, which is relied upon by more than 10 million individuals.

Academics, employers, trustees, government officials, union representatives have helped us identify the strengths and weaknesses in the current federal policies. We have learned an aging workforce, fewer contributing employers, and a persistently weak economy have significant challenges plaguing the system.

We have also learned that if these pensions are not placed on a more sound financial footing, workers, retirees, and taxpayers nationwide will be harmed. Two graphics illustrate this point.

The first graphic shows the deficit the Pension Benefit Guaranty Corporation expects its multiemployer insurance program will accumulate in less than 10 years—a deficit that is projected to climb from $5.2 billion to more than $26 billion. I don't believe anyone can look at this chart and deny a serious problem exists.

While the PBGC is not funded by the U.S. Treasury, insolvency of this program would raise tremendous public pressure for a taxpayer bailout of the agency. We cannot allow this to happen.

The second graphic illustrates the stakes in this debate. Nearly 5 million individuals participate in a multiemployer pension plan that, because of its funding condition, is in either yellow, orange, or red zone status.

This means nearly half of all individuals in the multiemployer pension system are in a plan without a clean financial bill of health. The insecurity this creates for workers, retirees, and families and the risk posed to the entire system cannot be ignored.

Broad, structural changes are needed to address this crisis, which leads us to today's hearing and the focus of our efforts. Congress and the administration have a responsibility to enact reforms that will benefit workers and retirees while protecting American taxpayers.

Our witnesses today will help us begin that process by providing an overview of proposed reforms.

We will also have an opportunity to discuss ideas recently released by the Retirement Security Review Commission of the National Coordinating Committee for Multiemployer Plans. We are fortunate to have the executive director of the NCCMP with us today to outline his organization's plan.

I will leave the details to Mr. DeFrehn. However, I would like to offer two observations about the NCCMP's proposal.

First, it is abundantly clear that solving this problem will require tough choices and sacrifice. Second, the NCCMP has demonstrated that common ground can be found when all sides work together in good faith and on behalf of the greater good.

Congress has a window of opportunity to improve the multiemployer pension system. I know there will be differences, but I hope in the weeks and months ahead we can mirror the same spirit of cooperation demonstrated by this organization.

I look forward to today's discussion and the vital work that lies ahead.

I know Mr. Andrews is on his way, and I will sort of defer.

I will go ahead and introduce you all, and then if Mr. Andrews arrives then we will let him make the opening statement.

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

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

As I have mentioned, Mr. Randy DeFrehn is the executive director of the National Coordinating Committee for Multiemployer Plans in Washington, D.C. He has served as a member of the U.S. Department of Labor's ERISA Advisory Council. He holds a master's degree in industrial relations from St. Francis College, where he also taught compensation, benefits, and administration.

Mr. Eric Dean is the general secretary of the International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers in Washington, D.C. In 2005 he was elected as president of Chicago District Council of Ironworkers and in 2013 was appointed to serve as the national general secretary.

Welcome, Mr. Dean.

And Dr. Teresa—oh, this is going to hurt me here—Ghilarducci—did I get that right? And I apologize for butchering your name—is the Bernard L. and Irene Schwartz chair of economic policy analysis at the New School of Social Research in New York, New York. She was twice appointed to the Pension Benefit Guaranty Corporation's advisory board and received her Ph.D. in economics from the University of California Berkeley.

And welcome.

Ms. Michele Murphy is the executive vice president of H.R. and corporate communications for SUPERVALU, Inc. in Eden Prairie, Minnesota. In this capacity she oversees all human resource functions for SUPERVALU's 35,000 employees. She holds a B.S. in economics from St. Vincent's College and a J.D. from University of Pittsburg, where she graduated summa cum laude.

And before you begin your testimony I will now yield to Mr. Andrews?

[The statement of Chairman Roe follows:]

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

Good morning, everyone. As the title of the hearing suggests, today we will begin to review possible reforms to the nation's multiemployer pension system. In 2014 provisions in the Pension Protection Act affecting multiemployer pensions are set to expire. For more than a year the committee has looked closely at the challenges facing this pension system, which is relied upon by more than 10 million individuals.

Academics, employers, trustees, government officials, and union representatives have helped us identify the strengths and weaknesses in current federal policies. We have learned an aging workforce, fewer contributing employers, and a persistently weak economy are significant challenges plaguing the system. We have also learned that if these pensions are not placed on more sound financial footing, workers, retirees, and taxpayers nationwide will be harmed. Two graphics illustrate this point.

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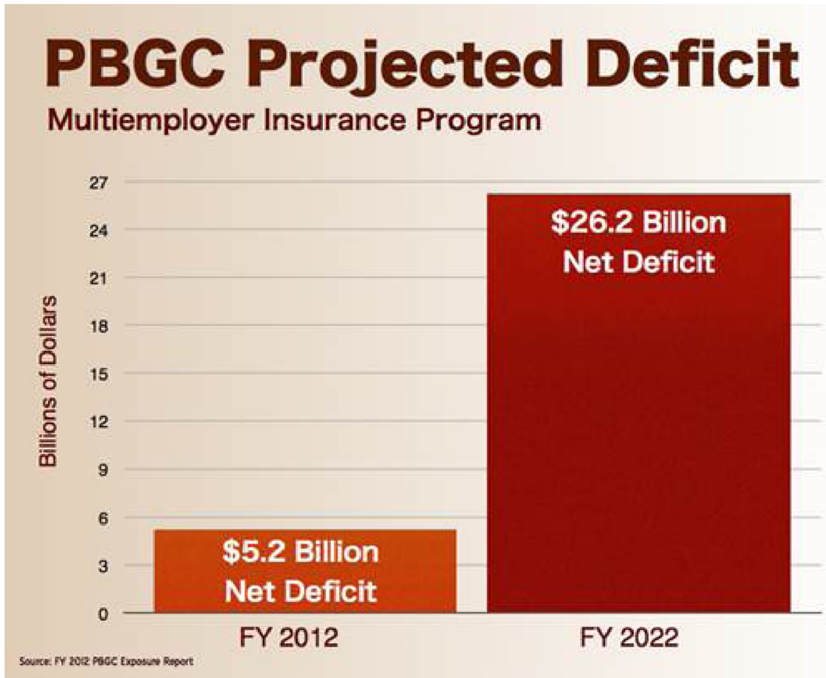

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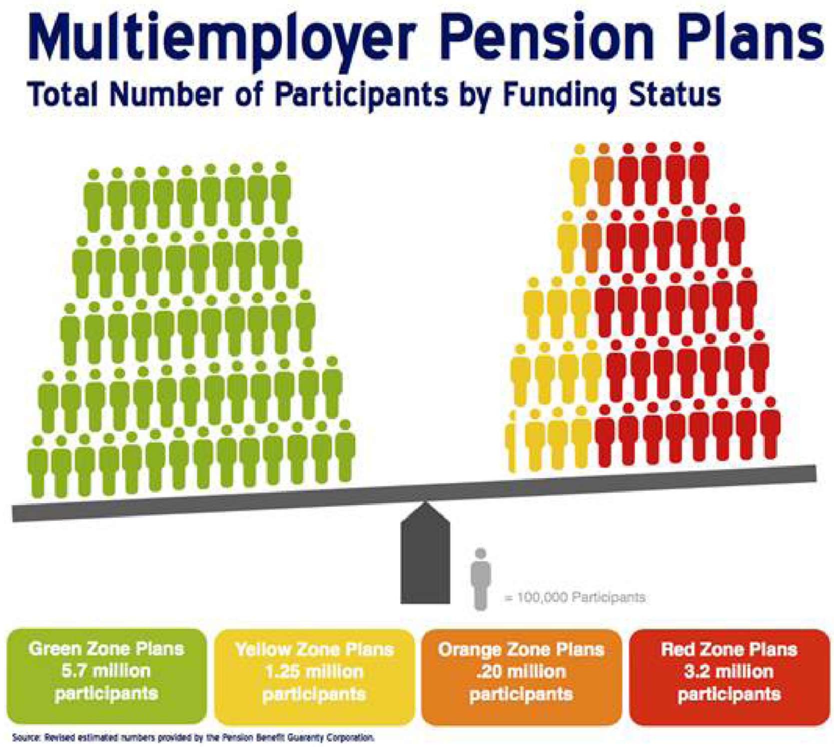

Broad, structural changes are needed to address this crisis, which leads us to today's hearing and the focus of our future efforts. Congress and the administration have a responsibility to enact reforms that will benefit workers and retirees, while protecting American taxpayers. Our witnesses today will help us begin that process by providing an overview of proposed reforms.

We will also have an opportunity to discuss ideas recently released by the Retirement Security Review Commission of the National Coordinating Committee for Multiemployer Plans. We are fortunate to have the executive director of NCCMP with us today to outline his organization's reform plan. I will leave the details to Mr. DeFrehn, however, I'd like to offer two observations about NCCMP's proposal.

First, it is abundantly clear that solving this problem will require tough choices and sacrifice. Second, NCCMP has demonstrated that common ground can be found when all sides work together in good faith and on behalf of the greater good. Congress has a window of opportunity to improve the multiemployer pension system. I know there will be differences, but I hope in the weeks and months ahead we can mirror the same spirit of cooperation demonstrated by this organization. I look forward to today's discussion and the vital work that lies ahead.

I will now recognize the ranking member of the subcommittee, my colleague Representative Rob Andrews, for his opening remarks.

Mr. ANDREWS. Well, I apologize for my tardiness this morning, Chairman, colleagues, and witnesses. Ijust want to compliment the chairman on the way he has conducted this inquiry.

I think there is broad consensus that we want to protect pensioners so their pensions are sound, that we want to help small businesses compete fairly in the marketplace so they can prosper, and we want to protect taxpayers so we minimize the risk to taxpayers. I think that your leadership on this issue has been a pleasure and exemplary and I look forward to this morning's hearing and working with you as we solve this problem together.

Thank you.

Chairman ROE. I thank the gentleman for yielding.

Before I recognize you to provide your testimony let me briefly explain our lighting system. You have 5 minutes to present your testimony.

When you begin, the light in front of you will turn green; when 1 minute is left the light will turn amber, at which time when your time is expired it will turn red. At that point I will ask you to wrap up your remarks as best you are able. After everyone has testified members will each have 5 minutes to ask questions.

I would like to thank the witnesses this morning, and I will begin with Mr. DeFrehn?

STATEMENT OF RANDY DEFREHN, EXECUTIVE DIRECTOR, NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

Mr. DEFREHN. Chairman Roe, Ranking Member Andrews, members of the committee, it is an honor to be here with you this morning to discuss this important topic. My name is Randy DeFrehn; I am the executive director of the National Coordinating Committee for Multiemployer Plans.

Generally speaking, the majority of multiemployer plans have been slowly but surely recovering from the economic shocks that occurred in the last 10 years. More than 60 percent of those, as your graphic demonstrated, are back in the green zone.

I last appeared before your committee at a hearing titled "Examining the Challenges of the PBGC and Defined Benefit Pension Plans" on Groundhog Day, February 2, 2012. Seems that the reference to Groundhog Day is appropriate, given the number of times this issue has come up over the last decade.

And we recall at that time your very explicit statements that no government bailout should be expected. Therefore, we have proceeded on that basis to craft very specific private sector solutions that, if enacted, will go far towards addressing those challenges.

It is unnecessary to dwell on the specifics of those challenges other than to note that the passage of time has only sharpened the focus on the need for attention. As your PBGC slide demonstrated, the increase in their liabilities are threatening the long-term ability for that agency to provide its benefits, and the GAO further reported that if the multiemployer fund is exhausted, participants relying on the guarantee would receive only a small fraction of the benefit provided under that formula.

These predictions only underscore the need for bold and decisive congressional action sooner rather than later. We commend the committee for having spent the necessary time to evaluate the need for prompt attention and strengthen the system and for focusing today's hearing on solutions to achieve that end.

I previously reported to you on our creation of the Retirement Security Review Commission. It is comprised of representatives from over 40 labor and management groups from industries across the multiemployer community.

Over a period of approximately 18 months the group evaluated their collective experience with current laws and regulations in the course of developing a comprehensive set of recommendations for reforms to strengthen the system. These recommendations fall into three broad categories—preservation, remediation, and innovation—which are described in a report titled, "Solutions Not Bailouts: A Comprehensive Plan for Business and Labor to Safeguard Multiemployer Retirement Security, Protect Taxpayers, and Spur Economic Development."

They include recommendations for technical corrections to the Pension Protection Act to preserve and strengthen those plans that are recovering from the 2008 recession, recommendations for remedial measures to address the problems of the approximately 90 to 150 plans which are projected to become insolvent, and recommendations that encourage the creation of innovative alternative designs to eliminate many of the current incentives for employers to exit the system.

In the limited time available I would like to comment briefly on the commission's process and then make a remark specifically on the deeply troubled plans, which appear to be somewhat misunderstood by some.

With the sunset of the multiemployer provisions of the PPA at the end of 2014, the reemergence of significant unfunded liabilities as a result of the Great Recession, and expanded disclosures required by the financial services community, the time has come to revisit the labyrinth of existing rules which have evolved over the past 40 years in order to restore stability to the system. The commission served as a vehicle to facilitate the development of a consensus among stakeholders across the multiemployer community on elements of funding reform that are necessary to achieve that stability.

Because multiemployer plans are the product of collective bargaining, any proposal for reform requires the active engagement of both labor and management. The composition of the commission reflected a broad cross-section of both constituencies, while the diversity of interests and perspectives ensured that the proposals for reform were representative of the wide variation among plans and participants. Despite their differences, the commission members remained focused throughout the process, conscientiously engaging in a cooperative spirit of problem solving that was both respectful and often vociferous as they worked towards a consensus on a wide range of issues.

A comment on the remediation section of our proposal: Under current law, the anti-cutback rules require plans that are headed for insolvency—the deeply troubled plans—to pay accrued benefits at the current levels until their assets are depleted. At that time, the fiduciaries are required to reduce benefits to the statutory guarantee level, levels which, by the PBGC's own estimates, are unsustainable for the future and are likely to be subject to even more draconian reductions.

Plans currently have no authority to intervene at an earlier point, even if the plan could remain solvent while preserving benefits above the statutory guarantee levels.

If I might beg your indulgence for about another minute?

As a result, many plans will needlessly cease to provide future accruals for active workers, employers will be assessed withdrawal liability, and the liability to the PBGC will go up, possibly exposing taxpayers to unanticipated liabilities.

For many plans these unwelcome outcomes can and should be avoided by accelerating the timing of their existing obligations to permit intervention while the plan's solvency may still be preserved rather than waiting until the plan has depleted its assets. Provided that after adoption of such measures the plan is expected to remain solvent, benefits may be reduced only to the extent necessary to achieve continued solvency but in no event below 110 percent of the stated statutory guarantee levels under the current PBGC Multiemployer Guaranty Program.

Plan fiduciaries are required to design any changes in an equitable manner across all participant classes. The PBGC certifies that the plan fiduciaries have exercised due diligence in making such determinations and designing the plan. And any subsequent benefit restorations include a partial restoration of benefit reductions on a dollar value equal to those provided to active participants.

While some have incorrectly characterized this recommendation as a proposal to cut accrued benefits, in reality this is a proposal to preserve benefits above the levels provided under the current law and applies only to those plans which are otherwise required to make the more severe benefit reductions.

In conclusion, the multiemployer community is unified behind this set of proposals. They represent a consensus of a diverse yet representative group of stakeholders from across the multiemployer community.

As with any such endeavor, consensus does not imply unanimous support for every aspect of the proposal and there will be those who would prefer that some provisions were different. Some of those differences simply reflect views by groups whose parochial interests differ from the commission, which attempted to place the good of the multiemployer community first, recognizing that a strong retirement program will meet the needs of covered participants and facilitate retention of a skilled workforce.

We appreciate this opportunity to share our comments with you on the recommendations of the commission and on the importance of taking prompt action to preserve this system which has served both participants and contributing employers so well. I welcome your questions.

[The statement of Mr. DeFrehn follows:]

Prepared Statement of Randy G. DeFrehn, Executive Director, National Coordinating Committee for Multiemployer Plans (NCCMP)

Chairman Roe, Ranking Member Andrews and Members of the Committee, it is an honor to appear before you today on this important topic. My name is Randy DeFrehn. I am the Executive Director of the National Coordinating Committee for Multiemployer Plans (the "NCCMP").[1] The NCCMP is a non-partisan, non-profit advocacy corporation created in 1974 under Section 501(c)(4) of the Internal Revenue Code, and is the only such organization created for the exclusive purpose of rep-

[1] The NCCMP is the premier advocacy organization for multiemployer plans, representing their interests and explaining their issues to policy makers in Washington since enactment of ERISA in1974.

resenting the interests of multiemployer plans, their participants and sponsoring organizations.

For over 60 years, multiemployer plans have provided a mechanism for generations of employees of tens of thousands of predominantly small employers in industries with very fluid employment patterns to receive modest but regular and dependable retirement income.[2] They are the product of collective bargaining between one or more unions and at least two unrelated employers that are obligated to contribute to a trust fund that is independent of either bargaining party and whose benefits are distributed to participants and beneficiaries pursuant to a written plan of benefits. While most often associated with the building and construction and trucking industries, multiemployer plans are pervasive throughout the economy including the agricultural; airline; automobile sales, service and distribution; building, office and professional services; chemical, paper and nuclear energy; entertainment; food production, distribution and retail sales; health care; hospitality; longshore; manufacturing; maritime; mining; retail, wholesale and department store; steel; and textile and apparel production industries. These plans provide coverage on a local, regional, multiple state, or national basis and can cover groups of several hundred to several hundred thousand participants. By law, these plans must be jointly and equally managed by both employers and employee representatives.

According to the PBGC's 2012 Annual Report, approximately 10.37 million people are covered by the approximately 1450 insured multiemployer defined benefit pension plans.[3] Generally speaking, the majority of plans have been slowly, but surely recovering from the back-to-back economic shocks of the past ten years, despite the continuing sluggish economic recovery, with more than 60 percent of plans having once again attained "green zone status."

When I last appeared before the Committee on February 2, 2012, it was in the context of your hearing titled "Examining the Challenges of the PBGC and Defined Benefit Pension Plans." We recall your very explicit statements that no government bailout should be expected and have proceeded on that basis to craft very specific private sector solutions that, if enacted, will go far towards addressing those challenges.

It is unnecessary to dwell on the specifics of those challenges. It is significant, however, to note that the passage of time has only sharpened the focus on the need for attention. Based on the information you gathered at that time and through subsequent hearings including the release earlier this year of the PBGC's own forecast in its 2012 Exposure Report, the multiemployer guaranty fund's current economic trajectory forecasts a 91% probability of insolvency by 2032. Notwithstanding those sobering estimates, the stark reality appears even more dire as conveyed to you by GAO Director of Workforce, Education and Income Security Issues, Charles Jeszeck at your hearing on March 5, 2013. He reported that "In the event that the multiemployer fund is exhausted, participants relying on the guarantee would receive a small fraction of their already reduced benefit."[4] He went on to describe an example that showed even the modest benefit guaranty provided under the current statutory formula would likely be further reduced by 90% or more. Clearly, the prospects of such reductions are evidence that what the tens of millions of multiemployer plan participants are being told in their statutorily mandated annual funding notice about the guarantees to be provided by the PBGC in the event of plan insolvency is more illusory than reality.

For the small, but significant minority of plans and participants whose plans are facing ultimate insolvency, these predictions only underscore the need for bold and decisive Congressional action sooner, rather than later.

We commend the Committee for having spent considerable time in evaluating the need for prompt attention to strengthen the system which provides approximately one in every four private sector defined benefit pensions. As the next step in that process we are pleased that you have chosen to focus today on solutions to achieving that end.

Retirement Security Review Commission

In your February 2012 hearing I reported to you on the creation by the NCCMP of a group known as the "Retirement Security Review Commission" (or "Commission") comprised of representatives from over 40 labor and management groups from

[2] The median benefit paid to participants of plans surveyed was $908—See DeFrehn, Randy G. and Shapiro, Joshua, "The Road to Recovery: The 2010 Update to the NCCMP Survey of the Funded Position of Multiemployer Plans", The National Coordinating Committee for Multiemployer Plans, 2011.

[3] Pension Benefit Guaranty Corporation FY 2012 Annual Report, p. 33.

[4] See Statement of Charles Jeszeck, March 5, 2013 to the Committee re: "Private Pensions—Multiemployer Plans and PBGC Face Urgent Challenges," Page 17.

the industries across the multiemployer community which rely on multiemployer plans to provide retirement security to their workers. Beginning in August 2011, the group deliberated over a period of approximately eighteen months evaluating their collective experience with current laws and regulations in the course of developing a comprehensive set of recommendations for reforms to strengthen the system.

The recommendations which fall into three broad categories: preservation, remediation and innovation, are described in a report titled "Solutions not Bailouts—A Comprehensive Plan from Business and Labor to Safeguard Multiemployer Retirement Security, Protect Taxpayers and Spur Economic Development." They include recommendations for technical corrections to the Pension Protection Act (PPA) designed to strengthen those plans that are recovering or have recovered from the 2008 recession, largely by building on the tools provided in the PPA and subsequent legislation. These recommendations are described under the provisions for preservation. The report also includes recommendations for remediation measures to address the problems of, and provide solutions for, the limited number of plans which, despite having taken all reasonable measures, are projected to become insolvent within specified time parameters. Finally, the recommendations include provisions that encourage the creation of innovative alternative designs to eliminate many of the current incentives for employers to exit the system and reverse the trends which, unless addressed, will only exacerbate the current decline in the pool of continuing employers. These include alternatives that will permit the adoption of alternative plan designs to significantly reduce or eliminate the unpredictable and unacceptable residual costs associated with the current system of withdrawal liability.

The following pages provide a brief description of the process under which the Commission conducted its deliberations and some of the specifics of the proposed reform measures.

Process

For decades, the multiemployer system provided modest yet secure retirement benefits for generations of workers without jeopardizing the ability of the contributing employers to remain financially viable. With the sunset of the multiemployer funding rules contained in the PPA approaching at the end of 2014, the re-emergence of significant unfunded liabilities following the market collapse of the Great Recession in 2008, and the expanded disclosures imposed by the financial services community which adversely affect the ability of many contributing employers to access the credit markets, the time has come to revisit the labyrinth of existing rules which have evolved over the past 40 years in order to restore stability to the system The Commission was created as a vehicle to facilitate the development of a consensus among stakeholders across the multiemployer community on elements of funding reform that are necessary to achieve that stability.

Because multiemployer plans are the product of the collective bargaining process, any proposal for reform requires the active engagement of both labor and management. The composition of the Commission reflected a broad cross-section of both constituencies from the aerospace, bakery and confectionery, building and construction, entertainment, healthcare, mining, retail food, building services and trucking industries. The diversity of interests and perspectives ensured that the proposals for reform were representative of the wide variation among plans and participants. Despite their differences, Commission members remained focused throughout the process, conscientiously engaging in a cooperative spirit of problem solving that was both respectful and often vociferous as they worked toward consensus on a range of issues.

Preservation

As the majority of plans regain sound financial footing, the Commission recommends a number of technical amendments be made to the PPA that are designed to address a number of issues which have surfaced during the first years of its implementation. These include, but are not limited to:

- permitting elective "critical status" (red zone) certification by plans which are determined by the plan actuary to headed for such status within the next five years, allowing earlier action in order to reduce the magnitude of expected benefit adjustments and/or contribution increases required to meet their funding obligations under the Act;
- removing any contribution increases that are the direct result of the adoption of approved funding improvement or rehabilitation plans from the determination of what is to be taken into consideration when calculating an employer's withdrawal liability. Under the current rules, such additional contributions provide a strong incentive for many contributing employers to choose to abandon their current relation-

ship with the fund rather than see the 20 year "cap" on withdrawal liability increase substantially;[5] and

• harmonizing the protections available to employers who adopt an approved rehabilitation plan when a plan encounters a funding deficiency so that those who adopt an approved funding improvement plan when in endangered (yellow zone) status receive similar protections from additional contribution and excise tax requirements were the plan to experience a funding deficiency.

Remediation

Under current law, the anti-cutback rules require plans that are heading for insolvency (referred to by the Commission as "Deeply Troubled" plans) to maintain accrued benefits and pay such benefits at current levels until the plan depletes the plans' assets to the point of insolvency. At that time the plan fiduciaries are required to reduce benefits to the statutory guarantee levels under the PBGC multiemployer guaranty fund. They currently have no authority to intervene at an earlier point even if the plan could remain solvent while preserving benefit levels above the statutory guaranty levels. The net result under current law is that the plan would then cease to provide future accruals to active workers, most likely result in having employers assessed withdrawal liability either because of their having elected to withdraw from the plan or due to the plan's experiencing a mass withdrawal, and increasing the liability to PBGC (thereby possibly exposing taxpayers to greater exposure in the event the agency itself becomes insolvent with liabilities owed to participants far in excess of any amounts which could reasonably be funded through the existing premium structures).

For the estimated six to ten percent of all multiemployer plans that, despite having taken all reasonable measures, are projected to be unable to avoid insolvency, the Commission recommends that the plan fiduciaries' current authority be accelerated to permit intervention while the plan may still be preserved rather than waiting until the plan has depleted its assets to the point where it must cut benefits to levels which, by the PBGC's own estimates, are unsustainable for the future and would be subject to even more draconian reductions, provided that:

• after the adoption of such measures, the plan is expected to remain solvent;

• benefits may be reduced only to the extent necessary to achieve continued solvency;

• benefits may not be reduced below 110 percent of the stated statutory guaranty levels under the current PBGC multiemployer guaranty program;[6]

• plan fiduciaries are required to design any plan changes in an equitable manner;

• the PBGC certifies that plan fiduciaries have exercised due diligence in making such determinations and in designing the plan; and

• when the plan recovers sufficiently to permit benefit improvements, those whose benefits were reduced must participate in any such improvements through the restoration of such benefit reductions on an equal dollar value to those provided to active participants.

While some have incorrectly characterized this recommendation as a proposal to cut accrued benefits, in reality this is a proposal to preserve benefits above the levels provided under current law and applies only to those plans which are otherwise required to make more severe benefit reductions.

Recognizing that taking earlier action could also impact the benefits of pensioners who would not otherwise be affected because they may be of sufficiently advanced age that they may not live until the plan were to exhaust its assets, the plan fiduciaries are specifically authorized to take the interests of such vulnerable populations into consideration when designing their plan of intervention. It is expected that most would take advantage of this authority and exclude them from the reductions, especially since the costs associated with those expected to draw benefits for a limited period would have only a modest impact on the plan's long-term funded position. Only those plans which currently pay benefits that are marginally above the PBGC guaranty that might only qualify for the relief if such benefit reductions were necessary to meet the ongoing solvency requirement might be expected to apply these reductions across the board to allow the plan to survive.

[5] Furthermore, such treatment is consistent with the provisions contained in the PPA that prevent an employer from benefiting from a plan's adoption of adjustable benefits in the determination of its withdrawal liability in order to encourage its continued participation in the plan.

[6] Due to the relatively low benefits provided by many plans, the 110% level was chosen so as to provide access to the relief for many plans that would otherwise be effectively precluded from utilizing this valuable tool.

Innovation

In its desire to make the system sustainable for the future, the Commission recommends that the current law be broadened to encourage greater creativity in designing plans to meet employees' ongoing income requirements while reducing the exposure of contributing employers to residual liabilities beyond their initial contribution. In doing so, the Commission recognizes that the shortcomings of both the current defined benefit and defined contribution systems need to be addressed. While some innovative designs are possible within the current statutory framework, there is a general recognition that the current structures are not sufficiently responsive to the evolving needs of workers and employers alike.

The Commission report describes two specific types of innovative plan designs that are considered to be illustrative of the kinds of flexibility required for the future. One is a variable defined benefit plan which has recently been adopted by several groups and appears to be permissible under the current Code definition of a defined benefit plan. The other, a so-called "target benefit" plan, contains a benefit formula that appears similar to a defined benefit plan, but is designed to address many of the shortcomings of the current defined contribution system. The design elements include limiting an employer's liability to its negotiated contribution. It requires higher funding requirements than current defined benefit plans, imposes self-adjusting benefit features when those higher funding requirements fail to be met, addresses longevity risk by paying benefits only in an annuity form from a pooled account, and enhances benefits payable by reducing fees and providing greater asset diversification through professional management of plan assets. Creation of such a plan would require a change to the existing code as it is neither defined benefit nor defined contribution as currently defined.

Conclusion

The multiemployer community is unified behind this set of proposals. They represent a consensus of a diverse yet representative group of stakeholders from across the multiemployer community. As with any such endeavor, consensus does not imply unanimous support for every aspect of the proposals and there will be those who would prefer that some provisions were different. Some of those differences simply reflect views by groups whose parochial interests differ from those of the Commission which attempted to place the good of the multiemployer community first, recognizing that a strong retirement program will both meet the needs of covered participants and facilitate retention of a skilled workforce.

We appreciate this opportunity to share our comments with you on the recommendations of the Commission and on the importance of taking prompt action to preserve this system which has served both participants and contributing employers so well. We look forward to responding to your questions.

Chairman ROE. Thank you, Mr. DeFrehn.

Mr. Dean?

STATEMENT OF ERIC DEAN, GENERAL SECRETARY, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

Mr. DEAN. Thank you, Mr. Chairman and committee members. It is a pleasure to be here.

In the interest of time, my assistant was a little overzealous in preparing my oral testimony, and I stand by what is in there but I am going to summarize to make adequate use of my time.

I became a fourth generation ironworker in 1980. On and around 1989 I got elected by my peers to be a steward and a leader to represent them in their interest. I have served since 1995 in some capacity or another as a trustee on all types of funds, from training funds, pension funds, welfare funds, and labor management. So it is something that I don't take lightly.

When I came to Washington, D.C., I not only governed the area I was from but had the responsibility of taking care of North America and the United States and Canada. So the interest that I now have as—I have governance over all of the pension plans in the

United States, both good and bad, and while the percentage of ironworker plans are small, we recognize that there are rules that restrict, so I am going to go into the part of my presentation that is prepared.

On behalf of the International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers and our industry, I am here on behalf of General President Wise, who could not make it today, representing our union as well as 120,000 members to support the National Coordinating Committee's Multiemployer Plans' recommendations as we move forward towards solutions to our industries' current challenges.

The ironworkers are not alone in recognizing the need for comprehensive action to be taken to assure pension benefit promises are met and allowed to deliver a new set of pension laws which would allow for acting more expeditiously in remediating funding issues caused by the unprecedented twice-in-a-decade collapse of markets resulting in erosion to assets held in our pension trusts.

The current laws require a virtual drawdown of all assets prior to rehabilitation remedies being allowed to go into effect. We strongly support the proposal by NCCMP, which we and our employers participated in the commission, and as stakeholders in the construction industry need desperately. While there are provisions that can't cover every scenario, as in the saying "no one size fits all," our proposal attempts to address several areas of importance that will result in meeting the challenges and offering benefit levels greater than the minimum level of protection currently offered.

NCCMP's recommendations would be optional to bargaining parties. We are not seeking any taxpayer support.

NCCMP's recommendations would implement efficiency to allow for harmonization with Social Security, which Congress saw as a prudent step long ago. Their recommendations would allow distressed sponsors the ability to provide greater benefits than the current levels PBGC offers or protects our members with. Their recommendations would also allow for innovation and new plan design not currently allowed in the traditional defined benefit and defined contribution plans.

I have included as an outline for your review, which is my attempt not to monopolize your time so I can have more time for questions. In summary, the key elements of our plan are to include security for the participants while reducing financial risk for its plan and its sponsors.

Members of Congress, the ironworking industry, and specifically our union, need you to understand the needs of our members and its employers as you consider the recommendations of the NCCMP which will ensure that multiemployer plan participants enjoy the dignity of retirement security and its plan sponsors the ability to operate, maintain, and improve pension systems they justly deserve.

Data suggests that defined benefits are the best pathway for retirement security, and we understand and we recognize there is a trend towards 401(k)s. There has not been a society that has been able to live solely on a lump-sum retirement, and we believe the best benefit going forward would be stabilizing and preserving defined benefit plans.

I am happy to entertain any questions.
[The statement of Mr. Dean follows:]

ORAL TESTIMONY OF GENERAL SECRETARY ERIC DEAN OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRONWORKERS ON WEDNESDAY, JUNE 12, 2013 AT 10:00 A.M.

My name is Eric M. Dean. I am the General Secretary of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers. I am a graduate of Lane Tech High School and attended UIC briefly before joining the Apprenticeship Program as a fourth generation Local 63 Iron Worker. I completed the Ironworkers Apprenticeship Program and went on to become a Journeyman, Foreman, Apprentice Instructor, Conductor, Trustee, Vice President and Business Agent in Local Union No. 63. As a representative of Local Union No. 63, I was a defined contribution trustee for the Architectural Iron Workers Local 63 Health and Welfare Fund and Iron Workers Mid-America Pension Fund, as well as the Apprenticeship Training Fund. In 1999, I became a General Organizer for the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers overseeing the Department of Ornamental, Architectural and Miscellaneous Metals. In addition to this position, in 2005, I became President of the Chicago and Vicinity District Council of Iron Workers. I was appointed 9th General Vice President of the Iron Workers in 2008. On February 1, 2011, I became General Secretary of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers. In August 2012 I was elected by the Delegates to the 42nd International Convention as General Secretary for a five-year term. In February 2013, I graduated from the Harvard Trade Labor Program. As General Secretary, I am a Trustee for the Ironworker Management Progressive Cooperative Trust (IMPACT), National Ironworkers and Employers Apprenticeship Training and Journeyman Upgrading Fund (N.I.E.A.T.J.U.F.), the Bridge and Iron Workers Staff Retirement Plan and the International Association Full-Time Salaried Officers and Employees of Outside Local Unions and District Council Pension Plan.

On behalf of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and our industry, I am here on behalf of General President Walter Wise representing our Union as well as a number of ironworkers to lend our support to the National Coordinating Committee for Multiemployers Plans' (NCCMP) recommendations as we move forward towards solutions to our industries' current challenges.

The Ironworkers are not alone in recognizing the need for comprehensive action to be taken to assure pension benefit promises are met and are allowed to deliver a set of new pension laws which would allow for acting more expeditiously in remediating funding issues caused by the unprecedented "twice in a decade collapse of the markets" resulting in an erosion to assets held in our pension trusts.

The current laws require a virtual draw down of all assets prior to rehabilitation remedies being allowed to go into effect. We strongly support the proposal by the NCCMP which we and our employers participate in as stake holders in the construction industry. While there are provisions that can't cover every scenario as in the saying "no one size fits all," our proposal attempts to address several areas of importance that will result in meeting the challenges faster and offering benefit levels greater than the minimum level of protection offered currently. NCCMP's recommendations would be optional to bargaining parties. We seek no taxpayer financial support. NCCMP's recommendations would implement efficiency and allow for harmonization with Social Security which Congress saw as a prudent step long ago. Their recommendations would allow distressed sponsors the ability to provide benefits greater than the current PBGC levels. Their recommendations would also allow for innovation and new plan designs not currently allowed for in traditional Defined Benefits (DB) and Defined Contribution (DC) plans. I have included an outline for your review which is my attempt not to monopolize your time. In summary, the key elements of our plan include income security for the participants while reducing financial risk for the plan and its sponsors.

Members of Congress, the ironworking industry and specifically our Union needs you to understand the needs of our members and employers as you consider the recommendations of the NCCMP which will ensure that all multiemployer pension participants enjoy the dignity of retirement security and its plan sponsors the ability to operate, maintain and improve the pension systems our members justly deserve.

Thank you for your consideration.

Outline is attached.

NCCMP Retirement Security Commission – Fact Sheet

Process Overview

- First Commission meeting in August 2011
- Approximately 40 participating groups
  - Unions
  - Employer associations and large individual employers
  - Multiemployer plans
- Proposal has broad support from both sponsoring companies and employee organizations

Guiding Principles of Proposal

- Primary objectives
  - Protect retirement income security for participants
  - Reduce financial risks to the contributing employers
- Themes of proposal
  - All recommendations are optional on the part of the plans and bargaining parties
  - Proposal allows multiemployer community to meet its challenges without relying on taxpayer financial assistance

Main Areas of Proposal

- **Preservation** – Common sense measures to make current multiemployer defined benefit system more efficient and effective
  - Allow plans to harmonize retirement ages with Social Security
  - Encourage plan mergers to reduce administrative costs
  - Resolve conflicts, inconsistencies, and ambiguities in current law
- **Remediation** – Measures to address deeply troubled multiemployer plans
  - Some multiemployer plans have experienced irreparable harm
    - Investment losses
    - Economic shifts and recession
    - Conflicting government policies
  - Plans facing inevitable insolvency need additional tools to remain viable
    - Preserve benefits above PBGC guarantee level
    - Plan survives to provide benefits to future generations
- **Innovation** – measures to foster new and innovative plan designs
  - Neither Defined Benefit (DB) or Defined Contribution (DC) plans meet needs of all stakeholders in all circumstances
  - Current rules and regulations narrowly classify plans into these categories
  - Proposal allows for plan designs and risk sharing structures that are neither DB nor DC

NCCMP Retirement Security Commission
Preservation – Measures to Strengthen the Current System

Allow Plans to Harmonize Retirement Age with Social Security

- Longevity has increased in recent decades
- Social Security has recognized this trend through increases in the retirement age
- Pension plans have remained unable to adopt retirement ages beyond age 65
- Commission proposal allows plans to harmonize retirement age with Social Security
  - Use of this provision is optional for plans
  - Provision would not apply to participants in payment status or close to retirement

Facilitate Mergers

- Many small plans would be financially stronger if they could access the economies of scale available to larger plans
- Commission proposal clarifies that PBGC has authority to use its assets to facilitate mergers
- Proposal also creates new type of merger called an Alliance
  - Under an Alliance, plans share common administration and investment structure
  - Legacy costs of plans remain separate and distinct
  - Smaller plan benefits from reduced costs, while larger plan does not take on additional liabilities

Remove Disincentive for Companies to Fund Pension Liabilities

- One factor in determining a withdrawal liability assessment is the contribution rate
- A higher contribution rate results in a higher assessment
  - This is true even if the additional contributions earn no benefit accrual
- The result is that taking action to better fund a plan increases a company's exposure to withdrawal liability
- Commission proposal ensures companies are not penalized for funding plans

Other Recommendations to Strengthen the Current System

- Give troubled plans earlier access to red zone tools
- Specify that funding relief will be available in the event of future dramatic market losses
- Simplify zone status determinations and address technical inconsistencies
- Close a gap in the PBGC coverage of benefits paid to spouses of deceased participants
- Clarify that ad-hoc payments to pensioners do not create an on-going commitment from the plan

NCCMP Retirement Security Commission
Remediation – Measures for Deeply Troubled Plans

Background

- Various factors have contributed to the challenges facing multiemployer plans
  - Inability to store market gains due to maximum deductible limitations
  - Shifting government policies that inadvertently affected multiemployer plans
    - Carrier Regulatory Reform and Modernization Act of 1980
    - Clean Air Act
  - Dramatic market declines in 2000 – 2002 and again in 2008
  - Recession that began in 2008, the effects of which continue today
- While most plans are making progress towards recovery, a small number of plans will inevitably exhaust their assets (i.e. become insolvent)
- An estimated 5% to 7% of multiemployer plans face insolvency

Impact of Multiemployer Plan Insolvency

- When a multiemployer plan exhausts its assets, the Pension Benefit Guaranty Corporation (PBGC) provides financial assistance
- The maximum annual benefit the PBGC will support for a full career employee is $12,870
  - Many plans covering middle class workers provide benefits well in excess of this amount
  - The comparable figure for a single-employer plan is $57,477
- There are currently two very large multiemployer plans that are likely to become insolvent
  - Either of these plans will rapidly consume all of the PBGC's multiemployer assets
  - The PBGC is not backed by the US Treasury
  - In the absence of Congressional action, it is likely that within the next 15 years participants in insolvent multiemployer plans will lose their entire benefits

Commission Proposal

- Action is necessary now to prevent multiemployer plan insolvencies
- The trustees of plans facing insolvency should have the authority to suspend a portion of the accrued benefits (including for retirees), subject to the following conditions:
  - The trustees and plan sponsors have taken all reasonable measures to avoid insolvency
  - Despite these measures insolvency is still inevitable
  - The proposed suspensions preserve benefits above the PBGC guarantee level
  - The suspensions are projected to be sufficient to prevent insolvency
  - The PBGC supervises the process and verifies that the preceding conditions are met
  - In the event of subsequent positive experience, any benefit improvement for non-retired participants is accompanied by a comparable restoration of suspended benefits

NCCMP Retirement Security Commission
Innovation – Measures to Foster New Plan Designs

Background

- Every plan in place today is either a Defined Benefit (DB) or a Defined Contribution (DC) Plan
  - Many employers have become unwilling to accept the financial risk of DB plans
  - DC plans are highly inefficient vehicles for providing retirement security to participants
- Why are employers suddenly unwilling to sponsor multiemployer DB plans?
  - Growth of retiree populations has greatly increased the financial risks for the sponsors
  - Recent market downturns have placed a spotlight on the risks
  - Misleading accounting and ratings agency analyses have made it far more difficult for multiemployer plan sponsors to obtain credit and bonding
- The Commission supports legislation and regulations that will facilitate new approaches to plan design and risk management

Variable Defined Benefit Plans

- At retirement, participant receives greater of two benefits:
  - Floor benefit, which is established using very conservative actuarial assumptions
  - Variable benefit, which moves up and down based on actual asset performance
- Participant receives value of market gains through the variable benefit
- In no event will a participant receive less than the floor benefit
- At retirement, benefit amount becomes locked-in through either a dedicated bond portfolio or an annuity contract purchased from an insurance company

Target Benefit Plans

- Operate very much like current multiemployer defined benefit plans
- Funding standards more stringent than current standards
  - Full funding is achieved at 120% of liabilities (as opposed to 100% today)
  - Benefit improvements prohibited unless plan is projected to reach 120% target
- Plan does not include the concept of withdrawal liability
  - Employer obligation to plan is limited to collectively bargained contributions
- Plan benefits are classified as core benefits or non-core benefits
  - Core benefits include annuities payable at normal retirement age
  - Non-core benefits include early retirement subsidies, post-retirement increases, etc.
- In the event the plan is unable to reach 120% target, trustees have authority to adjust non-core benefits (including for retirees)
- Core benefits payable to retirees are protected unless plan is facing insolvency

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Chairman ROE. Thank you, Mr. Dean.

Dr. Ghilarducci?

STATEMENT OF DR. TERESA GHILARDUCCI, PROFESSOR, THE NEW SCHOOL FOR SOCIAL RESEARCH

Ms. GHILARDUCCI. Thank you for inviting me. I am Teresa Ghilarducci. I am the chair of the economics department at The New School for Social Research and I am the author of the only academic book that I know of on multiemployer plans, “Portable Pension Plans for Casual Labor Markets,” Praeger Press.

I am also a trustee of several retiree health plans—they are called VEBAs—for the United Auto Workers and for the steelworker retirees of the Detroit auto companies and of Goodyear Tire. That represents 900,000 what we call bellybuttons—900,000 retirees and their families.

Relevant for this committee is that I was also a corporate director for YRCW, one of the largest sponsors of one of the largest plans at question here, the Central States Teamsters plans, and 38 other multiemployer plans. I was the corporate director because of my expertise in pension plans, and the other corporate directors were newly appointed from the hedge funds, the private equity firms, and some of the investment bankers, who seemed to have only learned in business school and law school that the only way you deal with pension liabilities is to go through bankruptcy.

And so that company did not go through bankruptcy and is dealing with its liabilities. But the—it seems as though in our society the only way to deal with these troubled plans is to dump them.

Multiemployer plans, as Randy has said and as Eric Dean has said, are really interesting. They complement health plans and apprenticeship plans; they help stabilize the employers in an industry by letting them have—these employers, who are often small—really have access to a skilled labor pool of people who are loyal to their craft and to the job who wouldn’t be there if it wasn’t for those employer plans.

So I agree with the report of the National Coordinating Committee for Multiemployer Plans that these plans should be preserved and they actually should be expanded and strengthened.

Preventing large red zone plans’ insolvency will protect employers, workers, and retirees, and the PBGC. The proposal of the National Coordinating Committee is to solve these insolvency problems by, at the last resort, cutting retiree benefits in only very special circumstances. They proposed that when every possible design change has been done—revenue enhancements, benefit reductions for non-retirees—when those have taken then the cuts can happen, which they can’t happen now, if those cuts will prevent insolvency, if those cuts will help participants maintain their long-term benefits, and if they reduce exposure to new employers who may otherwise come into the plan, and that is key to these long-term survival. And preventing the defaults also helps the PBGC.

But cuts to retiree benefits are dangerous. Current employees and workers may just leave the plans. And delaying cuts is good policy. That is what we did at YRCW. Each delay in cuts helps the retiree live another year under current living standards.

But insolvency hurts everybody, including retirees. They may have to go to the PBGC maximum, which is the poverty pension, or they may get nothing.

So as a trustee of these auto and steelworker plans for 8 years I have been involved in a process that is very well governed to gradually reduce retiree benefits, at the same time protecting very vulnerable retirees, and that is because the court told us to. I am a fiduciary with only the concern of the retirees, but the court has established a very strict governance structure so that the retirees are protected.

So in considering the National Coordinating Committee's plan, you—Congress should very much consider the way retirees will be represented on these plans. The PBGC is a good place to house that representative, but in a different way that is conceived now. That representative should be involved in an ongoing basis, be well resourced in order to restructure the plans.

And last, I don't think Congress should forestall any attempts to get more revenue into these plans. Many nonunion employers benefit from these plans. Nonunion carriers—big ones; ones you have heard of—were actually poaching truck drivers, who are quite, actually, in stark demand, because those truck drivers had the benefits from YRCW.

So these nonunion plans were benefiting from these legacy costs, and so they may be actually asked on with the industry tax to maintain these legacy benefits. Congress did it before when you established the Railroad Retirement Fund, when nonunion employers were not paying these legacy costs. So you might want to think about doing that again.

Thank you.

[The statement of Dr. Ghilarducci follows:]

Prepared Statement of Teresa Ghilarducci, Bernard and Irene L. Schwartz Professor of Economics, the New School for Social Research

Thank you for inviting me to testify about options to strengthen multi employer pension plans. I am Teresa Ghilarducci, Bernard and Irene L. Schwartz Professor of Economics Policy Analysis, and Chair of the Economics Department, at The New School for Social Research, in New York City. I am the author of several books on retirement policy including the only academic book on multiemployer pension plans.

Though I am a full-time academic I have practical experience representing retirees and managing postemployment benefits. I am a trustee of two retiree health plans for the United Auto Workers and Steelworkers retirees of the three American auto companies and Goodyear Tire—I am a trustee for nearly 900,000 retirees. I am also a former corporate director of YRCW—May 2010–May 2011—a key employer-sponsor of many multiemployer plans including the Central States Pension Fund for the Teamsters. In that role I had the legal responsibility to represent the sole interest of the corporations' shareholders.[i]

I agree with the PBGC, General Accounting Office, and the findings and analysis of the National Coordinating Committee for Multiemployer Plans Commission report—Solutions Not Bailouts[1]—which conclude multi employer plans have economic benefit; they should and can be preserved and strengthened if action is taken quickly. Further, preventing large plan insolvency will protect the PBGC and many employers, workers, and retirees. The NCCMP proposal to prevent insolvency by allowing benefit cuts for current retirees in special circumstances is well informed and makes paramount preserving long term benefits for retirees. However, Congress should ensure that retiree protections are sufficiently protective. Insolvency hurts everyone especially retirees who risk taking a large cut in current benefits to the PBGC maximum or, worse, obtaining nothing if the PBGC depletes its assets. The

[i] I also taught economics at the University of Notre Dame for 25 years which is in South Bend, Indiana the site of the Studebaker corporation whose abrogation of pension benefits in 1963 which generated support for ERISA. I lived in a community with many retirees benefiting from PBGC insurance and Studebaker retirees who did not. The peace of mind and increase in the material standard of living of elderly households with a modest, but secure, source of Social Security supplement is significant.

[1] Defrehn, Randy. and Joshua Shapiro. National Coordinating Committee for Multiemployer Plans. 2013. Solutions not bailouts: a report on the proceedings, findings and recommendations of the Retirement Security Review Commission. Washington DC. February.; Gotbaum, Joshua. 2012 and 2013. Testimony before the Health, Employment, Labor and Pensions subcommittee house Committee on Education and the Workforce. On December 12, 2012, and March 5, 2013; Jeszeck, Charles. 2013. Testimony: Multiemployer Plans and PBGC Face Urgent Challenges

NCCMP's statement of facts is consistent with the General Accounting Office and the PBGC's description of the financial situation of multiemployer plans.

Economic Case for Strengthening Multiemployer Plans

Multiemployer plans allow employers and workers to optimize labor contracts in situations when employers cannot or will not commit to long term contracts with employees, but still depend on skilled workers loyally attached to the industry and craft.

What needs to be emphasized is that multiemployer pension plans, health plans, and importantly apprenticeships plans are complements. They create a framework enabling many types of workers—who otherwise would be without—obtain a decent wage, training, and employee benefits. In short, workers, who in other countries are at the bottom of the labor market, can be in the United States near middle-class construction laborers, janitor, coal miners, electricians, maids for luxury hotels, big rig truck drivers, etc.

All employers gain from the training and industry loyalty; Multiemployer pension plans would be stable if all employers who benefit paid contributions. But only unionized employers pay. The PBGC, NCCMP, and GAO do not address future sources of revenue, yet they deem, as do I, that current employers cannot contribute more without losing competitive advantages. Premium increases may be tolerated however. Thinking bigger is to consider that Congress establishing the Railroad Retirement System (see appendix) set a precedent to collect from consumers, shareholders, and current workers to pay for pensions. Congress should not give up seeking more revenue sources for the PBGC multiemployer fund.

Ways to Strengthen the Plans

I agree with the NCCMP that the next wave of PPA reform must find new revenue sources, reduce liabilities, and change plan design. What is on the table now is reducing liabilities in the form of cutting retiree benefits. The NCCMP and GAO acknowledges the necessity to do everything in terms of plan design, revenue enhancement, and benefit reductions for non-retirees before considering reductions for current retirees.

The GAO and NCCMP agree that the vast majority of multis survived the 2008 recession through shared sacrifice—by raising contributions and cutting allowable benefits, such as early retirement benefits.

But the PBGC's multiemployer trust fund still faces probable insolvency because large critically underfunded plans, when failed, will likely petition for PBGC assistance over the next ten years and the PBGC will not have enough funds. There are several pension plans in the red zone that have done everything they can to survive and I agree some plans can't survive without reducing retiree benefits. But cutting retiree benefits is dangerous because current employees and workers may give up on the plan and employers. Delaying the cuts is good policy, every year longer is important for a retiree who have few options left to maintain living standards.

Cutting benefits for current workers are justified only when benefits will keep the plan solvent and maintain lifetime benefits and other protections are in place.

While the PBGC multiemployer plan still has assets, the GAO report shows retirees in insolvent plans would suffer, on average, a much reduced benefit up to the PBGC's guarantee. That maximum PBGC benefit of $1073 per month is about 50% of what the average long tenured retiree receives. When the PBGC runs out of money, the retiree could receive nothing.

I was a critic of the Pension Protection Act of 2006; but I am pleased and surprised at the success of the Act, with the good faith of Congress, to help many multiemployer survive the recession no one predicted.

Now, that I have established multiemployer plans should continue, how can we strengthen them? Cutting benefits for current retirees is the last resort. Each plan will have unique circumstances and futures so is it is not possible to legislate how the benefit cuts should be implemented. The NCCMP proposal outlines key due diligence criteria: the cuts must prevent insolvency, the cuts must help participants maintain their benefits in the long run—the long run is emphasized; the cuts must reduce exposure of employers in order to attract new employers to the multiemployer plans; and to protect the PBGC's risk of insolvency.

Further, the NCCMP acknowledges that the plans have to meet objective standards of insolvency and that no benefits will be improved until the cuts are restored.

Specific Ideas to Protect Retirees

As a trustee of the Voluntary Employee Benefits Trust the Auto and Steelworker VEBAS for almost 8 years; I've been involved in an orderly and transparent process to reduce retiree benefits in their health plans in order to maintain and maximize their benefits. The retirees understand that increasing cost-sharing and restrictions on drug and medical benefits are necessary to keep their retiree health plans intact, and immediate restrictions keep the plan going for a lifetime so the cuts aren't permanent and drastic.

What is the legal authority? The VEBAs were established by the courts, without a bankruptcy and not within bankruptcy codes, which designated independent trustees and, in the case of the Steelworkers, specific representatives of retirees. As an independent trustee I and my fellow public trustees represent the beneficiaries of the plan soley, and the court instructs us to distribute cuts to keep the very old and poor safe from cuts. The Autoworkers and Steelworkers plans each have unique structures that hue to the core principle of protecting retirees. In some of the cases, current workers and the employer have an obligation in the court agreement to continue to contribute to the retiree health obligations.

When the courts established the VEBAs—the retiree health care plans—it constituted a transfer of employer liability to a trust fund for retiree health benefits, the court was very concerned about the governance structure of the plans and that retirees, who are most vulnerable and the state has an interest in protecting, were represented. In addition to having very specific language about how the cuts but the court agreements defined who vulnerable retirees are. In the case of the auto VEBA, retirees who had very low pension amounts were defined as vulnerable and in the Goodyear—Steelworker case vulnerable retirees include the very old retirees. Different rules and definitions of vulnerability are appropriate for different settings.

In summay, I agree with the basic principles in the NCCMP Commission's report that the governance of an insolvent plan that cuts retiree benefits must include affirmative and specific protections for retirees. I support the analysis of the NCCMP Commission's report and the direction of the solutions. Based on my experience and research, Congress needs to provide a governance structure so that retirees are represented by an independent and well-resourced fiduciary.

I agree that the PBGC is a good place to house a retiree advocate. However Congress should ensure that the retirees have an advocate actively responsible to ensure fair treatment of retirees. Effective retiree representatives have to help shape the cuts, assess the distribution and define, in terms particular to the plan and industry, who the most vulnerable retirees are. I have learned that different rules will have very different distributional effects under different circumstances.

Congress should not give up on the idea that there could be new revenue sources to multiemployer plans besides from employers in critical status (who are already paying many more times the average contribution to the fund). Congress should give serious thought to an industry-wide assessment to help pay for these legacy cost. (See Appendix.)

Last, I am quite excited about the report's description of new benefit designs, including the target benefit—though discussion of new flexible and attractive design is for another day—they should be included in a PPA 2.0. Any solution to insolvency risks should include a design that mitigates future risks of insolvency.

APPENDIX: MORE REVENUE SOURCES

The United States faced a similar situation with mature and insolvent employer pension plans in the early 1900s and an industry tax restored retiree benefits. The American Express company (a railway) established the first corporate pension plan in 1875. Recessions and competition from smaller new railroads caused the first plans to cut and stop paying benefits. If not for retiree protests, Congress would not have created the Railroad Retirement system in 1934 before Social Security. The Railroad Retirement system collects pension contributions from all employers in the industry to pay for the depreciation of long tenure employees. The underlying justification was that the young railroads enjoyed legacy benefits provided by railroads—the development of the industry—and they should share in paying for the legacy costs.

In 2010, during my tenure as corporate director for YRCW, it was public knowledge that the trucking company had three problems: loss of revenue from the 2008 recession, a shortage of skilled truck drivers, and, more importantly, a large nonunion logistics company's setting prices below costs to gain permanent market share in key markets. Both firms would benefit from more people wanting to be truck drivers, but the newer nonunion company's strategy was early 20th century nonunion railroads' strategy—to slash prices and labor costs; making hard physical labor even less attractive.

Chairman ROE. Thank you for your testimony.
Ms. Murphy?

STATEMENT OF MICHELE MURPHY, EXECUTIVE VP OF HR AND CORPORATE COMMUNICATIONS, SUPERVALU, INC.

Ms. MURPHY. Good morning. Thank you, Chairman Roe, Ranking Member Andrews, and members of the subcommittee, for the opportunity to testify on this important topic.

My name is Michele Murphy, and I am the executive vice president of human resources for SUPERVALU Inc. I have responsibility for SUPERVALU's pension plans, and I am a trustee on one of our multiemployer pension plans.

You may have heard that SUPERVALU has divested many of its retail and distribution operations. Today's information is about the remaining SUPERVALU.

We are a Fortune 500 company and one of the largest grocery wholesalers and retailers in the U.S., with approximately $17 billion in sales. We are one of the founding members of the Association of Food and Drug Retailers, Wholesalers, and Manufacturers, a group of food employers concerned with the future of multiemployer pension plans.

Today, SUPERVALU operates 572 supermarkets, 177 pharmacies, and 41 distribution centers in 34 states. Our distribution network also supplies over 3,000 independent grocers, franchisees, and licensees.

SUPERVALU's net earnings margin is just over 1 percent in a highly competitive industry. We also support approximately 2,100 charities, schools, and grassroots organizations and contributed food and funds equal to about 4.2 million meals in 2012.

We have about 35,000 employees, almost 15,000 of which are unionized in 52 different union contracts, making SUPERVALU one of the larger union employers in the U.S. We work primarily with two labor unions: the UFCW, which represents about 74 percent of our unionized workforce; and the IBT, which represents another 24 percent.

SUPERVALU contributes to 20 multiemployer defined benefit pension plans. In 11 of those we account for 5 percent or more of the plan's total contributions.

In 2012 SUPERVALU contributed approximately $38 million to these plans. Currently, we have withdrawal liability in the majority of these plans estimated at over $500 million.

As this subcommittee is well versed on the general rules applicable to multiemployer pension plans and how those current rules currently preclude new employers from joining the plans, I will focus my comments on SUPERVALU's specific situation. But one illustration highlights the problem with the current rules.

As you know, Hostess filed for bankruptcy in 2011. Its bankruptcy increased the remaining employers' share of the unfunded liability of Central States by almost $600 million. Our share—SUPERVALU's share—of these unfunded liabilities is estimated to have increased by about $9 million even though none of those employees ever worked at SUPERVALU.

While we participate in 20 multiemployer pension plans, a majority of our withdrawal liability is attributable to the Central States Pension Plan. Of the 20 plans that SUPERVALU participates in, two are projected to become insolvent in the next 10 to 20 years, mostly due to the orphan retirees, left unfunded by their employers, unable to pay their fair share.

We have worked with our unions at the bargaining table, and our trustees have worked with union trustees and other employers to address the underfunding of these plans. This work has focused primarily on a combination of increased contributions as well as prospective benefit adjustments.

Over the last several years, about 30 percent of all of our contract settlements have gone to increase contribution in the pension plans. While these increases are needed, they leave little money left over for wage increases.

There are other anomalies and threatening conditions that we experience attributable to participation in plans. For example, we closed two Teamster facilities; we moved the work to other Teamster facilities participating in Central States, so no withdrawal liability. But if that work had moved to other union facilities, hundreds of millions of withdrawal liability could have been triggered.

We have one small UFCW fund where contribution rates, while low, increased over 246 percent in a 2-year period. In a small Teamster fund, contribution rates will increase 19 percent each year of a 5-year contract.

Our rating agencies are acutely aware of our withdrawal liability, essentially treating it as debt when we refinanced earlier this spring.

I believe we are nearing a tipping point where good and successful employers could be brought down because of the unintended consequences of MPPAA. If this happens, plans will go insolvent. That harms retirees and ultimately costs the federal government.

There are, however, solutions to the multiemployer plan dilemma that can help moderate or avoid the worst consequences, such as those solutions proposed by the NCCMP in its report. We have been represented in this work through the Food Association and we endorse the NCCMP report.

In our opinion, salvaging troubled plans is the most important area for Congress to address. A “wait and see” approach could ruin employers, put employees out of jobs, reduce pension payments to retirees, and endanger the existence of the PBGC.

The most important change is to allow a plan’s board of trustees to suspend benefits even to retirees if absolutely necessary to prevent the plan from becoming insolvent. Naturally, safeguards would be needed to ensure that the reductions were done equitably.

The second topic I want to touch on is technical corrections to the PPA. The PPA was an important piece of legislation that started down the right course for multiemployer plans and should not be allowed to sunset at the end of 2014.

Some minor changes would enhance its effectiveness. These include allowing plans that are projected to enter the critical zone in the next 5 years to enter it in the current year, thereby moderating the actions that need to be taken to fix the plan. Second is to conform the rules for plans that are endangered, or yellow status, and those in critical and red status so that the “critical” rules apply to all, and to ensure that the contribution increases that are attributable to funding improvement and rehabilitation plans will be disregarded for purposes of calculating withdrawal liability.

We also need to look at new types of plans that both provide retirement benefits that are reasonable and secure and protect contributing employers from the risk associated from other employers going bankrupt.

In conclusion, I want to thank you again for the opportunity to testify. SUPERVALU applauds this subcommittee for its leadership in addressing the structural problems attributable to the multiemployer system, and we look forward to working with you on solutions that will ensure its continued viability.

Thank you, and I am happy to answer any questions.

[The statement of Ms. Murphy follows:]

Prepared Statement of Michele Murphy, Executive Vice President, Human Resources and Corporate Communications, SUPERVALU Inc.

Thank you Chairman Roe, Ranking Member Andrews, and members of the Subcommittee for the opportunity to testify today. My name is Michele Murphy. I am the Executive Vice President of Human Resources and Corporate Communications for SUPERVALU Inc. ("SUPERVALU"). I have responsibility for SUPERVALU's pension plans, and I serve as a Trustee for one of the 20 multiemployer pension plans in which SUPERVALU participates.

I. About SUPERVALU Inc.

As a preliminary matter, you may have read or heard about SUPERVALU's recent divestiture of many of its retail stores and warehouse operations. The information I am providing you today is for the remaining SUPERVALU, meaning the going forward company.

SUPERVALU is a Fortune 500 company (about #150) and one of the largest grocery wholesalers and retailers in the U.S., with annual approximately $17 billion in sales.

SUPERVALU is also one of the founding members of the Association of Food and Dairy Retailers, Wholesalers and Manufacturers, a group of employers spread throughout the food industry that is concerned with the future of multiemployer pension plans (the "Food Employers Association").

Today, SUPERVALU operates 572 supermarkets , 177 pharmacies and 41 distribution centers, located in 34 states. Our distribution centers supply not only the company-owned supermarkets I just mentioned but also almost 3,000 independent grocers, franchisees and licensees. SUPERVALU's net earnings margin is just over 1%, reflecting the highly competitive nature of the retail food industry.

SUPERVALU also supports approximately 2,100 charities, schools and grassroots organizations in the communities we serve, and contributed food and funds equal to 4.2 million meals in 2012.

SUPERVALU has approximately 35,000 employees. About 15,000 of these employees are covered by 52 collective bargaining agreements ("CBAs"), making SUPERVALU one of the larger unionized employers in the United States. SUPERVALU primarily works with two labor unions—the United Food and Commercial Workers International Union ("UFCW"), which represents almost 74% of our unionized workforce, and the International Brotherhood of Teamsters ("IBT") which represents about 24% of our unionized workforce. SUPERVALU's other unions include the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union ("BCTW&GM"), the International Union of Operating Engineers ("IUOE"), the International Association of Machinists ("IAM"), the Automotive, Petroleum and Allied Industries Employees ("AP&AIE"), and the United Steelworkers ("USW").

SUPERVALU contributes to 20 multiemployer defined benefit pension plans. In 11 of these plans, we account for 5% or more of the plan's total contributions. In 2012, SUPERVALU contributed approximately $38 million to these plans as required by our CBAs. However, as described in greater detail below, if the NCCMP multiemployer reform recommendations are not enacted into law, SUPERVALU could be required to contribute more than $500 million over the long term (in addition to the contributions currently required under its CBAs) to fund pension benefits previously accrued under these plans, as 19 of these plans have withdrawal liability. Much of this money would not go to cover the pension costs of SUPREVALU employees or retirees but rather to cover pension costs of retirees who never worked for SUPERVALU.

II. Multiemployer defined benefit pension plans

A. Overview

A multiemployer defined benefit pension plan is a retirement plan to which more than one employer contributes. These plans are managed by a board of trustees, half of which are appointed by contributing employers and half of which are appointed by participating unions. The plans are funded pursuant to CBAs. In most plans, the employer contribution levels are established in the CBA through collective bargaining between the respective employers and unions. The Board of Trustees establishes the pension benefits to be provided to participants, based on the Plan's funding levels and projected contributions. Many multiemployer plans were designed to serve as retirement vehicles for smaller employers and employers with a mobile workforce, where employment patterns prevented employees from accruing adequate retirement benefits under traditional, single employer pension plans. In other words, multiemployer plans were established so that workers' pensions could be portable as they moved from job-to-job within the same industry. They are most common in the retail, transportation and construction industries.

Multiemployer plans are subject to the Labor Management Relations Act of 1947, otherwise known as the Taft-Hartley Act. These plans are also subject to the Employee Retirement Income Security Act of 1974 ("ERISA") and the relevant provisions of the Internal Revenue Code of 1986. As I stated before, these plans are required to have equal employer and union representation on the board of trustees. Although the trustees are selected by management and labor, they are required by law to act solely in the interests of plan participants.

B. Withdrawal Liability

Before the enactment of ERISA and the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), an employer's obligation to a multiemployer plan was generally limited to the contribution it was required to make during the term of the CBA. Once it made the agreed-upon contribution, the employer had no further liability. Thus, if an employer terminated participation in a multiemployer plan following the expiration of its CBA, it did not have any further liability to the plan.

In 1980, Congress enacted MPPAA, which was designed to address perceived problems with the multiemployer pension plan rules, including the possibility that an employer could terminate participation in a plan without having fully funded its share of plan benefits. MPPAA, in turn, strengthened the manner in which pension benefits were protected by requiring contributing employers that terminated their participation in a plan to make payments to cover their share of any unfunded benefits. This is known as "withdrawal liability."

C. "Last-Man Standing" Rule

When a withdrawing employer fails to fully pay its withdrawal liability (which is common for employers that become bankrupt or simply go out of business) the responsibility for the unfunded liabilities of the bankrupt employer is shifted to the remaining contributing employers in the Plan. This is referred to as the "last-man standing" rule. In many ways, the last man standing rule is endangering successful employers and their employees because the successful employers are required to pay for the failure of unsuccessful companies in the Plan.

Even in those cases where an employer exits a plan and fully pays its withdrawal liability, the remaining employers are still responsible for ensuring that there is adequate funding in the future to cover plan liabilities attributable to the exiting employer. Thus, if the plan has adverse investment experience, the remaining employers must ultimately pay additional contributions to fund the benefits of the workers and retirees of the withdrawn employer unless the plan experiences future "excess" investment returns that make up the loss.

D. Implications

The "last man standing" rule saddles employers that remain in a multiemployer plan with potential liability for pension obligations of workers and retirees that never worked for the remaining employers. This includes not only those who worked for a competitor of the remaining employers, but also, in many cases, those who worked in a completely different industry than the remaining employers. Shifting risk to the remaining employers places an unfair burden on the remaining employers and, depending on the employer's financial condition, could threaten the continued viability of these companies, too. Essentially, it creates a domino effect within the multiemployer pension plans that ultimately damages otherwise successful employers, reduces pension benefits for retirees, and puts further strain on the Pension Benefit Guarantee Corporation.

Given the impact of the "last-man standing" rule, it is not surprising that multiemployer pension plans are not attracting new employers. Employers do not want to join a multiemployer plan that could expose them to future withdrawal liability on benefits earned by employees of other employers, including benefits earned long before the employer joined the plan.

E. Pension Benefit Guaranty Corporation

The last-man standing rule also underscores the disparity in the way the government insures single employer pension plans versus multiemployer pension plans. If an employer in a multiemployer plan goes bankrupt and cannot pay the withdrawal liability, the first step is for other contributing employers to assume the unfunded liabilities of failed employers and essentially pay for these liabilities through higher contributions to the multiemployer pension plan. This makes the remaining employers more costly and less competitive in the marketplace. As more contributing employers fall by the wayside, the previously successful employers become less successful and they, too, become in danger of going out of business. This is the domino effect I mentioned earlier. Eventually, the funding burden becomes too severe for the multiemployer plan and its contributing employers.

For example, the Hostess bankruptcy in 2011 increased the remaining employers' share of the unfunded liability of the Teamster's Central States, Southeast and Southwest Areas Pension Plan ("Central States Pension Fund") by almost $600 million. SUPERVALU's share of these unfunded liabilities was about $9 million even though SUPERVALU comprises less than 2% of the Central States Pension Fund. This is worth repeating—SUPERVALU's contributions to Central States are funding about $9 million of unfunded liabilities attributable to Hostess employees and retirees—even though they never worked for SUPERVALU, and in fact, worked in a different industry.

If a multiemployer plan becomes insolvent, the PBGC loans money to the plan to pay benefits, and the pension payments must be reduced to the extent they exceed the PBGC statutory maximum. Currently, the maximum PBGC multiemployer guarantee is $12,870 per year for a retiree with 30 years of service at age 65. This is far different from a failing single employer plan for two reasons. First, with the failed single employer plan, the PBGC steps in and assumes the plan's liabilities and assets and pays the pension benefits. Second, the benefits in a single employer plan are subject to a maximum guarantee of about $57,477 per year, much higher than the multiemployer plan guarantee level.

III. SUPERVALU's participation in multiemployer defined benefit plans

Like many food employers, SUPERVALU began participating in multiemployer plans at least as far back as the 1960s—in an era during which its exposure to these plans was limited to the contribution it was required to make during the term of its CBAs. Thus, its decision to participate in these plans was made well before the rule changes made by ERISA and MPPAA.

As a result of its warehouse and transit operations, SUPERVALU, like a number of food employers, became a contributing employer to trucking industry multiemployer pension plans during the 1960s—at a time when trucking companies were federally regulated and, thus, dominated participation in these plans. Deregulation has resulted in a dramatic consolidation in the trucking industry since the 1980s. Thus, many unionized trucking industry employers have left the business (many through bankruptcy), and food and beverage employers—like SUPERVALU—now represent the largest segment of contributing employers to many of these multiemployer plans.

The impact of the market consolidation in the retail food and trucking industry was exacerbated by the 2001 tech bubble and the 2008 stock market crash. Much of the current multiemployer plan underfunding is a direct result of these market events, as well as the structural problems inherent in ERISA and MPPAA. All of these factors have resulted in reduced plan funding levels and lower the contribution streams into the plans.

As previously mentioned, SUPERVALU could be required to make additional future contributions of $500 million simply to fund previously accrued pension benefits, with most of this additional contribution going to fund the benefits of participants who never worked for SUPERVALU. In fact, this may be an optimistic estimate because it assumes a very conservative employer attrition rate.

While SUPERVALU participates in 20 different multiemployer plans, approximately 60% of its exposure is attributable to the Central States Pension Fund. It is estimated that 40% of the current retirees in the Central States Pension Fund are "orphans" who worked for employers who have left the Fund and who did not work for any of the remaining contributing employers in the plan.

IV. SUPERVALU's multiemployer plans

SUPERVALU has also been a long-time proponent of multiemployer funding reform, including increased transparency. In 2005, SUPERVALU's then CEO, Jeff Noddle, testified before Congress in support of the Pension Protection Act. Further, for the past several years, SUPERVALU has disclosed in its Annual Report its participation in multiemployer plans, including the theoretical estimate of its aggregated exposure to the underfunding in such multiemployer plans. These disclosures provide more detail than is required by federal accounting rules.

SUPERVALU has also worked with unions at the bargaining table, and its trustees have worked with union trustees and other employers to address the funding of the 10 multiemployer plans on which SUPERVALU has a trustee. Given the current rules, this work has focused on a combination of contribution increases and prospective benefit adjustments. Over the last several years, when bargaining labor contracts with multiemployer plans, more than 30% of SUPERVALU's total package settlement dollars have gone to increased contributions to the multiemployer pension plans in order to try to improve the funding of these plans. While we believe these increases were needed, they unfortunately resulted in little money being left over to pay wage increases, especially in light of the continuing increases in health care costs.

There are many other anomalies and threatening business conditions SV experiences attributable to its participation in multiemployer plans. For example:

- SV recently closed 2 Teamster facilities. The work was transferred to other facilities participating in Central States so withdrawal liability was not triggered. However, had the work been moved to other union facilities that did not participate in Central States, hundreds of millions of dollars in withdrawal liability would have been triggered.
- SV has one UFCW fund where contribution rates increased over 246% in a 2 year contract. In another Teamster fund, contribution rates will increase 19% each year of a 5 year contract.
- SV rating agencies are acutely aware of SV withdrawal liability, essentially treating it as debt when we refinanced debt this past spring.

Notwithstanding these efforts, SUPERVALU still faces significant exposure from underfunded plans, as do hundreds of other employers. We are nearing a tipping point where many good and successful employers will be brought down because of the unintended consequences of MPPAA. If this happens, multiemployer plans will go insolvent, resulting in harm to retirees and, ultimately, costing the federal government billions of dollars. Now is the time for Congress to act to prevent such a crisis.

V. Suggested concepts Congress should consider

The National Coordinating Committee for Multiemployer Plans ("NCCMP") has worked diligently with many employers and unions over the past several years to prepare recommended legislative solutions to the multiemployer plan dilemma. SUPERVALU has been represented in this work through its membership in the Food Employer Association and supports the solutions set forth in the NCCMP report. The NCCMP report sets forth many ideas to improve the current law with respect to multiemployer plans. The following is a discussion of one of the measures that are particularly important to SUPERVALU as a contributing employer.

A. Remediation: Measures to Assist Deeply Troubled Plans

In our opinion, salvaging troubled plans is the most important area for Congress to address. A "wait and see" or a "do nothing" approach will simply not work. It would ruin employers, put employees out of work, reduce pension payments to retirees, and ultimately endanger the existence of the PBGC. Changes need to be made to multiemployer plan rules—and now is the time. The most important of these changes would be to allow a plan's Board of Trustees to implement a program that would suspend benefits, even to retirees, if doing so is necessary to prevent the plan from becoming insolvent and to preserve the plan for its participants. Naturally, certain safeguards would need to be enacted to make sure these reductions were done in the most equitable manner possible.

The biggest example of this issue for SUPERVALU is the case of the Central States Pension Fund. As I said before, SUPERVALU's share of the unfunded liabilities continues to grow every year as other Central States employers fall by the wayside. The retirees from these failed companies would be much better off in the long run if pension benefits were reduced now instead of waiting until the Plan becomes insolvent, when these same retirees could have their pensions cut by as much as two-thirds (and possibly much more, unless the PBGC is provided the necessary funds to meets its obligation with respect to the multiemployer plan guarantee).

B. Preservation: Proposals to Strengthen the Current System

The second topic I want to discuss is technical corrections to the Pension Protection Act ("PPA"). The PPA was an important piece of legislation that started setting the right course for multiemployer plans. We strongly believe it should not be allowed to sunset at the end of 2014. That being said, there are many minor technical changes that we believe should be made which, when taken together, would greatly improve the ability of multiemployer plans to improve their funding levels. Some of these are:

- Allowing plans that are projected to enter the critical zone within the next five years to enter critical status in the current year. By allowing plans earlier access the additional tools afforded plans in critical status, the plan may be able to moderate the actions that must be taken to fix the plan.
- Conform the rules applicable to plans that are in endangered and critical status by providing that the same rules applicable to red zone plans will apply to yellow zone plans during the funding improvement adoption period and the funding improvement period. Currently different rules apply to plans in the yellow zone that are more onerous than those that exist for red zone plans. This illogical structure should be corrected by applying the red zone rules to yellow zone plans
- Provide that any contribution increases attributable to Funding Improvement Plans or

Rehabilitation Plans will be disregarded for withdrawal liability purposes. The additional contributions required to improve plan funding under a funding improvement or rehabilitation plan are producing a perverse incentive for employers to withdraw in order to avoid having these additional contributions result in greater potential withdrawal liability. For example, three employers withdrew in the last year from a small UFCW pension plan in Wisconsin because the increased contributions required under the rehabilitation plan were dramatically increasing their withdrawal liability exposure. The employers felt it was better to exit now and basically pay double their current contribution rate—the multimillion dollar withdrawal liability assessment plus an amount equal to their current contributions into a defined contribution plan—instead of risking increased withdrawal liability exposure attributable to the increasing required contributions. If the additional money was not added to the contribution rate for calculating the withdrawal liability payments, these employers may have stayed in the multiemployer plan.

C. Innovation: New Structures to Foster Innovative Plan Designs

Finally, we need to look to new types of multiemployer retirement plans that both provide reasonable benefits to retirees and protect contributing employers from risks associated with other employers going bankrupt. One of these mechanisms would be the creation of a new form of multiemployer plan, that would provide protection to employers (because no withdrawal liability) and would protect the core benefits of retirees (unless adjustment is necessary to prevent plan insolvency).

VI. Conclusion

Again, Chairman Roe, Ranking Member Andrews, and members of the Subcommittee, I thank you for the opportunity to testify to your Subcommittee on behalf of SUPERVALU and the Food Employers Association. SUPERVALU applauds this Subcommittee for its leadership on important job of addressing the structural problems facing the multiemployer system. We are grateful for the opportunity to tell our story, and we look forward to working with you and others on a solution that will ensure the continued viability of the multiemployer pension system.

Chairman ROE. Well, I thank all the panel for an excellent presentation, laying out the problem, and now we are getting to the solution phase, which is not going to be easy.

And I want to thank Ranking Member Andrews for his very hard work on this. I think both sides of the aisle are committed to finding solutions and getting it done. We have a perfect window when certain provisions of the PPA sunset in 2014, so we have the time to do it and the need to do it.

And, Mr. Dean, I want to start with what you were talking about a minute ago. It looked like the solutions to this problem are not easy but there are 4 or 5, and one is that we can increase premiums, and that has been done in the single employer plan. You can do that. That is one of the things you can do.

And you also mentioned—I think several of you mentioned—that we have—people have forgotten we had two recessions in 10 years. We had the tech bubble in the early 2000 era, and then the most recent one, the housing collapse, which created other stresses on these defined benefit or any pension plan, for that matter.

So we can increase premiums. I think that plans have to look at not looking at unrealistic returns. I mean, we have some of the plans looking at 7 to 8 percent returns ad infinitum, and I think that certainly is not feasible over the next 20 years.

Reduced benefits, which, as has been mentioned, is not—obviously we would like not to do it, but we may have to do it in some—to preserve benefits, and that is a hard sell when you have people retired out there who are depending on this income. And some of these incomes are not all that generous to begin with, so families are living on every dollar they have, and to cut that would really create a real issue for them. So I feel a responsibility to maintain as much of that income for them as we can.

And then last of all we have talked about is, you know, a taxpayer bailout to private unions, which I think—to private plans, I mean, which I think no one wants.

The concept of the multiemployer pension plan I like. It allows a person to go from here to there, he may work at a journeyman job at various ones, but can also plan for their retirement. And I think the concept, I think, is good.

Ms. MURPHY, I was intrigued—got up early this morning and read your testimony again before we came here, and I want you to go back on what you—the last thing you said was some solutions about when plans are scheduled to enter the red zone, and the ultimate catch-22 that you find your very solid company caught in, where the longer you stay the more—and other plans either go bankrupt or just go out of business—that it puts more and more stress and more reason for you to try to get out of this plan instead of encouraging people to get in it. Could you go over that a little bit more?

Ms. MURPHY. I would be happy to. You have mentioned the last man standing rule, and the Central States plan is a good example of that, where hundreds and many more have left Central States without paying their unfunded liability. The employers that continue to stay in are really penalized for that because their withdrawal liability increases with the number of orphan retirees that remain in the plan.

So every employer is looking at that downside of staying in the plan, and while they may want to do that, as a publicly traded company you certainly have to look at the financial risk of doing so.

Chairman ROE. You know, and you mentioned a 1 percent margin. I was very familiar with that number in the grocery business. So you have got a pretty thin margin to start with.

One suggestion, as I started my comments off, was just to continually raise the contribution limit. Would you speak to whether you can solve the problem by just doing that—in other words, going from $12 to $20, or pick a number?

Ms. MURPHY. Yes. Unfortunately, we don't think that is a viable solution. Contribution rates have increased pretty dramatically over the years, and even Central States has looked at employer contribution rates and has concluded that that is not a viable solution because there is an inverse proportion: as contribution rates go up, more and more employers will find it unaffordable, leave the plan, and ultimately the total contributions coming into the plan will not increase.

Chairman ROE. So I see. You go out of business, you put a little more in, you have a net nothing increase.

I know Mr. Andrews has a hard appointment at 11 o'clock. I will now yield to him?

Mr. ANDREWS. Thank you very much. I appreciate your indulgence.

I really appreciate the testimony of the witnesses.

And, Mr. DeFrehn, let me compliment you and your coalition for the years of hard work you have done on this issue. And the process that you outlined I think was very fair, very open, very transparent in dealing with some very difficult issues. You have given us a report that I think is a very sound basis to solve this problem, and I appreciate it.

I heard the chairman go through a list of solutions, and I embrace all of them. Looking at an increase in PBGC premiums is not easy but it is necessary.

Certainly producing and facilitating more economic growth so the assets can be worth more in the plans is something we all embrace and certainly hope we can achieve. I agree that more careful and prudent and conservative estimates about returns are important so that the actuarial picture that we are looking at for these plans is based upon reality and not aspiration.

And then finally, a fair and negotiated, collectively bargained approach to restructuring benefits is essential, and I want to emphasize the words "fair" and "collectively bargained." We believe that representatives of the workforce and the employers should have the discretion and the authority to achieve the best result that they think they can achieve without our micromanagement or interference.

There is a fifth option that I think we ought to think about, and the chairman made reference to it when we met in December to talk about the Hostess bankruptcy, and that was the effect of the bankruptcy laws on the machinations of these plans. I want to ask each of the four of you if there is a change that you would like to see in the bankruptcy law, which goes beyond our jurisdiction but I think is necessary to address this problem. What change would you like to see?

Mr. DEFREHN, you want to start?

Mr. DEFREHN. Sure. And thank you for those kind remarks.

Bankruptcy has been an issue that the community has dealt with over the years in kind of a mixed way. Obviously from a plan standpoint, having an increase in the priority level would help protect the plan assets. The flip side of that, though, is if you do that then it further restricts the employers' ability to access the credit markets. So that has always been a tension between the two.

We have had the Hostess situation, which everybody is familiar with, and even more recently, last week, the courts decided in the Patriot Coal Company to also dismiss vast amounts of liabilities, which will also create problems for that trust fund, which is already in trouble——

Mr. ANDREWS. Which is already in horrific shape to begin with, right?

Mr. DEFREHN. Yes. Yes. As a result, if I might add, of some unintended consequences of congressional action in the Clean Air Act. Sometimes things just don't work out the way we expect.

But I would think that one thing that Congress could look at from the bankruptcy side of things is on the flip side, once a company emerges from bankruptcy. If there were an ability to go back and assess some of those liabilities once the company comes out of bankruptcy there may be some way——

Mr. ANDREWS. Maybe a deferred liability——

Mr. DEFREHN. A deferred liability of some sort, that is correct, rather than looking at it up front to create greater impediments to the credit market.

Mr. ANDREWS. I want to give Dr. Ghilarducci a chance to respond, as well.

Ms. GHILARDUCCI. [Off mike.] A change in the bankruptcy law would have helped my work—would have helped my work at the Yellow Freight—the YRCW deliberations as a corporate director because the bankruptcy laws had in place ways that did not presume that the way to solve pension liabilities was to go through bankruptcy, that would have given a chilling effect to the kinds of discussions we had about how to deal with this troubled but strong company. It might also change the way pension liabilities and pension obligations are taught in business school, where it is just not the bankruptcy would be the way out——

Mr. ANDREWS. Now we are really going to get accused of micromanaging—business school curriculum.

Ms. GHILARDUCCI. There are signals to the parties making these agreements about what is permissible.

So if you actually made pension liabilities as important as tax liabilities, or responsibilities for the environment, or that you can't get away from criminal culpability by going through bankruptcy, then the pension liabilities may be treated in a different way at the very beginning.

Mr. ANDREWS. Do either of the other witnesses care to comment on this?

Ms. MURPHY. All I would say—we don't advocate a change in bankruptcy law but I think it is incumbent upon employers and unions to work together as early as possible in these issues, and exiting the plans isn't the only solution either in bankruptcy. Some in our industry have figured out ways by working together to actually stay in the plan and continue participating.

Mr. ANDREWS. Thank you, Mr. Chairman, very much.

Chairman ROE. Thank the gentleman for yielding.

Dr. Bucshon?

Mr. BUCSHON. Thank you very much, Mr. Chairman.

First of all, just from a—my dad is a retired united mineworker, so I have—one thing I wanted to find out for my own edification, that the pre-1974—are there other people covered—retired workers in the mining industry—by plans that were pre-1974? Does anyone know the answer to that question?

Mr. DEFREHN. Well, having started my career in that industry with the trust funds, there was a 1950 trust fund, which took care of everybody who retired prior to 1974. The 1974 coal wage agreement then changed and there was a separate trust fund.

I haven't followed it that closely to know whether that 1950 fund is still around. I would imagine there are still some widows that would be receiving benefits; not too many miners, my guess would be. That is a long time for people who had that kind of a career and exposure to the occupational illnesses that are prevalent in that industry. But there—it may be that those liabilities were merged into the 1974 fund at this point.

Mr. BUCSHON. Could be. I just was talking to my dad over the weekend, and his impression is amongst his retired workers is that if they started in the coal industry before 1974 they were okay, and that doesn't sound like that is the case. It depends on when you retired.

So they need to—I think the—it sounds like the UMWA needs to maybe message that to their retirees better about how critical this is that we work with them and with you all to make some changes that—because I think at least my dad has a false impression of that they are going to be okay regardless of what happens to this plan.

With that, I want to extend the question and highlight, what will—and I will—any of the panelists—to again highlight what will happen if Central States or UMWA's 1974 plan actually goes insolvent, and again, highlight how bad that would be compared to finding some solutions.

And we can start with whomever. Mr. DeFrehn?

Mr. DEFREHN. The slides, the graphic that the chairman showed early is representative of what the PBGC trust would look like—their liabilities—if those two trust funds fail without any other types of intervention. I am aware that the coal industry and members here and in the Senate are evaluating whether or not there are some other sources of revenue from the Coal Act that might be available to take care of some of the problems in the coal industry and with that plan, which, as I mentioned, had been affected by the Clean Air Act. Much of the production was pushed to the far west and many of the jobs that were associated with that were lost over the last——

Mr. BUCSHON. I hate to interrupt, but in fact, that is——

Mr. DEFREHN. Yes.

Mr. BUCSHON [continuing]. Exactly what happened to my dad's coal mine in central Illinois, 900 employees at one time, and now is idle with 30 years of coal sitting below the ground. But not only what will happen to the PBGC, but as an individual worker or an individual retiree, again, highlight the difference of what you currently get if the plan stays solvent but what you may get if it goes insolvent and how critical it is to these workers that Congress really do something to try to prevent that from happening.

Mr. DEFREHN. A worker who is receiving $2,000 a month or $3,000 a month—if the plan were to fail, the guarantee under the current statute would provide a maximum of $12,870 to a worker who receives—who retired at age 65 with 30 years of service. If either of those are reduced—if you get less than 30 years or if you retired before age 65—those guarantees are reduced.

The formula is quite simple. It is 100 percent of the first $11 of accrual, 75 percent of the next $33. That is what the statute provides.

However, it has been made abundantly clear by the PBGC that their insolvency targets—that they are headed for insolvency with no changes. There is a 30 percent chance in their exposure draft that that will happen by 2022 and a 91 percent probability that they will be insolvent by 2032, which would mean they don't have any assets other than the current premiums that are being paid.

GAO came in behind that study and did an estimate and they said that if you were paying benefits from current premiums the best you could do is 10 percent of that. So instead of $1,000 a month for that worker who was receiving $2,000 or $3,000 a month, he would be receiving $100 a month. That is not a guarantee. That is an illusion rather than a guarantee.

Mr. BUCSHON. I thank you for that, and I wanted just to highlight that, how critical it is for Congress to help prevent insolvency of these multiemployer pension funds.

Thank you, Mr. Chairman. I yield back.

Chairman ROE. I thank the gentleman for yielding.

Mr. Tierney?

Mr. TIERNEY. Thank you very much.

I don't doubt that everybody agrees that preventing insolvency is a critical issue here, so let me ask a question: Is anybody contending that the trustees of these plans acted negligently or breached their fiduciary responsibility?

Ms. MURPHY. From the employer perspective, I think the answer to that is no. The trustees have worked with the governing laws and regulations as well as the terms of the plans and have done everything that they could within their power and the tools that have been available to them. I think the point of the NCCMP proposal is to say that new tools are needed.

Mr. TIERNEY. Okay. So I think that is generally the consensus.

I see nodding heads across the board on that—maybe one dissention, Mr. Dean?

Mr. DEAN. Just—no. There is an economic shift to a declining——

Mr. TIERNEY. So there were other factors, is what——

Mr. DEAN. Far greater.

Mr. TIERNEY. One of the factors was some employers getting out of the plan and not covering their responsibilities going forward. What percentage of the problem is created in that sense?

Mr. DEAN. Well, in the construction economy I can speak to, the last man standing rule, technology and innovation in construction has resulted in less construction workers required to do the same task that they did in the past. Therefore, we have seen an erosion in employers, some labor laws——

Mr. TIERNEY. Just trying to get to what portion of the problem is created by that——

Mr. DEAN. Well, it is built in the last man standing rule that anyone that remains active and participatory——

Mr. TIERNEY. I don't want to——

Mr. DEFREHN. Perhaps I could give you some clarity there. If you look at the large pension funds, the estimate is that they collect 10 cents on the dollar of withdrawal liability. Most of it is through bankruptcy. Sometimes they—because of the size of many of these employers they are too small to even bother to go through the bankruptcy process, so it is not proven—withdrawal liability is not proven to be the theoretical solution that it was intended to be.

Mr. TIERNEY. Is there an idea or a set amount of capital, set amount of cash that is needed to resolve this problem? If there were such an injection of a certain amount would that resolve this problem and going forward things would repair with minor adjustments?

Ms. GHILARDUCCI. It would help this gap, because the gap there is $5 billion. But my very detailed review of the Teamsters plans revealed two problems. One was there was too much faith that equities would actually provide a high rate of return, so the funds that actually had a lot of equities actually tend to be less better funded. The other big problem, though, is the withdrawal of new employees, so it is actually the shrinking of the union population in these areas.

And then also, not a revival of a lot of part-time workers. So Western Conference versus the New England States is very much about the renewal of new entrants; it is probably 80 percent of the problem.

Mr. TIERNEY. You know, it would seem to me that the worst thing to happen here is that people will lose their pension funds or get them reduced on this basis. I mean, that is—they are already underfunded once they retired, and to say that they are going to pitch in and solve this problem and the answer is going to be they end up with a smaller pension, it just doesn't seem equitable or fair to me at all, so I am looking for a way—if there is an amount of money to be injected and this would do it, have people explored other ways of raising that capital that could be paid back later in some way that is less onerous that allows the plans to survive?

Ms. GHILARDUCCI. Well, I have offered this blue sky idea, but I think it is fair, which is to look at the employers who are benefiting from these plans and make them pay. So an industry tax or some kind of levy on all the employers that are using these workforces, like the Railroad Retirement Act.

Mr. TIERNEY. Ms. Murphy would object strenuously to that, I am sure.

Ms. MURPHY. Yes. I mean, we have looked at the private solution for those of us that participate in these multiemployer plans in partnership with the union that we believe will resolve it, and again, the benefit cuts are distasteful to everyone but they are only for those most troubled plans, like Central States, that simply there is no other way out that we have seen.

Mr. TIERNEY. Does the taxpayer have any stake in this? You know, I mean, we bailed out a whole pile of banks, you know, to so-called "keep them liquid." Does the taxpayer have any benefit to keeping liquid these retirees that are going to be so onerously affected? This a policy issue?

Ms. GHILARDUCCI. Oh, I have been looking at the retirement crisis in general, and states and localities have a big benefit to make sure that these retirees don't go into poverty or to near-poor status. The fastest-growing group in homeless shelters in New York are the population over 55.

So the federal government really doesn't have to bear directly those costs of those social services, but every governor, state legislator, and mayors are really interested in this.

Mr. TIERNEY. Why wasn't that reflected in the plan, Mr. DeFrehn? Why wasn't anything—an option involving all of those interests in resolving this problem presented in the plan as opposed to going right to the employees and retirees and whacking them?

Mr. DEFREHN. Well, actually, what we referred to was trying to keep the existing system from taking too much of the benefit away, which is what the current law requires. Our solution was to try to mitigate the current law's requirements by having a earlier intervention by the trustees. We didn't get into——

Mr. TIERNEY. We didn't give you enough license to be more creative. Is that what is——

Mr. DEFREHN. Pardon me?

Mr. TIERNEY. We didn't give you enough license to be more creative, but you might have been able to come up with some ideas had you been given that mission?

Mr. DEFREHN. Yes. You know, under the current rules there is—we have seen one plan where—and let me just give a little background here——

Chairman ROE. Gentleman's time is expired.

Mr. DEFREHN. Oh, excuse me.

Chairman ROE. Mr. Scott?

Mr. DEFREHN. Perhaps we can have that discussion later——

Mr. TIERNEY. Yes.

Chairman ROE. Yes. Mr. Scott?

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. DEAN, you indicated that you have to represent the best interest of your members. Do your members notice that there are—looking at one of the unintended consequences of reducing benefits, if your members saw that benefits were actually being reduced on these defined benefit plans, why wouldn't they say, "Well, let's go for a 401(k) with a match rather than this illusory defined benefit that may or may not be there. At least we would own our 401(k)"?

Mr. DEAN. Many of our plans have a combination of both, but our members look for that stable, monthly pension——

Mr. SCOTT. That may or may not be there.

Mr. DEAN. In most cases our pension plans in my industry and within my trade are in the green zone.

We have had a distressed plan, say, in Buffalo, where the collapse of the steel industry created an upside-down active to retiree. The employers in the area had no construction to bid on; the workers had no work. And that plan is right now to date our only U.S. plan that has gone insolvent.

Mr. SCOTT. But——

Mr. DEAN. But the issue is——

Mr. SCOTT. But, I mean, if they concluded that they would be safer with a real live 401(k) rather than the better defined benefit plan, might that have people pulling out of plans and cause the cascade that we are kind of afraid of?

Mr. DEAN. The construction industry right now relies predominantly on defined benefit plans and it is supplemented with a defined contribution plan as a hedge against both. The defined benefit plans that we have offer great protections. Unfortunately, if a plan goes insolvent, goes to PBGC, they are destined for dramatically reduced benefits and these are our scenarios are for the distressed plans, which is a small percentage.

We want to be able to preserve and stabilize the existing ones we have and look for flexibility. We are not intending to cut benefits on all of our members' plans; we are looking to alter benefits on plans that are headed for insolvency, and it is a maybe 6 to 7 percent percentage of our entire workforce.

The way the current rules——

Mr. SCOTT. I am running out of time. I have a number of other questions I would like to ask.

Mr. DEFREHN, when you answered the question whether or not there could be increased payments into the fund, was that an increase in pension plan—pension benefits or an increase in premiums that you were talking about?

Mr. DEFREHN. I am sorry. I am not quite sure——

Mr. SCOTT. You asked the question whether or not increased contributions would be a solution. Is that increased contributions to the pension plan or increased premiums—PBGC premiums?

Mr. DEFREHN. I think the question was directed to whether or not the—increasing contributions by employers to the fund would be a solution, and——

Mr. SCOTT. Well, what about pension premiums?

Mr. DEFREHN. To the PBGC?

Mr. SCOTT. Right.

Mr. DEFREHN. That is obviously going to have to be part of the package here. There are going to be plans even under the solution that the commission came up with that will not be able to benefit because they won't be able to project long-term solvency. That is a threshold requirement in order to access these new tools. So there will be some plans that continue to fall into that category and will ultimately become insolvent.

To the extent that the agency already has $7 billion of recognized liabilities and only $1.8 billion in assets, there needs to be something to address that, and obviously some form of alternative premium structure is probably in order. We would recommend that—and we are trying to work right now with the agency to look at some alternatives as to how those premiums might be restructured in order to reflect the current liabilities.

Mr. SCOTT. Thank you.

Ms. GHILARDUCCI, can you say a—these contributions into the plan are all invested in stocks that can go up and down and are a corporate asset subject to bankruptcy. What would be the problem with requiring these plans to invest in annuities that would inure to the benefit of the employees and not—and would no longer be a corporate asset, that way the ups and downs of the market would be on the insurance companies, not on the companies and ultimately the employees?

Ms. GHILARDUCCI. In some cases de-risking of annuities might makes some sense, and ERISA, kind of, you know, will allow that to happen. But in the two plans that you mentioned and the red zone plans, they just don't have enough money to buy from an insurance company that——

Mr. SCOTT. This would be——

Ms. GHILARDUCCI [continuing]. Hadn't lost its mind.

Mr. SCOTT [continuing]. Prospective, not retroactive.

Ms. GHILARDUCCI. No, I think that would be appropriate in some cases. But insurance companies also at risk of default, as well, as we have seen, so the PBGC backdrop is probably more important for retirees than an insurance company's backstop.

Chairman ROE. Thank the gentleman for yielding.

Mrs. Roby?

Mrs. ROBY. Thank you, Mr. Chairman.

Thank you all for being here today.

And, Mr. DeFrehn, I am going to start with you. Can you explain how plans have adjusted their assumptions and operations based on the financial downturn? In other words, what changes have those plans made since the 2008-2009 financial downturn?

Mr. DEFREHN. What we have seen so far is there has been very little change in the long-term assumed rates of return among multiemployer plans. They typically fall between 7 and 8 percent. Our survey showed that about 85 percent of the plans are in that range, with more than half at 7.5 percent.

The commission specifically looked at this, asking not just the actuarial community, who sets those assumptions, but economists and money managers—some of the largest firms, like BlackRock and PIMCO, as well as consultants, what that long-term prospects for returns would be and how reasonable those current rates are.

One of them said probably 7 percent would be the highest and all the rest of them said when you are looking at a 40-year time horizon, 7 to 9 percent is certainly reasonable. So they haven't made those changes.

Mrs. ROBY. Okay. Thank you.

Ms. MURPHY, we have heard complaints that some contributing employers sometimes have difficulty finding details regarding—detailed information regarding the plan, so can you just explain, has that been your experience, and are there changes that we here in Congress can make to promote transparency?

Ms. MURPHY. I can. Yes, we have had some challenges and we fully support transparency. The funds are obligated to provide certain information under the PPA to employers. Employers have to request it in most cases.

Many funds charge for it; the charges are not insubstantial. And some funds don't provide it when requested.

So the change that we would ask is more standing on the behalf of employers to be able to get the information that has been requested.

Mrs. ROBY. Some people suggest that the funding crisis facing multiemployer plans is due to the sluggish economic recovery, and so again, Ms. Murphy, can you tell us what economic factors harm the plans you contribute to and maybe what are some other factors influencing their financial status?

Ms. MURPHY. Sure. Well, certainly the tech bubble of 2001 and the market downturn in 2008 were significant factors that affected these funds, because for the most part they are highly leveraged and highly dependent on investment returns. Those market returns since then have helped improve some of the funding status of these plans. One of the biggest economic factors is, frankly, that new growth is not coming into these plans, particularly in some industries like retail, that there hasn't been a growth on the unionized side for retailers; and also, the reluctance of new employers to come into these plans.

So we are having, you know, increased age of our participants and less use that is coming into the plan, so those are the primary economic factors.

Mrs. ROBY. Thank you very much.

I yield back.

Chairman ROE. Thank the gentlelady for yielding.

Mr. Miller?

Mr. MILLER. Thank you, Mr. Chairman, and thank you very much for holding this hearing.

And thank all of you for all the hours you have devoted to this subject, and I appreciate all the work you have done. I just want to touch base on a couple of issues and just sort of get some assessment of where we are.

And one is, Teresa, in your testimony you raised a—about your service on the VEBAs and the question of what happens to vulnerable employees and who is defined as the vulnerable employee, and I just—I am not asking you for an answer on how that is going to be handled, but is that still a part of this discussion? Because obviously there are many organizations here and we have different views from them about how this is going to be done, and I just want to know, is that still a matter of consideration here so we try to make sure the——

Ms. GHILARDUCCI. Okay, so if you are going to consider cutting retiree benefits—and I am very sympathetic that in some cases that is the only way these things are going to last——

Mr. MILLER. Right. I think we all understand that——

Ms. GHILARDUCCI [continuing]. Then the cursory language that says vulnerable retirees have to be protected is almost meaningless unless there is a very strong representation almost particular to every plan and every situation. Because in the steelworkers and auto workers cases, actually the vulnerability had a different standard. In the auto workers it was retirees that had less than \$8,000—living on less than \$8,000 a year; in the steelworkers, they defined their vulnerable retirees as very old. Now, there is an income-age correlation, but the particularities of the region and also the industry actually meant something different to vulnerable workers.

Mr. MILLER. Is that discussion being had as you consider reducing the——

Ms. GHILARDUCCI. The most important thing I can bring from my experience there is all the time. We discuss benefit design every 6 weeks, and the distributional effects of every benefit design is what our poor actuary has to do.

Mr. MILLER. I am going to stop you there.

The other question was—Randy, I think you referred to this business that should things turn out to be great and, in fact, the plan can gain solvency, how do you come back from that? How do you work your way back in terms of benefits? Is that being discussed or are avenues being developed?

Mr. DEFREHN. Yes. That was an area that we discussed and it was clearly an area that people felt that there was some obligation as a plan recovered its financial health to also restore some of the benefits that were reduced, recognizing, though, that in some of these more mature plans the liabilities for retirees is maybe multiples of what the liabilities for the actives would be. The decision was that perhaps a dollar equivalency would make sense, rather than trying to restore on a percentage basis those benefits——

Mr. MILLER. But again, that——

Mr. DEFREHN. It was a discussion. It was——

Mr. MILLER. That hasn't been thrown out yet. I mean, we are——

Mr. DEFREHN. Not at all. It is certainly part of the proposal, Mr. Miller, and there would—just to come back to the other point, as well, the notion of vulnerable populations, as Teresa says, it is best defined by those closest to it. The commission was very careful to recognize that people who were advanced ages had no ability to find other sources of income, and yet would be of the least cost to the plans going forward because their life expectancy is shorter.

Those populations could reasonably be taken into consideration as the plans design their reconstruction model here. That would be something that the PBGC would take into consideration as they were satisfying themselves that due diligence had been exercised, as well.

Mr. MILLER. Okay.

Finally, just on the question of new plan design, where are we in that discussion in terms of to the raises—the variable annuities and the target benefits? Is that under active discussion? Again, I recognize that in some cases that is a pipedream, but in others it may be—hold out some potential for some employers and some employee groups.

Mr. DEFREHN. Yes. It is actually very much in play. All of the proposals—all aspects of the proposal are being advanced as a package. We believe that they are integrally and—tied to one another. Certainly the variable defined benefit plan has already been adopted by I think four different groups so far.

The fact that it is a D.B. under the current structure is really only hampered by the question of whether or not the Treasury Department believes that the current structure is sufficient to issue a qualification letter. I don't believe any of those groups that have adopted it have received letters yet.

Mr. MILLER. Thank you. The reason I am asking these questions is that obviously members of Congress are starting to get, you know, taking meetings and getting hammered in some cases, or getting urged in other cases, whatever is going on. I just want to make sure that these particular issues are still open and under active discussion, that they are not starting to close these down.

Because again, people are coming with—with very different situations and have a different vision about how big the catastrophe is or what the benefits will be, and I think while members are learning some of this for the first time beyond this committee, they have to know that this—one side or the other hasn't closed these options down.

Mr. DEFREHN. If I might, Mr. Miller, just to respond to that——

Mr. MILLER. It is up to the chairman at this point.

Mr. DEFREHN. I am sorry.

Mr. Chairman?

I think at this point we are very close to having a formal proposal that would be something that could be turned into bill language that you could then—once that happens you will see that the support is still here—very strong support among the entire membership of the group that put this together. One or two slight defections along the way, but a group of 42 people, 42 organizations, I think we have done a very good job in keeping that together, and you will see that support, both labor and management jointly, as soon as there is a bill for them to be talking about.

Mr. MILLER. Thank you. And thank you again for all of your work. Appreciate it.

Chairman ROE. I thank the gentleman for yielding.

Mrs. Brooks?

Mrs. BROOKS. Thank you, Mr. Chairman.

To Mr. DeFrehn. The commission's proposal includes recommendations for alternative plan designs, one of which would change the discount rate used by plans for future accruals. What are the characteristics of those plans that you expect would move toward that model if doing so is voluntary?

Mr. DEFREHN. Remember that there were two objectives of this commission. One was to make sure that any changes would result in a predictable, regular, guaranteed income for participants. And the second was to try to reduce the liabilities to employers.

The two models were given as examples but not exclusive in the commission's proposal were a variable defined benefit plan, which would reduce but not eliminate withdrawal liability simply by using lower discount rates, and then having a variable portion, which would create a floor benefit using those rates, and then there would be a variable portion above that that would fluctuate based on the market returns.

In the second model, which is known as the target benefit, that model eliminates withdrawal liability. It has higher than current funding standards with a requirement that the benefits be funded on a contribution basis of 120 percent of the current projected cost for the benefit, but because there is no withdrawal liability the contribution that is made would have to be managed by the fiduciaries of the plan and there would have to be some mechanism for adjustments in that benefit as it goes forward.

So there are very specific recommendations that we have created along that line for a hierarchy of how those plans could be adjusted. But the notion is that the adjustments would be done timely and early so that there—the vulnerability of any pensioners whose benefits were being paid would be significantly limited.

This model is not unusual. It has actively been used by the Canadians in—it is very similar to the Canadian defined benefit model, which also has no withdrawal liability with the exception of the province of Quebec.

Mrs. BROOKS. How is it working for Canada?

Mr. DEFREHN. Pretty well, as a matter of fact. They have actually changed some of their rules on solvency because some of those were not as robust as they needed to be during the time of the market contractions.

But it is quite similar to systems elsewhere in the world as well as the Dutch system, which we could get into in greater detail, but I think you can just see that we are one of the unique—our model is unique in having withdrawal liability, and what it is proven to do is create an impediment to the new employers coming into the system.

If this system is to work, and if any defined benefit system—defined benefit program is to work it requires active engagement by the employers, and a continually shrinking pool of contributing employers is not a good future for any plan.

Mrs. BROOKS. Thank you. Thank you.

Mr. DEAN, you attributed the decline in assets in the pension fund to a twice-in-a-decade—in your testimony to a twice-in-a-decade financial downturn, and unfortunately, financial markets do sometimes suffer downturns at inopportune times. For that reason, some have questioned whether or not it is reasonable for the pension plans to automatically assume the 7.5 or 8 percent returns every year.

How can Congress provide unions and employers the funding flexibility they need while also ensuring that future promises and benefits are sufficiently funded even when there are financial downturns?

Mr. DEAN. Good question. Congress could look towards allowing us, in either the two solutions of the variable or the targeted or floor benefit going forward, which would assume a much lower rate of return, and then as it—as there is more income allowed you could apportion that money towards the participant not on a permanent basis but on whatever the market allows the portfolio to return.

The way it is presently and the previous question, when you lower assumption rate you have to take a grundle of money to pay down that assumption rate and it doesn't do anything to pay for, and as the other panelists have talked about, whether it be, you know, the annual rate is determined on not only contributions but interest assumed, so it is not solely on interest assumption. So, and you know, that is one direction going forward where, if we had that leeway it would be something that we haven't done to date.

But when we lock in the assumption rate and the benefit, that is a benefit promise in perpetuity.

Mrs. BROOKS. Thank you. I yield back.

Chairman ROE. Thank the gentlelady for yielding.

Mr. Polis?

Mr. POLIS. Thank you, Mr. Chair.

My first question is for Mr. DeFrehn.

I wanted to ask about in terms of the National Coordinating Committee, what kind of outreach have you been able to do to both—I think you talked a little bit about some of the national unions of workers who have, in particular, locals and ground-level workers and unions to get their input in the final report?

Mr. DEFREHN. The commission had both international union representation as well as some of the local and regional plans that were part of the discussions as we went forward. Since the commission's report has come out we have—I have personally spent an awful lot of time on the road briefing people about what the objective is, what the recommendations are. And generally speaking, I can tell you they have been well received.

Mr. POLIS. But I was more interested in the input leading to the report as opposed to the outreach after it, but the input leading to the report also included locals and——

Mr. DEFREHN. It did.

Mr. POLIS. Okay.

And next question for Dr. Ghilarducci. You know, I think this concept of shared sacrifice is certainly understandable, but we also understand the importance of retirement security, and of course, we are committed to protecting beneficiaries whose—it is not their fault that their multiemployer pension plans are in the shape they are in. So what kind of limitations or protections should responsible pension reform have to ensure that we are not throwing beneficiaries under the bus?

Ms. GHILARDUCCI. It is not their fault, and they also have less options. So the commission's report has the structure of a PBGC representative that would have to sign off on any reduction that had to happen in these desperate situations. The Central States may be a desperate situation.

But that—I am really worried about that representative not actually having a more active role or being well resourced. And also, is that PBGC representative going to actually have the input from retirees and even on a local level for it to be effective? So I am concerned about the governance of that independent say.

So the courts, in these situations that I am involved in, actually made sure I am one of the independent trustees and then the steelworkers actually have retiree representatives on that board, expanded that multiemployer union employer sponsor and included a retiree representative. It is kind of an active and fierce lawyers on these committees.

Mr. POLIS. So, I think the follow-up question is for anybody on the panel really. What happens if Congress doesn't take any action? Where are we in let's say 10 years, in 20 years, so, I mean, 20 years, talking about people that are in their 40s today—10 years. What happens if there is no action whatsoever in the 10-and 20-year timeframe, whoever would like to address that?

Mr. DEFREHN. I would be glad to start on that one.

Mr. POLIS. Okay.

Mr. DEFREHN. If there is no action taken, some of the largest plans that we just mentioned—Central States and the Mine Workers plan—will collapse——

Mr. POLIS. But what does that mean for——

Mr. DEFREHN. They will go to PBGC, the dire economic scenario that GAO has laid out will likely take place, or this body will be asked to appropriate large sums of money. But either way, the domino effect across these industries, because as you see from even the retail food industry, who contributes to funds in different trades, there is so much interconnectivity in the contributing employers among these trust funds, you will see a domino effect.

Mr. POLIS. And in your opinion, how soon does Congress need to act to avoid this?

Mr. DEFREHN. As soon as humanly possible.

Mr. POLIS. What is our window? How many years?

Mr. DEFREHN. I think if you get it done by next summer that is probably the end of the—where the window closes. Had we taken this action, or taken some action earlier to allow some of the earlier proposals, then the benefit reductions for plans that would be able to take advantage of these tools would not have had to be as severe as they are—by the day as these plans continue to spend down their assets, headed for insolvency.

There will come a time when they pass that threshold where the test says you have to be able to demonstrate that you will be solvent going forward. When you get to that point and they can't meet that obligation any longer, we will have waited too long.

Mr. DEAN. If the PBGC does become insolvent due to the collapse of the two plans, think of all the plans that are trying to maintain its solvency and in addition pay PBGC premiums for which they will be offered no protection. It is a scary thought.

Mr. POLIS. Do others agree we are only 12, 14, 16 months away from that, real quickly?

Ms. Murphy?

Ms. MURPHY. Yes. Time is really of the essence, and this is the window to act now. We have been working on this for quite some time and talking about it, and the solutions that we propose now simply won't be effective if we wait any longer than that. Thank you.

Mr. POLIS. Thank you.

I yield.

Chairman ROE. I thank the gentleman for yielding.

And I would also like to thank the witnesses for taking their time to testify today. You have done a great job.

And I will now yield to Mr. Miller for his closing remarks?

Mr. MILLER. [Off mike.]

Chairman ROE. That is a first. [Laughter.]

That really caught me off guard.

Secondly, I would like to thank the committee.

And, Dr. Ghilarducci, I am an SEC fan. I know you were at Notre Dame for 25 years and I was just wondering if they are going to fill the football team next year.

Ms. GHILARDUCCI [continuing]. For that. They are building their team.

Chairman ROE. I think we both sides have a commitment to making sure or seeing that we can help solve this problem or get it into at least acceptable for everybody at the table. Certainly I have never seen a pension plan have a problem when they had too much money, and I think one of the things we need to look at in doing this is during the up years is allowing people to, quotes—"overfund" these plans because you have not repealed the economic cycle. It is going to go up and down.

And when you happen to retire—and just myself personally, I retired from my medical practice and guess what? The market went in the tank, and so you can't pick that time out. You are the age you retire when you retire, and I think that is—smoothing out over time would be something we need to look at strongly, because, like the up during the 1990s, when it was—the market was really on the ups, it would have been great to have stored some acorns away at that point to have to go back later to reserves to look at.

So I would think we would look at that. I think bankruptcy, how that is dealt with, that Ranking Member mentioned a minute ago, I think we need to look at that.

You all have clearly stated that increasing premiums alone does a couple things. It will help some. It will be part of the problem, but if you do too much it will discourage and hurt some companies and create a worse problem, so we have to be careful with that.

I certainly think that looking at a small benefit reduction now with protections, as you all mentioned, will prevent a huge reduction in the future. And that is very difficult to go back and to tell people something you promised them that we may not be able to deliver 100 percent of that promise, but that is certainly better than none.

And I think Mr. Polis brought out that educating the membership is—the people that are affected—and not let rumor mills get started is very important, and I think that is also much so. And I think changing—I think Mrs. Brooks brought this up, a very good question about how returns are calculated and if—boy, if I could be guaranteed a 9 percent return I might be looking at a new boat here pretty soon, so I think that is something we need to look at.

And I think the new ideas—there is not any reason in the world why we have to stay with these two models we currently have. There is no reason for that and I am excited about the variable deferred—defined benefit plan I think is a great concept, and the targeted benefit also, where you can fund at a higher rate, understanding that you don't create, then, a barrier for people getting into a plan like that.

I think that removes that last man standing rule and that is a huge deal when you look at UPS. It just wrote a $6 billion check a few years ago and got out, looking at their future liabilities.

And I know, Ms. Murphy, you mentioned in your testimony—at least in your written testimony—about how the potential $500 million liability you may have going forward is listed as a liability when you borrow money, people look forward, so that holds your company back from expanding or doing what they need to do.

We don't know what the next sector will be, but we know during this—as Mr. Dean pointed out, technology in the mining and the transportation industry and construction industry has reduced the manpower that is needed to do the same job, so that has created fewer people paying into these plans. So a lot of problems, but I see solutions out here.

I think we are committed to doing that and I am glad to hear, Mr. DeFrehn, you talking about we have got a window of about a year to get this legislation up and done.

Well, that being said and no further comments, this meeting is adjourned.

[Additional statements for the record from Mr. Andrews follow:]

Prepared Statement of American Association of Retired Persons (AARP)

On behalf of our more than 37 million members and all Americans age 50 and older, AARP appreciates the opportunity to submit this statement for the record on the "Solutions, Not Bailouts" proposal by the Retirement Security Review Commission on Multiemployer Pension Plans.[1]

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

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

The NCCMP proposal lays out in detail the forces, risks, and liabilities weighing on both employers and employees in multiemployer plans. It seeks to keep troubled plans from becoming insolvent so as to ensure that working-age participants who are contributing to the plan and retirees who are already receiving their hard-earned pensions receive benefits that are above PBGC-insured levels. However, it accomplishes solvency chiefly by granting plan trustees virtually unbridled discretion, allowing them to cut accrued benefits for participants, including the unprecedented step of reducing benefits of retirees in pay status. The proposal also does not address the shortfall in the PBGC's multiemployer insurance fund. AARP is sympathetic to the very real challenges facing distressed multiemployer pension plans, and the NCCMP proposal offers a good start for discussing how best to address those challenges. However, AARP has several strong concerns that need to be addressed before any such proposal should be considered.

Alternatives to Cutting Accrued Benefits

If ERISA stands for anything, it stands for the proposition that accrued benefits cannot be reduced. The law provides that future benefits can be pared or frozen, but not benefits that have already been earned and vested. The "anti-cutback rule" is perhaps the most fundamental of ERISA's participant protections. Moreover, in the event an employer terminates the plan, those benefits (up to a given amount) are insured by the PBGC.

AARP understands that active employees have already shouldered reductions in the form of increased contributions and scaled-back benefits. According to NCCMP, employers have already increased their contributions to the point of making themselves noncompetitive in bidding for jobs. We are not advocating that active employees and employers take further "hits" if their participation is at the tipping point. But this does not mean that the next step should be asking retirees to accept benefit cuts. Other than the due diligence requirements, which are advisory in nature, the NCCMP proposal makes cutting retirees its first resort—it is the centerpiece of the proposal based on the assumption that plans have already done everything else they can possibly do, and that insolvency will result in benefit cuts for retirees that are even deeper than those proposed by NCCMP.

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

Accordingly, other alternatives should be fully explored and deployed as an alternative to cutting anyone's accrued benefits. Moreover, because retirees generally cannot return to work and lack other options for generating lost income, cutting benefits for retirees in pay status should be the absolute last resort. AARP believes that alternative measures should be considered and pursued rather than considering abrogation of the anti-cutback rule, including (not in priority order):

• Mergers and Alliances—AARP agrees with NCCMP that mergers and alliances with healthy plans should be encouraged, and not only for small plans. Yet, the NCCMP report states that although many smaller troubled plans could benefit from mergers with healthier plans, funding rules under the Pension Protection Act of 2006 (PPA) and the PBGC's recently restrictive interpretation of its authority are barriers to allowing this to happen. To the extent that overly narrow interpretations of its authority are getting in the way of this potentially helpful strategy, AARP agrees that the PBGC's authority to facilitate mergers and alliances prior to insolvency should be affirmed.

In addition, as an alternative to reducing accrued benefits, it would be worth exploring whether multiemployer or single employer plans with overlapping sponsors might be able to share participants or assets in a way to so as materially assist troubled plans and still protect participants. Normally, the exclusive benefit and fiduciary rules would and should prevent transfers of assets from one plan to another; however, under very narrow circumstances, limited transfers of assets between one employer's plans have been permitted with the goal of helping preserve benefits for retirees.[2] Some employers and unions participate in more than one plan, some of which may be healthy and one of which may be distressed. To the extent that any given employer and/or union participates in more than one multiemployer plan, and if it would actually be effective and make a difference, the possibility of transferring participants from one plan to another should be considered in order increase the base of contributing active participants or otherwise protect retirees. The same might apply for employers that sponsor a healthy single employer plan as well as participating in a distressed multiemployer plan.

Certainly, healthy plans should not undertake steps that would put the better-funded plan at risk of underfunding. However, to the extent pooling assets and liabilities in this way might work to save a portion of at-risk participants from cuts in accrued benefits, this step should be considered.

• Partition—The PBGC has rarely used its authority to partition the benefit obligations of employers who failed to make contributions or went bankrupt.[3] Assuming that the PBGC had the funds needed to partition off and cover participants whose employers no longer contribute, this step could improve the solvency of the plan for remaining participants. In the case of deeply troubled plans, though, it is unclear whether this remedy would be sufficient to restore solvency, because other factors have also contributed to the distress of these plans. Moreover, this strategy doesn't avoid benefit cuts, at least for those partitioned into the PBGC-assisted plan. However, partition might help staunch concerns about further withdrawals from the plan.

• Increased Funds for the Plans and for the PBGC—The NCCMP report is called Solutions, not Bailouts. Pension plans, and the PBGC, are set up to be self-financing, without the need for federal funds. And for the most part, they have been. Some of the same plans that are so troubled now were adequately funded at the beginning of 2008, when the financial meltdown decimated business and jobs for many of the industries such as construction that sponsor multiemployer plans. The meltdown also led to steep losses in plan asset values and returns, and it produced the need for an extended, stimulative, low-interest rate environment, which is placing inflated funding obligations on employers. Given the role played by large banks and investment houses in creating the financial meltdown, steps can be taken to require them to also help distressed multiemployer plans.

• Low-interest loans by the large banks and investment funds—Until jobs and higher interest rates return to a certain level that helps these plans regain their financial footing, the banks and investment houses that received TARP funds could be required to make long-term, low-interest loans to them at the same Federal Reserve discount rate they use to loan each other funds.

• Public guarantee of private loans—Normally, the PBGC's assistance to insolvent multiemployer plans consists of providing loans to the plan so that it can pay benefits, but at lower, PBGC-guaranteed levels. Then, when and if the plan becomes solvent again, it is required to repay the PBGC. Previous hearings have explored whether there might be a way to bring investment banks or hedge funds into this picture, to provide federally guaranteed loans to plans earlier so as to stave off insolvency due to cash flow issues, or even a federal credit facility that would infuse funds to help offset the contributions that employers are having to make for orphans and others in the plan for whom an employer is not contributing.[4] The NCCMP proposal puts forward the idea of federally guaranteed bond offerings that companies could use to pay off their unfunded legacy costs. Options such as these should be fully considered before the hard-working employees and retirees who rely on these plans should be asked to accept cuts in accrued benefits.

• Increased PBGC premiums—Aside from measures taken to shore up troubled plans, there also need to be measures to bring the PBGC's multiemployer plan insurance fund back into balance, capable of handling its projected liabilities. There is no getting around the fact that the PBGC needs additional funds. Premiums were recently increased in the MAP-21 legislation, but are set at the still-too-low level of $12/year per participant beginning in 2013—about what it costs to go to a movie. These premiums are inadequate to cover the PBGC's liabilities. They also yield insurance levels that are too low to provide retirement security to participants.

According to the PBGC, raising premiums to $120/year per participant would reduce the probability of the PBGC's insolvency by 2022 down to zero,[5] at least for plans now on the PBGC's books. The NCCMP plan insinuates that employers cannot bear additional costs such as premium increases of this magnitude without triggering withdrawals and other severe consequences. However, faced with the threat of being forced to accept benefit cuts of one-third or worse under the NCCMP proposal, it is quite possible that retirees and other participants might find it less onerous to be required to pay those premiums. For example, if all of the more than 10 million participants in multiemployer plans were required to contribute $250 per year, it would raise more than $25 billion dollars over the next 10 years, thereby closing the PBGC's deficit and financing more adequate levels of insurance without imposing additional costs on employers. In the past, some retiree health plans have started to charge premiums or exact other forms of cost-sharing of retirees, even though the plans were earlier offered as requiring no contributions from retirees.[6] As compared to the alternatives, participants might welcome the chance to better insure their pensions, especially if they would receive higher levels of insurance protections.

The alternatives discussed above represent "outside the box" approaches to addressing the challenge of insolvent multiemployer plans. But, so is the NCCMP proposal. As long as such approaches are on the table, AARP urges that all due consideration, and priority, be given to those proposals that would prevent drastic benefit cuts for participants, particularly any cuts to those in pay status.

Cutting Accrued Benefits

The NCCMP proposal attempts to balance many competing interests: to keep active workers willing to contribute in exchange for the promise of a decent benefit in retirement; to keep employers willing to continue (or new ones to begin) their participation, yet avoid raising their costs too high to maintain their competitiveness; and to preserve benefit payments above levels that would ensue if the plans became insolvent. However, in addition to its failure to require alternatives to cutting accrued benefits, the NCCMP proposal contains two other fatal flaws: it grants too much discretion to plan trustees, and it fails to provide adequate protections for participants, especially for retirees. Consequently, AARP believes that changes are needed before consideration of the NCCMP proposal.

Unbridled Discretion

At the outset, the NCCMP proposal states that certain criteria would need to be met before a plan would be eligible to cut accrued benefits. It would need to be so distressed as to face a projection of insolvency in 20 years or less, the cuts in benefits must fix the problem and restore solvency, and the "plan sponsors and trustees

[must] have exercised due diligence in determining that suspensions are necessary, including having taken all reasonable measures to improve the plan's funded position."[7]

What constitutes "reasonable measures" is not specified, but would seem to be encompassed within the list of "illustrative" indicators of "due diligence," i.e., considering factors such as contribution levels, future accrual levels, the impact on ancillary benefits, etc. Yet, having granted that plans should be required to exercise due diligence to be eligible to take drastic actions, the proposal then provides that "it is impractical to develop a precise and complete list of quantitative tests to measure the due diligence of the sponsors and trustees. * * *"[8] This same "illustrative" list of what constitutes due diligence is the basis for the limited parameters allowed for PBGC review and approval.

The plan, as proposed, grants too much, virtually unbridled, discretion to plan trustees. Nothing is required. No priorities are established. AARP understands that plan designs and terms can vary widely and that plan trustees may need to have some flexibility to fashion the measures that will work best for their stakeholders and participants. However, pension plans are not so different from one another that "all reasonable measures" cannot be anticipated and required, or that steps that constitute and are relevant to a finding of "due diligence" cannot be specified.

Moreover, the proposal does not appear to recognize that the trustees may have possible conflicts of interest between protecting the active employees, who are contributing to the plan, paying union dues, and voting for union leadership; the deferred vested employees, who no longer contribute, pay dues, or vote; and the retirees, who may no longer contribute or pay dues, and may not have a vote or representation among the plan trustees. In failing to differentiate among various groups of participants with competing interests, it also fails to provide any appropriate procedural and substantive protections against conflicts of interest.

The inclusion of an "approval process" by the PBGC, as outlined, does not compensate for these problems, as that process is itself inadequate. First, the entire scheme fails to acknowledge that the PBGC is not a disinterested watchdog in this context. If plans become insolvent, the agency is on the hook to pay benefits, and at present, it has insufficient funds to do so. It is in the interest of the PBGC to do all it can to prevent the plan from becoming insolvent; it has no incentive not to approve the trustees' plan. Second, even if the PBGC were not so incentivized, its assigned scope of review is limited to whether the plan trustees exercised due diligence. Yet, as stated above, "due diligence" is simply a list of considerations, not a defined set of duties that provides a basis for any real measure of accountability. The plan also calls for PBGC approval of the distribution of suspensions, taking into account "equitable" distribution across populations and "protections" for "vulnerable populations."[9] However, these terms, too, are undefined. Third, the PBGC must defer to the plan's decisions "absent clear and compelling evidence to contrary." It is difficult to imagine what evidence would be sufficient, given that plan trustees are not required to do anything or have their decisions comport with any substantive standards, other than to achieve eventual solvency. Finally, if the PBGC fails to approve the plan within six months, the plan is "deemed approved" and in accordance with fiduciary standards, possibly preempting challenges, or at least creating a presumption of compliance. The entire process amounts to little more than a rubberstamp of the trustees' decision.

Several changes are needed to address these deficiencies. First and foremost, "all reasonable measures" and "due diligence" cannot be whatever the trustees say they are. To prevent reductions in accrued benefits, it would be entirely appropriate to require certain steps be taken first. In addition to the alternatives already discussed, AARP believes that the standard steps should be required, such as cutting "extras" that are not part of accrued benefits (e.g., 13th checks to retirees), and paring future accruals. Moreover, the due diligence element needs to be strengthened by requiring trustees to follow certain specified standards and procedures. That is not to say there needs to be a one-size-fits-all list, every item of which is required. However, there should be a list of standards and priorities, based on longstanding principles of fairness and ERISA, which should apply. Adherence to that list of standards, considering the facts and circumstances in which the plan finds itself, should be considered the measure for determining whether the trustees did or did not exercise due diligence.

There also needs to be a stronger, more independent approval process. First, the PBGC's scope of review of the trustees' plan should be broadened to all relevant factors weighing in favor and against adoption of the plan, including but not limited to strengthened standards of due diligence.

This review should preferably be done with the required approval of someone with some independence, such as the newly created Participant and Plan Sponsor Advocate, who is charged with advocating for "the full attainment of the rights of participants in plans trusteed by the corporation,"[10] or in this case, plans at risk of being trusteed by the corporation. AARP agrees with NCCMP that the agency should be given a time limit for acting; the PBGC will need to weigh in on the question of whether six months is reasonable and appropriate. However, we are uncomfortable with the notion of deemed approval by default, especially when people's benefits are at stake.

AARP is open to other alternatives. Perhaps the plan could be given the right to seek a time-limited review by the Employee Benefits Security Administration, or an independent third party, in order to better ensure approval within a defined time limit.

Inadequate Protections for Participants, Especially Retirees

AARP is also extremely concerned that the NCCMP proposal is substantially lacking in participant protections, especially for retirees. We start with the fact that consideration of retirees appears nowhere in the list of "illustrative" factors that would be used to determine due diligence! The plan's trustees, and then by design the PBGC, are not called upon by a single factor to weigh the impact of the solvency plan on retirees. Moreover, it seems to us that the due diligence factors that are listed appear to tilt toward cutting benefits for retirees. Clearly, the kind of substantive standards of fairness and ERISA that AARP believes should be required as part of any measure of due diligence would and should include the historic protections afforded to participants who are already retired and in pay status.

In addition to omitting any consideration of retirees, the plan makes no differentiation in treatment between different groups of participants and beneficiaries. This is also a fatal flaw. There is nothing to prevent the trustees' plan from treating retirees or near-retirees more adversely than it treats newly vested participants, for example. The only allusion to differentiation in the proposal appears in the provision regarding the distribution of benefit suspensions. There, the proposal specifies that benefit cuts should be distributed "equitably" across the participant population, and that undefined "vulnerable" populations should receive unspecified protections.

These objections regarding lack of regard for retirees and near-retirees are not ones of the tail wagging the dog, or allowing concerns about the vulnerable to overwhelm the bigger proposal, as some have suggested. This is a huge problem with the bigger proposal. It is not very meaningful to cordon off a "vulnerable" group as if they are a small part of the population, when the median multiemployer pension benefit received by retirees is so modest: only about $8,300/year in 2009.[11] If, in fact, most of the participant and beneficiary population in multiemployer plans are receiving relatively small pensions of well under $10,000/year, AARP would contend that most retirees would qualify as "vulnerable" and unable to bear any benefit cuts whatsoever.

AARP recognizes that retirees and near-retirees could be hurt the worst in the event plans become insolvent. However, the NCCMP proposal must be modified in several ways. First, consideration of the status of retirees must be an explicit factor that is part of any evaluation of due diligence and fairness. Second, the plan should differentiate among groups of participants. There needs to be an established order of priority in how any proposed benefit suspensions would be handled in order to protect retirees in pay status, as well as near-retirees. This ranking should be mandatory/statutory. Third, any benefit cuts should also be expressly limited, perhaps according to a formula based on age or income, or limited on a sliding scale based on the size of the pension, e.g. there can be no cuts to those with benefits of $10,000 or less, or limits on cuts for those of higher age. Certainly, benefit protections that are only 10% higher than the amount provided by the PBGC in the event of insolvency is not much protection, and should be much higher.

AARP agrees that cuts in optional, adjustable, or "ancillary" benefits should come before consideration of cuts in core pension benefits. However, AARP disagrees that benefits for surviving spouses (the 50% qualified joint and survivor annuity), or former spouses/surviving spouses who have received a court-ordered share of a participant's pension, are "ancillary" benefits. These benefits were part of deferred compensation, jointly earned and jointly owned by both partners in the couple. They are considered part of the core benefit, and respect for these beneficiaries' rights are a condition of the plan's tax-qualified status. The NCCMP proposal does not state exactly how it would affect the rights of beneficiaries, or how, for example, a qualified domestic relations order that orders payment of a particular dollar amount would be fulfilled. AARP would maintain that the benefits of beneficiaries should be handled in a way that is congruent with the benefits of the participant. For instance, if the participant's benefits are reduced by 15%, so should the benefits of the beneficiary; the cuts to the beneficiary should not be larger.

AARP agrees with the proposal's provisions that any suspension of benefits "must achieve, but not exceed," the amount needed to achieve solvency. However, should such a proposal be adopted, we would take issue with the framing of another stated limitation. The proposal specifies, presumably after the plan achieves solvency, that any future benefit improvements "must be accompanied by equitable restoration of suspensions, where the liability value of the improvement for actives cannot exceed the value of the restoration for retirees."[12] Should retirees' benefits be reduced, it is insufficient to specify that improvements or restorations of benefits for active participants cannot exceed the value of restoring benefits to retirees. Under such a plan, it should be an absolute requirement that once solvency is achieved, the benefits of retirees are restored first, before there is any improvement or restoration of benefits to active participants. Once all suspended accrued benefits have been restored in full to retirees, improvements to the benefits of active participants would be permitted.

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

There can be no doubt that the current proposal is contrary to one of the most central and fundamental tenets of ERISA, and would be a bad precedent for pension law generally. AARP also has no doubts that such a precedent would encourage other efforts to cut back accrued benefits.

To prevent any further erosion of pension law, any proposal that advances should make clear that the measures permitted are confined only to the unique and difficult circumstances currently faced by multiemployer plans. Moreover, Congress should consider restricting the plans eligible to propose these unprecedented measures. Plans that are operating at a deficit but have 15-20 years until they face insolvency might be able to obtain low-cost financing or take steps that would significantly "bend the curve" away from insolvency, thereby lessening the need for more draconian measures.

Other Issues in the Proposal

The NCCMP proposal also proposes allowing plans to "harmonize" their normal retirement age with those of Social Security, as a way of strengthening the system.[13] Private sector pensions are barred from raising their retirement age for full benefits past 65.[14]

AARP would caution against this proposal for several reasons. First, the types of jobs held by participants in many multiemployer plans are physically demanding and/or are performed under difficult working conditions. Many of their participants will not be able to work until age 65, let alone later. It is for this very reason that many unions have been among the most ardent opponents of raising the early retirement age in Social Security above 62 and of raising the full retirement age beyond the levels already made in the 1983 changes.[15] Second, most pension plans already provide for actuarially reduced benefits in the event of early retirement. Raising the full retirement age in pension plans would have the same effect as it has in Social Security: to further reduce the benefits the participant receives, for life. Third, there would be no way to limit this change to multiemployer plans on the brink of insolvency. Finally, especially for those with physical disabilities or illness that prevents them from working longer, being able to collect a full pension at 65 enables the pensioner to make it until 66 or 67 when they can collect their full Social Security, in order to maximize what may be a small retirement income. AARP believes that retroactively increasing the retirement age for pensions, as is proposed, would impose an undue hardship.

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

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

Conclusion

AARP agrees the NCCMP proposal attempts to address real problems faced by multiemployer plans, and appreciates its attempt to ensure everyone comes out better than they would under insolvency. However, we are not convinced that alternatives to cutting accrued benefits—a fundamental protection under ERISA—have been adequately considered. We are convinced, however, that at the very least, more protections for participants and beneficiaries must be included to ensure the proposal is a preferable alternative to insolvency.

ENDNOTES

[1] R. DeFrehn & J. Shapiro, Solutions not Bailouts: A Comprehensive Plan from Business and Labor to Safeguard Multiemployer Retirement Security, Protect Taxpayers and Spur Economic Growth (National Coordinating Committee for Multiemployer Plans, Feb. 2013), available at *http://www.solutionsnotbailouts.com/splash* [hereinafter NCCMP Proposal].

[2] See e.g., I.R.C. § 420.

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

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

[5] PBGC Insurance of Multiemployer Pension Plans: Report to Congress required by the Employee Retirement Income Security Act of 1974, as amended 6 (Jan. 22, 2013), available at *http://www.pbgc.gov/documents/pbgc-five-year-report-on-multiemployer-pension-plans.pdf.*

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

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

[8] Id.

[9] Id.

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

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

[12] NCCMP Proposal, supra n. 1, at 25.

[13] NCCMP Proposal, supra n. 1, at 23.

[14] 29 U.S.C § 1056.

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

Prepared Statement of the Pension Rights Center (PRC)

The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to romote and protect the retirement security of American workers and their families. We commend the Subcommittee for holding this hearing. Multiemployer pension plans provide an essential source of retirement income to millions of Americans. The benefits paid by these plans, combined with Social Security benefits, have allowed hard-working Americans to enter retirement with the confidence that they will be able to maintain a reasonable standard of living for the remainder of their lives.

Despite the success of the multiemployer system for so many people, there are now a small but significant number of multiemployer plans that face substantial financial issues that must be addressed. Some of these plans were adequately funded not long ago and some of them may find themselves in improved financial shape at some point in the future simply because of changes in the economic climate. But the issue today is how to shore up these plans to minimize the calamitous economic consequences of plan insolvency to current and future retirees.

The National Coordinating Committee on Multiemployer Plans (NCCMP) has produced a document that has started a valuable dialogue on this important subject. Their report, Solutions not Bailouts, includes many innovative ideas relating to the future of multiemployer plans, including the idea for alliances and clarifying PBGC's authority to facilitate mergers; the possibility of discontinuing a 13th check in certain industries; a proposal to help certain widows unfairly denied survivor's protections; and recommendations to foster innovative plan designs.

But we are deeply troubled by the document's suggestions for deeply-troubled plans, which endorse the unprecedented and dangerous step of allowing plans to slash the benefits of men and women already in retirement and who have no opportunity to replace lost benefits. This proposal would surprise the 1974 Congress that wrote ERISA and thought that in doing so had put a permanent end to broken promises and disappointed expectations for retirees.

The NCCMP contends that its proposal will result in shared sacrifice, but we are concerned that most of the true sacrifice will be borne by those who have already retired. Multiemployer plans should not balance their books on the backs of their retirees.

The rationale underlying the NCCMP proposal for deeply-troubled plans is that cutting some retiree benefits now will prevent the necessity of larger reductions later should the plan fail.[1] This is not, however, necessarily true for all retirees. Under current law, the plan would pay every dollar of promised benefits to those retirees who die before plan insolvency, which might not occur for 15 or 20 years, or more.[2] Retirees who are 80 or 85 years old will simply not be able to pay for utilities, medical expenses, and other daily necessities if their benefits are cut.

For such retirees, the NCCMP proposal is all pain and no gain.

Pension policy and pension law has long recognized that retirees deserve the strongest protection. Such individuals typically cannot go back into the job market to make up lost pension income. Benefit reductions would force many retirees into impoverishment. And the law reflects this. Under Title IV of ERISA, plan assets are effectively paid first to those who have already retired (or could have retired), both in single and multiemployer plans. Moreover, long before ERISA, orthodox plan design generally allocated the assets of insolvent plans first to the benefits of people in pay status, recognizing their particularly vulnerable status. The NCCMP proposal abandons this key principal of pension policy.

The proposal refers to vulnerable populations, but does not adequately protect retirees. It leaves the decision to cut benefits to the discretion of the trustees, who often will have their primary allegiance to active workers, contributing employers, and the long-term continuation of the plan. Moreover, although the factors the trustees are directed to consider include "compensation level of active participants relative to the industry, competitive factors facing sponsoring employers, and the impact of benefit levels on retaining active participants and bargaining groups," these standards say nothing directly about protecting retirees.

Even worse, the proposal provides that the trustees' decision will be final unless the PBGC affirmatively rejects the decision within a 180-day period, and that the PBGC can only reject the decision if the trustees have failed to use "due diligence." In judging whether the trustees have used "due diligence," the PBGC must grant deference to the trustee's decision to reduce benefits "in the absence of clear and compelling evidence to the contrary." This is an unacceptably inadequate standard of review. There is the further fact that the PBGC itself has an institutional interest in approving benefit reductions to lessen the likelihood that it will be required to provide financial assistance to the plan.

There is no question that a number of multiemployer plans are in serious financial trouble, and we very much appreciate the hard work of NCCMP's Commission members in developing their recommendations to address this issue. However, we also believe that there should be exploration of alternatives to the severe retiree benefit cuts that would be allowed under the Commission's proposal. We are currently working with our Retired Fellows (who include former top PBGC officials), our board of directors, and advisors to develop new ideas that would protect retir-

[1] The NCCMP proposal would allow the trustees of a plan, subject to minimal review, to cut benefits to 110% of PBGC guarantee levels. The maximum guarantee for a retiree with 30 years of service is $12,870 a year. As a recent Wall Street Journal article noted, a retired truck driver now receiving a pension of $36,268 a year, would have his benefit reduced to $13,200, a loss of $23,028 a year. Kris Maher, "Union-Employer Proposal Would Hit Some Retirees," April 12, 2013.

[2] Under current law, benefits are not cut to PBGC guarantee limits until plan insolvency.

ees—as well as their multiemployer plans, and the long-term health of the PBGC. Once we have completed our deliberations, we will be pleased to share our ideas with the Subcommittee.

[Whereupon, at 11:29 a.m., the subcommittee was adjourned.]

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