ASSESSING THE CHALLENGES FACING MULTIEMPLOYER PENSION PLANS

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BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

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ASSESSING THE CHALLENGES FACING MULTIEMPLOYER PENSION PLANS

Wednesday, June 20, 2012
U.S. House of Representatives
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and the Workforce
Washington, DC

The subcommittee met, pursuant to call, at 10:01 a.m., in room 2175, Rayburn House Office Building, Hon. David P. Roe [chairman of the subcommittee] presiding.

Present: Representatives Roe, Wilson, Thompson, Rokita, Bucshon, Noem, Roby, Andrews, Kildee, McCarthy, Tierney, and Holt.

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

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

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

In a recent editorial entitled the "Union Pension Bomb" the Wall Street Journal described the big trouble facing multiemployer pension plans. The editorial noted a study by the analystsat Credit Suisse which found multiemployer pension plans are collectively underfunded by approximately $369 billion and only a small fraction of these plans are considered stable and healthy.

It is important to note this study is based on a rate of return on investments not reflecting in—reflected in existing law. Some have argued the study makes assumptions that better reflect the current state of the multiemployer pension system and, as with any debate, others have disagreed. Regardless of the methodologies used, this is not the first time the challenges facing the multiemployer pension system have drawn the public's attention.

According to an analysis by the benefits consulting firm Segal, more than 25 percent of plans are in "critical status" due to severe financial deficiencies. A report by the Pension Benefit Guaranty Corporation revealed multiemployer pensions are increasingly dependent upon the agency's financial assistance. In fact, the PBGC projects that its future obligations to these plans totals $4.5 billion, a 48 percent increase from previous estimates.

The corporation also expects the number of insolvent plans to more than double over the next 5 years. Finally, there are warnings by plan managers and trustees who fear the pensions they oversee will become insolvent in the years ahead.

While some plans have made responsible decisions to help ensure their long-term success, an aging workforce, weak economy, investment losses, and unsustainable promises are placing a great deal of strain on the multiemployer pension system. The resultant uncertainty is an ongoing source of angst for many workers and employers.

Some workers have little confidence the benefits they were promised will be there when they retire. And employers trying to keep their businesses open are also trying to keep up with their growing pension obligations.

Policymakers continue to struggle with this pension problem as well. In 1980 changes to federal pension law were adopted, including reforms that promote greater responsibility among employers and union officials for the promises they make to workers. More recently, the Pension Protection Act enhanced the accountability of the multiemployer pension system, establishing classifications to better identify a plan's financial strengths and weaknesses and requiring more detailed disclosure of the plan's financial status.

Despite these well-intended efforts and past attempts to provide relief problems still exist. A number of provisions in existing law are set to expire in 2014, which means Congress will need to take action once again to help address the shortfalls of the multiemployer pension system. While some pension plans are financially sound and prepared to meet their obligations, it is becoming increasingly clear the depth and breadth of the challenges facing the system will demand significant reform.

With a deadline of 2 years it may seem like time is on our side. However, we cannot ignore the impact this issue has right now on the health and strength of our nation's economy. Thousand of job-creators participate in the multiemployer pension system with more than 10 million Americans dependent on these benefits to help provide for financial security they deserve in retirement. We must use the months ahead to ensure we get this right.

I look forward to today's discussion and expect it will pave the way for future conversations on this very important subject.

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

[The statement of Chairman Roe follows:]

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

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

In a recent editorial entitled the "Union Pension Bomb," the Wall Street Journal described the "big trouble" facing multiemployer pension plans. The editorial noted a study by analysts at Credit Suisse, which found multiemployer pensions are collectively underfunded by approximately $369 billion, and only a small fraction of these plans are considered stable and healthy.

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According to an analysis by the benefits consulting firm Segal, more than 25 percent of plans are in "critical status," due to severe financial deficiencies. A report by the Pension Benefit Guaranty Corporation reveals multiemployer pensions are increasingly dependent upon the agency's financial assistance. In fact, PBGC projects that its future obligations to these plans total $4.5 billion—a 48 percent increase from previous estimates. The corporation also expects the number of insolvent plans to more than double over the next five years. Finally, there are the warnings by plan managers and trustees who fear the pensions they oversee will become insolvent in the years ahead.

While some plans have made responsible decisions to help ensure their long-term success, an aging workforce, weak economy, investment losses, and unsustainable promises are placing a great deal of strain on the multiemployer pension system. The resultant uncertainty is an ongoing source of angst for many workers and employers. Some workers have little confidence the benefit they were promised will be there when they retire. And employers trying to keep their businesses open are also trying to keep up with their growing pension obligations.

Policymakers continue to struggle with this pension problem as well. In 1980, changes to federal pension law were adopted, including reforms that promoted greater responsibility among employers and union officials for the promises they make to workers. More recently, the Pension Protection Act enhanced the accountability of the multiemployer pension system, establishing classifications to better identify a plan's financial strengths and weaknesses and requiring more detailed disclosure of the plan's financial status.

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With a deadline of two years, it may seem like time is on our side. However, we cannot ignore the impact this issue has right now on the health and strength of our nation's economy. Thousands of job-creators participate in the multiemployer pension system and more than 10 million Americans depend on these benefits to help provide the financial security they deserve in retirement. We must use the months ahead to ensure we get this right.

I look forward to today's discussion, and expect it will pave the way to future conversations on this very important subject. I will now recognize my distinguished colleague Rob Andrews, the senior Democratic member of the subcommittee, for his opening remarks.

Mr. ANDREWS. Thank you, Mr. Chairman. Good morning. I appreciate you calling this hearing and I appreciate the preparation of today's witnesses.

One measure in Washington of how solvable a problem is is the attendance at the hearing, and the higher the attendance the less solvable the problem——

[Laughter.]

And here is why: Many of our hearings—and it is true whether we are in the majority or the other side is in the majority—are rather contentious, where they are held to prove a political point, and everybody comes because everybody wants to get into the brawl. This is not a brawl this morning; this is a serious attempt at understanding a serious problem so we can work together to solve it, and I am sure that our colleagues on both sides will be actively engaged in helping to solve that problem.

Here is the way I see the problem: It is the problem of a woman who runs a sheet metal contracting firm and has 21 employees, and she has been through really tough times the last 5 years as construction has slowed and in some cases ground to a halt.

And she has got two problems here that the amount that she has to contribute to the pension fund in which she is a part keeps going up, which makes her less competitive to go get bids to build buildings or means that she has to pay lower wages to her present workers in order to do so—puts her in a real catch-22 situation. That problem worsens for her as other employers go out of business or leave the plan because every time one of them does the burden on her gets higher and more difficult to bear, and if she thinks about reducing her liabilities by leaving the plan it may put her out of business because the withdraw liability is so high.

So this is about that small business person that builds hospitals, and builds schools, and builds stores around the country who is in real trouble to begin with, and this problem makes trouble worse.

Problem is also, you know, about a 68-year-old iron worker who thinks that he is going to get a certain pension for as long as he lives. And we are here to do everything we can to make sure that that promise to him is kept, because he held up his end of the bargain. He went to work; he did his job well; he paid into the fund; he, you know, participated in collective bargaining agreements where he gave something up to get that pension.

And then the third person I think about this morning is the taxpayer of the United States of America, that although the demands of multiemployer funds on the Pension Benefit Guaranty Corporation are qualitatively smaller than those of single employer plans simply because there are so many other guarantors. Unlike a single employer plan, where all that stands between the employer and the taxpayer is the PBGC, the multi plans there is another layer of protection for the taxpayer and it is that small businesswoman I just talked about running the sheet metal contracting firm.

So those are the three people that I am worried about this morning. And I think this is a problem with a solution. These plans, depending upon how you measure their projected returns, are anywhere from 52 percent funded to something quite a bit higher than that, but they still have some trouble and the trouble really comes from two sources.

The first is the same economic downturn that everybody else went through—you know, the equity investments weren't worth as much as they were supposed to be and the money people thought they had in their fund they didn't have. I think we have all been through that as individuals and families as well as businesses.

But the second problem that the multis have that is unique to the multis is the problem the E.U. is having this morning, which is, to make a decision you need a lot of people to vote "yes." So you see, when Honeywell or General Motors has a problem the board of directors makes a decision, and they fix their plan one way or the other, and off they go. But when the Western States Conference has a problem, or the Central Pennsylvania Fund has a problem, or the Sheet Metal Contractors Fund has a problem, they got a lot of people who have a voice in that decision. They have a collectively bargained agreement and they have a—their word "multi" means they have a multitude of employers who get a vote.

So I am not suggesting that that governance model doesn't work. I would suggest exactly the opposite. I think it works quite well, and I think that the multiemployer funds are an example of voluntary labor management cooperation that works very well in this country.

But the fact of the matter is, when you have to have a lot of people agree on something it is a lot harder than when you only have to have a few. And so the multis are in a situation where they have suffered the same kind of economic harm that everybody else has in the 2008 meltdown, but making hard decisions about restructuring benefits or restructuring contributions are much harder to make when you are in that format where a lot of people have to make a decision.

So I see our goal as considering ways that we can create or enhance a set of rules that make it possible for the trustees who run the multiemployer funds to make the decisions they need to make to make the funds stronger. Notice I said "for them to make the decisions." I am not in favor of us supplanting their judgment with ours; I am not in favor of the Department of Labor or the PBGC or this committee micromanaging those funds.

What I am in favor is creating an environment with the proper incentives and disincentives where the trustees of the multiemployer funds will have a better environment in which to make decisions that help the lady running the sheet metal contracting firm, the retired iron worker, and the taxpayer of the United States.

I am confident we can work together, Mr. Chairman, and get that done. I look forward to hearing from the witnesses this morning.

Chairman ROE. Thank the ranking member, and I suspect that you are right. The temperature in this room will be a lot lower than it is outside today, so—pursuant to Committee Rule 7(c), all members will be permitted to submit written statements to be included in the permanent hearing record, and without objection the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted for the official hearing record.

I will now introduce the witnesses. And this is a very distinguished panel.

I have read all of your testimony and it—as I said, it laid out the problem very well, just not the solution. So I appreciate you doing that.

Ms. Judy R. McReynolds is the president and CEO of Arkansas Best Corporation in Fort Smith, Arkansas.

Welcome.

Mr. Michael Sander is the administrative manager of Western Conference of the Teamsters Pension Trust in Seattle, Washington.

Welcome.

Josh Shapiro is the deputy executive director for research and education at the National Coordinating Committee for Multiemployer Plans in Washington, D.C.

Welcome, Mr. Shapiro.

John F. Ring is a partner with Morgan, Lewis, and Bockius LLP in Washington, D.C.

Welcome.

And Scott M. Henderson is the vice president and treasurer of the Kroger Company in Cincinnati, Ohio.

And before I recognize you to provide your testimony let me briefly explain our lighting system. You have 5 minutes to present your testimony and when you begin the light in front of you will turn green. With 1 minute left the light will turn yellow; and when your time is expired the light will turn red, at which point I will ask you to wrap up your remarks. I won't cut you off in mid-sentence, but just wrap up your thoughts.

And after everyone has testified members will have 5 minutes to ask questions. And I now will begin.

I want to thank the witnesses and begin with Ms. McReynolds.

STATEMENT OF JUDY R. MCREYNOLDS, PRESIDENT & CEO, ARKANSAS BEST CORP.

Ms. MCREYNOLDS. Chairman Roe, Ranking Member, and distinguished members of the subcommittee, thank you for the opportunity to testify regarding the impact of multiemployer pension plan obligations on the trucking industry.

I am the president and chief executive officer of Arkansas Best Corporation. Our largest operating subsidiary, ABF Freight System, is based in Fort Smith, Arkansas, and has been in continuous operation since 1923. We are one of the largest less-than-truckload carriers in North America and have more than 10,000 employees throughout the United States, Canada, Puerto Rico, and Mexico.

ABF has traditionally been profitable but was hit hard by the economic downturn that began in 2007. The biggest challenge to ABF's long-term viability is its multiemployer pension plan obligations. Unless the Congress acts, the ever increasing contribution obligations to these plans will cause more trucking company bankruptcies and the PBGC will ultimately have to take over the funding of many plans.

ABF contributes to 25 separate multiemployer pension plans associated with the trucking industry. Many of the plans serving our industry are either already close to insolvency or clearly headed in that direction.

The plans are independent of both the employers and the union. The plan trustees, half of whom are appointed by the employers, are ERISA fiduciaries who are required to act solely in the interest of the plan participants. If a multiemployer plan becomes insolvent the PBGC is responsible for providing the assets to pay these benefits.

Contributions to multiemployer pension plans by ABF and other employers have skyrocketed in recent years for a number of reasons, two in particular. First, these plans were established prior to federal deregulation of the trucking industry in 1980. Deregulation caused a fundamental shift in the economics of the industry and thousands of trucking companies who were participants in the—these pension plans have gone out of business. Under the multiemployer system the remaining companies in the plan are effectively responsible for the continued funding of all benefits, even for individuals they never employed.

Second, the Pension Protection Act of 2006 gives multiemployer plan trustees little flexibility to address changed circumstances. The act significantly increased required contributions to underfunded plans in the endangered yellow zone status and the critical red zone status, a situation exacerbated by historically low interest rates and investment losses due to the stock market crash in 2007 and 2008.

In 2011 ABF contributed $133 million to multiemployer plans. Approximately 62 percent of our current contributions are made to critical red zone plans, including Central States Pension Fund, and another 12 percent to yellow zone status plans.

More than half of ABF's contributions to Central States Pension Fund alone are used to fund benefits of retirees of bankrupt or defunct companies, so-called "orphan retirees." Any other multiemployer plans that we contribute to also have large numbers of orphan retirees.

Three-fourths of our employees are represented by the International Brotherhood of Teamsters and we are a party to the National Master Freight Agreement. That 5-year agreement expires March 31, 2013. In order to comply with the requirements of PPA applicable to red and yellow zone plans the agreement imposes a 7 percent compound annual contribution increase on ABF, which results in a more than 40 percent increase during the 5-year term of the agreement from the already high levels previously in effect.

AFB operates in a highly competitive industry that consists predominantly of nonunion freight transportation carriers with much lower pension benefit costs. ABF now contributes $10.17 an hour for pension benefits, 257 percent higher than those for average union employers in the United States. These contributions represent 21 percent of our total compensation costs, compared to less than 8 percent for the average union employer.

It is much worse with respect to nonunion competitors. In 2011 our average pension plan contribution for an operational employee was $17,392, compared to $1,131 per employee for our key nonunion competitors. Thus, our retirement plan contributions are 1,437 percent higher than our nonunion competitors.

Because of its higher pension costs a smaller portion of the market is available to ABF and our market share dropped from 5.5 percent in 2004 to 4 percent in 2011, relative to our competition.

ABF is working with a number of groups to formulate multiemployer pension plan reforms that make sense for plans, active and retired employees, and contributing employers. Further raising of contribution rates will jeopardize the ability of employers to survive and continue contributing to the plans. Plans cannot survive without contributing employers, but plan trustees have few tools to make changes that are necessary for the long-term viability of the plans and their contributing employers.

ABF strongly supports efforts to save the multiemployer pension plans that its active and retired employees depend on for their retirement income. By taking action now Congress can help avert a crisis that otherwise is almost certain to occur.

And I would be pleased to answer any questions that the members of the subcommittee have today. Thanks.

[The statement of Ms. McReynolds follows:]

Prepared Statement of Judy McReynolds, President and Chief Executive Officer, Arkansas Best Corp.

Chairman Roe and Ranking Member and distinguished members of the Subcommittee, thank you for the opportunity to testify regarding the impact of multiemployer pension plan obligations on the trucking industry.

My name is Judy McReynolds and I am the President and Chief Executive Officer of Arkansas Best Corporation. I am here to discuss the pension challenges faced by our largest operating subsidiary, ABF Freight System, Inc. (ABF). ABF, which is based in Fort Smith, Arkansas, has been in continuous operation since 1923 and is one of the largest less than truckload (LTL) motor carriers in North America. ABF has more than 10,000 employees and provides interstate and intrastate direct service to more than 44,000 communities through 275 service centers in all 50 states, Canada, Puerto Rico and Mexico.

ABF is a model corporate citizen. We are consistently recognized for excellence in safety, security and loss prevention by the American Trucking Association. We have been named a "Best Company to Sell For" by Selling Power magazine for ten consecutive years. We have been a named "Top 125 Training Organization" by Training magazine for the last three years. In addition, we currently have three America's Road Team Captains, and have had at least one driver representative on this team every year since the team was established in 1995.

ABF has traditionally been profitable but was hit hard by the economic downturn that began in 2007. We are working our way back to profitability and last year reported a small positive operating income of $9.8 million on more than $1.9 billion of revenue. With an operating loss in the first quarter of 2012, ABF is not out of the woods, but we are making progress. Despite the importance of these cyclical economic factors, the biggest challenge to ABF's long-term viability and its competitiveness within the trucking industry is the current and future liabilities it faces under many of the multiemployer pension plans to which it contributes.

Multiemployer Pension Plans and the Trucking Industry

ABF contributes to 25 multiemployer pension plans associated with the trucking industry. Many of these plans are in difficult financial straits. Multiemployer pension plans cover employees of different employers generally in the same industry and geographic area and are managed by a joint board of trustees, half of whom are appointed by the contributing employers and the other half by the labor union. The plans are independent of both the employers and the union. Neither collective bargaining party can exercise legal control over the plans. Rather, the trustees are fiduciaries who are required to act solely in the interest of the plan participants, and not in the interest of either the employers or the union. The Pension Benefit Guaranty Corporation (PBGC) insures benefits promised under these plans, up to a maximum guaranteed level set by law. If a multiemployer plan becomes insolvent, the PBGC is responsible for providing assets to pay these benefits. The plans pay annual premiums to the PBGC for this insurance coverage.

Contributions to multiemployer pension plans by employers like ABF have skyrocketed in recent years for a number of reasons. First, these plans were established at a time when the trucking industry was heavily regulated by the federal government, which imposed barriers to entry and rate regulation. When the Congress deregulated the trucking industry in 1980, this caused a fundamental shift in the economics of the industry. Since then, the industry has become much more competitive and, as a result, thousands of trucking companies have gone out of business. Under the multiemployer system, due to changes implemented by the Employee Retirement Income Security Act of 1974, as amended (ERISA), the remaining companies in the plan are effectively responsible for the continued funding of all benefits under the plan, including benefits of participants formerly employed by bankrupt or defunct companies. This is a fundamental difference from single employer pension plans, where the employer is responsible only for the benefits it promised to its own employees. While the number of companies contributing to trucking industry multiemployer pension plans has been greatly reduced, the number of retirees who receive pension benefits has increased. Thus, an unsustainable demographic situation has developed where an ever-declining number of employers are responsible for funding the benefits of retirees with whom they have no connection. For example, ABF understands that more than 50 cents of every dollar that it contributes to the Central States, Southeast and Southwest Areas Pension Fund (the "Central States Pension Fund") goes to fund benefits of former employees of bankrupt or defunct trucking companies, so-called "orphan" participants.[1]

Second, ERISA imposes potentially catastrophic "withdrawal liability" on companies that withdraw from underfunded plans. When an employer withdraws from a multiemployer pension plan, it owes its proportional share of the plan's unfunded vested benefits. Many withdrawals have occurred in the bankruptcy context, and plans typically collect only pennies on the dollar of the withdrawal liabilities owed by these bankrupt or defunct companies. For example, when Consolidated Freightways withdrew from the Central States Pension Fund following its bankruptcy in 2002, the Fund collected a small fraction of the nominal $318 million withdrawal liability. This shortfall ultimately must be funded by ABF and the other remaining employers. Withdrawal liability has also deterred new employers from contributing to the plans and investors from providing additional capital to multiemployer plan contributing employers.

Third, the Pension Protection Act of 2006 (PPA) significantly increased required contributions to underfunded plans, particularly those in endangered ("Yellow Zone") and critical ("Red Zone") status. When the PPA was enacted, interest rates had not dropped to their current historically-low levels, and the stock market decline following Lehman Brothers' bankruptcy had not occurred. In combination, those two events drove up the value of plans' liabilities, while reducing the value of their assets. For example, UPS withdrew from the Central States Pension Fund at the end of 2007 and paid the Fund $6.1 billion in withdrawal liability. The Fund's losses from the stock market decline in 2008 exceeded this payment from UPS. Unfortunately, the PPA gives multiemployer plan trustees little flexibility to address changed circumstances.

ABF's Multiemployer Plan Contributions

Based on the most recent annual funding notices ABF has received from the multiemployer pension plans to which it contributes, approximately 62% of ABF's contributions are made to plans that are in critical/Red Zone status (including the Central States Pension Fund). Close to half of ABF's total contributions are made to the Central States Pension Fund. Plans in endangered/Yellow Zone status represent 12% of ABF's contributions. The remainder of ABF's contributions are made to "Green Zone" plans like the Western Conference of Teamsters Pension Fund.

Approximately 75% of ABF's workforce is represented by the International Brotherhood of Teamsters (IBT). ABF is a party to the National Master Freight Agreement (NMFA) with the IBT, and the current five-year agreement expires March 31, 2013. In order to comply with the requirements of the PPA applicable to Red Zone and Yellow Zone plans, the current version of the NMFA has imposed a 7% annual, compound multiemployer pension plan contribution increase on ABF since it went into effect in 2008. Over the course of the five-year term of the current NMFA, that means a total compounded PPA-required contribution increase of more than 40% relative to the rate in effect before the NMFA became effective in 2008. ABF has contributed the following amounts to multiemployer pension plans in recent years: $104 million in 2009; $120 million in 2010; and $133 million in 2011. Those contributions alone represent almost 8% of ABF's total revenues from those years.

ABF's Competitive Situation

ABF operates in a highly competitive industry that consists predominantly of nonunion freight transportation motor carriers. ABF's nonunion competitors have much lower employee benefit cost structures, and some carriers also have lower wage rates for their freight-handling and driving personnel. In addition, wage and benefit

[1] On the other hand, multiemployer plans that are less dependent on the trucking industry and have a more diverse base of contributing employers, such as the Western Conference of Teamsters Pension Fund, are in much stronger financial positions.

concessions granted by the IBT to a key union competitor allow for a lower pension cost structure than that of ABF. During the recessionary economic conditions that began in 2007 and worsened in 2008, competitors with lower labor cost structures reduced freight rates, resulting in increased pricing competition in ABF's primary market segment.

Furthermore, ABF's labor costs are strongly impacted by its contributions to multiemployer plans that are used to pay benefits to "orphan" retirees who were never employed by ABF. As noted above, more than half of ABF's contributions to the Central States Pension Fund are used to fund benefits of retirees of companies that are no longer contributing employers. Many other multiemployer plans to which ABF contributes also have large numbers of orphan retirees.

Contributions to multiemployer pension plans are the main cost item compromising ABF's competitiveness. For example, according to an April 24, 2012 study prepared by Mercer/WRG's Information Research Center, ABF's contributions for pension benefits of $10.17 per hour worked are 257% higher than those for average union employers. Pension contributions represent almost 21% of ABF's total compensation costs, compared to less than 8% for the average union employer. Not only are the levels higher for ABF, they are increasing more rapidly, with a growth rate of 8% per year since 2007 compared to 4.2% for the average union employer and 2.9% for the average nonunion employer. If ABF's current contribution levels were frozen at current levels, and contribution rates for average union employers grew at their current rate of approximately 4.2% annually, it would take more than 30 years just for those contribution levels to match ABF's current level. The comparable figure for the average nonunion employer is 88 years.

The comparison is even worse with respect to ABF's nonunion competitors. For 2011, ABF's average pension plan contribution for its operational employees was $17,392 per employee. The average retirement plan contribution by ABF's key nonunion competitors was $1,131 per employee for that year. Thus, ABF's 2011 per-employee pension costs were 1437% higher than those competitors, who are not responsible for funding legacy liabilities of retirees they never employed.

Relative to its nonunion competitors, ABF had market share of around 5.5% in 2004. That has dropped to below 4%. Unless multiemployer pension plan contribution obligations are brought under control, ABF will continue to lose market share. ABF's significantly higher cost structure that results from the multiemployer pensions plans has been highlighted in numerous financial analysts' reports and is reflected in the Company's stock price. For example:

"[W]e see an above-peer cost structure keeping ABF from generating earnings based on what the market will offer. ABF has a higher cost structure than union and non-union peers, which could keep the company at a competitive disadvantage * * * an above-peer cost structure and persistent challenges in the core less-than-truckload business present meaningful long-term risks." Anthony Gallo, Senior Analyst, Wells Fargo

"We believe better relative tonnage levels will not solve the problem of [ABF's] reduced profitability. It appears that a structural change in compensation and benefits to its Teamster workforce is necessary to better align costs with volumes * * * without material progress [on compensation issues] Arkansas Best has structurally higher costs than its peers stunting potential growth." Chris Wetherbee, Research Analyst, Citi

"The most prevalent risks, in our opinion, to the performance of ABFS' shares are the cyclical nature of LTL freight and legacy cost headwinds from its unionized workforce. Additional risks include the presence of well-capitalized integrated carriers (FedEx and UPS) in the LTL market and uncertainty surrounding multi-employer pension liabilities." Todd Fowler, Vice President, KeyBanc Capital Markets

ABF's stock traded at $12.29 on June 15, 2012. The 52-week high as of that date was $27.44, more than double the current price. Before the 2008 financial crisis, ABF's stock price exceeded $45 per share.

If pension obligations are ignored, ABF's cost structure is in line with that of its key competitors. It is ABF's multiemployer pension obligations that require it to charge prices that its competitors are able to undercut. This creates a vicious cycle, where higher prices result in reduced market share, revenues drop, and ABF's ability to invest in its business are jeopardized.

A solution to the multiemployer pension plan crisis is critical for ABF and other trucking companies.

Conclusion

ABF is working with a number of groups to formulate multiemployer pension plan reforms that make sense for plans, active and retired employees, and contributing employers. Many multiemployer plans are in an untenable situation. Further raising of contribution rates will jeopardize the ability of employers to survive and continue contributing to the plans. The PPA restrains plans' abilities to accept reduced contribution rates for employers in financial distress. Plans cannot survive without contributing employers, but current legal rules make it difficult for plans to make changes that are necessary for the long-term viability of the plans and their contributing employers. Plan trustees currently have few tools to address the structural problems faced by the plans and the employers on which they depend. ABF strongly supports efforts to save the multiemployer pension plans that its active and retired employees depend on for their retirement income.

In addition, action is required because the PBGC lacks the resources to fulfill the multiemployer plan obligations it expects to incur under current law. In its 2011 annual report, the PBGC noted that the financial deficit of its multiemployer program doubled in its most recently-completed fiscal year. The PBGC further stated that "the greater challenge, however, comes from those plans that have not yet failed: our estimate of our reasonably possible obligations (obligations to participants), described in our financial statements, increased to $23 billion." Without sufficient contributing employers, plans will eventually become insolvent and the PBGC will have to assume responsibility for the benefits under those plans. Currently, all of the PBGC's multiemployer program revenues come from premiums charged to multiemployer plans themselves. However, if the PBGC cannot fulfill its benefit guarantee obligations, there will be great pressure on the federal government to provide additional funding to the PBGC from general revenues. By taking action now, Congress can help avert a crisis that otherwise is almost certain to occur.

I would be pleased to answer any questions that the members of the Subcommittee may have. Thank you.

Chairman ROE. Thank you.

Mr. Sander?

STATEMENT OF MICHAEL SANDER, ADMINISTRATIVE MANAGER, WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST

Mr. SANDER. Chairman Roe, Ranking Member Andrews, and members of the subcommittee, thank you for inviting me to testify today about the Western Conference of Teamsters Pension Plan. My name is Mike Sander. I am the administrative manager of the plan.

The Western Conference Plan, the largest multiemployer plan in the country, provides secure retirement benefits to over 500,000 active and inactive vested employees and retirees. Since 1955 we have provided retirement benefits to over 300,000 additional retirees and their families.

Plan assets today exceed $30 billion. Annual employer contributions total $1.3 billion. Last year we paid $2.2 billion in benefits to plan participants in all 50 states.

Almost 1,700 employers engaged in over 50 different industries participate in our plan. We continue to add new employers and employee groups. These large and small employers are engaged in a variety of industries: grocery, food distribution, package delivery, manufacturing, beverage bottling, law enforcement, waste disposal, health care, and many others.

Some are brand names: United Parcel Service, Safeway, Coca-Cola, Waste Management. But others are small businesses, like W.W. Clyde and Company, in Orem, Utah; McGree Contracting Company in Butte, Montana; and Whitewater Building Materials in Grand Junction, Colorado.

Over 74 percent of employers that participate in the Western Conference Plan are small businesses with 50 or fewer employees. In fact, nearly half have 20 or fewer employees.

The Western Conference Plan is designed to accommodate a mobile workforce. A recent analysis of our active workers reveals that over 25 percent of participants over the course of their career have worked for two or more contributing employers to the plan. Participants work in a host of occupations, including truck drivers, nurses, clerks, warehouse workers, food processors, police officers, highway maintenance workers, construction workers, and others.

The plan distributes a specified, regular amount of funds to retirees, determined by historical employer contribution rates, ages, lengths of service, and other factors. Because retirees are guaranteed a fixed level of retirement income the plan provides certainty and stability to retirees even in unpredictable economic times. The plan limits risks to both participants and employers by pooling contributions from a variety of companies and industries.

Our goal is full funding. The trustees have always used a conservative investment strategy and benefit plan design. The plan has been in the green zone, as that term is defined by the Pension Protection Act, since the law was first passed in 2006. At the start of 2008, just before the market crash, our plan's funded percentage was a robust 97.1 percent.

The plan's management and labor trustees have a long history of working together to strengthen the plan and promote the wellbeing of plan participants. After the dot-com market slide in 2002 the trustees agreed to cut future benefits in half in order to get back to full funding.

Like all institutional investors, the Western Conference Plan was harmed by the unprecedented collapse of the markets worldwide in 2008. Our asset values dropped by 20 percent, over $6.2 billion. Congress passed common sense legislation in 2010 to allow plans to spread these losses over a longer period of time. The plans funded status for 2012 is now projected to be 90.3 percent.

The Western Conference Plan strongly supports transparency. Financial information about the plan, including our audited financial statements, our Form 5500s, actuarial reports, annual funding notices, and other documents are all readily available for all to see. We encourage employers, participants, and other stakeholders to review our financial data on our Web site.

The trustees strive to maximize operational efficiencies. Through investments in technology and a streamlined processing system computers now automate much of daily processing.

Employers can report their monthly hours activity over the Internet and send their contributions electronically to a clearinghouse where available funds are swept immediately into the plan's investment pools. The plan uses only seven cents of every contribution dollar to fund all plan operations, leaving 93 cents of contributions and 100 percent of investment income to support funding levels.

Thank you for your consideration of our views. The Western Conference Plan is a long-term enterprise. We have been successful for over 50 years and we intend to provide substantial retirement security for the next 50 years and beyond.

We look forward to working with you and I would be happy to answer your questions.

[The statement of Mr. Sander follows:]

Prepared Statement of Michael M. Sander, Administrative Manager, Western Conference of Teamsters Pension Plan

Chairman Roe, Ranking Member Andrews, and Members of the Subcommittee, thank you for inviting me to testify today about the Western Conference of Teamsters Pension Plan. My name is Mike Sander, and I am the Administrative Manager of the Plan.

The Western Conference Plan, the largest multiemployer pension plan in the country, provides secure retirement benefits to over 500,000 active and inactive vested employees and retirees. Over the life of the Plan since 1955, we have provided retirement benefits to over 300,000 additional retirees and their families. The Plan covers the 13 western states—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. Plan assets exceed $30 billion, and annual employer contributions total $1.3 billion. Last year, we paid $2.2 billion in benefits to plan participants in all 50 states and the District of Columbia.

Almost 1,700 employers, engaged in over 50 different industries, participate in the Plan. We continue to add new employers and employee groups. These large and small employers are engaged in a variety of industries: grocery and food distribution, package delivery, manufacturing, clerical, beverage bottling, law enforcement, entertainment, waste disposal, health care and others. Some of them will be familiar to you: United Parcel Service, Safeway, Coca-Cola, and Waste Management. Others are not household names because they are small businesses, like W.W. Clyde & Company in Orem, Utah, McGree Contracting Company in Butte, Montana, and Whitewater Building Materials in Grand Junction, Colorado. Over 74 percent of employers that participate in the Western Conference are small businesses with 50 or fewer employees.

The Western Conference Plan is designed to accommodate a mobile workforce, providing pension portability to participants who may find it necessary to seek employment in a different industry or elsewhere in the 13 western states, or even beyond. A recent analysis of our active workers reveals that over 25% of participants over the course of their career have worked for two or more contributing employers. Participants work in a host of occupations, including as truck drivers, nurses, clerks, warehouse workers, food processors, police officers, highway maintenance workers, and construction workers.

The Western Conference Plan distributes a specified, regular amount of funds to retirees, determined by historical employer contribution rates, age, length of service, and other factors. Because retirees are guaranteed a certain level of retirement income, the Plan provides certainty and stability to retirees, even in unpredictable economic times. The Plan limits risk to both participants and employers by pooling contributions from a variety of companies and industries.

Our Plan's goal is full funding. The trustees have always used a conservative investment strategy and benefit plan design. The Plan has been in the "green zone," as defined by the Pension Protection Act, since that law was passed in 2006. At the start of 2008, just before the market crash, the Plan's funded percentage was a robust 97.1%.

The Plan's management and labor trustees have a long history of working together to strengthen the plan and promote the well-being of participants. The trustees take their responsibilities for funding very seriously. After the dot-com market drop in 2002, for example, the trustees agreed to cut benefit accruals by one-half to get back to full funding. Over the many decades the Plan has operated, the management and labor trustees have worked well together, resolving differences through a rational decision-making process focused on how best to achieve the key objective of providing retirement security to the hundreds of thousands of employees who participate in the Plan.

Like all institutional investors, the Western Conference Plan was harmed by the unprecedented collapse of the markets worldwide in 2008. Our asset values dropped by 20%, over $6.2 billion. Congress passed common sense legislation in 2010 to allow plans to spread those losses over a longer period of time. These important changes came at no cost to taxpayers or the government. Despite the 2008 crash, the Western Conference Plan's funded status for 2012 is projected to be 90.3%.

The Western Conference Plan strongly supports transparency. Financial information about the Plan, including our audited financial statements, Form 5500s, actuarial reports, annual funding notices, and other documents, is readily available for all to see. We encourage employers, participants and others to review our financial data at *http://www.wctpension.org./downloads/downloads.html.*

The trustees strive to maximize operational efficiencies. Through investments in technology and a streamlined processing system, computers now automate much of daily processing. Employers can report their monthly hours activity over the internet and send their contributions electronically to a clearing house where available funds are swept daily into investment vehicles. The Plan uses only seven cents of every contribution dollar to fund all Plan operations, leaving 93 cents of contributions and 100% of the investment income to support funding levels.

Since 1995, the Plan has provided an annual personal benefit statement to each active participant. The statement shows the participant's total accrued benefits and the amount earned in the previous year, an itemization of hours worked and employer contributions for that year, and beneficiary information. This gives participants an important retirement planning tool.

The Plan investments are made in accordance with an asset allocation model designed to provide strong returns consistent with a variety of economic environments. The Trust uses indexing strategies to provide effective diversification within the portfolios, while keeping net investment costs low. The Plan leverages its asset size into advantageous pricing. Manager selection is done with an eye to proven long-term results. Strong returns from proven asset managers at low net cost supports the highest benefit levels prudently possible.

Thank you for your consideration of our views. The Western Conference Plan is a long-term enterprise. We have been successful for over 50 years, and we intend to provide substantial retirement security for the next 50 years and beyond. We look forward to working with you, and I would be happy to answer your questions.

Chairman ROE. Thank you, Mr. Sander.

Mr. Shapiro?

STATEMENT OF JOSH SHAPIRO, DEPUTY EXECUTIVE DIRECTOR FOR RESEARCH AND EDUCATION, NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

Mr. SHAPIRO. Chairman Roe, Ranking Member Andrews, and members of the subcommittee, it is an honor to speak with you today on this important topic. My name is Josh Shapiro and I am the deputy director of the National Coordinating Committee for Multiemployer Plans.

Multiemployer pension plans provide vital retirement income security to millions of working-class Americans. By serving workers characterized by very small employers and mobile workforces these plans cover individuals who simply would not have access to quality retirement benefits without them.

As we discuss the challenges facing multiemployer plans a few features of these plans are worth noting. The first is that each multiemployer plan is governed by a board of trustees that consists of equal representation from both management and labor. The contributions that companies make to these plans go into a trust fund that is managed by the board of trustees, and this trust fund operates independently of either bargaining party.

There are currently approximately 1,450 multiemployer plans in the country covering approximately 10 million workers. The NCCMP has estimated that the aggregate assets held by these plans totals approximately $450 billion.

As you all know, the 2008 financial crisis and ensuing recession have had devastating effects on many sectors of our economy. Multiemployer plans are no exception. These plans are active investors in the equity markets, and just as they experienced tremendous asset growth during the boom years of the 1990s they also experienced enormous declines in their asset holdings in recent years. What you may not know is that the tax code that was in existence in the 1990s did not allow these plans to store those asset gains as insurance against future losses.

A unique feature of multiemployer plans is the fact that contributions to the plans are governed by collective bargaining agreements. Once those contributions are negotiated there is no simple way to stop or reduce them when the plan is overfunded.

Additionally, in the late 1990s contributions to an overfunded multiemployer plan were not tax deductible to employers, and in many cases such contributions would trigger excise tax penalties. This unfortunate situation meant that as a practical matter many plans had no choice other than to raise their benefit levels in order to eliminate the overfunding and preserve the tax deductibility of contributions. This inability to hold those investment gains as insurance against future losses left multiemployer plans especially vulnerable to declines in capital markets.

The 2008 stock market crash reduced the funded position of multiemployer plans by an average of approximately 30 percent. The average plan was 90 percent funded immediately prior to the crash. After the crash the contributions necessary to fund these plans in many instances more than tripled.

The response of the multiemployer community to this crisis has been profound. Across all sectors employees have accepted lower wages and lower benefits while employers have had to make larger contributions during a historically difficult business climate. NCCMP data indicates that over 80 percent of multiemployer plans have taken one or more of these steps.

While these responses have been painful they have been largely successful. Recent survey data indicates that well over 60 percent of multiemployer plans are now in the PPA—the Pension Protection Act—green zone, indicating a healthy funded position.

While the news headlines will always focus on the small number of plans that are deeply troubled and may not be able to recover from the crisis, the fact is that the majority of plans will be able to fully recover and pay benefits to future generations of participants.

However, this recovery has come at a steep price. Younger participants have had their faith in the system shaken as their contributions have risen and benefits have declined, while the sponsoring companies are concerned that they are effectively acting as insurers against the stock market.

The NCCMP has convened a Retirement Security Review Commission consisting of both labor and management representatives whose mission is to study the situation facing the plans and to develop a comprehensive proposal for reform. The guiding principles of this commission are that employer financial risk must be mitigated while at the same time participant retirement income security must be preserved.

During this time of great challenge it is tempting to conclude that the multiemployer pension system is broken and should be abandoned. It would be a great tragedy if this fate were to befall a system that has been so beneficial to so many millions of people for so many decades. The system does not need to go away but it does need to evolve.

I am confident that the upcoming recommendations of the NNCMP commission will provide a solid foundation for a retirement system that will meet the needs of both the companies that support the plans and the employers that participate in them.

Thank you very much for your kind attention, and I sincerely look forward to working with you and your staff members in the coming months as you work to implement necessary reforms.

[The statement of Mr. Shapiro follows:]

Prepared Statement of Josh Shapiro, Deputy Director for Research and Education, National Coordinating Committee for Multiemployer Plans

Chairman Roe, Ranking Member Andrews and Members of the Committee, it is an honor to speak with you today on this important topic. My name is Josh Shapiro. I am the Deputy Director of the National Coordinating Committee for Multiemployer Plans (the "NCCMP"). The NCCMP is a non-partisan, non-profit advocacy corporation created in 1974 under Section 501(c)(4) of the Internal Revenue Code. It is the only organization created for the exclusive purpose of representing the interests of multiemployer plans, their participants and sponsoring organizations. In addition to my role at the NCCMP, I am also a Fellow of the Society of Actuaries, a Member of the American Academy of Actuaries, and an Enrolled Actuary under ERISA. I serve on the American Academy of Actuaries Pension Committee, and on its Multiemployer Subcommittee.

The sponsors of multiemployer pension plans are predominately small businesses that operate in industries characterized by highly fluid employment patterns. For over 60 years multiemployer plans have made it possible for these companies to provide their employees with modest and reliable retirement income. Both the small size of the sponsoring employers and the mobility of their workforces make it impractical for them to achieve this objective with single-employer pension plans. For this reason, millions of middle class Americans have financial security in retirement that is entirely attributable to the existence of multiemployer pension plans. According to the 2011 PBGC Annual Report, there are currently approximately 1,450 multiemployer plans in the country covering over 10 million participants. While precise figures are difficult to obtain, the NCCMP has estimated that the aggregate assets held by these plans totals approximately $450 billion.

Multiemployer plans are the product of collective bargaining between one or more unions and at least two unrelated employers. The collective bargaining process establishes the rate at which employers will contribute to the plan, frequently expressed as a dollar amount per hour of work. The contributions go into a trust fund that is independent of either bargaining party. By law, the trustees of this fund consist of equal representation from both management and labor. With input from their professional advisors, the trustees determine the benefit provisions of the pension plan, oversee the investment of the assets, and administer the collection of contributions and the payment of benefits. As trustees, the representatives of both sides of the bargaining table have fiduciary responsibility to manage the plan for the sole and exclusive benefit of the plan participants.

While most often associated with the 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, or national basis, and cover populations that range from as small as a few hundred participants to as large as several hundred thousand participants.

The Experience of Multiemployer Plans in the 1990's

Since the establishment of ERISA's pre-funding requirements, multiemployer plans have typically been very well funded. This was especially true in the late 1990's when exceptionally strong stock market returns resulted in many plans having assets that were significantly larger than their liabilities. While on the surface this is a highly desirable result, it is ironic that this period actually set the stage for the challenges that the plans face today. To see why this is the case, it is first necessary understand how actuaries calculate the funding needs of multiemployer plans through the use of long-term assumptions and methods.

Long-term actuarial funding rests on the idea that the financial markets will experience periods of strong investment returns and periods of poor investment returns. The actuary determines the funding requirements using an assumed rate of return on plan assets that represents his or her best estimate of the long-term average, with the understanding that over short periods of time the assets may perform significantly better or worse than this average. The core idea is the notion that short-term fluctuations will tend to offset each other, and the plan can achieve stable long-term funding through the use of level and predictable contributions. In order for this funding approach to function properly, it is necessary for plans to maintain surplus positions during periods of unusually strong asset returns, as these surpluses will serve to offset the losses that the plans incur during periods of unusually poor returns.

During the late 1990's, very strong investment returns resulted in the majority of multiemployer plans having assets that exceeded their liabilities. While the long-term approach to funding dictates that plans need to preserve this overfunding to offset future investment losses, two unique features of multiemployer plans prevented them from remaining in a surplus position. The first of these features is the fact that contributions to multiemployer pension plans are specified in collective bargaining agreements. There is no simple mechanism for stopping or reducing these contributions when the plan is overfunded. The second unique feature of multiemployer plans is the fact that during the 1990's, contributions to an overfunded multiemployer pension plan were not tax deductible to the employers. In many cases, not only would contributions to these plans have been non-deductible, they would also trigger excise tax penalties.

The combination of these two features placed the trustees of multiemployer pension plans in a very difficult position. The employers were obligated by the collective bargaining agreements to contribute to the plans, but due to the overfunding of the plans, these contributions would not be tax deductible, and might trigger excise tax penalties. As a practical matter, the trustees had no choice but to raise the level of benefits that the plans provided so that the plan assets would no longer exceed the liabilities. Essentially, they were forced to spend the funding surpluses instead of being able to preserve them as insurance against a market downturn. The NCCMP has estimated that upwards of 70% of all multiemployer plans found themselves in this position leading up to the millennium. The Pension Protection Act of 2006 (PPA) addressed this shortcoming in the tax code, but unfortunately this change was too late to help most plans.

It is worth noting that the situation facing single-employer pension plans was very different. The most obvious difference was the fact that the sponsors of these plans had the option to simply stop contributing to the plans during periods of overfunding. Many plan sponsors took advantage of this option, and it was not uncommon for these companies to go ten or more years without making any contributions to the plans at all. At the same time, there was no need for these plans to raise their benefit levels to eliminate the overfunding, so many of them remained significantly overfunded year after year. Some observers have noted that single-employer plans have historically had higher funding levels than multiemployer plans. This observation is true, but most authors either miss, or choose to ignore, the fact that the ability of single-employer plans to effectively maintain a surplus position gave them an inherent funding advantage over multiemployer pension plans.

Market Turmoil of the 2000's

Having been unable to maintain a surplus position during the late 1990's, multiemployer pension plans were extremely vulnerable to the market turmoil that characterized the decade between 2000 and 2010. Despite the downturn that occurred in the years 2000 to 2003, by the beginning of 2008 multiemployer plans were very much back on track. NCCMP survey data indicates that at the beginning of that year, the average plan was approximately 90% funded. The Pension Protection Act of 2006 (PPA) established criteria for determining when a multiemployer plan should be considered in 'endangered status' or 'critical status'. NCCMP survey data shows that at the beginning of 2008, only 9% of plans were considered to be 'critical', with an additional 15% classified as 'endangered'.

The 2008 financial market crash and ensuing recession had a profound impact on the funding position of multiemployer plans. The S&P 500 Index lost 37% that year, and the average multiemployer plan experienced a decline of approximately 30% in its funded level (determined using the market value of assets). For many plans with funding ratios of 90% or better prior to the crash, the level of contributions needed to responsibly fund the liabilities more than tripled. This situation placed enormous burdens on companies that were already contending with a historically difficult economic climate in the years following the 2008 crisis. The recession also presented a separate challenge for he plans themselves, as they depend on employment levels to generate contribution income. As an analogy, the 2008 crash gave the plans a hole from which they need to dig out, and the subsequent recession substantially reduced the size of their shovel.

It is critical to note that the funding challenges currently facing multiemployer plans are not the result of reckless investing, aggressive assumptions, or unreasonably large benefits. NCCMP survey data clearly documents this conclusion. This data indicated that at the beginning of 2008, the average multiemployer plan held approximately 57% of its assets in equities, 27% in bonds, 6% in real estate, and the remaining 10% spread across cash, hedge funds, private equity, and other investments. This asset mix is in line with the portfolios of pension funds in other sectors, and is also consistent with the strategy that investment professionals recommend to individuals who need to manage their own retirement savings through defined contribution plans.

Regarding actuarial assumptions, the vast majority of multiemployer pension plans budget for average returns of 7.5% or less on their investments. This figure represents a reasonable estimate of the asset returns that are attainable to investors with very long-term time horizons. NCCMP survey data indicates that the median benefit that a multiemployer plan pays to a retiree is approximately $900 per month, which is just under $11,000 per year. As most retirees have been receiving their benefits for many years, a better measure of the benefits that the plans are currently promising is to look at the median amount paid to a recent retiree. This figure is approximately $1,400 per month, or just under $17,000 per year. By any measure, these are modest retirement benefits that, when combined with Social Security and personal savings, are just enough to allow retired participants to have a decent standard of living.

The Road to Recovery

When a multiemployer plan encounters adverse experience, the trustees and bargaining parties have two main tools at their disposal to improve the funded position of the plan. The first tool is to allocate additional contributions to the plan. When this tool is used, it has a direct effect on both the employees and the employers. For the employees, it serves to reduce their overall compensation, since absent the funding challenges of the pension plan, these dollars would have been available for other purposes. In fact, in many severely troubled plans employees have accepted reductions in their paycheck wages in order to allocate more money to the pension plan. For the employers the additional contributions make it more difficult for them to compete in the market place, often against competitors that have not chosen to provide comparable retirement benefits to their employees. NCCMP survey data indicates that more than 70% of multiemployer plans have responded to the 2008 funding crisis with increased contributions.

The second tool available for the purpose of improving the funded position of a multiemployer pension plan is to reduce the rate of future benefit accrual. This action has minimal immediate effect on the plan as it does not affect benefits that participants have already earned. What it does do is allow a larger portion of the ongoing contribution income to pay for the funding shortfall, as a lesser portion of these contributions is required to cover the cost of participants' benefit growth. In contrast to the first tool that impacts both the employees and the employers, reducing the rate of benefit accrual only has a direct impact on the employees. NCCMP survey data indicates that approximately 40% of multiemployer plans have responded to their funding challenges by reducing the rate of benefit accrual.

The actions that multiemployer boards of trustees and sponsoring employers have taken in response to the financial crisis have been difficult for all stakeholders. However, these actions have not only been necessary, they have been effective. While NCCMP survey data indicates that only 20% of plans were in the PPA 'green zone' immediately following the 2008 crash, current data indicates that this figure now exceeds 60%. An occasional, and particularly ill informed, criticism of multiemployer plans is that they have ignored their problems. Regardless of how someone feels about multiemployer pension plans, any thorough analysis of their recent history will demonstrate the commitment that both the employees and employers have to the plans, and the sacrifices they have made to support them.

Despite the efforts of the sponsors to take the measures necessary for recovery, a small number of plans have suffered more damage than they will be able to endure. Primarily these plans come from industries in which economic shifts have greatly hindered their ability to raise the necessary contribution income. In particular, there are two specific very large plans that have suffered from the unintended consequences of unrelated public policy decisions. In one of these plans, the deregulation of the trucking industry in 1980 resulted in the decline and demise of virtually all of the major contributing commercial carriers. In the other plan, the Clean Air Act caused the cessation of a large portion of the bituminous coal mining industry that previously contributed to the plan, resulting in an active employee population that is a small fraction of the previous number. In both instances, the plans had managed to remain well funded until the unprecedented market collapse imposed irrevocable harm on the plans' investments. While these two plans represent major challenges to the multiemployer community, and they are the subject of frequent media attention, their unique circumstances are not representative of the vast majority of multiemployer plans.

NCCMP Retirement Security Review Commission

The multiemployer funding provisions of the Pension Protection Act of 2006 (PPA) will sunset at the end of 2014. The challenges currently facing multiemployer plans make it clear that in order to survive and grow in the future, the system requires a greater degree of flexibility than is currently available. We have welcomed the interest shown by your Committee staff and that of the other Committees of jurisdiction, as well as the regulatory agencies in learning how PPA could be modified to better meet the needs of plan participants, sponsors and the plans themselves. In the course of reviewing proposals for modifications, we have come to the conclusion that now is an appropriate time to consider taking a more fundamental assessment of the rules governing the multiemployer defined benefit system.

In order to ensure that the interests of all stakeholders are reflected in this evaluation, the NCCMP has convened a "Retirement Security Review Commission" comprised of representatives from over 40 labor and management groups from the industries which rely on multiemployer plans to provide retirement security to their workers. The group began its deliberations in August of 2011 and meets monthly to evaluate their collective experience with current laws and regulations and develop ideas for reform and improvement.

The group has identified the following key objectives:

- Ensure that any proposed changes to the law or regulations will allow the plans to continue to provide regular and reliable retirement income to participants.
- Reduce the financial risks to employers so that these risks do not encourage companies to leave the system or prevent new companies from joining the system.

The Commission has established an ambitious time table for its deliberations with a target of developing legislative recommendations later this summer. We look forward to keeping your Committee staff apprised of our progress, and to discussing our recommendations when they are available. We are confident that labor, management, and government will be able to work together to achieve the necessary enhancements that will enable multiemployer plans to survive and continue to provide affordable, reliable and secure retirement income to future generations of Americans.

Chairman ROE. Thank you, Mr. Shapiro.
Mr. Ring?

STATEMENT OF JOHN F. RING, PARTNER, MORGAN, LEWIS & BOCKIUS LLP

Mr. RING. Chairman Roe, Ranking Member Andrews, and members of the subcommittee, thank you for the opportunity to participate in this hearing today. I am a partner with the law firm of Morgan, Lewis, and Bockius, and as part of my practice I am—I serve as management co-counsel to a number of multiemployer pension plans, and our firm represents dozens of multiemployer plans in traditionally unionized industries.

In addition, I have negotiated on behalf of employers numerous collective bargaining agreements which set for the terms of and companies—the terms of companies' participation in and contributions to multiemployer plans. So I have had the benefit of seeing multiemployer plan issues both from the bargaining table and the trustees table.

For more than 50 years multiemployer plans have played an important role in the overall retirement scheme of this country. In many unionized industries they are the retirement system for millions of Americans. And while many of these plans may be in good shape, like Mr. Sanders, the—there are significant numbers that are not and they are headed towards insolvency.

Before discussing the plans themselves I would like to briefly talk about the companies that contribute to these plans. There is a tendency to focus exclusively on the plans and their beneficiaries, but consideration also needs to be paid to the companies that participate in and pay for these multiemployer plans. Without them the plans would be history. And if the financial burden to sustain these plans becomes too great then we run the risk of even more employers who provide good jobs with good benefits going out of business.

Unfortunately, the number of companies that contribute to these plans has dwindled significantly in the past several decades. This has resulted in an ever increasing and in some cases unsustainable burden on those companies that remain.

In some industries, increasing employer contributions to multiemployer plans is simply not a viable option. In order to comply with requirements of current law some plans would require—or set employer contribution rates at upwards of $20 per hour. That is $20 per hour of each hour worked by their active employees. It is obviously unsustainable.

So why, then, are some of the multiemployer plans in trouble now and how bad is it? I think boiled down to its simplest explanation the problem has been caused by a combination of four things: one, investment loss; two, rising liabilities due to low interest rates; three, serious demographic issues; and fourth, spiraling liabilities left by withdrawing employers.

These four things have put some multiemployer plans on an irreversible path towards insolvency, and for some plans the collapse is closing in quickly and they are projected to run out of money within 5 years.

Investment returns and interest rates over the last decade have ravaged most defined benefit pension plans, and multiemployer plans were no exception. I would point out that many of these plans now facing insolvency were in very good shape—some upwards of 100 percent funded—more than a decade ago.

The economic downturn only exacerbated the significant demographic issues facing multiemployer plans. As the size of the country's unionized workforce in a number of industries has shrunk and continues to do so the ratio of retirees to active participants also continues to grow greater. And many of these retirees worked for companies who are gone or have withdrawn and are no longer contributing. And as such, the benefits of these retirees must be paid for by the remaining employers.

What this has meant is higher employer contributions, which further threaten the financial viability of these last remaining contributing employers, many of which are already struggling because of the economy and because of the significant cost disadvantages they face vis-a-vis their nonunion competition. It has become a vicious cycle.

Situations like the one playing out in the current Hostess bankruptcy will only make matters worse. There, the bankruptcy judge may allow that company to walk away from all of the multiemployer pension plans in which it previously contributed, and to do so with no withdraw liability. For a number of smaller bakery funds this will mean certain insolvency and will leave the remaining employers with substantial liability.

So it is not a pretty picture for some of these multiemployer plans. And what is worse, for plans in critical status that have reduced future benefits to the maximum extent possible and have raised contributions to the maximum extent possible, there are simply no tools left that trustees can use to avoid the slide towards insolvency. And regrettably, there is nothing in the current law that gives responsible government agencies—the IRS, the PBGC, or the DOL—any ability to provide meaningful assistance to these plans prior to them running out of money.

So looking forward what is the answer? With the sunset of the PPA provisions in 2014, failure to address the problem in a timely legislative solution will mean that these insolvent plans will end up at the PBGC sooner rather than later. That is the current law. This means that the status quo will result in the government taking on a portion of these liabilities when these plans become insolvent.

Mr. Chairman, thank you for giving me the opportunity to testify and I look forward to answering any questions you may have.

[The statement of Mr. Ring follows:]

Statement of John F. Ring
Partner, Morgan, Lewis & Bockius LLP

before the

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

June 20, 2012

Assessing the Challenges Facing Multiemployer Pension Plans

Chairman Roe, Ranking Member Andrews and Members of the Subcommittee, thank you for the opportunity to participate in today's hearing. I am honored to appear before you today.

By way of introduction, I am a partner with the law firm of Morgan Lewis & Bockius in the Washington D.C. office where I practice in the Labor & Employment and Employee Benefits Practice Groups. As part of my practice, I serve as management co-counsel to a number of multiemployer pension plans, and the Firm and I represent dozens of multiemployer plans in traditionally-unionized industries, including food, mining, maritime, trucking and entertainment. In representing these plans, we have been actively involved in all aspects of their operation and administration. In addition, my practice focuses on collective bargaining, particularly multiemployer bargaining, and I have been involved in the negotiation of numerous labor agreements, many of which determine employer participation and contributions to multiemployer pension plans.

Before I begin my testimony, I want to thank full Committee Chairman Kline and Subcommittee Chairman Roe for scheduling this important hearing, and the entire Subcommittee membership – both Republicans and Democrats – for participating here today. If it is not already evident to you, I suspect that after listening to the testimony from this panel of witnesses, you will join a very small – but important – group of legislators who understand and appreciate the serious challenges facing multiemployer plans and the employers that contribute to them.

I. Introduction

To start, it might be useful to review where we've been and how we got to where we are today.

Multiemployer pension plans are collectively bargained, jointly administered plans that are generally organized by industry and/or region. Unlike single employer plans, where the company sponsoring the plan has decision-making authority concerning plan design and administration, multiemployer plans are administered by an independent board of trustees – half representing management and half representing the sponsoring union.

Mr. Chairman, that bears repeating because there is a common misperception – often seen in the media – that these plans are "union" or "union-run" plans. That simply is not the case. Neither the union nor the contributing employers have the ability to control these plans. They are run by separate and autonomous boards of trustees representing both labor and management. By law, each trustee must act independently as a fiduciary and in the best interest of the plan's participants. At the trustees' table, we often talk about trustees wearing two hats, and that trustees, when dealing with trustee matters, must take off their company or union hat and wear only their trustee hat. Of course, this means that trustees must make decisions that may not be preferred by their company or union. For instance, management trustees sometimes must vote to increase employer contributions to the plan, something their companies probably would rather not see. Similarly, union trustees sometimes must vote to reduce benefit accruals, making their constituency unhappy. Regardless, trustees must make decisions based on what they believe is in the best interest of the plans participants and beneficiaries. Failure to do so would put trustees at significant legal risk of breaching their fiduciary duty.

For more than fifty years, multiemployer plans have played an important role in the overall pension/retirement scheme of this country. Millions of men and woman look to these plans for their retirement security, and multiemployer plans have provided billions of dollars in pension benefits. As we look at these plans, however, their long-term sustainability affects not only the current pensioners and beneficiaries. It also affects the companies that contribute to these plans and the current employees of those companies. In assessing the challenges facing multiemployer plans, Congress needs to be mindful of three immediate constituencies and one potential constituency. The immediate constituencies are: current retirees and beneficiaries, the current contributing employers, and the current employees of these contributing employers. While there is a tendency to focus exclusively on the plans and their beneficiaries, attention needs to be paid to the companies that participate in – and pay for – these plans. Without them, these plans will be history. And, if that happens, then the liabilities become the responsibility of the Pension Benefit Guaranty Corporation ("PBGC") and potentially the taxpayer.

Unfortunately, the number of companies that contribute to these plans has dwindled significantly over the past several decades, resulting in an ever-increasing, and in some cases, unsustainable, burden on those companies that remain. Many of these companies already face significant competitive disadvantages because of their relatively high costs as compared to their non-union competition. For some of these unionized employers, increasing contributions in order to better fund these plans is simply not an option, particularly as an increasing portion of the contribution goes to pay benefits to individuals who never worked for the company. There is a growing recognition even among union leadership that increasing contributions is just no longer possible and that doing so only exacerbates the current problems.

Legal/Regulatory Background

Multiemployer pension plans, established under Section 302(c)(5) of the Taft–Hartley Act of 1947, are governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA") , the Internal Revenue Code of 1986, as amended, and a complex series of tax and benefits regulations and regulatory rules from the Internal Revenue Service (IRS) and U.S. Department of Labor ("DOL"). The PBGC also has oversight and enforcement capabilities as part of its responsibilities to provide an insurance safety net for defined benefit plans, including multiemployer plans.

This exclusively-federal legal and regulatory scheme sets the standards for plan participation, vesting, benefit accruals, pension eligibility and plan funding. The law defines how long a person may be required to work before becoming eligible to participate in a plan, to accumulate benefits, and to have a non-forfeitable right to those benefits. It establishes detailed funding rules that require boards of trustees to provide adequate funding for the plans they administer. And, as noted earlier, trustees are subject to fiduciary rules, including the duty to act prudently and to discharge all of their duties with respect to a plan "solely in the interest" of the plan's participants and beneficiaries. If anything, the administration of multiemployer pension plans is as complex as ever, and the requirements on and accountabilities of trustees are as great as they have ever been.

As someone who spends significant time working with trustees of multiemployer plans – both union and management trustees – who take their role and responsibilities as trustees very seriously – I am often surprised by reports that broadly portray these plans as mismanaged and poorly run. While there undoubtedly have been management issues, focusing on those isolated problems does not address the more fundamental and real challenges facing multiemployer pension plans. In many instances, these problems are the same problems that are confronting single employer plans. The trustees we deal with not only work incredibly hard and take their fiduciary responsibilities extremely seriously, they regularly engage the experts and professionals to advise and assist them with the complexities of administering these plans. For example, plans engage investment consultants who take on a fiduciary role to advise and make recommendations to the trustees about their investment decisions. They also engage the services of actuaries, accountants, legal and other professionals, who are responsible to the trustees. ERISA permits, and even encourages, these types of engagements.

Multiemployer Pension Plan Amendments Act (MPPAA)

In 1980, Congress enacted the Multiemployer Pension Plan Amendments Act (MPPAA) with the goal of strengthening protections for multiemployer plans. Under MPPAA, companies that permanently cease to contribute to a multiemployer plan generally are liable to the plan for their share of the plan's unfunded vested liabilities for the employees the employer has left behind. This is known as withdrawal liability. It is difficult to quarrel with the purposes behind MPPAA, and when it was passed in 1980, it undoubtedly was done with the best of intentions.

Today, however, the reality is that when a company exits a multiemployer plan – often through a bankruptcy or other business closure – it usually does not pay its full withdrawal liability. Indeed, in most bankruptcies, plans collect withdrawal liability that is only cents on the dollar. Moreover, when an employer withdraws from a multiemployer pension plan, its retirees remain in the plan and continue to receive pension benefits, which are paid for by the remaining contributing employers. As a result, a substantial number and percentage of retirees in multiemployer pension plans are so-called "orphan retirees" of non-contributing employers.

Funding the retiree liabilities of non-contributing employers has added a significant economic burden on the employers remaining in these plans. In a number of industries, the burden is proving to be unsustainable for the remaining employers. In many plans, 50 percent or more of an employer's contributions now fund these liabilities. It is difficult to imagine how any plan can sustain that burden, or how any contributing employer can pay for that liability over the long term. It is worth noting that sponsors of single employer plans, in contrast, use their corporate resources for plan contributions that benefit only their own employees.

Additionally, while the "orphan" liability left behind in many of these funds is enormous, the withdrawal liability amounts attributable to each existing employer have become overwhelming. In many instances, companies' withdrawal liability from multiemployer plans greatly exceeds their entire market capitalization. Most companies could never pay a fraction of their current share of the withdrawal liability. Not only does this mean that the plans will never collect this money, but the staggering amount makes it very difficult for plans to attract new employers. And, without new employers to replace those that are exiting, the problem continues to get worse. In these plans, part of their design is based on the ability to continue replacing exiting employers. The staggering withdrawal liability also is detrimental to those companies that participate in these plans. Already disadvantaged by the costs of these plans, contributing companies have significant difficulty obtaining credit or financing or otherwise attracting investment with the specter of this enormous contingent liability.

These problems are only exacerbated for plans in industries where there has been a significant decline in union employment. In the trucking industry, for example, 1980 marked not only the passage of MPPAA, but also deregulation of the industry under the Motor Carrier Act of 1980. Prior to 1980, something on the order of 90 percent of the 100 largest trucking companies were unionized and thus paying into multiemployer pension plans. Twenty years later, that percentage had dropped to under 10 percent. Today, there are essentially two trucking companies, one package company, and a handful of car haul companies for the pension liabilities of that original 90 percent. This significant decline in the number of unionized companies supporting multiemployer pension plans is present in other industries as well. In short, it puts an enormous and unsustainable economic burden on the few, remaining contributing employers.

Pension Protection Act

Recognizing that there were serious funding issues facing multiemployer pension plans, Congress significantly revised the rules governing these plans in the Pension Protection Act of 2006 (PPA). The PPA was designed to shore-up the financial health of these plans by accelerating funding requirements and creating more transparency with classifications based on each plan's funding status. Importantly, the PPA also gave trustees certain tools – and imposed certain legal mandates to adjust benefits and employer contributions – to ensure plans were on firm financial footing or at least headed in that direction.

There were three funding levels established under the PPA for multiemployer plans that are at risk: Endangered Status ("yellow zone"); Seriously Endangered Status ("orange zone"); and Critical Status ("red zone"). A plan that is not endangered, seriously endangered, or critical is said to be in the "green zone." A plan's status is generally based on funding percentages and projected accumulated funding deficiencies. A plan that is less than 80 percent funded, or has an accumulated funding deficiency in the current year or in any of the next six years, is in endangered status; if the plan meets both criteria, it is in seriously endangered status. Generally, a plan is in critical status if it is less than 65 percent funded or will experience a funding deficiency within four years.

For a plan in endangered status, the Trustees must adopt a Funding Improvement Plan, which consists of schedules showing revised benefit structures, contribution structures, or both, that are designed to bring the plan's funding up to certain benchmark levels by the end of a certain period. Under a Funding Improvement Plan, Trustees may require increased contributions and/or a reduced rate at which benefits are earned in the future, but nothing further.

If a plan is certified to be in critical status, the Trustees must adopt a Rehabilitation Plan. In addition to including the possibility of increased required contributions and a reduced rate at which benefits are earned in the future, Trustees also may reduce or eliminate "adjustable benefits." "Adjustable benefits" include such benefits as: (1) post-retirement death benefits and disability benefits not in pay status; (2) any early retirement benefit or retirement-type subsidy and any benefit payment option (other than the qualified joint and survivor annuity); and (3) benefit increases adopted or effective fewer than 60 months before the plan entered critical status.

Since the PPA was enacted in 2006, Congress has also passed the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), and the Pension Relief Act of 2010 (PRA 2010) in order to provide relatively minor relief to multiemployer plans to help them get through the stock market crisis from 2008.

Pension Benefit Guaranty Corporation

Under the PBGC's multiemployer program, each multiemployer plan pays the PBGC an annual insurance premium of $9 per participant. In return, the PBGC provides financial assistance through loans to plans that are insolvent (i.e., unable to pay benefits when they are due). When a plan becomes insolvent, benefits must be reduced to the level that can be paid out of the plan's available resources. Benefits, however, are not reduced below the level of basic benefits; that is, the level of benefits guaranteed by the PBGC (a monthly benefit equal to the sum of 100 percent of the first $11 of monthly benefits and 75 percent of the next $33 of monthly benefits for each year of service). For a participant with 30 years of service, the maximum PBGC-guaranteed benefit is $12,870 per year.

The PBGC only becomes responsible for funding the pension obligations of multiemployer plan participants when the plan becomes insolvent. Unlike when a company sponsoring a single employer plan goes bankrupt, the PBGC does not take over a multiemployer plan. A multiemployer plan's remaining contributing employers play the role of the PBGC in the single employer world, paying contributions as the plan becomes insolvent. Even then, the PBGC's responsibility comes only in the form of "loans," although when a plan is truly insolvent, there cannot be any reasonable expectation that these loans will ever be repaid.

The PBGC's multiemployer program has reported a deficit every year since 2003. At the end of 2011, the program's deficit was $2.8 billion (up from $1.4 billion in 2010). According to the PBGC, more of those liabilities represent "non-recoverable" future financial assistance to the 41 plans currently receiving financial assistance and to other plans expected to receive such assistance in the future. In addition, the PBGC estimated that its "reasonably possible" obligations to multiemployer plan participants were $23 billion at the end of fiscal 2011. Notably, the PBGC's multiemployer program is funded and maintained separately from its single employer insurance program.

Unfortunately, under current law, there is little the PBGC can do to assist troubled plans – even those clearly headed towards insolvency – until the plan runs out of money. As the Agency noted in its 2011 Annual Report, it ''cannot step in until plans are already insolvent, by which time other remedies are no longer possible.''

II. Today's Challenges

The last decade ravaged most defined benefit pension plans – both in the public and private sectors – and multiemployer plans were no exception. Although there has been significant focus on the problems facing other types of plans, such as government and municipal plans, many multiemployer plans are facing a similar or worse fate. Indeed, there are a significant number of them that are beyond resuscitation, at least under the current legal framework. The combination of investment losses, rising liabilities due to low interest rates, demographic issues and the spiraling liability left by withdrawing employers has put many multiemployer plans on an irreversible path towards insolvency. And, for some plans, insolvency is less than five years away.

Let me first talk about investment losses. For most multiemployer plans, the investment losses have been catastrophic. As the markets dropped, multiemployer plans, which are major institutional investors, lost billions of dollars and their overall assets declined substantially. I note that while the market losses were devastating from a dollar perspective, for pension plans, these losses were far worse because plans count on a certain investment return each year. When a plan expecting to earn 7 percent in investment returns loses 10 percent in the market, the actuaries tell us that the plan has sustained a loss of 17 percent because it is 17 percent behind where it was expected to be. When a plan loses 10 percent in the market one year, it can't make up that 10 percent loss the next year with 10 percent returns.

Investment losses are only part of the problem. Interest rates have declined to the lowest level in decades. Much like a bond, as interest rates decline, pension liabilities increase. Rising liabilities at a time when investments are underperforming would be bad enough, but these plans have had to contend with more bad news.

What is important to understand is that many of these funds were in good shape a little more than a decade ago. Many were over 100 percent funded and on sound actuarial footing before the economic collapse. Indeed, back in the 1990s, some multiemployer plans actually were forced to increase benefits in order to avoid being overfunded to an extent that employers' pension contributions to these plans would not have been tax deductible.

These investment losses and the economic downturn that caused them only exacerbated the significant demographic issues facing multiemployer plans in a number of industries. As the size of the country's unionized workforce has shrunk and continues to do so, the ratio of retirees (who are receiving pension payments from the plan) to active participants (those still working and for whom contributions are made by the contributing employers) continues to grow. In one example that has been cited by the PBGC and others recently, a large pension fund in the mining industry has a ratio of 12 retirees to every active employee. Although this might be an extreme example, there are many multiemployer plans where the ratio of retirees to actives exceeds three or four retirees for every one active.

Additionally, not only are there increasingly more retirees than actives in these plans, but many of these retirees worked for companies who have withdrawn and are not contributing for their retirees who remain in the plan. As such, the benefits of these retirees must be paid for by remaining employers. This means higher and higher employer contributions, particularly as plans are unable to rely on investment returns to fund these benefits. Higher employer contributions further threaten the financial viability of these last remaining contributing employers. It has become a vicious cycle.

Unfortunately, the situation seems to be getting worse. For plans in a number of industries, the overall demographics continue to look bleak. Many plans have been forced to reduce benefits as required by the PPA such that current participants are not accruing much in the way of a future pension benefit. In some situations, to comply with the PPA would require the remaining contributing employers to pay to the multiemployer plan $20 per hour worked by their active employees. That obviously is not sustainable. As a result, employers continue to look for any way to get out of these plans, and certainly none are signing up to get in. The financial health of many contributing employers cannot sustain additional contribution increases, and, in fact, some plans have capped their highest employer contributions for fear of driving the remaining companies out of business.

Situations like the one playing out in the current Hostess bankruptcy will only make matters worse. There, the bankruptcy judge may allow the company to walk away from all the multiemployer plans in which they previously contributed, and to do so with no withdrawal liability. For a number of bakery funds, this will mean certain insolvency, and leave the remaining employers with substantial liability.

For private employers in the multiemployer plans, there is little they can do. When they look at their overall labor costs, the cost of pensions is the piece that is completely out of step with their competition. In many cases, these pension costs are 30 and 40% greater than their competitors. Unlike their non-union competition, however, they cannot simply switch to a defined contribution or other less-risky pension program. Some employers are paying whatever it takes – huge sums of money – to get out of the plans, figuring the price is worth it to relieve themselves of the burden and uncertainty of these plans. On the other hand, there are many employers that could not afford to pay their withdrawal liability even if they could negotiate a collective bargaining agreement that allowed them to do so.

What is important to understand is that in certain sectors of the economy and industries, the extent of the multiemployer pension plan problem is much worse than has been widely reported. There are a number of smaller, but significant plans that face projected insolvency within the next five years. It also is important to understand that for plans in critical status that have reduced future benefits to the maximum extent possible, there is nothing that trustees can do legally to avoid a slide toward insolvency. Moreover, there is nothing in the current law that gives the responsible government agencies any ability to provide assistance to these plans.

What also is important to understand is that doing nothing means the government ends up taking on a portion of the liabilities of these plans when they become insolvent. Under current law, when a multiemployer plan becomes insolvent, the PBGC ends up paying benefits to participants at a reduced level. Although no one that I am aware of has done any precise calculations, it is fair to say that even the insolvency of some of these smaller plans over the course of the next five years will quickly deplete the PBGC's multiemployer insurance program.

III. Where Do We Go From Here?

A recent op-ed in the *Wall Street Journal* suggested that multiemployer plans needed more oversight and greater transparency. While it's hard to argue with greater oversight and transparency for most issues, in this case I believe it is the equivalent of placing a band-aid on a broken arm. It can't hurt but it surely will not cure the patient.

Given the wide range of industries and significant differences among plans today, however, it would be difficult to say that there is a single answer or a one-size-fits-all solution to the problems facing multiemployer plans. Although relatively minor tweaks of existing funding rules may be sufficient for some plans, there are a number of plans that will not survive without significant change in the current law. For these plans, there needs to be major reform and, frankly, a fundamental change in the way we approach pension plans. Clearly, we need to give trustees additional tools – tools that should cost the government nothing – to address the fundamental fact that revenues can never meet the obligations of these plans. Failure to act, as I mentioned earlier, will mean that these insolvent plans will end up at the PBGC and, under current law, the federal government will be obligated to fund benefits for participants of these plans.

While the focus of today's hearing is on assessing the challenges facing multiemployer plans, I would be remiss if I did not indicate that a number of stakeholders are attempting to identify potential solutions and developing legislative proposals. Without endorsing or commenting on the merits of any of these ideas, I thought it might be useful to summarize several of the legislative reform concepts that I am aware are being discussed:

- Increase PBGC premiums for multiemployer plans to strengthen the Agency's insurance program.

- Provide multiemployer plans a "fresh start" with respect to withdrawal liability, and essentially eliminate some or all of the current unfunded liability.

- Promote Mergers/Multiemployer Plan "Alliances."

- Allow for partitioning of certain participants and beneficiaries whose employer failed to pay its full withdrawal liability or are not contributing for its beneficiaries who are or will receive benefits from the plan.
- Permit reduction of vested benefits under certain limited circumstances.
- Change the PPA to avoid the imposition of employer contribution rates that are not sustainable.
- Change the bankruptcy laws regarding withdrawal liability.

Mr. Chairman, thank you for giving me the opportunity to testify this morning. I will be happy to answer any questions from the Subcommittee members.

Chairman ROE. Thank you, Mr. Ring.
Mr. Henderson?

STATEMENT OF SCOTT M. HENDERSON, VICE PRESIDENT & TREASURER, THE KROGER CO.

Mr. HENDERSON. Chairman Roe, Ranking Member Andrews, and members of the subcommittee, thank you for this opportunity to testify today. My name is Scott Henderson. I am vice president and treasurer of the Kroger Company. I have responsibility for Kroger's pension investments and I serve as a trustee for one of the 33 multiemployer pension plans in which Kroger participates.

Kroger is one of the largest retailers in the world, with total annual sales exceeding $90 billion. Kroger is also one of the largest unionized employers in the United States. Two-thirds of our 339,000 associates are represented by labor unions.

Kroger appreciates the funding discipline Congress imposed under the Pension Protection Act. We look forward to discussing ways to build upon those rules and ways Congress could make broader structural changes to the multiemployer system.

Mr. Chairman, there are three points I would like to make today. My first point is to note that multiemployer plans are funded only by those employers that participate in these plans. That is why we often stress that this is an employer issue.

It is sometimes believed that multiemployer plans are union pension plans and, hence, a union issue. While it is true that participants work under collective bargaining agreements, those who fund these plans are employers—businesses large and small—that employ millions of working Americans. As Congress considers legislation that would address multiemployer plans it is important to remember that a key objective is to help employers better manage their financial exposure to these plans.

My second point relates to Kroger's obligations to fund retirement benefits of workers and retirees who never worked for Kroger. Kroger has promised to fund the retirement benefits that our associates have earned and we have kept this promise. But Kroger, along with other employers that contribute to multiemployer plans, should not be forced to fund or guarantee the pension benefits of workers and retirees who never worked for us.

Under the current system, employers that remain in a multiemployer plan are financially responsible for the unpaid obligations of an employer that leaves the plan without funding its pension promises. Even if an employer pays everything it owes before leaving a plan the remaining employers are still financially responsible for the pension benefits of the exiting employer.

This shifting of liabilities to remaining contributing employers is referred to as the "last man standing rule." In those plans where the employer base has considerable declined the liabilities being absorbed by remaining employers are placing an unfair burden on these employers. In Kroger's case it is one of the main reasons why we could be required to contribute an additional $2.3 billion to fund pension benefits over the long term.

This leads to my final point. The current multiemployer rules are ill-suited for today's economy. The rules limit companies such as Kroger from taking steps that would strengthen these plans.

Despite these limitations Kroger has been innovative and forward thinking in our approach to multiemployer funding issues. Case in point: In 2011 we addressed some of our exposure by negotiating with our union counterparts to merge four multiemployer plans into a single new plan. Kroger contributed $650 million to accelerate funding of the merged plan, which increased its funded percentage from 73 percent to 91 percent. These efforts have long-term benefits for both our shareholders and our retirees.

While Kroger would like to be more proactive, the current rules limit our ability to take similar action with respect to other multiemployer plans. Admittedly, it is easy to identify problems with the current system. Coming up with workable and equitable ways to reform these rules, however, is difficult.

But here are four broad concepts that Congress could consider: One, continue the funding discipline imposed in 2006 by requiring bargaining parties and trustees to establish benefits based on available contribution levels and to eliminate current underfunding over a reasonable period of time. Two, give plans and bargaining parties more tools to address the current underfunding situation. Three, encourage the consolidation of multiemployer plans. And four, make plan information more accessible and transparent to contributing employers and participants.

In closing, employers compete for the talent we need by providing competitive compensation packages that include a reasonable retirement benefit for long service employees. We can best keep that commitment by remaining a financially strong and growing company.

Mr. Chairman, we look forward to working with this subcommittee and hope that you will view Kroger as a resource as Congress takes on these complicated issues. Thank you for the opportunity to testify and I look forward to answering your questions.

[The statement of Mr. Henderson follows:]

Prepared Statement of Scott Henderson, Treasurer and Vice President, the Kroger Co.

Thank you Chairman Roe, Ranking Member Andrews, and members of the Subcommittee for the opportunity to testify today. My name is Scott Henderson. I am the Vice President and Treasurer for The Kroger Co. ("Kroger"). I have responsibility for Kroger's pension investments, and I serve as a Trustee for one of the 33 multiemployer pension plans in which Kroger participates.

I. About the Kroger Co.

Kroger is one of the largest retailers in the world, operating 2,425 supermarkets, 789 convenience stores, 337 fine jewelry stores and 37 food processing facilities. We have operations in more than 35 states and sales of more than $90 billion. Kroger's net earnings margin is just over 1%, reflecting the highly competitive nature of the retail food industry.

Kroger ranks 23rd on the list of Fortune 100 companies and has been recognized by Forbes as the most generous company in America. We support numerous charities and more than 30,000 schools and grassroots organizations in the communities it serves. Kroger contributes food and funds equal to 160 million meals each year through more than 80 Feeding America food bank partners.

Kroger employs 339,000 associates. Approximately two-thirds of our associates are covered by roughly 300 collective bargaining agreements ("CBAs"), making Kroger one of the largest unionized employers in the United States. Kroger's primary union is the United Food and Commercial Workers International Union ("UFCW"), which represents almost 96% of our unionized workforce. Kroger's other unions include the Bakery, Confectionary, Tobacco, Grain Millers International Union ("BCTGM"), the International Brotherhood of Teamsters ("IBT"), the International Union of Operating Engineers ("IUOE"), the International Association of Machinists ("IAM"), the Service Employees International Union ("SEIU"), the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW"), and the National Conference of Fireman & Oilers ("NCFO").

Kroger contributes to 33 multiemployer defined benefit pension plans. In 10 of these plans, we account for 5% or more of the plan's total contributions. On average, Kroger contributes approximately $250 million per year to these plans. However, as described in greater detail below, Kroger could be required to contribute an additional $2.3 billion over the long-term (in addition to its contributions to cover current accruals) to fund pension benefits previously accrued under these plans.

II. What is a multiemployer defined benefit pension plan?

A. General Overview

A multiemployer defined benefit pension plan is a retirement plan to which more than one employer contributes. These plans are jointly managed by a board of trustees and funded pursuant to a CBA. Multiemployer plans were designed to serve as retirement vehicles for smaller employers and employers with mobile workforces, where employment patterns prevented employees from accruing adequate retirement benefits under traditional defined benefit pension plan sponsored by a single company. 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.

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. These plans are required to have equal employer and union representation on the governing board of trustees. In general, the bargaining parties (i.e., the employer and the union) negotiate the terms under which employer sponsors contribute to the multiemployer plan. The board of trustees determines the benefits to be provided by the plan, based on the level of plan contributions and actuarial assumptions. 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

Prior to the enactment of ERISA and the Multiemployer Pension Plan Amendments Act ("MPPAA"), an employer's obligation to a multiemployer plan was generally limited to the contribution obligation established in its CBA. In other words, a contributing employer's exposure to these plans was 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 it 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. MPPAA 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 pay its portion of the plan's unfunded liabilities—as is commonly the case with employers that become bankrupt or simply go out of business—responsibility for funding these unfunded liabilities is shifted to the remaining contributing employers. This is referred to as the "last-man standing" rule.

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 fund the benefits of the workers and retirees of the withdrawn employer. For example, assume an employer leaves a plan and pays $100 million in withdrawal liability (representing 100% of the amount it owes) but the plan suffers a 25% investment loss in the following year (as many plans did in 2008). Unless the plan experiences future "excess" investment returns that make up the loss, the "last-man standing" rule requires the remaining employers to make up the $25 million shortfall. In other words, the remaining employers bear the investment (and mortality) risk for benefits attributable to the workers and retirees of the employer that exited the plan (notwithstanding the fact that the employer paid its withdrawal liability).

D. Implications of Withdrawal Liability and the "Last-Man Standing" Rule

It is important to emphasize that the "last man standing" rule effectively 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, worked for a competitor of the employers, or who worked in a completely different industry than the employers. This shifting of risk to the remaining employers places an unfair burden on these employers, and depending on their financial condition, could threaten the continued viability of these companies.

Not surprisingly, the "last-man standing" rule has effectively discouraged the entry of new employers into these plans. New 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 new employer joined the plan.

E. Multiemployer Plans and the Pension Benefit Guaranty Corporation

Unlike single-employer defined benefit plans, the remaining employers in a multiemployer plan effectively guarantee plan benefits and the Pension Benefit Guaranty Corporation ("PBGC") plays a secondary role. Thus, unlike troubled single-employer defined benefit pension plans—where the PBGC receives the plan's assets, assumes the pension liabilities, and pays out benefits in the case of a distressed plan—in the case of a multiemployer plan, the PBGC loans money to the plan to pay benefits when the plan becomes insolvent. If this occurs, 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 normal retirement age.

III. Kroger's participation in multiemployer defined benefit plans

Like many retail food employers, Kroger began participating in multiemployer plans in 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 transformational changes made by ERISA and MPPAA.

Employers in the retail food industry operate distribution centers and food processing facilities and transport goods between these facilities and store locations. As a result of its transit operations, Kroger, like a number of food employers, became contributing employers to trucking industry multiemployer plans during the 1960s—at a time when trucking companies dominated participation in these plans. As a result of the dramatic consolidation in the trucking industry since the 1980s, some of these plans have ceased to be trucking plans, and food and beverage employers—like Kroger—now represent the majority of contributing employers.

The effects of the market consolidation in the retail food and trucking industry was keenly felt when the 2001 tech bubble burst. The combined effect of the market consolidation and those losses were exacerbated by the 2008 stock market crash. These market events, together with the dramatic consolidation that has occurred in the trucking and food industries and the structural problems inherent in the multiemployer rules that have discouraged new entrants into the plans, have led to the current funding concerns.

As described in our annual report, Kroger could be required to make future contributions of an additional $2.3 billion (in addition to its contributions to cover current accruals) to fund previously accrued pension benefits under the multiemployer plans in which it participates. Approximately 70% of this exposure is attributable to five of these plans. Importantly, a large portion of the $2.3 billion that Kroger could have to contribute is attributable to workers and retirees who never worked for Kroger.

IV. Kroger as an industry leader

A. Kroger's Proactive Actions to Address Underfunding

Kroger has been innovative and forward-thinking in its approach to multiemployer pension funding issues. For example, in response to funding concerns, union and Kroger trustees have worked together to address the funding of the 11 multiemployer plans with a Kroger trustee through a combination of contribution increases and benefit adjustments. In addition, Kroger is a long-time proponent of multiemployer funding reform including increased transparency. Since 2005, Kroger has made disclosures in its Annual Report with respect to its participation in multiemployer plans, including the theoretical estimate of its aggregated exposure to the underfunding in such multiemployer plans. Kroger supported the efforts of the Financial Accounting Standards Board for greater financial statement disclosure of multiemployer plan exposure.

In 2011, Kroger acted to address underfunding of four UFCW multiemployer plans, in which it was effectively the "last man standing," by negotiating the merger of these four plans into one, new plan. In this case, Kroger associates accounted for over 90% of the active participants in these plans (which covered almost 30% of Kroger's represented workforce). Together, the four plans had a current market value funded ratio of about 73% and over $900 million of unfunded liabilities, about $200 million of which was attributable to workers and retirees who had never worked for Kroger (i.e., amounts that were shifted to Kroger on account of the "last-man standing" rule).

As part of the merger, Kroger agreed to accelerate its share of funding to the plan and fund the liabilities attributable to workers and retirees of employers that previously exited the plans. Kroger also made a long-term commitment (until 2021) to a defined benefit plan that is designed to provide competitive retirement benefits for career Kroger associates covered by the new consolidated plan. In January, 2012, Kroger contributed $650 million to facilitate the merger of the four plans and to eliminate most of the current underfunding. As a result of this contribution, the new consolidated plan's current market value funded ratio rose from approximately 73% to 91%.

B. Structural Impediments Prevent Faster Funding of Underfunded Plans

Notwithstanding these efforts, Kroger still faces significant exposure from underfunded plans, as do hundreds of other employers. The current funding structure of multiemployer plans discourages companies like Kroger from addressing those plans in which Kroger is not the dominant contributing employer. This is because the current funding rules effectively prevent employers like Kroger from eliminating their share of plan underfunding, unless the other contributing employers can be persuaded to take similar action (or the plan attempts to address the issue through special withdrawal liability rules and contribution agreements).

For example, the actions Kroger took last year to address underfunding in four of its multiemployer plans would be difficult to replicate for plans in which Kroger is a significant, but not dominant, employer. Special contributions—such as the $650 million contribution Kroger made to the new consolidated plan—would improve the overall funding of the plan but would effectively benefit all contributing employers. However, unless other contributing employers can be persuaded to make special contributions, there is little reason for Kroger to unilaterally fund these plans. To illustrate, if Kroger is an equal participant in a multiemployer plan with four other employers, 80 cents of every additional dollar Kroger contributes towards the current underfunding would serve to reduce the overall plan liability of other contributing employers, and would actually increase Kroger's share of the plan's remaining unfunded benefits if Kroger were to withdraw.

In the case of the new consolidated plan, Kroger took action only after concluding that because it was already the "last man standing," the advantages of plan consolidation outweighed the cost of the additional contribution dollars. While special withdrawal liability rules and contribution agreements could be fashioned to encourage others contributors to follow Kroger's example, these steps would have to be voluntarily adopted by the plan trustees and cannot completely address all of the impediments to accelerated funding under current law. Unless other contributing employers can be persuaded to make a similar contribution, the current system effectively discourages employers from committing significant dollars to address underfunding in these plans.

V. Suggested concepts Congress may consider

A. Continue Funding Discipline Inherent in PPA Rules

The Pension Protection Act of 2006 ("PPA") was designed to impose discipline on pension funds and bargaining parties to ensure that the bargaining parties and plan trustees acted responsibly and established reasonable benefit and contribution levels. The PPA also provided needed transparency for multiemployer plans. Prior to PPA, even large employers like Kroger had difficulty securing information about the plans to which they were contributing. Although the PPA included rules requiring funding discipline and additional transparency, it did not change the basic structure of the multiemployer pension plan rules (e.g., withdrawal liability or the "last-man standing" rule).

The PPA rules applicable to multiemployer pension plans are scheduled to sunset at the end of 2014. Congress should act to continue the funding discipline imposed by the PPA by requiring bargaining parties and plan trustees to establish benefits based on available contribution levels, and to eliminate current underfunding over a reasonable period of time. However, the tools currently available to plan trustees, employers and unions wishing to responsibly address plan underfunding issues have proven to be insufficient. The parties will need greater flexibility in order to develop and implement the necessary measures to address the underfunding issue in a mutually satisfactory manner.

B. Greater Flexibility

Multiemployer plans, labor unions and employers are working together to develop policy recommendations that would address the current underfunding of multiemployer plans. Because such a substantial proportion of our workforce relies on these plans to secure their retirement, and because Kroger has had to devote significant resources to fund the benefits of other workers in these plans, Kroger is deeply invested in finding a solution to these challenges. Kroger is committed to being part of the problem-solving process.

What is clear is that multiemployer plans and bargaining parties must be provided with greater flexibility to address the underfunding situation. Given the unique circumstances of each plan, the parties should be afforded as much flexibility as possible. For example, the fortunes of some plans could be improved by encouraging consolidation as a means of promoting greater efficiencies and reducing expenses.

Plan trustees, unions and employers should be encouraged to take responsible steps to place underfunded plans on solid footing. The parties need support and flexibility so they can determine the best course of action to improve their funding situation. There is no easy solution to this problem, and the way forward is unclear. But solutions exist, and by working together, we can secure the retirement benefits our employees are counting on.

VI. Conclusion

Kroger applauds this Subcommittee for its leadership in holding this hearing and beginning the process 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, the multiemployer plans and labor on a solution that will ensure the continued viability of the multiemployer system.

Chairman ROE. I thank the panel. As I said, you all laid out the problem very well.

It is the solution that is going to be the problem, as you said, Mr. Henderson, and I want to tell you, you have my full attention, and that we will—that you have my promise to work with you all as best we can to help find some solutions here.

So let me start by saying that I started out my career in a defined benefit program, and we changed to defined contribution program 25 years ago because we saw we couldn't fund it. And I served on the pension committee in my practice, which has 100 providers and 450 employees. So I do have some experience there.

I was also mayor of our local city, and what I noticed was that we were—when I started in 2003 as a city commissioner we were paying 12 percent of payroll in retirement, and when I left in 2008 it was up to 19 percent to come to Congress. And Ms. McReynolds has laid it out, and I want to start—we realized we could not continue that. The tax—future obligation to taxpayers was unsustainable.

So now our city—actually two cities in my district—have changed to a defined contribution plan and capped those liabilities. So that may be something you have to look forward. I realize these are contractually done in a—in union contracts, and you have to—obviously to sustain those.

Ms. McReynolds, I was fascinated by your comments and how much—$10.17 an hour in pension costs and $17,000—that is an astonishing amount of money, and quite frankly, it is to make up a previous liability. If you put $17,000 per employee they would—everybody in your business would retire multiple wealthy.

So how do we—I am going to start with you and then, Mr. Henderson, I want you to chime in, because you are out there trying right now to run your businesses and not go broke. So I am going to start with you. What suggestions do you have? And I heard Mr. Henderson's four ways.

Ms. MCREYNOLDS. Well, I think, you know, you heard a variety of comments, you know, across the witnesses that are testifying here today, Mr. Chairman, and, you know, I appreciate the perspective of others and other plans. You know, our specific issues relate to the trucking industry, and, you know, really what you had in 1980 when these rules came into place—you know, the deregulation of the industry and then the ERISA rules that caused us to have responsibility for employees who never worked for us, you know, the industry was much different.

Over time we have had the failure of a number of companies that were former contributors to these plans, and the current situation is that we are acting as the PBGC for the trucking industry. Our primary solution, you know, needs to involve eliminating an obligation for orphaned retirees who never worked for our company.

Chairman ROE. What percent of your—you may have said it; you had a lot—what percent of your contributions are for orphaned employees?

Ms. MCREYNOLDS. We believe that it is between 40 and 50 percent. We know 50 percent of our contributions go to Central States. We have had factual information come from them that suggests that 50 percent of our payments are for orphaned retirees. The other funds have not given us the direct facts, but we believe across the board it is similar, so I would say between 40 and 50 percent of what we pay——

Chairman ROE. Significant amount.

Ms. MCREYNOLDS [continuing]. A significant amount. It is north of $60 million a year for people who never worked for our company. So our best solution is going to involve a solution for those retirees of defunct employers——

Chairman ROE. So here your business is. You are trying to compete in this market——

Ms. MCREYNOLDS. Right.

Chairman ROE [continuing]. With a huge disadvantage financially to try to go out and get a contract.

Ms. MCREYNOLDS. That is right.

Chairman ROE. Mr. Henderson, I would like you to comment.

Mr. HENDERSON. Well, to the last point, we also compete in a highly competitive industry and many of the new entrants in our industry are not—do not work under collective bargaining agreements, which adds additional pressure to our business.

I guess the best way for me to answer that question is probably from my experience as a trustee on these multiemployer plans. First comment I would make is that I appreciated as a trustee the provisions of the Pension Protection Act. When a plan goes in the red zone status and that clock starts running it puts the necessary pressure on trustees to collectively cooperate and come up with solutions, which I think we have done.

And in the case that we are talking about here it is clear that the last man standing, or the implication of orphans, is a major problem in these plans, and in fact, in our case the four plans that we consolidated last—well, January 1st of this year, they collectively had approximately $3.5 billion worth of liability, and almost $1 billion of that liability came from orphans in those plans.

Chairman ROE. My time is expired.

I am going to ask a question later, Mr. Sander, why you believe that plan—your plan is financially solvent. You can't answer it right now because my time is expired, but I am going to come back.

Mr. Andrews?

Mr. ANDREWS. Thank you.

This is a refreshing panel because not only did you lay out the problem but many of you started to talk about the solution. I would like to follow up on that.

Do we have a consensus here this morning that court decisions or law that would let companies walk away from their liability in bankruptcy—that is, discharge those liabilities in bankruptcies—is undesirable and should not be the law? Does everybody agree with that?

Mr. SANDER. Think so.

Mr. ANDREWS. You should not be able to discharge these departure liabilities in bankruptcy. Does anybody disagree with that?

Okay. That doesn't make the present problem any better but at least it keeps it from getting a lot worse. It would be catastrophically bad, in my opinion, if that happened.

Number two: Mr. Shapiro outlined that we had 20 percent of the plans in the green zone I guess the beginning of 2009. That has migrated to about over 60. So something is working.

Does everybody agree at least thematically that we should take the incentives in the 2006 law that helped make that happen and reconsider those and maybe strengthen them some? Everybody agree with that, at least conceptually? Okay.

Here is the hard one: I think there are some plans for whom those incentives don't work because they have a huge cash flow problem, and I think really that is what Ms. McReynolds is talking about. We could say that, you know, you have 2 years to get from red to yellow and 2 years to get from yellow to green and I think that might put your trucking company out of business, and it would hurt Krogers big time.

So what we don't want to do is kill the goose that is laying the golden egg. So I think there are some plans for which there is a cash flow problem here that the present contributors are just not going to be able to handle on their own. Does everybody agree with that presumption?

Ms. MCREYNOLDS. Yes.

Mr. ANDREWS. Okay.

Would it help solve that cash flow problem if there were a credit facility available that would help the fund—in effect, literally put cash into the fund, borrow it, put it in, and amortize that cash over the future in order to reduce present contributions? Would that be a good thing?

Yes. I don't think your mike is——

Ms. MCREYNOLDS. Yes. I would like to speak to that.

The way that additional funding could help is if it does result in reduced contribution levels for employers.

Mr. ANDREWS. Let's say that——

Ms. MCREYNOLDS. I mean, you have to have the——

Mr. ANDREWS. Let's say that we wrote a rule that said that is the only way you could borrow the money, that the only way that you could borrow it would be if the proceeds went exclusively to buy down the contribution for present employees—or employers, rather. Would that work?

Ms. MCREYNOLDS. Again, if it resulted in us no longer having to bear the burden of employees that never worked for us——

Mr. ANDREWS. What would a——

Ms. MCREYNOLDS [continuing]. That would be a good——

Mr. ANDREWS. You have estimated that as maybe 40 percent of your contributions?

Ms. MCREYNOLDS. Yes.

Mr. ANDREWS. Let's say purely hypothetically we were able to knock that 40 percent down to 10 by taking some of the pressure off in cash flow. What would that do for your trucking company?

Ms. MCREYNOLDS. That would be a substantial improvement from where we are today.

Mr. ANDREWS. What would that do for Krogers?

Mr. HENDERSON. Well, in our case—the best example I suppose I can give is the consolidation that we achieved in late 2011. In the four plans that we consolidated those plans—we were the overwhelming contributor. We were, in fact, the last man standing.

Under the rules of PPA all those plans were in the red zone, so we had enacted—the trustees had enacted certified rehabilitation plans.

Mr. ANDREWS. Right.

Mr. HENDERSON. And if you added them all together Kroger was, over the course of 7, 8, 9 years, largely responsible for funding all of the unfunded liability. Realizing we had that liability and realizing that as one of the last remaining conventional retailers—grocery retailers in the United States, given our strong balance sheet, we actually concluded that we could go to the regular capital markets and borrow money at a rate that was very favorable to us.

Mr. ANDREWS. So I think we have a sort of three-tier issue here. We have got some plans like the ones that you are in, Mr. Henderson, where the capital markets, of their own volition, might put up some of that money. There would be a second tier where they wouldn't but perhaps consideration of a—some guarantee would draw them into that marketplace.

And there is a third level where they wouldn't at all because they are in such trouble, and that suggests that we at least consider some kind of publicly provided credit facility that might get you out from under this. And I would just outline this as an analytical way of looking at this.

I would also say this to you: I don't think anybody should have—any plan should have access to either the guaranty facility or the direct loan facility unless it makes the kind of reforms that you are all talking about here, unless it maxes out internally on what it can do. But I think it might be a way to go after that group that is the—that is really hurting and find a way to get them over the hump, and I would be interested in exploring that idea with you.

Thank you.

Chairman ROE. I thank the gentleman for yielding.

Mr. Rokita?

Mr. ROKITA. Thank you, Mr. Chairman. I would like to yield as much time as you would like to consume to you, sir, so you can follow up your questioning.

Chairman ROE. Mr. Sander, obviously your—the plan you represent is relatively healthy, and obviously what would make all these plans relatively healthier would be about a 10 or a 15 percent improvement in the stock market, and interest rates changing would help a lot.

But what is the difference between yours—I think I understand it, but for the record I want you to explain the difference between what Ms. McReynolds is experiencing and maybe Mr. Henderson, and what you have experienced.

Mr. SANDER. Sure. First of all, I would like to thank Ms. McReynolds for the footnote in her testimony which referenced our plan and was very complimentary about the funding levels that our trustees have maintained.

I really don't have the experience or the knowledge to speak to other plans other than the Western Conference, but I can give you an idea about, having been in this position since 1992, the steps that our trustees have taken. Maintaining strong funding has always been the guiding principle of the Western Conference Plan, and the trustees have always, if you will, lived within their means when it came to using reasonable actuarial assumptions and investments assumptions and then structuring the plan of benefits so that if we received reasonable investment returns they were not going to be creating unfunded liability for employers.

I think the other thing that is so critical is our trustees—labor and management, working together—have always made hard decisions about the structure of the plan when it was necessary. The dot-com bust, frankly, was a really difficult time for plans. Not as difficult as 2008, but difficult. And out trustees, actually at the union's suggestion—union trustees' suggestion—met and cut the accrual rate for future benefits, the earnings formula, proactively so that the plan could return back to full funding as quickly as possible.

So that level of cooperation has always been a real trademark of the Western Conference Plan.

We are fortunate to have a diversity of employer industries so that if, for instance, construction falls on hard times for a year or 2 we will find another industry—food—that is very steady or is growing, and this has really provided a cushion for us and it is a real strength for our plan, and other plans lack it. And we have been very open with our employers; we are very open with the local unions. We are very, very transparent.

We have always taken the position that we want to be the plan of choice. You mentioned, Mr. Chairman, your own personal experience. We have a lot of small employers in our plan. We have gone out, met with these employers at their request, we have said, "Look, this defined benefit formula is the best place for your employees to be. If you bargain this rate of contribution, we stay well funded, then that is all we are going to be asking of you. Pay it accurately, pay it timely, and we will take care, on the trustee end, of producing a good family of benefits for your employees." And that has really worked successfully for us.

Chairman ROE. I think one of the things that has happened is when the actuaries have assumed a 7 percent accrual rate, and that is just not—certainly in the last 10 to 12 years it hasn't been. The 1990s, yes, but the last 10 or 12 years—now, Mr. Shapiro pointed out, I think, the perfect storm, when the—the 1990s, when things were going along just great, when you go over 100 percent funded then the employer was punished if they put more in, and that created a perfect storm where you couldn't get it—there are going to be peaks and valleys and we haven't rejected the economic cycle. It will go up again; it will go down again. So we have to be able to get through those times, and I think that is something I am going to look strongly at is to allow those deductibilities to go to be overfunded for a little while. I mean, some plans went years without putting any money in there.

I am going to yield back to Mr. Rokita. I didn't mean to use all of his time.

Mr. ROKITA. Thank you, Mr. Chairman.

Appreciate everyone's testimony.

Mr. Henderson, I particularly appreciate you being here. My father-in-law was a Kroger union truck driver for 30-some years, although I think I botched that number exactly. So really appreciate—I learned a lot through him and I learned a lot through all your testimony here today.

If I can get this question in really quick to Mr. Ring, however: Your testimony painted a sober picture of the situation facing PBGC. Program has a deficit of $2.8 billion and you say it is reasonably possible that it will take an additional $23 billion in obligations to multiemployer plan participants.

Can you explain how and when PBGC provides financial assistance to insolvent plans?

Mr. RING. Yes. As a plan becomes insolvent it is actually a pretty orderly transition. Notice is provided to the participants, benefits are cut to what is known as the PBGC minimum, and the plan then starts paying benefits at a lower rate, so there is an automatic benefit reduction. And then the plan trustees petition for essentially what the law refers to as a loan from the PBGC, and the PBGC picks up payment for all those pension benefits going forward.

Mr. ROKITA. Thank you. Time is out.

Chairman ROE. I thank—Mr. Rokita.

Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. Shapiro, can you discuss how more investment in international markets would affect the long-term stability of multiemployer pension plans. There has been discussion of broadening out the investments. Have you done any looking at that or how that may affect it? We are living in a global economy. Does that pose too many dangers or might it have some opportunities?

Mr. SHAPIRO. That question actually has come up a fair bit in our Retirement Security Review Commission. One of the steps that we took early on in that process was to invite several investment experts from various firms to talk to us about what they see happening in the equity markets in the coming decades with the particular question that we put to them, which is, many of our funds are assuming or looking forward to, in their budgets, 7 or 7.5 percent return and we wanted them to tell us if they felt that that was reasonable going forward. Certainly historically it has been very reasonable over the long term, but that is not the same question. Is it reasonable going forward?

And all of them, you know, gave us the answer. They felt that it was but they all caveated the answer with some qualifications, as investment people tend to do, and what they said was that in order to achieve that going forward you really need to be looking, you know, more globally than you have been historically, that there is a need to diversify assets outside of traditional U.S. equity markets and to look for more innovative strategies that involve foreign countries and also innovative strategies domestically.

So it is certainly our belief that if our plans are going to achieve those levels of return going forward that it would help them to embrace a more global approach to investing. And plans have already been doing that. If you look back over the past 5 or 10 years, multiemployer plans have absolutely been gradually increasing their investments internationally. I think that is a good trend and one that I see continuing.

Mr. KILDEE. You at the table down there, you have an enormous responsibility. We have an enormous responsibility. I have been on this subcommittee for 36 years and I am leaving this subcommittee—leaving Congress—at the end of this year. And how well or not well have we done?

What are some of the good things—what are some of——

Mr. ANDREWS. Has the gentleman's time expired? I worry about that answer.

Mr. KILDEE. They can answer my question, can't they?

Anything good that you say we—yes, Mr. Shapiro?

Mr. SHAPIRO. I think PPA was in large part a very good thing. The Pension Protection Act—I wish I could remember who said this, because I quote it all the time and I feel like I am not giving proper credit, but in the multiemployer world the Pension Protection Act, in many ways, legislated good practice. It didn't really create new ideas that plans should have been doing—we felt that plans always should have a long-term focus—but under the rules prior to PPA there was effectively an option for plans to kind of look very short-term at their picture and not look ahead.

PPA put in place rules that said, "You can't do that anymore. You must look forward." And that, I think, is the strongest thing about PPA, and I regard that as being a tremendous improvement to our system.

Mr. KILDEE. Well you give me some comfort, then, as I leave Congress. We did do something well there. Thank you.

Mr. SANDER. I could speak to that, too. Thirty-six years brings you almost back to the passage of ERISA itself, and Congress has taken a focus on retirement security and recognized it as a very important objective. The PPA—I agree with Mr. Shapiro—was a necessary and a good framework to carry us forward into this century and the needs.

One of the real privileges I get in this job is to meet with some of our plan participants who are—who have been in this plan and receiving benefits sometimes for decades. We have over a dozen that are 100 years old and older, and I—we have a large group that are in the 90s and heading toward that 100 year old.

When you meet with these folks again the universal comments that we get is they are grateful for the security of the plan, they are grateful for the structure, they are grateful for the fact that the plans are built in a way to provide real retirement security. And all of this, of course, on the defined benefit end comes from the work of ERISA and from the subsequent legislation, and we certainly see it every day in our work.

Mr. RING. I don't want to be—if you don't mind—I don't want to be a downer on that, but the one area where I think Congress, and frankly, the industry has not addressed the problem is really dealing with these particular industries where the demographics have left the plans with a substantial number of what has been referred to as orphans. And it is an issue that really needs to be addressed. There are many funds that are—have a diverse population, many employers, but there are a number of funds that don't, and the current employers are saddled with the burden of really, as Ms. McReynolds says, being the PBGC for the rest of the industry.

Mr. KILDEE. Thank you very much.

Thank you, Mr. Chairman.

Chairman ROE. I thank the gentleman for yielding and for his 36 years of service.

Dr. Bucshon?

Mr. BUCSHON. Thank you, Mr. Chairman.

Ms. McReynolds, your testimony noted several quotes from the financial analysts who are concerned about ABF's exposure to multiemployer plans. A recent Credit Suisse analysis painted a stark picture for these plans.

Regardless of whether you agree with the report or not, is it fair to say that financial analysts and eventually the financial markets take these liabilities into account when looking at your stock prices, determining stock prices?

Ms. MCREYNOLDS. Absolutely fair. It is the case that they do. You know, there are times when it is a higher profile issue, and obviously, you know, upon the heels of the Wall Street Journal article and, you know, the time after that, you know, there are, you know, many more questions about it, but one thing that it does in terms of our company—I meet with shareholders often—is it is a complexity. It is a nonsensical result that we have that we have to pay for people who never worked for us, and that it is a tremendous difficulty for someone who is trying to understand the direction of the company, you know, what impact that can have on the company going forward.

And I believe our company has done a tremendous job over the years in addressing that, but going forward, an increasing burden there, or a continuing burden there, is going to, you know, have an impact on our company that I think others in the industry and the shippers don't want it to have because our company is a high-quality carrier and wants to remain that.

Mr. BUCSHON. Mr. Henderson, are most of the people in the—your competitors—do they have defined contribution plans or defined benefit plans? I mean, what are the new people getting into this type—I am assuming there are always businesses coming into and out of your industry. What is the trend? Because it seems to me nationally the trend is defined contribution plans. Is that true?

Mr. HENDERSON. Yes. That would be the trend among newer entrants into our industry.

Mr. BUCSHON. I yield back.

Chairman ROE. I thank the gentleman for yielding.

Mrs. McCarthy?

Mrs. MCCARTHY. Thank you.

And I appreciate everybody's testimony, and it is very refreshing to have everybody at the table agreeing that we need to look at something. I actually had voted for the—in 2006, the passage of the Pension Protection Act. One of the things, unfortunately, that we couldn't get into it was making it more flexible that if you were having good years to be able to put more money into it.

Most of us kind of look that way when we are saving for our future, "Hey, it is a good month. I can put another $50 away," or something like that. I hope that we are able to look at that, because I do believe that we will come back and we will see, possibly—interest rates going back to 7 to 8 percent, but that is going to be down the road, so it is unrealistic for anybody to expect. I am hoping that I get 4 to 4.5, to be very honest with you, especially at my age.

One question I would like to ask, because I have a curiosity—and I know you all—and I am not talking about what everybody gets, but the average retiree that retires today, what would their average pension be when they retire, if they retire at 65?

Mr. Shapiro?

Mr. SHAPIRO. I brought with me my book just in case such a question might come up. We have some survey data that I don't have memorized but I can certainly reference for you.

The NCCMP started about 3 years ago a survey that we send to all multiemployer plans asking them some very basic questions about what is going on in their plan and we compile the results annually in a report. The first year we did this was in 2009. We got a spectacular response that year. We had nearly 400 plans respond out of a universe of about 1,400 plans, which exceeded our wildest expectations.

And if you give me just a moment to find the right page I will quote the number for you. From that report the median benefit paid to a multiemployer plan participant from those 400 plans, which we believe is representative of the whole universe, was approximately $900 per month.

Mrs. MCCARTHY. $900 a month.

Mr. SHAPIRO. $900. So the point there being that by and large, you know, these plans are paying very modest benefits to people; they are not exorbitant.

Another measure to look at is, you know, obviously a large portion of the retiree population is older, retired many decades ago, so we also asked the question, “What is the average benefit you are paying to someone who retired in the past year,” to get a better sense of current benefit levels. And there the answer was approximately $1,400 per month. So certainly more of a reasonable amount, but by no means exorbitant.

And with that—Mike, do you have some numbers——

Mr. SANDER. Yes. I speak specifically to the——

Mrs. MCCARTHY. Mr. Sander, I know you are going to answer that question, but I also want to say that I am very impressed on the Western Conference Plan. You seem very realistic.

What I am asking is, when you—let’s go back to 2008. What were you basically projecting as a possible interest rate? Were you looking at the 7 or 8 percent or were you——

Mr. SANDER. In 2008?

Mrs. MCCARTHY. Yes.

Mr. SANDER. Seven percent has been our assumption for a period of time.

Mrs. MCCARTHY. Okay. Go ahead and, you can finish the other part of the question.

Mr. SANDER. I was just going to mention that from our plan’s standpoint it—our average benefit for a normal retiree at age 65—and it does range—ranges because of the contribution rate, which can be, obviously, a factor in driving it——

Mrs. MCCARTHY. Sure.

Mr. SANDER [continuing]. Is closer to $1,200 to $1,300 a month. We have some that are quite a bit higher due to higher contribution rates and longer lengths of service.

We also have a food processing component, which has been a history in our plan for—almost since its inception, where the contribution rate is very low but individuals still receive a regular monthly benefit, albeit lower, out of that industry, which is very valuable to them.

Mrs. MCCARTHY. And the other question I would like to ask is, obviously there are certain—depending on how you are working—we work in Congress—I worked as a nurse for over 32 years before I came here; I probably wouldn’t be working as a nurse at this particular time in my life because of my age, but being that you work with unions, because unions are in all your plans, from what I understand, and if they are construction or whatever—physical hard work—what is the average age of those people actually going in to look for retirement?

Mr. SANDER. To our plan specifically, again, the age is about 61 years is the average retirement age—the people draw their benefit.

Mrs. MCCARTHY. Because I am only thinking of my two kid brothers who are about ready—one has retired and he is 6 years younger than me, and the other one will probably retire by at least 62, only because physically their legs are gone, their hips are gone, their knees are gone. Both of them just had their knees done in the last 2 weeks. So that is a consideration, too, isn’t it, as far as having a defined—as far as having to make sure that they have some sort of insurance before they can start collecting, going on Medicare, going into—collecting Social Security, even?

Mr. RING. In many of the transportation funds—or plans, the retirement age—eligibility for retirement age is much lower, and you have people retiring, you know, early 50s, sometimes earlier. And that is largely because it is a very, very physically demanding job, but that means somebody is going to be receiving a pension for the next 40, 50 years.

Mrs. MCCARTHY. Police officers, too.

Mr. RING. Correct.

Mrs. MCCARTHY. It is mandatory that they retire at a much earlier age than most people do. But you are right, these are things to be considered, but I definitely am interested in the Western Conference Plan to look at as a model and the flexibility that obviously we are going to need.

Thank you. I yield back my balance of my time.

Chairman ROE. I thank you for yielding.

And, Ms. Noem?

Mrs. NOEM. Thank you, Mr. Chairman.

And my question would be for Mr. Sander. I know that you are tasked with the responsibility of not only representing the employees and the employer trustees, but also the labor and union trustees, as well, when you make management decisions, and I was wondering if you would briefly describe that for us, how you strike that balance in making those decisions about the plan, how you represent management and labor at the same time, and also how you represent the plan's participants?

Mr. SANDER. One of the privileges of working on this plan for a long as I have is to watch this board of trustees in operation. As I mentioned before the funding integrity of the plan has always been job one, principle one for this board. And as a result of that I think it has really engendered a pride in what this plan has accomplished over the years and what it is accomplishing.

So we have an employer chairman, who represents the management side of the board; we have a union chairman that represents the union side. They work together every day in trying to strike balance in the various interests of moving the plan forward.

And then we have a variety of committees. We have a very intensive committee structure that has delegated authorities from the board to investment committee, plan design committee.

These types of committees work together. They are equal number of employer and union trustees on the committee. They make recommendations up to the full board. And this has worked very effectively for us.

As far as the participant end, I cannot remember a time when some decision was in front of this board and the question was raised, "Remember, we act in the best interest of the participants. Let's be sure we have got that covered first before we go to the secondary considerations." So that really has always been the touchstone for this plan.

Mrs. NOEM. Okay. Well, thank you. Just as a quick follow up, then, having access to plan financial information is important, but also not only to multiemployer plan participants but also to employers who are deciding whether to participate in that plan. So what steps—what action steps does the Western Conference Plan—have you taken to ensure that its financial information is transparent, that it is open and accessible to both the employees and the participants that are effected?

Mr. SANDER. We have taken a number of steps. Transparency is something we feel very strongly about. As I mentioned before, we always feel the more you look at this plan—employer, union, participant—the better you are going to like it.

So our main source of disseminating information right now is our Web site, which receives several thousand hits a month. And we have posted on there the last 3 or 4 years of audited financial statements, actuarial reports, Form 5500s, and contact information if the interested party wants to inquire further.

We also put our annual funding notices and any other information which becomes available. It is on there the next day, as soon as it is published by the appropriate party.

We also do a variety of meetings. When an employer is—fact, I just offered Ms. McReynolds a meeting in Fort Smith, Arkansas. We are ready to come out and lay out what this plan is about—our objectives, our history, how our funding is structured—meet with the employer community, as we do with the union community and participants, to be sure they understand what is going on with the plan and their confidence in the plan can remain strong.

Mrs. NOEM. Well, thank you. I appreciate that.

Mr. Chairman, I yield back.

Chairman ROE. I am going to take a prerogative of having a—if anyone has anymore questions—a second round of questions, this is such an important issue.

And you have taken your time to come so I want to be sure that we get all—extract all the information we can.

I certainly understand this problem from a personal standpoint. I had a father that was a factory worker who at 50 his job went offshore—went to Mexico. He actually ended up, after 30 years, after World War II with this plan, with essentially no pension plan. So I know what it is like as a family to be left out in the cold like that, and when you make a promise to people you ought to keep your promise.

But the other side of that, and also, Mr. Sander, one of the things I found being on our pension committee at work, I was very interested in it doing well because that is how I was going to retire. So I had a vested interest in that plan doing well, as I am sure you have a vested interest in your plan doing well.

I think the problems that I can see—and I think—the ranking member and I have been talking about some solutions up here, is the commitment to a defined benefit. That is a safety net, and certainly these payments are not overly generous. They are to keep you out of poverty when you retire and you worked somewhere for many years.

I know I felt an obligation to my employees to provide them retirement. If you work for me for 30 years I want you to be able to retire and have a comfortable retirement in your future. I felt a moral responsibility to do that. So we do agree with we want to make sure we keep those promises.

It looks like some of the problems is with the orphan employees you have got more people now receiving benefits than are paying in, as Ms. McReynolds clearly pointed out. I think the rate of return assumptions ought to be actuarially looked at, not so generous.

I think that you have got the remaining companies, like Ms. McReynolds or maybe less so with Kroger, but they can't stay competitive under this—there is no way you can when—we always hear about health care costs exceeding—or forcing us not to be competitive, well this is exceeding anybody's health care costs, what you pointed out. So I think the downturn in the economy—I do believe the economy will turn around and get better. I think this will look better, hopefully, in 2 or 3 years. And right now no government agency really has a way to do anything. Actually, the law actually hurt in the 1990s, it actually caused part of this problem.

And I think another problem is the PBGC—I mean, we are talking about $9 per participant per year with 10 million people, I mean, that is two lattes at the airport at Starbucks, so that is definitely got to be looked at.

Have I pretty much touched on all the problems? I am going to open it up now for you all to give us the solution.

So if somebody—I don't see anybody jumping out of their chair, but——

Mr. SHAPIRO. I will talk——

Chairman ROE. Go ahead, Mr. Shapiro.

Mr. SHAPIRO. You know, I definitely don't have the solution at this point, so I can't truly answer your question as it was asked, but I can certainly give some thoughts on the directions that we have been thinking. You know, our commission really has been asking the exact same questions that you just asked for the past 8 or 9 months. We don't have the answers yet but we are working very close to a final proposal.

But in terms of, you know, you mentioned earlier defined benefit plans and defined contribution plans as being the two ways to go, and in today's environment that is correct. And I think it is pretty clear to us at this point that defined benefit plans are posing a problem for employers, as we have seen here and thousands more, where the risks that they are taking in these plans is more than they can deal with.

From our perspective, defined contribution plans have a different problem, which is that there really is no guarantee of—or not even anything close to a guarantee of lifetime income for participants. And my personal feeling is that the recent move we have seen to combined contribution plans in the past decades is setting us up for a real problem of an entire generation of completely broke 75-year-olds, and that troubles me.

But if you look at, you know, defined benefit plans on one side and defined contribution on the other, there is an ocean of space that exists between those two plans but you can combine features of both in such a way that you, you know, really mitigate and reduce the risk to the employers and at the same time, you know, provide some real income security to participants. You know, the whole focus of our commission has been exploring that space and trying to find how we can find ways to really capture the best features of both worlds and put it into a model that, as of today, doesn't exist, but we hope will exist when we are done. So that is my quick perspectives on where we can go.

Chairman ROE. Thank you.

I yield to the ranking member.

Mr. ANDREWS. Thank you.

I do think we have had discussion about solutions this morning, led by the chairman and certainly helped by the panel, and I wanted to explore two of the success stories I think that we heard.

Mr. Sander, after the crash of 2008 your fund went down to what percentage funded?

Mr. SANDER. Mr. Chairman, our PPA percentage was at 85 percent in 2009, which was the lowest point.

Mr. ANDREWS. Okay. And where are you now?

Mr. SANDER. 90.3.

Mr. ANDREWS. And what changes have you made to get that progress?

Mr. SANDER. Well the trustees—actually, after the dot-com bust the trustees took the action that I mentioned earlier and they were able to improve funding to the point where they were able to actually improve benefits on temporary basis in 2006 and 2007. Those temporary improvements were rolled back beginning in 2009 to, again, to balance the books, if you will.

Trustees have also taken action with the investment portfolio to take a look at some alternative forms of investment. We are looking at timberlands and farmland, things which may not return immediately but over the longer term are exceptional opportunities for long-term growth. So——

Mr. ANDREWS. And these really—I know the decisions were made in the context of the PPA, but you weren't really under any gun or deadline. These were voluntary decisions that were consistent with your fiduciary duty, right?

Mr. SANDER. That is correct. The trustees, I think, felt that they needed to take some steps in order to get back to their historic funding level goals.

Mr. ANDREWS. Now, Mr. Henderson, you have mentioned consolidation as one of the ways—and Kroger certainly put its money where its ideas were by in effect prefunding some of the benefits of that consolidation. You should be commended for that.

What other reforms did Kroger participate in, in some of those multiple multi-plans that you are in. What worked?

Mr. HENDERSON. The situation we found ourselves in was that we had become the dominant contributing employer to these four plans, and they ranged anywhere from a $50 million plan, the administrative expenses of which were eating up about 25 cents of every contribution dollar simply because it was a small plan, all the way to a $2 billion plan. And when we looked at the underlying investments in those plans we discovered that there were roughly 100 individual asset allocations that were managing—I hate to use the word, but only about $2.5 billion worth of assets.

And so working with labor and coming up with the solution to this issue we were able to consolidate the plans. The benefits of that should be significantly lower administrative expenses to run the plan, lower asset management fees—when you make larger asset allocations you——

Mr. ANDREWS. Better net returns.

Mr. HENDERSON [continuing]. Do enjoy lower fees.

Mr. ANDREWS. Yes.

Mr. HENDERSON. And then I guess it goes without saying that when you allocate significantly larger numbers to folks like FIMCO you do get a higher level of attention to your account.

Mr. ANDREWS. FIMCO would certainly agree with that.

Mr. HENDERSON. They would agree with that. And so we thought there were a number of advantages to the plan, and also, with interest rate structures being what they are, we were able to take advantage of capital markets——

Mr. ANDREWS. Now, what has happened to the funding levels of some of those plans? Where did they start before these reforms and where are they now?

Mr. HENDERSON. Before the consolidation all four of them were in the red zone and had enacted certified rehabilitation plans. After the contribution that we made the combined plan is now 91 percent funded. And we were able to actually improve and secure the benefits of those participants.

Mr. ANDREWS. See I think the stories we just heard give us some guiding principles for what we ought to do here. This was a combination of subtle and gentle incentives to make very hard decisions about benefits and consolidation. I am sure those were not easy things to do. Coupled with an infusion of cash—in this case from Krogers—I am not sure we are going to be fortunate enough to have a Kroger in every one of those situations.

And where we are not I think we need to explore a rational and fair situation where we can either entice private capital to play that role in a balanced and fair way or perhaps, under certain circumstances, provide for more direct loan functions that would help others. Because what I am hearing from Ms. McReynolds is that even if the fund she is involved in made all of those reforms the fact that there just aren't enough men and women left standing that are prosperous to solve the problem. Is that a fair characterization?

Ms. MCREYNOLDS. That is absolutely fair.

Mr. ANDREWS. Yes. And——

Ms. MCREYNOLDS. Well, and, you know, one of the things that hasn't been mentioned yet that I am very concerned about—I guess it has been mentioned on the positive side by Mr. Sander—is, you know, whenever I meet with our employees I have to interact with them, not necessarily respond because I am not totally responsible for, you know, the red zone funds, but they are aware of the troubled funds.

$80 million a year is the number we contribute to red zone funds. And I have to be able to look back and our employees, you know, who are concerned about whether they are going to have a retirement benefit and we are contributing such tremendous dollars to funds that need to be improved, and I think your point is right——

Mr. ANDREWS. I realize my time is up, but I think that employers like yours are—like you are in a situation here where you are not in any way culpable or responsible for this problem but it is a huge business problem for you and your employees, and I think we ought to find some more fair way to address that.

Ms. MCREYNOLDS. Yes. Thank you.

Chairman ROE. Thank the gentleman for yielding.

Mr. Rokita?

Mr. ROKITA. Thank you, Mr. Chairman.

Hello again, everyone.

Following up on a conversation between Mr. Andrews and Ms. McReynolds, do the other witnesses have anything to add or take away from that? Do you agree, disagree?

Mr. Shapiro?

Mr. SHAPIRO. I would like to add one thing, which is, you know, when you look at the multiemployer plan universe, the actual—the largest sector of multiemployer plans by a healthy margin is actually the construction industry. That is where most of the plans are.

And they have a somewhat different problem, by and large. They don't really generally have an orphan problem, per se, but they have a work level problem. You know, the construction industry right now is down—in the union areas—numbers vary, but easily in excess of 20 percent, and in some parts of the country it is more like 50 percent. And much of the problems facing those plans would be repaired simply by some economic recovery and get some construction going on. I think the vast majority of construction industry plans, even the ones that have some troubles, if they can get their work levels even halfway back to where they were, you know, 5 years ago those troubles would go away pretty quickly.

So their perspective is a little different than what has been discussed here on this panel.

Mr. ROKITA. Thank you, Mr. Shapiro.

Anyone else?

Seeing none, I wanted to follow up with Mr. Ring again, along the same lines we were discussing earlier. On page eight of your testimony, at the last paragraph there you say, "What is important to understand is that in certain sectors of the economy and industries the extent of the multiemployer pension plan problem is much worse than has widely been reported." Can you get any more specific on that, what you wrote or what has been said here today? What exactly do you mean and how extensive is this?

Mr. RING. Yes. I would be happy to.

You know, we talked earlier about the fact that some reports say red zone plans are 27 percent of the overall plans and—multiemployer plans in the country. But of those 27 percent there are a number of those that are facing insolvency, and——

Mr. ROKITA. How many?

Mr. RING. What is that?

Mr. ROKITA. How many? Roughly how many?

Mr. RING. I don't know if you have a number on——

Mr. ROKITA. Mr. Shapiro?

Mr. SHAPIRO. I do. It is impossible to come up with a precise figure, and we have tried. Right now we have been estimating somewhere in the neighborhood of 5 percent of all plans have a danger of insolvency.

Mr. ROKITA. Thank you.

Mr. SHAPIRO. It is not a precise number at all, but that is a ballpark figure of what we are looking at.

Mr. ROKITA. Thank you, Mr. Shapiro.

Mr. Ring?

Mr. RING. Well, and, you know, at our firm we have a number of multiemployer plans and we meet regularly to talk about issues facing the plans. I am familiar with about a dozen plans with enough participants that it will not take the—take long to deplete the PBGC's current funding. So, you now, while we could say, well, there are a lot of plans that are doing fine and it is just a small number of plans that are insolvent, those small number can really wreak havoc relatively quickly.

Mr. ROKITA. Thank you.

Same question to the other witnesses. Anything to add there?

Hearing none, I yield back. Thank you, Mr. Chairman.

Chairman ROE. I thank the gentleman for yielding.

Mr. Kildee?

Mr. KILDEE. Just briefly, between the Americans—United States system and the Canadian system—we have many companies that operate in both the countries, and their economies are similar—are there elements of the Canadian system—I will address this to Mr. Sander—that perhaps we could emulate, embrace, or are there some elements that we should avoid? Anything we could learn from looking at our neighbor to the north?

Mr. SANDER. I have really been focused so much more on the Western Conference side, I think maybe Mr. Shapiro has some ideas in that regard.

Mr. KILDEE. I defer to Mr. Shapiro.

Mr. SHAPIRO. Another aspect of our commission that, again, that has been going on for many months now is we actually had people come and talk to us from other countries to ask the questions of, how do your plans work? You know, what do you think of them? What are the strengths and what are the weaknesses?

And we had a fellow come and speak to us a few months ago from Canada and he gave us a very excellent presentation on how their plans work. There are some similarities and some differences. You know, on the surface they look—their multiemployer plans look much like ours. The benefit structures I think are similar; the way they are managed is fairly similar.

But one thing which is fairly different is in most of the provinces—and they actually have different rules that vary by province—but in most of the provinces there is no concept of withdraw liability. So if an employer chooses to leave they leave and the plan has to make due as best it can.

And in some ways—it is interesting because a lot of the employers that we have that want to leave the system, you know, they don't leave because of withdraw liability but they also want to leave because of withdraw liability. Once you take it away there is not as much reason to leave in the first place.

So it is sort of—it is hard to say what the true impact is of that concept, but in Canada that concept is absent. What that means is ultimately if the assets of the plan are insufficient to pay benefits because of a crisis or because of whatever reason their benefits, in contrast to ours, are not guaranteed. So what would happen then is if the fund does not have enough money to pay benefits the trustees ultimately, after they have exhausted all of their other options of trying to negotiate more money, of trying to fix things perspectively, do have the authority to lower benefits. That is a power that by and large our trustees do not have.

That concept has certainly gotten a lot of discussion with our commission and I think at this point I can't really comment on, you know, to what degree we feel like we would be interested in that, but I can certainly say that we have discussed it extensively.

Mr. KILDEE. Thank you very much.

Thank you, Mr. Chairman.

Chairman ROE. Thank the gentleman for yielding.

Mrs. Roby?

Mrs. ROBY. Thank you, Mr. Chairman.

Thank you all for being here today. We really appreciate it. In the short time I have been here you have already given me a lot of insight and I look forward to reviewing the first round of questions that were asked today.

Mr. Ring, can you discuss some of the well-intentioned but possibly constraining legal boundaries limiting plan trustees as they consider changing the benefits under the law? And I think the perfect example is the anti-cutback rules, but could you expand on that?

Mr. RING. Well, as was said, the PPA put in place some very, very good requirements and tools for trustees of plans, and in a number of the plans that are well-funded and have a broad base of employers those type of tools are very useful and have kept the plans in good shape.

The plans that are of real concern are the ones that are facing insolvency. And in those places, in those plans those tools and restrictions of the PPA actually tie the hands of the trustees to a certain extent.

I serve as counsel to a number of trustees, boards, and they are incredibly frustrated that they have nothing to do—nothing that they can really do except watch the plan slide towards insolvency. They have cut benefits to the absolute bare minimum. They really can't cut any further. And they have raised contributions to a place where they know they are going to bankrupt their contributing employers.

We know of plans that have actually just capped the highest contribution rates because they know and they have gone out and got studies to show that if they raise the contribution rates any higher they will put their golden gooses out of business. So those are—there are no other tools, and that is the thing I—and Congressman Andrews mentioned it earlier, they are—I think trustees in particularly in those type of plans need to have some tools to be able to address these type of funding issues.

Mrs. ROBY. In your experience, I mean, how can plan funding concerns have affected business or legal decisions made by your clients?

Mr. RING. Well, the—so many contributing employers these days are fixated on this pension problem. Collective bargaining is absolutely focused on the pension problem. When unionized employers look at their overall labor costs most of the time the wages and other cost structures are probably in line with their competitors; it is the pension cost that is just completely off the mark.

And so, you know, in collective bargaining that is a—it is a huge issue. It affects the contributing employers in their ability to attract investors, to get any type of financing. And so it really limits and constrains employers in these plans and their ability to compete in the marketplace.

Mrs. ROBY. Can we just go back for 1 second—the potential tools—and you may have discussed this already, but going back to my first question, can you give some examples of what some of, you know, the best tools would be that we could provide to deal with this limiting structure that is in place now?

Mr. RING. Well, Mr. Shapiro mentioned it, it is something that I think is going to have to be looked at, and that is, there may be certain financial benchmarks where trustees are going to have to be able to look at reducing accrued benefits for retirees. It is a kind of the third rail of pension discussions because no one wants to address that, but—and I understand, you know, the sensitivities because these promises were made to the pensioners.

On the other hand, their benefits are going to be cut to PBGC minimums if nothing is done and it will be an even greater cut. And in many ways these pensioners, while they continue to receive their full pensions, the active employees are receiving very little accruals on their pension; they are receiving even less, you know—I have been involved in negotiations for concessions where employees are making 15 percent—or they have taken 15 percent wage concessions, currently.

So, you know, in terms of the shared sacrifice in this economy maybe looking at some type of benefit modifications for pensioners is going to be necessary.

Mrs. ROBY. Thank you.

My time is expired.

Chairman ROE. Thank the gentlelady for yielding.

Mr. Thompson?

Mr. THOMPSON. Thank you, Chairman. Thanks for hosting this subcommittee hearing. A very important issue. When I came to Congress along with the chairman here in January 2009 some of the first businesses that I visited this was an issue. These were obviously economic tough times at that point, but some of these were very solvent, strong companies doing well and the only potential financial threat was trying to deal with these pension programs.

And in fact, the potential program—the pension programs at that point—and I think it—some of it was an unintended consequence of the Pension Protection Act of 2006. It was the pension program and those funding requirements that had almost the potential to put them out of business, whereas they were solvent, going well even in tough economic times.

And so I want to come back to the whole issue of competitiveness. Ms. McReynolds, I know you touched on that. You talked about, you know, the significant differences in terms of pension costs. Looking at your testimony, you know, talk about 257 percent higher for those average nonunion employers and it was an astronomical number, your 2011 per employee pension costs were 1,437 percent higher than those competitors—one or two for nonunion competitors.

I wanted to look at the broader implications of that. What is the broader implications in terms of competitiveness, solvency on your business as a result of that issue?

Ms. MCREYNOLDS. If we had the orphan retiree problem solved—in other words, we didn't have to bear the—the cost for people that never worked for us, our company would be much more competitive in the marketplace. By that I mean, you know, there is a certain—we are in the less-than-truckload business. There is a market for that, okay? There is a variety of types of customers and they require a variety of service levels and will pay certain prices. Some of those customers are more price sensitive than others.

What happens to us as we have to deal with this cost is that we more and more have a smaller slice of that market that is available to us. It is like the very most premium, where we give, you know, the highest level of service because we have higher prices, we are worth it, you know, when you get right down to it, and I wouldn't suggest that we are not, but if we were more competitive we would have a broader part of the less-than-truckload market available to us and that would allow us to grow our company and add jobs to our company.

And, you know, let me say, you know, again, we are very comfortable paying the retirement benefits for our own employees. We are very concerned about them having benefits when they retire. Our basic problem is having to pay for people who never worked for us.

Mr. THOMPSON. Just as a follow up, you know, one way to ensure plan solvency is to continually raise contributions. Can you explain whether these problems can be solved simply by requiring larger contributions?

Ms. MCREYNOLDS. We have experienced that. I think in my testimony I also reference in our last collective agreement that began in 2008, because of PPA and the requirements for red zone and yellow zone plans we had a 7 percent increase in our pension cost every year that actually resulted in 40 percent higher pension costs, you know, from 2008 until 2013. That was a period of time where no one was able to increase pension costs because of what was going on with the economy, yet we had to deal with that.

And so, you know, we are in a situation where because of the requirements under PPA kind of the normal collective bargaining process can't function the way that it needs to, and I think Mr. Ring commented about this earlier. We need the tools to be able to address our costs in a way that make sense at the collective bargaining table rather than having to have ever increasing contributions that just are a burden and make us less competitive.

Mr. THOMPSON. Thank you very much.

Chairman, I yield back.

Chairman ROE. I thank the gentleman for yielding.

And I want to thank the panel today, the witnesses, for taking your time to testify in front of the committee. It has been an extremely informative committee—subcommittee hearing, and I will yield now to the ranking member for closing remarks.

Mr. ANDREWS. Well, thank you, Mr. Chairman, for—and your staff and our staff for working hard to put together an excellent panel. I think the members have been educated by this and we thank the panel for all their preparation.

Again, I think it is both welcome and refreshing that there have been ideas put forward here about how to address this problem, and I am not suggesting that these are universally agreed to or that they are all right, but I am hearing some things I think sound good. One is, with respect to plans that are burdened because of a lot of orphaned retirees there ought to be some credit facility available that helps that plan get through the present situation so it can see the light at the end of the tunnel, at least reduce those costs. Where the private sector can provide that credit facility, great; where it can't, I think we need to look at some other mechanism.

I also think that any such credit facility that is made available should carry with it the obligation to enact some of the reforms we have heard about this morning so the plan can strengthen itself internally. I think it shouldn't be a blank check; I think it should be a quid pro quo where if you do your part, if there is truly shared sacrifice there is a benefit for that shared sacrifice.

I certainly think there should be no discharge in bankruptcy of a withdraw liability. I think this would be a catastrophic result for this whole sector and I think working with our friends on the Judiciary Committee we need to address that if, in fact, there is an adverse court decision.

And then finally, for those who are in the enviable position of being able to choose to overfund their plans, I don't think there should be any retardation of that at all. I think such overfunding should be completely deductible. My personal view is that if the money—if the employer or the trustees want to they ought to be able to transfer that money into another ERISA trust, like for health care, if they want to. I think that we ought to encourage people to put money away to help their employees in an ERISA trust under just about any circumstances.

And I think we have learned a lot today, and I am sure some of those ideas would work, some wouldn't. We would welcome additional ideas, certainly, from the community.

But as I said at the very outset, this is a problem that has a solution. It doesn't require the parties to fight each other, and we heard none of that this morning. It does require us to listen and learn, and I think we learned a lot from you this morning.

And, Chairman, I commend you for your leadership on this and promise you that our side will work in good faith very hard to try to get this problem fixed. Thank you.

Chairman ROE. I thank the gentleman for yielding.

And I want to thank the committee once again, and learned—I learned a lot today and certainly am committed to try to help—be of any assistance that we can be to help solve this problem. And certainly I think Ms. McReynolds' statement is that we don't mind paying for our employees is one of the most reasonable things I have ever heard, but for people that have never worked for our company we have a little bit of a problem with that, and I certainly get that. I put myself as a fiduciary in a single-employer system and think, "What if I were asked to pay for the pension benefits of my competitors across town?" That is exactly what you are asked—have been asked to do with this through the way it is set up.

I agree with Mr. Andrews. I think there are solutions here, and we are certainly committed to trying to find those, and I think we need to get on with it, because 18 months is not—that is how long it is between now and 2014.

So I thank you all, and we look forward to working with you.

And being no further business, the subcommittee stands adjourned.

[Additional submissions of Chairman Roe follow:]

July 3, 2012.

Hon. PHIL ROE,
U.S. House of Representatives, Washington, DC 20515.

DEAR CHAIRMAN ROE: As members of the Construction Employers for Responsible Pension Reform, a coalition of trade associations representing thousands of construction companies that contribute to multiemployer defined benefit pension plans ("MEPPs"), wish to express our concern with a statement made by Mr. Josh Shapiro, Deputy Director for Research and Education, National Coordinating Committee for Multiemployer Plans. Mr. Shapiro spoke during the June 20, 2012, hearing on Assessing the Challenges Facing Multiemployer Pension Plans before the Education and Workforce Subcommittee on Health, Employment, Labor and Pensions. Mr. Shapiro properly acknowledged that recent reductions in industry activity is a significant problem for construction employers that contribute to MEPPs, but his response in answer to a question that "if the work levels get even halfway back, their problems will go away" vastly understates the multiple challenges construction industry plans are facing nationwide.

Construction industry employers contributing to MEPPs are in a particularly precarious position at this time. It is true the economic recession has affected the construction industry to a far greater degree than most industries, and the decline in demand for construction services has led to an extraordinary decline in work hours for construction workers. At the same time, however, severe investment losses have devastated plan assets, and rigid Pension Protection Act (PPA) funding rules and anti-cutback restrictions have put pressure on contributing employers. Bankruptcy and abandonment by other contributing employers brings even more pressure to those remaining employers. Unfortunately, the collapse/insolvency of defined benefit pension plans is a real and immediate problem. Even for plans not currently in a precarious funding position, collapse/insolvency is a highly predictable outcome.

It is clear that recovery of the construction economy alone will not solve the MEPP crisis plaguing contributing employers. While plans may be able to improve their funded status as the construction economy improves, the level of improvement would likely be insufficient to overcome the combined effects of the economic downturn, decline in competitive market share, withdrawal of contributing employers, and an aging workforce. The reasons include:

• Current and future construction industry economic contractions will lower contribution income, which is based on hours worked; while, at the same time, contribution rates are going up and competition for business is great.

• Stock market instability for the foreseeable future. Under the best of circumstances, plans would take 15 years or more to recover from 25 percent-plus market losses incurred in 2008 and 2009.

• Shrinking contribution base causing a progressively unfavorable active-participants-to-retired-participants ratio—i.e., fewer and fewer construction employers are contributing to MEPPs, and those remaining have a shrinking market share, causing a decline in hour-based contributions for active participants (workers) while plans are facing benefit pay-outs to ever-increasing numbers of baby-boomer retirees.

• Ironic position of successful employers ultimately at risk because pension fund and withdrawal liability rules leave the last surviving company with all the liability for pension fund solvency.

• Instability of plans in other industries, such as the trucking industry, affecting the viability of construction employers that contribute, or previously contributed, to those plans.

The risk, even for employers contributing to plans not in immediate danger, is unsustainable. It is an unstable system with very real and foreseeable dire consequences. The industry cannot rely on market growth alone as a solution for these plans' recovery. According to Segal, in 2001 construction industry plans had an average funded ratio of 98 percent; however in 2006, the year construction industry employment and man hours peaked, plans were only funded at an 80 percent ratio.

As you know, we are committed to developing constructive solutions to the problems facing multiemployer pension plans. We continue to work diligently with a broad coalition of labor and management from affected industries to jointly present ideas to Congress. Congress and the agencies have a coming window of opportunity to make needed structural changes to ERISA that will ensure the long-term viability of multiemployer pension plans. We look forward to working closely with you on that critical project.

Sincerely,

ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
ASSOCIATION OF THE WALL AND CEILING INDUSTRY,
EASTERN CONTRACTORS ASSOCIATION, INC.,
INTERNATIONAL COUNCIL OF EMPLOYER OF BRICKLAYERS AND ALLIED CRAFTWORKS,
MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA,
NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION,
SHEET METAL AND AIR CONDITIONING CONTRACTORS NATIONAL ASSOCIATION,
THE ASSOCIATION OF UNION CONSTRUCTORS.

Prepared Statement of the U.S. Chamber of Commerce

The U.S. Chamber of Commerce would like to thank Chairman Roe, Ranking Member Andrews, and members of the Subcommittee for the opportunity to provide a statement for the record. The topic of today's hearing—challenges facing multiemployer pension plans—is of significant concern to our membership.

As sponsors of multiemployer defined benefit plans, a number of Chamber members have a substantial interest in the viability of the multiemployer plan system. Funding for multiemployer plans comes entirely from employers, who are at financial risk when a plan faces funding problems. Therefore, funding and accounting issues create substantial challenges not just in maintaining the plan but also for the employers' business.

While all defined benefit plans have been negatively impacted by the financial crisis, certain multiemployer plans have been particularly hard hit as the current financial crisis exacerbates long-term funding problems resulting from shifting demographic trends and financial problems within certain industries. While current law requires insolvent employers to pay their share of liability upon withdrawal from the plan, most bankrupt employers are unable to realistically meet that liability. Therefore, the remaining employers become financially responsible for the retirement liabilities of the "orphaned" retirees. This system results in untenable contribution levels for the remaining employers, which can force them into insolvency as well.

Moreover, in a multiemployer plan, there is joint and several financial liability between all employers in the plan. Therefore, when one employer goes bankrupt, the remaining employers in the plan are responsible for paying the accrued benefits of the workers of the bankrupt employer. Because of this liability, there is the fear of an employer being "the last man standing" or the last remaining employer in the multiemployer plan.

Reform of the Multiemployer Plan System is Necessary. The Chamber supports multiemployer funding reform. Without such reform, many employers—including many small, family-owned businesses—are in danger of bankruptcy.

In April, the Chamber released a white paper entitled "Private Retirement Benefits in the 21st Century: A Path Forward." The paper makes recommendations for all retirement plans and includes a special section for multiemployer plans to address the unique challenges faced by them. In that paper, we offered the solutions detailed below.

Withdrawal liability is a great burden that may force employers to stay in multiemployer plans even when it is not economically feasible. The Chamber feels that a comprehensive solution must be sought to allow for a more robust multiemployer plan system and to maintain equity among contributing employers.

Another problem arises from the nature of multiemployer plan funding. Benefit increases are not anticipated in funding but are often granted at contract renewal. These increases often apply not only to active workers, but also to retirees. This practice may put the plan into an underfunded situation because the benefit increases cause a "loss" for the year. This loss is generally funded over a long amortization period, such as 20 years. While this additional expense may be projected by the plan to be affordable for active employers that are contributing a negotiated contribution rate (usually dollars per hour or a percentage of pay), a withdrawing employer may be immediately liable for its share of the underfunding.

In order to prevent bankruptcy among remaining employers in multiemployer plans and unanticipated bankruptcy on withdrawing employers, comprehensive funding reform should focus on allowing plans to be financially solvent on an ongoing basis. Examples of such provisions include, but are not limited to, additional tools for trustees to maintain solvency, partitioning plans and promoting mergers and acquisitions between certain plans.

Even for plans that are not at financial risk, changes could ensure that they remain financially viable. For instance, the assumptions used to determine withdrawal liability should be consistent with those used to determine contribution requirements. They should not be more conservative, forcing the withdrawing employer to subsidize active employers. In addition, benefit increases should be moderated. In the past, benefits were increased if the plan became overfunded and, as noted above, granted even when the benefit increase would make the plan underfunded. This prevented plans from being able to fall back on extra contributions in later years. As a result, any future underfunding would require additional contributions by current employers. Reform efforts should focus on moderating benefit increases so that they are not made simply because the plan is overfunded. One way to do this would be to require disclosure of the amount of liability associated with benefit increases—not just contribution increases.

Finally, the procedural rules that allow employers to arbitrate disputes over the amount of withdrawal liability require change, at least with respect to small employers. For example, the time frame for requesting arbitration is very short, and a small employer, who may not have significant administrative resources, is likely to miss it.

The suggestions above are just examples of steps that policymakers can take. The Chamber is committed to addressing multiemployer funding issues and is willing to discuss any viable ideas that allow participating employers to remain financially solvent.

Reform of the Multiemployer System is NOT a Union Bailout. As mentioned above, contributions to multiemployer plans are funded entirely by employers, not unions. Therefore, it is employers at financial risk, not unions and reforms to multiemployer plans have no financial impact on unions or their activities. Misleading characterizations, such as this, hinders progress that is essential to implement much-needed reform.

Without a real reform to the multiemployer system and resolutions to the underlying problems, more employers will be forced into bankruptcy and more workers will be left without a secure retirement. We stand ready to work with Congress and all interested parties to resolve these issues as soon as possible. Thank you for your consideration of this statement.

[Additional submission of Mr. Andrews follows:]

June 20, 2012.

Hon. PHIL ROE,
U.S. House of Representatives, Washington, DC 20515.

DEAR REPRESENTATIVE ROE: As employers in the construction industry, the Construction Employers for Responsible Pension Reform, we would like to express our fundamental components for multiemployer pension plan reform that will create long-term viability for employers. The group of 8 leading construction trade associations represents more than 34,000 construction employers, the vast majority of which are small family-owned business.

Multiemployer pension plans are common in the unionized sector of the construction industry and provide employers the opportunity to provide their employees with a defined benefit plan that gives them "portability" to earn continuous benefits as they go from job to job within the same industry. Of the 10 million participants in multiemployer defined benefit plans, nearly 54 percent are construction industry plans.

The majority of multiemployer plans suffered significant losses as a result of the financial crisis. Recently enacted relief legislation and some improvements in investment returns have helped some plans, but the current rules, long-term demographics, and market conditions continue to put at risk the viability of the plans and their contributing employers. This is particularly true for the construction industry, which has been affected by the economic recession to a far greater degree than most industries. In short, further legislative reform is needed and, with the Pension Protection Act nearing sunset, the process must begin now.

We believe that Congress should enact reforms that will:

- Recognize the unique relationship between the employer and workers in the construction industry
- Promote a reasonable and sustainable retirement benefit through shared risk

- Provide flexible rules to allow trustees of plans facing financial instability to adapt to changing economic and market conditions as they occur
- Mitigate the unintended consequences of the “last man standing” rule enacted in the Multiemployer Pension Amendments Act
- Guarantee transparency and reporting by plans to all affected parties

These principles are needed to help the tens of thousands of small employers that contribute to the plans and to protect the retirement security of their hardworking employees.

Sincerely,

ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
ASSOCIATION OF THE WALL AND CEILING INDUSTRY,
FINISHING CONTRACTORS ASSOCIATION,
INTERNATIONAL COUNCIL OF EMPLOYER OF BRICKLAYERS AND ALLIED CRAFTWORKS,
MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA,
NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION,
SHEET METAL AND AIR CONDITIONING CONTRACTORS NATIONAL ASSOCIATION,
THE ASSOCIATION OF UNION CONSTRUCTORS.

[Whereupon, at 11:43 a.m., the subcommittee was adjourned.]

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