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BUILDING A SECURE FUTURE FOR MULTIEMPLOYER PENSION PLANS

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

ON

EXAMINING BUILDING A SECURE FUTURE FOR MULTIEMPLOYER PENSION PLANS, FOCUSING ON LONG-STANDING CHALLENGES THAT REMAIN FOR MULTIEMPLOYER PENSION PLANS

MAY 27, 2010

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BUILDING A SECURE FUTURE FOR MULTIEMPLOYER PENSION PLANS

THURSDAY, MAY 27, 2010

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 2:03 p.m. in Room SD–430, Dirksen Senate Office Building, Hon. Tom Harkin, chairman of the committee, presiding.

Present: Senators Harkin, Casey, Enzi, and Isakson.

OPENING STATEMENT OF SENATOR HARKIN

The CHAIRMAN. The Committee on Health, Education, Labor, and Pensions will come to order.

I want to welcome everyone to this hearing on an issue of critical importance to workers and business alike, and that's the security of our multiemployer pension plans.

First of all, I want to thank our witnesses for being agreeable to stay over this afternoon. As you know, we had a whole series of votes this morning, so we had to postpone the hearing until this afternoon.

I also want to thank my colleague Senator Enzi for also agreeing to work to help move this to the afternoon. We all have lots of schedules around here, and so, everybody's had to juggle a lot of things.

This is an important hearing. I know some of you came a great distance to come here, so we wanted to get it done today.

Well, there's no question that retirement security's been under siege in this country for years. This is my own opinion, but, to our national detriment, we have seen a gradual erosion of the traditional defined benefit pension system as companies opt to provide their workers 401(k) plans or, in many cases, nothing at all.

This has left U.S. workers shouldering more and more retirement risk. Workers bear the risk that they could misjudge the amount they need to save. They bear the risk of outliving their savings. Workers bear the risk of investment losses in a volatile economy. And if recent economic events have taught us anything, it's that these risks are too great for any single individual, or single family, to bear.

Jacob Hacker, in his book, talks about "The Great Risk Shift." And so, while we had pools before in sharing these risks, a 401(k) plan says, "You're on your own. You pay for it; you're on your own."

Well, as we've seen in the recent downturn, if you've got a lot of money and you've got a lot of backing and you're in good health, but woe to you, if you're not in that situation.

That's why I think it's important we do everything in our power to ensure that every American has access to a safe and secure pension, a pension that rewards a lifetime of work with the opportunity to retire with dignity and financial independence.

Fortunately, about 10 million people still have secure pensions, thanks to the multiemployer pension system. Since the 1940s, multiemployer plans have made it possible for some of the hardest-working Americans—truckdrivers, machinists, miners, electrical workers, et cetera—to earn a pensions benefit for themselves and their families. Most of these workers would never have been able to do that otherwise.

Multiemployer plans have also played an important role in supporting small businesses. Many small businesses want to do right by their workers. They want to provide good wages and quality benefits and reward their workers for a lifetime of service. Sharing the cost and responsibility of retirement benefits through a multiemployer plan is often the only way for a responsible small business to provide for a defined benefit pension. We need to make sure the system doesn't discourage them from continuing to do the right thing.

Simply allowing these plans to fail would be catastrophic for working families across America. Although pensions are insured by the Pension Benefit Guaranty Corporation, the payout for insured benefits hasn't increased in years, so many retirees would see their benefits slashed. Plus, the collapse of any multiemployer pension plan places an incredible strain on an agency already beleaguered by fiscal woes. The failure of a large plan could doom the agency.

Now, Congress has already taken some steps to provide targeted short-term relief to ease them through these tough economic times. Funding relief will surely help some of them remain afloat. But, for a handful of multiemployer plans, short-term funding is just not enough.

Now, those are the plans we'd like to focus on today, the minority of plans that are truly in dire straits. They find themselves bearing costs dumped on them by defunct employers that failed to pay their fair share, while at the same time watching their contribution base shrink, as industries and demographics change over time. Those plans need long-term help and systemic reforms.

The challenges faced by multiemployer plans are real, and we need to face them head-on, because, quite frankly, they're simply too big to ignore. We need to find solutions that will protect workers and preserve jobs, while at the same time ensuring that our resources are used responsibly. This hearing is an important first step towards those important goals.

Retirement issues have always been an area where we've been able to reach across the aisle and work together in this committee. Senator Enzi and Senator Kennedy, before me, worked closely together on the Pension Protection Act and other recent pension legislation. I'm hopeful that we can continue that fruitful and bipartisan approach in developing solutions to the unique problems faced by multiemployer plans.

I want to commend Senator Casey for helping to open the discussion by introducing a bill that would provide a path forward for some of our most troubled multiemployer plans.

While I think this is an issue that needs a lot of thought, we should keep all options on the table. Senator Casey's legislation is an important first step. I look forward to hearing more about his proposal in today's hearing.

The obstacles facing multiemployer plans are significant, but not insurmountable. By working together, we can find creative solutions that ensure that multiemployer plans continue to serve an essential part of our retirement system and provide safe and secure defined benefits to working Americans and their families.

Once again, thank you all for being here to help us discuss this very important issue.

I'll turn to Senator Enzi.

Opening Statement of Senator Enzi

Senator Enzi. Thank you, Mr. Chairman.

Today's hearing on our Nation's multiemployer pension system is very timely. Many of our Nation's workers, retirees, and their families have faced significant uncertainty with their financial matters over the past couple of years. They also should not be burdened with wondering whether their pensions are secure or not.

I've been a strong supporter of our Nation's traditional defined benefit system, as it is one of the three legs, including 401(k) plans and Social Security, of our Nation's retirement system.

With the passage of the Pension Protection Act in 2006, we strove to ensure that both single-employer pension plans and the multiemployer pension system were made stronger so that workers, retirees, and their families felt secure, and that the Pension Benefit Guaranty Corporation reduced its deficit. However, the market declines of the past 2 years have produced significant hurdles, and many multiemployer plans can no longer meet the qualifications of the yellow or the green zones established in 2006.

Today, I'm ready to roll up my sleeves again so that we can move legislation that'll put the multiemployer plans on the road to recovery. Our workers and retirees are counting on us. However, before we can begin, we need to find out the magnitude of the task. During 2008 and 2009, nearly 400 letters were filed with the Department of Labor for multiemployer pension plans, indicating that they were endangered or critical.

The PBGC, in its annual report for 2009, released just this last week, indicates that its liabilities for multiemployer pension plans have grown tenfold since 2008. In addition, the agency's statistical model predicts that the PBGC's underfunded liability could reach $4 billion by 2019. Last year, Moody's reviewed 126 of the largest plans, and estimated those plans could be underfunded by $165 billion. I think that's pretty sobering news.

Even more sobering is that the Segal Group, an actuarial and service provider for multiemployer plans, found, in its spring 2010 survey, that data indicate that over the next few years, 30 percent of the plans that are certified as green for 2010 could migrate into the yellow or red zones unless additional actions are taken.

In addition to the financial status of some of these pension plans, I also am very concerned about the management and administration of the multiemployer pension plans. Back in 2005, I held a hearing, in this very room, on the Capital Consultants fraud that was perpetrated on a number of multiemployer plans.

Just this past December, a pension consultant was arrested in New York for embezzling $42 million over 7 years from the New York Local 147, the Sandhogs. I still don't understand how anyone could steal that much money without the plan administrator, the trustees, and/or the actuaries catching it.

Also, this week, a class-action lawsuit was filed by the New York Carpenters Local 280 against its pension plan's trustees for being, "heavily invested," in Bernie Madoff's firm, in violation of the prudent investment standards of ERISA.

In both of these instances, the trusted men and women who run the pension plans fell down on the job. Due to their negligence, it's the union workers and the union retirees who have lost. I'd like to know what the Department of Labor is doing to help prevent this type of fraud and to ensure that multiemployer plan administrators and trustees are equipped to do their jobs.

With regard to the legislation before us, the Create Jobs and Save Benefits Act of 2010 would permit the partition of the Central States Southeast and the Southwest Pension Plan, would increase retroactively to almost double the insurance coverage PBGC has for the multiemployer pensions, would increase premium contributions, and grant the PBGC greater involvement in the multiemployer pension mergers and alliances.

Since the PBGC already has the ability to partition pension plans and to facilitate mergers, I'm interested in hearing from the administration and GAO as to whether it's necessary to expand these authorities. I'm especially interested in hearing about why the PBGC has not partitioned the Central States Plan before.

I also wish to express my concern for one provision of the bill that would allow the new Multiemployer Trust Fund at PBGC, in case it runs out of money, to tap into the other trust funds at the PBGC. This is extremely dangerous, and I strongly believe that if this provision passes, then it will be the taxpayer who will eventually be bailing out the PBGC. And a taxpayer bailout of the PBGC is not an option.

Finally, based upon the earlier statistics that I cited, we need to determine whether we should be focusing solely on Central States and a couple of other small pension plans. On Tuesday, the PBGC funded two more multiemployer plans. In January, it provided 117 million in assistance to the southern California, Arizona, Colorado, and southern Nevada Glaziers Pension Plan. The press reported that that plan was less than 10 percent funded.

Mr. Chairman, we may need to look at the entire multiemployer system. I have significant concerns that just doing this piecemeal is not going to be enough. We need to ensure that the union workers, union retirees, and their families have a pension system they can trust and believe in. In addition, we have to ensure that the taxpayer is not on the hook.

I do have a couple of letters I'd like to have put in the record.

[The letters referred to may be found in Additional Material.]

I'll apologize in advance; I will have to leave.

I also want to welcome John McGowan. It's always nice to have an accountant doing some testifying. Sometimes it feels a little lonely.

I want to thank all of you for testifying. I will have questions for all of you. Unfortunately, I'll have to ask most of them in writing.

Thank you.

[The prepared statement of Senator Enzi follows:]

Prepared Statement of Senator Enzi

Mr. Chairman, today's hearing on our Nation's multiemployer pension system is very timely. Many of our Nation's workers, retirees and their families have faced significant uncertainty with their financial matters over the past couple of years. They also should not be burdened with wondering whether their pensions are secure or not.

I have been a strong supporter of our Nation's traditional defined benefit system as it is one of the three legs, including 401(k) plans and Social Security, of our Nation's retirement system. With the passage of the Pension Protection Act in 2006, we strove to ensure that both single employer pension plans and multiemployer pension systems were made stronger so that workers, retirees and their families felt secure and that the Pension Benefit Guarantee Corporation reduced its deficit. However, the market declines of the past 2 years have produced significant hurdles and many multiemployer plans can no longer meet the Yellow or Green funding zones established in 2006.

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However, before we can begin we need to find out the magnitude of the task. During 2008 and 2009, nearly 400 letters were filed with the Department of Labor by multiemployer pension plans indicating that they were in "endangered" or "critical" status. The PBGC in its Annual Report for 2009, released just last week, indicates that it's liabilities for multiemployer pension plans have grown ten-fold since 2008. In addition, the agency's statistical model predicts that the PBGC underfunded liability could reach $4 billion by 2019. Last year, Moody's reviewed 126 of the largest plans and estimated that those plans could be underfunded by $165 billion. This is quite sobering news.

But even more sobering is that the Segal Group, a actuarial and service provider for multiemployer plans, found in its Spring 2010 Survey that, "data indicates, that over the next few years, 30 percent of the plans that are certified as green for 2010 could migrate into the yellow or red zones unless additional actions are taken."

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The CHAIRMAN. Thank you very much, Senator Enzi.

By mutual agreement, I'd like to recognize Senator Casey for a statement, and congratulate him, again, on introducing a bill that I think is, as I said in my statement, an important first step in solving this.

Senator Casey.

STATEMENT OF SENATOR CASEY

Senator CASEY. Thank you, Mr. Chairman.

I want to thank you and the Ranking Member for calling this hearing and for gathering us together, after we had to postpone it earlier today.

We want to thank, again, the witnesses who are here.

Thank you Chairman Harkin and Ranking Member Enzi, also, for giving me the opportunity to make a brief opening statement, which doesn't always happen on this committee; we don't always have this opportunity. We're grateful to have that chance.

I know we're going to be getting into the details of this challenge that we have, but also the details of the legislation. I'm proud to have introduced Senate bill 3157, the Create Jobs and Save Benefits Act, which I believe contains within it a strategy to deal with a very real problem and a very real threat to job creation and job preservation in the near future.

I'll get into some of the statements that have been made over the last couple of days that—frankly, a lot of the statements made in the press are just not true. Some are, I hope, just negligent misstatements of fact; I hope they're not intentional. There have been television reports and print reports, as well, that have been way off. Again, I hope it's not intentional. We'll go through those in a moment.

Basically, what we're trying to do here is to make sure that individuals who have worked very hard in their lives, and have earned a pension, are able to get that pension at the time that they have a right to expect it. Hundreds and hundreds of thousands, if not millions, of retirees' retirement security is at stake when it comes to these issues.

First of all, in terms of the elements of the bill, there is a section on mergers and alliances—the language in the bill enables multiemployer funds to combine resources for purposes of reducing administrative costs. The section on partition, which is if a plan satisfies certain requirements, the plan will transfer to a separate account all benefit liabilities that are attributable to the so-called "orphans," meaning the participants of employers who withdrew from the plan without paying their withdrawal liability—and also transfer assets equal to a maximum of 5 years of projected payment. The Pension Benefit Guaranty Corporation, which was enacted into law with no taxpayer dollars, will handle the initial application. For the first 5 years, the plan itself will be responsible for the payments.

It's very straightforward. It's absolutely necessary that we pass this legislation. Currently, there are only a handful of plans that would be able to take advantage of it. But, those who are able to do so are in the greatest need.

I just want to deal with a couple of things that have been said in the press in the last couple of days. They've used the word "bailout"—that this bill will cause a bailout. That's not true; it's nowhere near true. I realize that "bailout" is a word that's been freighted with a lot of controversy. It's an incendiary word to use in the public press, but it just isn't the case.

There's also been references, in the television and the print press, to use the word "union." I understand that, that some like to use that as a way to denigrate and to cause conflict. I'm a Democratic U.S. Senator who has had a lot of support from unions, and

I'm a strong supporter of theirs. Very few that I could point to are stronger supporters.

Let me read to you, in pertinent part—and I'll submit these letters later—one or two sentences from a letter from the U.S. Chamber of Commerce. I don't know what my voting record is with the Chamber of Commerce, but it's not at the top of their scoring. In the second paragraph of this letter, released this morning, and I quote, "Recent press stories have referred to the proposals as, 'a union bailout,' to multiemployer plans as"— and, I should say—"to multiemployer plans as 'union plans'. However, this is not the case. In fact, contributions to these plans are funded entirely by employers, not unions."

I'd note, for the record, that one of the substantial plans that would be helped by this legislation, the Central States Fund—we'll hear more about this later—just imagine this—has 423,000 participants, at last count. Three hundred and forty-two thousand of those are retirees.

So, I guess some of those people in the news are going to just say, "Don't worry about them. Those plans will get along just fine. Those people won't get their retirement benefits, but they'll be okay." Pretty easy to say that, when you're sitting on a different perch, where your retirement is secure.

Central States has 2,000 employers who contribute. This is about retirees, and it's about making sure that we protect these employers, as well.

Of the 2,000 employers that contribute to the Central States Fund, 9 out of 10 of them are small businesses with 50 employees or less.

For those who want to say, "This is going to benefit some small group of well-off individuals, or some labor organization that's already bargained and negotiated for these rights," they should think long and hard about that, because we're talking about small business people. We're talking about retirees here.

If we're going to have a debate about this in the U.S. Congress, the least that our friends in the media could do, and the least that anyone else who comments about this should do is, read the bill, understand how it works before going on television and saying things that are not true.

I will have a lot more to say, which I won't now; I'll leave it for another time. This hearing is a very instructive opportunity for us to be able to learn something about our retirement system, I should say—about multiemployer plans, about some of the challenges they have, and about solutions, instead of rhetoric and incendiary language, which might create conflict, but doesn't solve too many problems.

The American people want us to do our best to solve problems. They really don't care about our political fights; they want us to solve problems. This legislation is one of the ways, one of the strategies, that we can solve a problem that's facing a lot of retirees who work pretty hard over their lifetimes to deserve these benefits.

Thank you, Mr. Chairman.

[The prepared statement of Senator Casey follows:]

Prepared Statement of Senator Casey

Thank you to Chairman Harkin and Senator Enzi for providing me with the opportunity to speak at this important hearing. Also, thank you for organizing a hearing on multi-employer plans—the continued success of multi-employer plans is vital to millions of Americans across this great Nation—and I hope this hearing will provide us information on how to ensure the continued success of these plans.

As a strong supporter of multi-employer plans, I believe there are several actions that Congress must take this year to ensure their survival. Specifically, I believe the Senate must pass S. 3157, the Create Jobs and Save Benefits Act of 2010. I introduced this bill in March and the bill is co-sponsored by Senators Brown, Franken, Stabenow and Burris.

I won't go into the details because I believe several of the witnesses here today will discuss various aspects of the legislation; however, I do want to confront a few of the distortions that have been communicated about the bill over the past few days.

Statement: S. 3157, the Create Jobs and Preserve Benefits Act of 2010, will cost $165 billion dollars.

False: $165 billion is the purported total amount of under-funding of all multi-employer plans in the country. The partition aspect of this bill can only be utilized by a handful of the 1,500 multi-employer plans in the country. At the moment, we only know of 2 pension plans that will apply for partition. The estimated cost is approximately $8 billion over 10 years, not $165 billion.

Statement: The bill will be a union bailout.

False: This bill will help companies stay in business, prevent job loss and protect pensions for hard-working Americans.

Statement: Multi-employer plans have major problems.

False: Actually, multi-employer plans are in excellent shape. Prior to the recession, according to the Segal Group, the average funding level of multi-employer plans was 97 percent. Due to the economic recession, that average has dropped to 86 percent, which is an excellent average considering the current economic climate.

Statement: According to an editorial yesterday in Investor's Business Daily: **"The bill's author, Democratic Sen. Bob Casey of Pennsylvania, wants the public to pay for the *gold-plated* union retirement benefits that the funds have mismanaged into oblivion."**

False: With respect to the Central States Fund, which will benefit under my bill, the average annual benefit is just over *$13,000*. That figure is the same for the Western Pennsylvania Teamsters Fund. To put $13,000 into perspective, the Federal poverty line for a 2-person family is $14,570. A 3-person family, the figure is $18,310. Certain interest groups try to claim union members receive lavish benefits—they make these statements in order to convince the public that unions are bad for America—but, in fact, and the numbers don't lie, the benefits are not lavish—they are below the Federal poverty line.

Statement: The bill is a union bailout.

False: This is not a union bailout—in fact, it is not even a bailout. Private employers are the entities that contribute funds to the multi-employer plans—not unions. In fact, I have a letter from the U.S. Chamber of Commerce, specifically stating that this bill is not a union bailout.

In addition to the lies and distorted statements, some news groups have attempted to claim the title of the bill is pure fluff. Well, this is blatantly false—and here is why—this bill is about jobs—maintaining jobs and creating jobs!

I have with me today two letters—one from YRC Worldwide—North America's largest trucking company—YRC employs 40,000 people across the Nation—with over 1,000 in the Commonwealth of Pennsylvania. For YRC, this issue is about jobs—there is a risk that YRC could go bankrupt without the assistance that my bill provides. If YRC were to go bankrupt—along with bankruptcy is the risk of 40,000 people losing their jobs.

In addition, I have a second letter of support from a group of 12 employers who support the bill. Combined, these companies employ over 650,000 people. Similar to YRC, these companies are urging passage of the bill to assist in reducing their cost—at stake are 650,000 jobs.

Not only will this bill maintain jobs, it will create jobs! By lowering the cost of contributing to the plan for all employers involved, more capital is available to re-invest in their companies—which will create jobs.

On top of the letters of support from YRC and a separate letter from an additional 12 employers—I have a letter from the U.S. Chamber of Commerce, representing several employers who contribute to multi-employer funds. This letter states support for measures to provide relief to multi-employer plans and pushes back on the notion that my bill is a union bailout. All three of these letters I would like to offer into the record.

To maintain and continue to create jobs during this difficult time in our history, we must pass S. 3157. I encourage my colleagues to support this legislation. Chairman Harkin, Senator Enzi, thank you for this opportunity. I look forward to the testimony of all the witnesses.

The CHAIRMAN. Thank you very much, Senator Casey.

Again, I welcome our witnesses.

All your statements will be made a part of the record in their entirety.

We have two panels. Our first panel is Phyllis Borzi, Assistant Secretary for the Employee Benefits Security Administration at the Department of Labor, and a representative to the Board of PBGC. Assistant Secretary Borzi is accompanied by David Gustafson, director of the Policy, Research, and Analysis Department at the PBGC.

Next is Charles Jeszeck, acting director of the Government Accountability Office. Mr. Jeszeck has spent almost 25 years leading research on retirement and labor policy issues and providing information to Members of Congress and their staff on these matters.

We welcome you both. I'll ask you if you could just sum up your testimony in 5 minutes or so. Then we can open a discussion. I would certainly appreciate that.

Ms. Borzi, we'll begin with you. Please proceed.

STATEMENT OF PHYLLIS C. BORZI, ASSISTANT SECRETARY OF LABOR, EMPLOYEE BENEFITS SECURITY ADMINISTRATION, AND REPRESENTATIVE TO THE BOARD OF THE PENSION BENEFIT GUARANTY CORPORATION, WASHINGTON, DC; ACCOMPANIED BY DAVID GUSTAFSON, DIRECTOR OF THE POLICY, RESEARCH AND ANALYSIS DEPARTMENT AT PBGC

Ms. BORZI. Good afternoon, and thank you, Chairman Harkin, Ranking Member Enzi, Senator Casey, Senator Isakson.

Thank you for inviting me to testify before the committee today on multiemployer defined benefit pension plans.

I am Phyllis Borzi, the Assistant Secretary of Labor for the Employee Benefit Security Administration. One of my key responsibilities, as the Assistant Secretary of Labor for EBSA, is to serve as Secretary Solis's representative to the Pension Benefit Guaranty Corporation board of directors, which she chairs.

The Department of Labor and the PBGC are committed to promoting policies that encourage retirement savings and protect workers' employer-sponsored benefits. Multiemployer defined benefit pension plans play a vital role in providing retirement security to millions of American workers and retirees. The PBGC protects the pension benefits of about 1,500 multiemployer plans that cover more than 10.4 million workers and retirees.

Now, while 5 percent of PBGC's insured defined benefit plans are multiemployer plans, the participants in these plans constitute over 24 percent of all the participants in PBGC-covered defined benefit plans.

Multiemployer plans, as you know, are collectively bargained plans that are jointly administered by boards of trustees with equal representation from labor and management. These plans are attractive in industries, such as construction and trucking, where workers switch employers frequently. These plans enable workers to continue to accrue pension credits when they change employers, as long as the employers continue to be contributing employers to the plan. This portability feature enables workers in these industries to accumulate meaningful pension benefits.

Due to dramatic and permanent changes in the structure of some industries, however, compounded by recent economic downturn, today some multiemployer plans face new questions about their ability to continue to provide meaningful benefits in the future.

The common problems these plans face are a sharp decline in the number of new employers that join the plans, and a dramatic drop in the ratio of active workers to retirees, as Chairman Harkin said at the beginning. A multiemployer plan depends on contributions from employers participating in the plan.

When employers go bankrupt, or otherwise withdraw from the plan, and the plan is underfunded, it's the remaining employers who are responsible for contributing sufficient amounts to pay for the benefits of those participants who accrued benefits while working for an employer that is no longer contributing to the plan.

These larger problems facing plans in troubled industries won't be solved by the kind of temporary, short-term funding relief that Congress is currently working on.

The administration has been examining proposals to help multiemployer plans keep their commitments to workers and retirees while also ensuring that the PBGC is able to continue to protect the retirement security of the 44 million workers and retirees in the more than 29,000 private defined benefit plans that it insures.

And, as he mentioned, earlier this year, Senator Casey introduced the Create Jobs and Save Benefits Act of 2010. We appreciate Senator Casey's leadership in calling attention to the situation facing some multiemployer plans. We recognize the financial hardship facing these workers and retirees who could experience lower pension benefits.

At the same time, however, we believe that several elements of this particular proposal deserve further consideration. The legislation would amend the Employee Retirement Income Security Act of 1974, ERISA, to permit some multiemployer plans to elect a qualified partition. This proposed qualified partition would permit a multiemployer plan to spin off into a new partition plan the liabilities and certain assets attributable to employees of employers who file for bankruptcy or who have failed to pay their withdrawal liability when they leave the plan.

Under current law, PBGC has the authority to order partition of a multiemployer plan. Partition is a statutory mechanism that permits healthy employers to retain a plan by carving out plan liabilities attributable to employees of employers who file for chapter 11 bankruptcy. The PBGC assumes liability for paying benefits to these participants of the newly carved-out terminated plan. Like all multiemployer plans, the new plan is subject to PBGC's multiemployer guaranteed benefit limits, and currently, the maximum guaranteed benefit limit is approximately $13,000 for participants with 30 years of service.

Since 1980, when these partition rules came into effect, PBGC has partitioned only two plans. The rules are designed to be narrow, for PBGC to grant partition in narrow circumstances, and to give PBGC the flexibility in making a determination that the partition is necessary. The PBGC must find that a substantial reduction in the amount of aggregated contributions under the plan is a result of employer bankruptcies, and that the plan is likely to be insolvent. In addition, the PBGC must find that contributions will have to be increased to prevent insolvency, and that partition would significantly reduce the likelihood of insolvency.

Unlike PBGC's current statutory framework, the proposed framework in the bill would leave PBGC without the power to make its own findings about the plan's financial condition or the need for partition.

We're concerned about the impact of this proposal on workers and retirees in plans covered by PBGC's insurance programs. The proposal would transfer responsibility to the PBGC for payment of the full plan benefits of participants transferred to the partition plan. In many cases, the benefits participants would receive would be well above the amount guaranteed by PBGC, thus treating participants in the partition plan differently than participants, in other plans trusteed by the PBGC, who are subject to the benefit guarantee limits.

Also, under the proposal, the partition plan would use other PBGC funds, such as the Single-Employer Fund, to pay benefits to participants in the partition plan.

The proposal ultimately makes taxpayers liable for the benefits of the partition plan. Currently, no other benefit obligations assumed by PBGC are subject to the full faith and credit of the U.S. Government.

Now, the administration is still reviewing these proposals. We need to take time to carefully examine them and look at other proposals that would expand the circumstances under which partition could be used; and, in particular, to look at the impact of proposals on participants in other multiemployer plans and single-employer plans insured by the PBGC.

The administration is sympathetic to the financial problems facing multiemployer plans, and we hope to work with you to find balanced solutions. We need to make certain that any solutions protect the retirement security of workers and retirees, and secure the PBGC's ability to continue to pay guaranteed benefits for all of the workers and retirees whose defined benefits plans it's responsible for insuring.

Thank you so much for the opportunity to testify and for your leadership in examining this issue. We look forward to working with the committee to solve these important issues. I'll be happy to answer any questions.

[The prepared statement of Ms. Borzi follows:]

Prepared Statement of Phyllis C. Borzi

INTRODUCTORY REMARKS

Good morning Chairman Harkin, Ranking Member Enzi, and members of the committee. Thank you for inviting me to testify before the committee today about multiemployer defined benefit pension plans. I am Phyllis C. Borzi, the Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA). EBSA's mission is to protect the security of retirement, health, and other employee benefits for America's workers, retirees and their families, and to support the growth of our private-sector employee benefits system.

One of my key responsibilities as the Assistant Secretary of Labor for EBSA is to serve as Secretary Solis' representative to the Pension Benefit Guaranty Corporation's (PBGC) Board of Directors, which she chairs. The subject of today's hearing is relevant both to EBSA's mission and to the PBGC Board's oversight responsibilities. I am pleased that your committee is examining these issues and look forward to working with you to strengthen retirement security for working Americans.

The Department of Labor is committed to promoting policies that encourage retirement savings and protect workers' employer-sponsored benefits. Multiemployer defined benefit pension plans play a vital role in providing retirement security to millions of American workers and retirees. However, due to dramatic and permanent changes in the structure of some industries, compounded by the recent economic downturn, today some multiemployer plans face new questions about their ability to continue to provide meaningful benefits in the future. The common problems these plans face are a declining number of active participants and a significant drop in the number of employers who contribute to the plan. These larger problems for plans in troubled industries are not temporary and will not be solved by short-term funding relief.

Because the Department and the PBGC Board of Directors understand the valuable benefits that these plans provide to millions of workers and retirees, we are concerned about their long-term solvency. We are examining proposals to help multiemployer plans keep their commitments to workers and retirees, while also ensuring that the PBGC is able to continue to protect the retirement security of the 44 million workers and retirees in the more than 29,000 private defined benefit plans that it insures.

BACKGROUND

The PBGC protects the pension benefits of about 1,500 multiemployer plans that cover more than 10.4 million workers and retirees.[1] While 5 percent of PBGC-insured defined benefit plans are multiemployer plans, multiemployer plan participants constitute over 24 percent of all participants in PBGC-covered defined benefit plans. Multiemployer plans are collectively bargained plans that are maintained by labor unions and more than one employer. Contributing employers are generally from the same or closely related industries, such as the construction, trucking, textiles, or mining industries. Federal labor law requires these plans to be jointly administered, with equal representation from labor and management.

The number of multiemployer pension plans PBGC insures has been declining since 1980, falling approximately 30 percent from 2,200 in 1980 to 1,500 in 2009—primarily due to plan mergers.[2] Over the same period, the total number of multiemployer pension plan participants has risen about 30 percent (from almost 8 million in 1980 to over 10 million in 2009). However, the percentage of active workers participating in multiemployer plans has declined since 1980, while, in contrast, the percentage of participants who have retired or who are separated from employment and have not yet begun receiving a pension has risen. Active workers represented approximately 75 percent of multiemployer plan participants in 1980 but only 45 percent in 2007, while retired or separated participants represented approximately 25 percent in 1980 but significantly increased to 55 percent by 2007. This demographic shift is at the heart of the funding challenges that multiemployer defined benefit plans face.

ADVANTAGES AND DISADVANTAGES OF MULTIEMPLOYER PENSION PLANS

Multiemployer plans, like single-employer defined benefit plans, can provide workers and their families with a steady and reliable stream of income at retirement. In many multiemployer plans, the participant's benefit is based on a flat dollar amount for each year of service. This is different from most single-employer plans where benefits are typically based on years of service and earnings.

Multiemployer plans enable workers who switch employers frequently within the same industry to earn meaningful benefits under a defined benefit plan. Participants can continue to accrue credits toward their pension when they change employers, as long as the new employer is a contributing employer to the plan. This portability feature is what makes multiemployer plans attractive in industries such as construction where workers may switch employers frequently.

However, the concentration of multiemployer plans in a particular industry also creates a disadvantage for plans if that industry is in decline. A multiemployer plan depends on contributions from employers participating in the plan. When employers go bankrupt or otherwise withdraw from the plan, and the plan is underfunded, the remaining employers are responsible for contributing sufficient amounts to pay for the benefits of those participants who accrued benefits while working for an employer that is no longer contributing to the plan.

In 1980, Congress enacted the Multiemployer Pension Plan Amendments Act (MPPAA) to strengthen protections for multiemployer plans. Under MPPAA, employers who cease to contribute to a multiemployer plan are generally liable to the plan for their share of the plan's underfunding, known as withdrawal liability. Companies that go out of business, however, often fail to pay their withdrawal liability and leave the remaining employers responsible for larger contributions.

PBGC ASSISTANCE TO MULTIEMPLOYER PLANS

The PBGC operates two insurance programs—one for multiemployer plans and one for single-employer plans. The PBGC multiemployer plan insurance program is, by law, operated and financed separately from the single-employer insurance program. The assets from one program cannot be used to support the other. The multiemployer program also has its own premium structure under which plans pay a flat rate of $9 per participant per year in 2010. This premium is indexed for wage inflation. In comparison, single-employer plans pay a flat rate of $35 per participant per year in 2010. An underfunded single-employer plan may also be required to pay an additional variable premium of up to 0.9 percent of the plan's unfunded vested benefits.

[1] Pension Benefit Guaranty Corporation Annual Report 2009.

[2] Pension Benefit Guaranty Corporation Annual Report 2009 and Forthcoming Pension Insurance Data Book 2009.

Unlike similarly situated single-employer plans, multiemployer plans that become insolvent receive assistance from the PBGC in the form of loans. There are strong incentives for adequate funding of multiemployer plans and for plans to avoid PBGC assistance. In addition to employers being jointly liable for unfunded benefits, the guaranteed benefit for participants is small. Currently, the maximum PBGC guaranteed benefit is approximately $13,000 for 30 years of service, compared with about $54,000 for workers who retire at age 65 in single-employer plans. In effect, workers in multiemployer plans bear more of the risk of plan underfunding than workers in single-employer plans.

Multiemployer plans pose a smaller risk to the PBGC than single-employer plans because the PBGC insurance program for multiemployer plans is the second "backstop." Contributing employers are the first insurers of benefits. Instead of a plan terminating and being trusteed by the PBGC as under the single-employer program, PBGC multiemployer plan insurance is triggered by plan insolvency. When a multiemployer plan lacks assets to pay basic guaranteed benefits, PBGC provides financial assistance in the form of loans, but the plan, rather than PBGC, continues to pay guaranteed benefits.

Since 1980, PBGC has provided $500 million in financial assistance, net of repayments, to 62 multiemployer plans. While plans have an obligation to repay the financial assistance if the plan recovers from insolvency, only one plan has repaid PBGC.

The multiemployer program's deficit was $869 million for fiscal year 2009, with $1.5 billion in assets and $2.3 billion in liabilities. Most of the liabilities represent nonrecoverable future financial assistance to the 39 plans currently receiving financial assistance and to 65 other plans expected to receive assistance in the future. Exposure to additional future losses is a concern due to a number of long-term challenges that may affect the solvency of multiemployer plans.

CHALLENGES FACING MULTIEMPLOYER PLANS

Just like other defined benefit plans, recent investment losses across all asset classes and low interest rates have impacted the funding status of many multiemployer plans. The Pension Protection Act requires multiemployer plan trustees to review projections of their financial status annually and to classify the plan as being in the green, yellow, or red zone. Generally, plans are classified as being in the yellow zone if they are in "endangered status" with funding below 80 percent, or the red zone if they are in "critical status" with funding below 65 percent. From 2008 to 2010, the percentage of calendar-year plans in green status has decreased and the percentage of plans in red status has increased. For 2008, 83 percent of calendar-year plans were in green status, 10 percent in yellow status, and 7 percent in red status. In contrast, for 2010, 54 percent of calendar-year plans were in green status, 16 percent in yellow status, and 30 percent in red status. Most recently, there has been an increase in the number of plans in green status. From 2009 to 2010, the percentage of calendar-year plans in green status increased from 39 percent to 54 percent.[3]

In response, many multiemployer plans have told us that they have already increased employer contributions or cut future benefit accruals to improve funding. In addition, the Administration is sympathetic to providing short-term funding relief for multiemployer plans impacted by the economic downturn by extending the amortization period to fund the plans.

A small number of multiemployer plans, however, are facing severe long-term financial problems that short-term funding relief will not solve. A number of trends have made it unlikely that these plans will recover unless they receive dramatic funding relief or other changes to the pension insurance program are made. One such trend that is particularly challenging is that, due to restructuring of and decline in particular industries, there has been a sharp decline in the number of new employers that join these plans and a dramatic drop in the ratio of active workers to retirees.

The Central States Pension Fund

The Central States Pension Fund, one of the Nation's largest multiemployer defined benefit plans, is facing some of the most difficult long-term challenges. According to information provided by the Fund, the plan covers over 433,000 participants and provides monthly benefits to over 200,000 retirees and beneficiaries; active participants who provide the plan's contribution base have now dropped to 61,000. A large number of business failures in the last 2 years have drastically reduced the

[3] Segal Survey of Calendar-Year Plans' 2010 Zone Status (Spring 2010).

number of employers and active workers to support the retirees in the plan, severely compounding a downward trend caused, in part, by trucking deregulation in the 1980s. The obligation to pay benefits to employees and retirees of these defunct companies remains with the Central States Pension Fund. Like many other plans, Central States also recently suffered investment losses, which has contributed to its financial problems. Reductions in benefits and substantial increases in employer contributions during the past few years have not been able to fill in the gaps caused by the rapidly shrinking contribution base.

PARTITION PROPOSALS

Representatives of the Central States Pension Fund have met with the Department and other members of the Administration about a proposal that would amend the Employee Retirement Income Security Act (ERISA) to permit some multiemployer plans to elect a "qualified partition." Earlier this year, Senator Casey introduced the "Create Jobs and Save Benefits Act of 2010" (S. 3157). The bill provides for many of the partition provisions proposed by Central States. We appreciate Senator Casey's leadership in calling attention to the situation facing Central States.

Current PBGC Partition Authority

PBGC has current authority to order the partition of a multiemployer plan. ERISA empowers the PBGC to order the partition of a multiemployer plan, either upon its own motion or upon application by the plan sponsor. Partition is a statutory mechanism that permits healthy employers to maintain a plan by carving out the plan liabilities attributable to employees of employers who have filed for Chapter 11 bankruptcy. Once partitioned, the PBGC assumes liability for paying benefits to the participants of this newly carved-out but terminated plan. Like all multiemployer plans, the new partitioned plan is subject to ERISA's multiemployer guaranteed benefit limits.

In order to grant a partition under PBGC's current authority, the PBGC must find that a substantial reduction in the amount of aggregated contributions under the plan has resulted or will result from employer bankruptcies and that the plan is likely to become insolvent. In addition, PBGC must find that contributions will have to be increased significantly to prevent insolvency, and that the partition would significantly reduce the likelihood of insolvency.

Since 1980, when the partition rules came into effect, PBGC has partitioned only two plans. In the case of Council 30 of the Retail, Wholesale and Department Stores Union, PBGC does not administer the partitioned plan, but rather provides funds to the trustees of the original plan who act as the paying agent for the partitioned plan. PBGC recently approved the partitioning of the Chicago Truck Drivers Union Pension Plan, which has more than nine retirees for each active worker.

Proposed "Qualified Partition"

The proposed "qualified partition" would permit a multiemployer plan to spin off into a new plan ("partitioned plan") the liabilities and certain assets attributable to employees of employers who have filed for bankruptcy or who have failed to pay their withdrawal liability. The proposal would transfer responsibility to the PBGC for payment of the full plan benefits of participants transferred to the partitioned plan, which in many cases would be well above the amount guaranteed by the PBGC under current law. The multiemployer plan would transfer to the partitioned plan assets that the plan contends should be sufficient to pay the benefits of the transferred participants for up to 5 years. Under the legislative proposal, the plan actuary could determine that fewer assets should be transferred to protect the solvency of the remaining multiemployer plan. Once the transferred assets run out, the U.S. Government would become liable for obligations arising from the partitioned plan.

We recognize the financial hardship facing workers and retirees who could experience lower pension benefits. At the same time, however, we believe that several elements of this particular proposal deserve further consideration. The proposal states that once a multiemployer plan elects a qualified partition, PBGC must order the partition. This framework leaves PBGC without power to make its own findings about the plan's financial condition or need for partition. Once the plan is partitioned, the multiemployer plan, not the PBGC, would continue to manage and invest the assets of the partitioned plan.

The rationale for allowing participants in the partitioned plan to receive their full benefits, while participants in other multiemployer plans receiving assistance from the PBGC and single-employer plans trusteed by the PBGC are subject to benefit guarantee limits, is unclear.

Also, under the proposal, the partitioned plan would use other PBGC funds, such as the single-employer plan fund, to pay benefits to participants in the partitioned plan. We are concerned about the impact of the proposal on participants in single-employer plans trusteed by the PBGC. As of the end of fiscal year 2009, the single-employer program insured about 33.6 million people covered by more than 27,600 plans, and reported a net deficit of $21.1 billion. The proposal ultimately makes the taxpayers liable for paying the benefits of the partitioned plan. Currently, no other benefit obligations assumed by PBGC are subject to the full faith and credit of the U.S. government.

We are examining these proposals and, in particular, the impact of the proposals on participants in other multiemployer plans and single-employer plans insured by the PBGC. The Administration is sympathetic to financial problems facing multiemployer plans and we hope to find balanced solutions. We need to make certain that any solutions protect the retirement security of workers and retirees and secure the PBGC's ability to continue to pay guaranteed benefits to all of the workers and retirees whose defined benefit plans it is responsible for insuring in both the single-employer and multiemployer programs. Any solution to the multiemployer problem might require an infusion of additional funds, for instance through an increase in plan premiums, into the PBGC. We will continue to work with representatives of the Central States Pension Fund on their proposal and would be happy to work with the committee.

CONCLUSION

Thank you for the opportunity to testify before the committee today at this important hearing and for your leadership in examining the future of multiemployer plans. The Department remains committed to protecting the security and growth of retirement benefits for America's workers, retirees, and their families.

The CHAIRMAN. Thank you very much, Ms. Borzi.

Now we'll turn to Mr. Jeszeck.

Mr. Jeszeck, please proceed.

STATEMENT OF CHARLES A. JESZECK, ACTING DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

Mr. JESZECK. Chairman Harkin and members of the committee, thank you so much for inviting me here today to discuss employer pension plans and the challenges they face. Covering over 10 million workers and retirees, they are a key component of our Nation's private pension system. Because of the multiemployer system's key contribution to our country's retirement security, this hearing is extremely timely.

As you know, we are conducting a study of multiemployer plans for another committee, and that study will be issued later this year. My comments today will focus on some of the features of multiemployer plans that distinguish them from single-employer plans. I will then briefly discuss the challenges facing multiemployer plans and the PBGC.

First, some key features of multiemployer plans. Multiemployer plans are collectively bargained by unions and several employers and are administered jointly by labor and management. In comparison, many single-employer plans are not bargained and are administered by a single sponsoring employer. Further, employer contributions to multiemployer plans are determined through the bargaining process, often specified as a rate per hour worked. Such rates are typically fixed for the contract's duration. In contrast, single-plan sponsors may vary contributions annually, as long as they remain within the limits set by ERISA.

Rules of employers seeking to end their sponsorship are less flexible for multies than for singles. Multiemployer plan sponsors who wish to withdraw from the plan must pay their share of the plan's unfunded vested benefits. This is called the "withdrawal liability." Further, if an employer in such a plan goes bankrupt, the other sponsors must assume responsibility for paying any unfunded benefits. In contrast, a single-employer plan sponsor is liable only for the unfunded portion of his own plan.

PBGC's role also varies between multi- and single-employer plans. PBGC premiums for multiemployers are significantly lower than those for single employers, and so are premium revenues. So, too, are PBGC benefit guarantees; up to 54,000 a year for participants in single-employer plans, compared to about 13,000 for multies. Further, single-employer plans are insured at termination, and PBGC may assume responsibility for the plan and pay benefits directly to retirees. Although multiemployer plans are also insured, PBGC does not take over these plans, but instead provides financial assistance in the form of loans.

The net effect is a different distribution of risk between the two models. For multiemployer plans, the risk of plan underfunding is first borne by the company sponsoring the plan, then by the participants, whose benefit guarantees are relatively low. Under the multi model, PBGC assistance is less likely and less costly to the agency, and ultimately the taxpayer, than the guaranteed benefits in the single-employer program.

Let me now turn to the difficult challenges facing multiemployer plans. Right now, the latest funding data available from PBGC is for 2006, prior to the recent financial crisis. However, even then, the aggregate multiemployer system was funded at about an almost critical 66-percent level. PBGC's multiemployer program deficit, at $869 million in 2009, remains far smaller than the single-employer program's $21.1 billion accumulated deficit. However, it has increased significantly in recent years, and PBGC simulations suggest a high probability of rising future deficits.

Like single-employer plans, the low interest rates and market declines of the last decade have contributed to the multies' funding difficulties. In addition, the currently high unemployment is likely magnifying the funding pressures for many multies. This is because contributions are typically a function of hours worked, and with reduced employment, contributions have declined, as well.

These difficulties occur in a longer-term environment that is increasingly unfavorable to DB plans. As with single employers, the number of multiemployer plans continues to decline, and the number of active participants has stagnated in recent years. Although their shared governance and risk distribution creates strong incentives for stakeholders to work together to address problems, the multiemployers' financial health has been deteriorating.

Many employers perceive multiemployer plans as financially risky and inflexible; hence, they're not likely to join them. Furthermore, collective bargaining itself, a necessary element of the multiemployer model, is in long-term decline, and will offer fewer opportunities for new plan formation. Taken together, these trends suggest a future of fewer and older multiemployer plans.

Given these dynamics, PBGC, employers, workers, and unions will likely face increasing challenges in ensuring that multiemployer plans continue to be key contributors to American retirement security.

That concludes my statement, Mr. Chairman. I'd be happy to answer any questions you or other members may have.

[The prepared statement of Mr. Jeszeck follows:]

Prepared Statement of Charles A. Jeszeck

BACKGROUND

Multiemployer defined benefit pension plans are created by collective bargaining agreements covering more than one employer and generally operated under the joint trusteeship of labor and management. They cover over 10.4 million participants in the 1,500 multiemployer plans insured by PBGC. Reports of declines in plan funding have prompted questions about the financial health of these plans.

METHODOLOGY

GAO's testimony will provide information on (1) the unique characteristics of multiemployer plans and (2) the challenges that multiemployer plans face and how they may affect PBGC. To address these objectives, GAO relied primarily on its previously published reports on multiemployer plans (GAO–04–423 and GAO–04–542T), and data publicly available from PBGC. GAO is conducting a study of multiemployer plans for the House Education and Labor committee, which will be issued later this year. GAO is not going to make any new recommendations in its testimony.

SUMMARY

In comparison to the single-employer plan framework, multiemployer plans have a unique structure that provides a certain level of plan stability through its pooling of risk among participating plan employers. A plan can continue to operate long after an individual employer, or sponsor, goes out of business because the multiemployer framework holds the remaining employers jointly liable for funding benefits for all vested participants. Multiemployer plans also facilitate benefit portability as they provide benefits to workers who change participating employers. In addition, the multiemployer model redistributes financial risk away from PBGC to participating employers and participants, compared to the single-employer system. Premium levels and benefit guarantees are far lower for multiemployer plans. In contrast to underfunded single-employer plans that are terminated and then trusteed by PBGC which pays all benefits, PBGC will provide loans to a plan that becomes insolvent and can no longer pay benefits at the level guaranteed by PBGC. Since the inception of the insurance program, PBGC has paid $500 million in financial assistance to 62 insolvent plans.

Multiemployer plans face ongoing funding and demographic challenges that potentially can increase the financial burden on PBGC. According to PBGC, multiemployer plans have not been fully funded since 2000 and the most current data suggests that they were only 66 percent funded in 2006, prior to the current recession. Further, PBGC simulations suggest that additional economic stress is likely in the future. Other challenges include the continuing declines in the number of plans, an aging participant base and the general decline in collective bargaining that leaves few opportunities for plan growth. As a result, the proportion of active participants paying into the fund to others who are no longer paying into the fund has decreased, increased plan liabilities. GAO will also provide available information on plan-funded status, participant levels, and PBGC funding and liabilities.

WHY GAO DID THIS STUDY

Multiemployer defined benefit pension plans, which are created by collective bargaining agreements covering more than one employer and generally operated under the joint trusteeship of labor and management, provide pension coverage to over 10.4 million participants in the 1,500 multiemployer plans insured by the Pension Benefit Guaranty Corporation (PBGC). Changes to the structure of the multiemployer plan framework and to PBGC's role as insurer have sought to improve plan funding. Reports of declines in plan funding have prompted questions about the financial health of these plans.

The committee asked GAO to provide information on (1) the unique characteristics of multiemployer plans and (2) the challenges that multiemployer plans face and how they may affect PBGC.

GAO provided a draft of this testimony to PBGC for review and comment. PBGC provided technical comments, which were incorporated, as appropriate.

To address these objectives, GAO relied primarily on its previously published reports on multiemployer plans (GAO–04–423 and GAO–04–542T), and data publicly available from PBGC. GAO is not making new recommendations in this testimony.

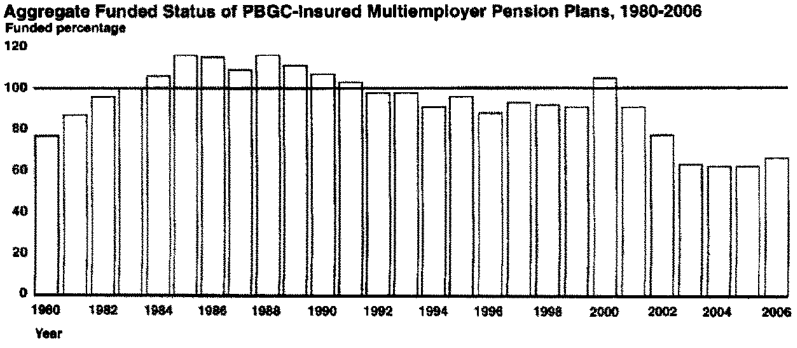
Private Pensions—Long-Standing Challenges Remain for Multiemployer Pension Plans

What GAO Found

While the Employee Retirement Income Security Act of 1974 funding rules apply to most private sector pension plans, the Nation's collectively bargained multiemployer plans have a unique structure intended to provide a certain level of plan stability and benefit portability while mitigating the risks to their insurer, PBGC. Multiemployer plans provide portable benefits to workers who change employers, distribute risk among participating employers and participants, and continue to operate long after an individual employer, or sponsor, goes out of business, because their framework makes remaining employers jointly liable for funding benefits for all vested participants. Multiemployer plans also pay a low insurance premium to PBGC because they typically do not require PBGC assistance. When needed, PBGC will provide loans to a plan that becomes insolvent and can no longer pay benefits at the level guaranteed by PBGC. Since the inception of the multiemployer insurance program in 1980, PBGC has paid $500 million in financial assistance to 62 insolvent plans.

Multiemployer plans face ongoing funding and demographic challenges that potentially increase the financial burden on PBGC. According to PBGC, multiemployer plans have not been fully funded at the 100 percent or above level since 2000. Other challenges include continuing decreases in the number of these plans and an aging participant base. Further, a decline in collective bargaining in the United States has left few opportunities for plans to attract new employers and workers. As a result, the proportion of active participants paying into the fund to others who are no longer paying into the fund has decreased, thereby increasing plan liabilities and the likelihood that PBGC will have to provide financial assistance in the future.

Aggregate Funded Status of PBGC-Insured Multiemployer Pension Plans, 1980-2006



Source: GAO analysis of PBGC data.

Mr. Chairman and members of the committee, I am pleased to be here today to discuss the multiemployer pension system and the challenges it faces. Multiemployer pension plans constitute an important segment of the Nation's private employer pension system.[1] Multiemployer plans are defined benefit (DB) plans established through collectively bargained pension agreements between labor unions and

[1] 'Multiemployer plans are distinct from single-employer plans, which are established and maintained by one employer, and multiple-employer plans, many of which maintain separate funding accounts for each employer.

two or more employers.[2] In 2009, there were about 1,500 multiemployer plans that cover more than 10.4 million workers and retirees—approximately 1 of every 4 workers and retirees in the United States covered by a private sector DB plan. As we reported in 2004, the financial stakes are high for workers, retirees, and employers participating in these plans, as well as for the plans' insurer, the Pension Benefit Guaranty Corporation (PBGC).[3]

Multiemployer plans cover unionized workers in many industries, including the trucking, retail food, construction, mining, and garment industries and, importantly, provide some portability of benefits. Workers can continue accruing pension benefits when they change jobs if their new employer is a contributing employer in the same plan. Such arrangements are particularly suited to workers in industries such as construction, in which job changes are frequent over the course of a career.

Since 2000, many multiemployer plans have experienced significant reductions in their funded status. Several factors contributed to this underfunding, including stock market losses, which reduced the value of plans' holdings, and historically low interest rates, which increased plan liabilities. The economic downturn also affected employers' ability to contribute to these plans. Many companies experienced slowdowns or closed their doors. While recent reports point to a recovering economy, some industries in which multiemployer plans are common have experienced high unemployment, limiting the stream of contributions coming into the plans.

In 2004, we reported that the multiemployer system, in comparison with private single-employer plans, operates under a framework that redistributes risk toward employers and participants and away from government and potentially the taxpayer.[4] In addition, we noted that this framework can create important incentives for interested parties to resolve financial difficulties. However, we also found that weak economic conditions in the early 2000s and declines in interest rates and equities markets increased the financial stress on the overall multiemployer plan framework, and each of the key stakeholders. We also identified several challenges to the long-term health of these plans, including the lack of employer funding flexibility compared with single-employer plans and the overall decline of collective bargaining. Today, 6 years later, the economic climate within which multiemployer plans must operate is far worse. As you know, we are conducting a study of multiemployer plans for another committee and expect to publish a report on our work later this year. Today I will discuss (1) some of the unique characteristics of multiemployer plans that affect their stability and PBGC's risk, and (2) current challenges faced by multiemployer plans and by PBGC as their insurer.

Today's testimony draws on our work on PBGC, our 2004 report, and publicly available information. In developing our 2004 report, we examined how multiemployer DB pension plans differ from single-employer plans, and reviewed relevant laws and regulations, Form 5500 reports that plans file with the Department of Labor, and prior GAO reports and other pertinent literature. To identify recent and current trends and potential challenges in funding and worker participation rates for multiemployer plans, we reviewed PBGC reports and analyzed data from PBGC, conducting this performance audit in May 2010, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[2] Collective bargaining has been the primary means by which workers can negotiate, through unions, the terms of their pension plan. In 1935, the National Labor Relations Act (NLRA) required employers to bargain with union representatives over wages and other conditions of employment, and subsequent court decisions established that employee benefit plans could be among those conditions. The Taft Hartley Act of 1947 amended the NLRA to establish terms for negotiating such employee benefits and placed certain restrictions on the operation of any plan resulting from those negotiations. For example, employer contributions cannot be made to a union or its representative but must be made to a trust that has an equal balance of union and employer representation.

[3] GAO, *Private Pensions: Multiemployer Plans Face Short- and Long-Term Challenges*, GAO–04–423, (Washington, DC: Mar. 26, 2004). We designated PBGC's single-employer pension insurance program as high risk in 2003, including it on our list of major programs that need urgent attention and transformation. Both of PBGC's insurance programs remain high-risk concern because of an ongoing threat of losses from the terminations of underfunded plans.

[4] GAO–04–423 and GAO, *Private Pensions: Multiemployer Pensions Face Key Challenges to Their Long-Term Prospects*, GAO–04–542T, (Washington, DC: Mar. 18, 2004).

BACKGROUND

In 1974, Congress passed the Employee Retirement Income Security Act (ERISA) to protect the interests of participants and beneficiaries covered by private sector employee benefit plans.[5] Title IV of ERISA created PBGC as a U.S. Government corporation to provide plan termination insurance for certain DB pension plans that become unable to provide pension benefits. PBGC operates two distinct pension insurance programs, one for multiemployer plans and one for single-employer plans. These plans have separate insurance funds, as well as different benefit guarantees, and insurance coverage rules. The multiemployer insurance program and PBGC's day-to-day operations are financed by annual premiums paid by the plans and by investment returns on PBGC's assets.[6] For multiemployer plans, PBGC guarantees, within prescribed limits, those participant benefits that are not funded by plan assets when a covered plan is insolvent and unable to pay basic PBGC-guaranteed benefits when due for the plan year.

In 1980, Congress sought to protect worker pensions in multiemployer plans by enacting the Multiemployer Pension Plan Amendments Act (MPPAA).[7] Among other things, MPPAA (1) strengthened funding requirements to help ensure that plans accumulate enough assets to pay for promised benefits, and (2) made employers, unless relieved by special provisions, liable for their share of unfunded plan benefits when they withdrew from a multiemployer plan. The amount is based upon a proportional share of the plan's unfunded vested benefits.[8] Liabilities that cannot be collected from a withdrawing employer, for example, one in bankruptcy, were to be "rolled over" and eventually had to be funded by the plan's remaining employers.[9] The changes were to discourage withdrawals, which shift liabilities to PBGC's insurance program.

The Pension Protection Act of 2006 (PPA) established new funding and disclosure requirements for multiemployer plans.[10] Under PPA, a plan's actuary must certify to the Secretary of the Treasury the funding status of the plan within 90 days of the start of the plan year.[11] For plans that certify that they are in endangered status (less than 80 percent funded) or critical status (less than 65 percent funded), PPA requires plan trustees to take specific actions to improve the plan's financial status, such as developing schedules to increase contributions or reduce benefits.[12] Plans certified as endangered must adopt a funding improvement plan, and those certified as critical must adopt a rehabilitation plan.[13] To assist plans in critical status, PPA amended ERISA to allow plans to reduce or eliminate some payment and early retirement options for plan participants who had not yet retired. In addition, PPA required trustees of plans in endangered or critical status to provide notice of that status to participants and beneficiaries, the bargaining parties, PBGC, and the Secretary of Labor within 30 days of certification.[14] If a plan is in critical status, the notice must also inform employers of a possible contribution surcharge, and participants of a potential reduction in benefits.

The funding requirements of PPA took effect just as the Nation entered a severe economic recession in the fall of 2007. As a result, Congress enacted the Worker,

[5] U.S.C. § 1001 nt.

[6] The single-employer insurance program receives additional financing from assets acquired from terminated single-employer plans and by recoveries from employers responsible for underfunded terminated single-employer plans. PBGC receives no funds from Federal tax revenues, but it is authorized under ERISA to borrow up to $100 million from the Federal treasury if it has inadequate resources to meet its responsibilities.

[7] 'Pub. L. No. 96–364.

[8] Vested benefits are benefits that are no longer subject to risk of forfeiture. Unfunded vested benefits are the difference between the present value of a plan's vested benefits and the value of plan assets as determined in accordance with Title IV of ERISA.

[9] These liabilities are frequently referred to as orphaned liabilities.

[10] Pub. L. No. 109–280.

[11] 26 U.S.C. § 432(b)(3).

[12] Under PPA, a plan is considered to be in endangered status if it is less than 80 percent funded or if the plan is projected to have a funding deficiency within 7 years. A plan that is less than 80 percent funded and is projected to have a funding deficiency within 7 years is considered to be seriously endangered. A multiemployer plan is considered to be in critical status if (1) it is less than 65 percent funded and has a projected funding deficiency within 5 years or will be unable to pay benefits within 7 years; (2) it has a projected funding deficiency within 4 years or will be unable to pay benefits within 5 years (regardless of its funded percentage); or (3) its liabilities for inactive participants are greater than its liabilities for active participants, its contributions are less than carrying costs, and a funding deficiency is projected within 5 years.

[13] 26 U.S.C. § 432(c).

[14] 26 U.S.C. § 432(e)(1)(B) (for plans in endangered status) and 26 U.S.C. § 432(e)(8)(C) (for plans in critical status).

Retiree, and Employer Recovery Act of 2008 (WRERA) to provide multiemployer plans with temporary relief from PPA requirements by allowing plans to temporarily freeze their funded status at the previous year's level.[15] The freeze allows plans to delay creation of or updates to an existing funding improvement plan, rehabilitation plan, or other steps required under PPA.[16] WRERA also requires plans to send a notice to all participants and beneficiaries, bargaining parties, PBGC, and the Department of Labor indicating that the election to freeze the status of the plan does not mean that the funded status of the plan has improved. WRERA also provided for a 3-year extension of a plan's funding improvement or rehabilitation period.

KEY DIFFERENCES EXIST BETWEEN MULTIEMPLOYER AND SINGLE-EMPLOYER PENSION PLANS

While ERISA and PBGC funding rules apply to both single and multiemployer plans, there are several important differences that affect the structure and stability of each type of plan. They include the following:

- **PBGC benefit guarantee levels:** PBGC guarantees benefits for multiemployer beneficiaries at up to $12,870 per year, based on 30 years of employment. PBGC's guarantee for single-employer beneficiaries is considerably higher—up to $54,000 per year for a retiree at age 65.
- **PBGC premium structure:** PBGC collects insurance premiums for each plan it insures, but premium rates differ significantly, commensurate with the benefit amounts being guaranteed. In 2010, multiemployer plans pay PBGC an annual flat rate premium of $9 per participant, while single-employer plans pay PBGC $35 per participant. In addition, underfunded single-employer plans generally pay PBGC an additional variable rate premium based on the plan's unfunded vested benefits, because of the increased risk to PBGC because there are no other sponsors to cover the unfunded liabilities. Multiemployer plans are not required to pay this additional variable rate premium.
- **Insurable events:** PBGC's "insurable event" for its multiemployer program—an event that triggers PBGC financial assistance—is plan insolvency. A multiemployer plan is insolvent and may apply for financial assistance when its available resources are not sufficient to pay benefits at PBGC's guaranteed level when due. In contrast, the insurable event for the single-employer program is generally termination of a plan, after which PBGC assumes responsibility and pays benefits directly to participants.
- **Provision of financial assistance:** PBGC provides loans to multiemployer plans when they become insolvent, and a multiemployer plan need not be terminated to qualify for financial assistance. Insolvent multiemployer plans also are required to reduce or suspend payment of any portion of benefits to beneficiaries that exceed PBGC's guarantee level. If a plan recovers from insolvency, it must begin repaying the PBGC loan. Since the inception of the multiemployer insurance program in 1980, PBGC has provided $500 million in financial assistance to 62 plans. In fiscal year 2009 alone, PBGC provided $86 million in financial assistance to 43 insolvent plans. In 30 years, only 1 plan has paid back its loan. PBGC provides no comparable assistance to single-employer plans because PBGC takes over terminated unfunded plans.
- **Fiduciary and settlor function:** An employer's primary responsibility in a multiemployer plan is to pay contributions to the plan in the amount set in the collective bargaining agreement. Contribution requirements are generally a settlor rather than fiduciary function, for both sponsors of single-employer plans and participating sponsors in multiemployer plans. Individual employers in multiemployer plans do not assume a fiduciary role in plan management, which is instead handled by a board of trustees. Single-employer plans, on the other hand, are administered by one employer and may or may not be collectively bargained, so the employer generally assumes fiduciary duty for the pension plan.[17]

[15] Pub. L. No. 110–458.

[16] Section 204(b) of WRERA provides a special rule for multiemployer plans that would be in critical status for the election year if they had not elected to freeze the plan's funded status. In particular, if the plan has been certified by the plan actuary to be in critical status for the election year, then the plan is treated as being in critical status for that year for purposes of applying the excise tax exception under section 4971(g)(1)(A) of the Internal Revenue Code.

[17] In 2008, we identified a tension inherent in the single-employer model for the plan sponsors, who must serve both as plan fiduciary and approve investment decisions. See GAO, *Private Pensions: Fulfilling FY Fiduciary Obligations Can Present Challenges for 401(k) Plan Sponsors*, GAO–08–774 (Washington, DC: July 16, 2008).

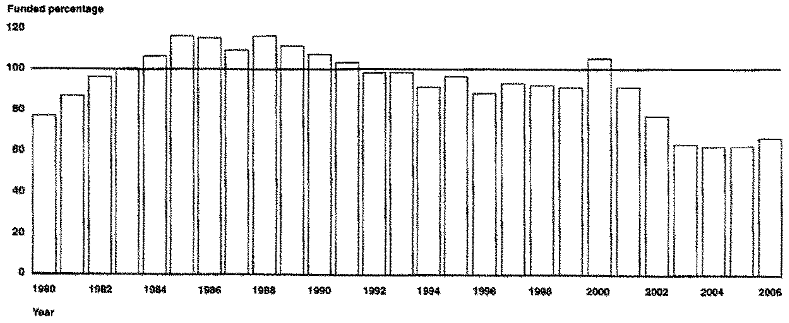
- **Risk distribution:** The pooling of risk that is inherent in multiemployer pension plans may buffer these plans from financial shocks because the economic performance of any one employer has less impact. Multiemployer pension plans typically continue to operate long after an individual employer, or sponsor, goes out of business, because the plan's remaining employers are jointly liable for funding benefits for all vested participants. Single-employer plans generally do not share the risk with other employers.
- **Portability of benefits:** Multiemployer plans provide participants some benefit portability because they allow workers to keep and continue to accrue pension benefits when they change jobs as long as their new employer also participates in the same plan. Because single-employer plans are established and maintained by only one employer, their benefits are not normally portable.
- **Ability to adjust contribution and benefit levels:** While minimum funding rules set out in ERISA and the Internal Revenue Code permit plan sponsors some flexibility in the timing of pension contributions, individual employers in multiemployer plans cannot individually adjust their plan contributions at will, and may be restricted in making changes until the collective bargaining agreement comes up for renegotiation, typically once every 2 or 3 years.[18] Often, any changes in benefit levels must also be renegotiated by the bargaining parties. In contrast, sponsors of single-employer plans, depending on their employees' bargaining rights, may make adjustments to future contributions and benefits according to the company's fiscal condition provided that minimum funding requirements are met.
- **Employer terminations:** If an employer withdraws from a multiemployer plan, the accrued benefits for its workers stay in and are administered by the plan. The plan terminates by mass withdrawal if all contributing employers of a multiemployer plan leave. When the plan becomes insolvent, PBGC begins providing financial assistance to the existing trustees upon insolvency of the plan, after which those trustees continue to administer the plan until all benefits are paid out. With respect to single-employer plans, PBGC assumes trusteeship and administers payment of participant benefits when an underfunded single-employer plan terminates.
- **Plan withdrawal:** To protect the pensions of participants in multiemployer plans, MPPAA holds an employer seeking to withdraw from a plan liable to the plan for its share of the plan's unfunded liability. The law contains formulas for determining the amount, known as withdrawal liability, based on the employer's proportional share of the plan's unfunded vested benefits for all employees covered by the plan. In cases of bankruptcy, MPPAA requires the remaining employers in the plan to assume responsibility for funding benefits to the bankrupt employer's participants. This unfunded amount is often referred to as an orphaned liability. There is no comparable withdrawal liability for sponsors of single-employer plans, as the employer is liable for the unfunded benefits of the plan. According to PBGC, this greater financial risk on employers and lower guaranteed benefit level for participants in multiemployer plans, in practice, create incentives for employers, participants, and their collective bargaining representatives to avoid insolvency and to collaborate in trying to find solutions to the plan's financial difficulties.

MULTIEMPLOYER PLANS CONTINUE TO FACE FUNDING AND DEMOGRAPHIC CHALLENGES THAT COULD SIGNIFICANTLY AFFECT PBGC

Multiemployer plans face ongoing funding and demographic challenges that have the potential to place an additional financial burden on PBGC. According to PBGC, multiemployer plans have not been fully funded at the 100 percent or above level since 2000 and their net funding has declined significantly since that time. The aggregate funded status—the percentage of benefits covered by plan assets—in multiemployer plans insured by PBGC declined from 105 percent in 2000 to 66 percent in 2006, the last date for which PBGC data are available. (See Fig. 1.) The aggregate position of these plans has further diminished because of investment market declines and the recession beginning in 2007.

[18] Employer contributions to many multiemployer plans are typically made in a set dollar amount per hour of covered work, and thus reflect the number of active plan participants.

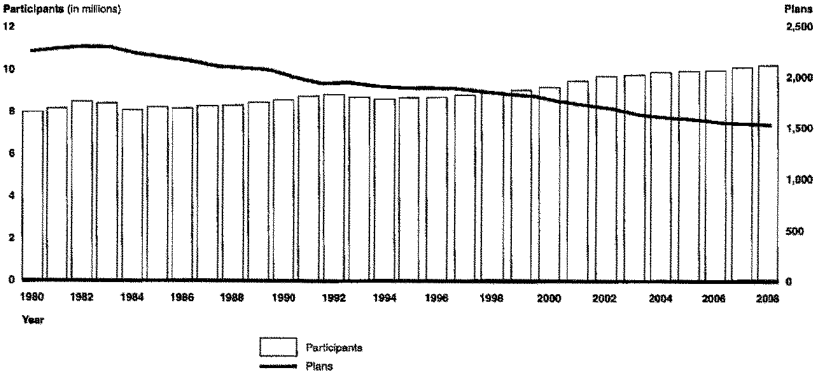
Figure 1: Aggregate Funded Status of PBGC-Insured Multiemployer Pension Plans, 1980-2006



Source: GAO analysis of PBGC data.

Multiemployer plans also face demographic challenges: reductions in the number of plans, an aging workforce, and few opportunities to attract new employers and workers into plans. The number of plans has decreased fairly steadily since the 1980s, likely reflecting plan mergers. (See Fig. 2.)

Figure 2: Number of PBGC-Insured Multiemployer Plans and Participants, 1980-2008

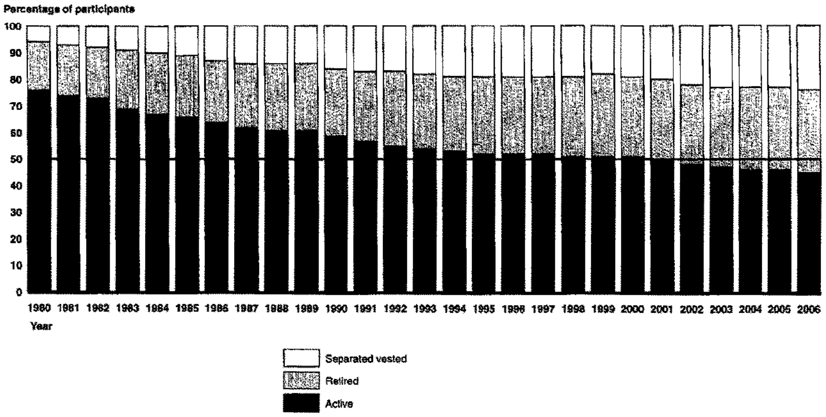


Source: GAO analysis of PBGC data.

Meanwhile, although the number of total participants in multiemployer plans has slowly increased, the proportion of active participants to retirees and separated vested participants has decreased, largely because of an aging workforce.[19] (See Fig. 3.) For example, multiemployer plans had 1.6 million fewer active participants in 2006 than in 1980, according to PBGC.

[19] A separated vested participant is one who has earned a non-forfeitable pension benefit but is no longer accruing benefits under the plan and has not yet started receiving benefits.

Figure 3: PBGC-Insured Multiemployer Plan Participation, by Participant Status, 1980-2006

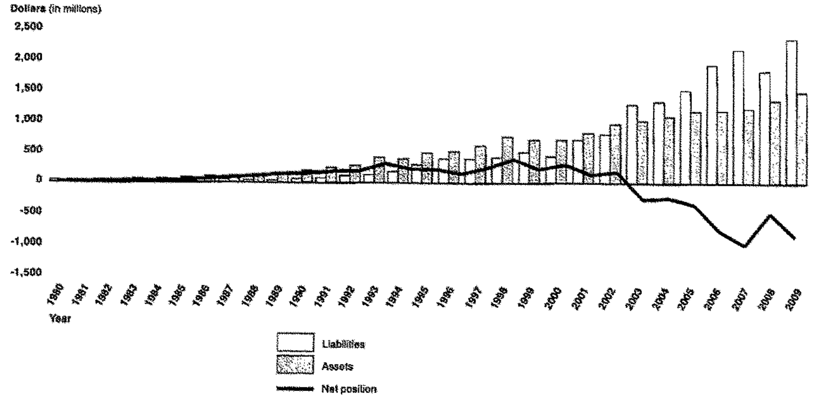


Source: GAO analysis of PBGC data.

The future growth of multiemployer plans is largely predicated on growth of collective bargaining. Yet collective bargaining has declined in the United States since the early 1950s. According to the Bureau of Labor Statistics, union membership—a proxy for collective bargaining coverage—accounted for 7.2 percent of the U.S. private sector labor force in 2009. In contrast, in 1990, union membership in the private sector accounted for about 12 percent, and in 1980, about 20 percent.

Without a new stream of contributions, plans will increasingly have to tap into assets to meet benefit obligations and, everything else being equal, will generally lower the plans' funded status. The conditions that plans currently face increase the risk of insolvency and the likelihood PBGC will be forced to provide financial assistance. PBGC's ability to assist multiemployer plans is contingent upon its insurance program having sufficient funds to do so. PBGC's net position for its multiemployer pension insurance program has steadily declined since its highest point in 1998 as program liabilities outpaced asset growth. (See Fig. 4.) In fiscal year 2009, the multiemployer program reported an accumulated deficit of $869 million.

Figure 4: PBGC Multiemployer Insurance Program Assets, Liabilities, and Net Position, Fiscal Years 1980-2009



Source: GAO analysis of PBGC data.

By promoting risk sharing among participating employers and workers, the framework for multiemployer plans under ERISA and MPPAA is intended to limit PBGC's exposure to future losses from underfunded plans. However, in fiscal year 2009, PBGC's estimates of exposure to future losses from underfunded multiemployer plans rose to $326 million (up from $30 million in 2008 and $73 million in

2007).[20] PBGC reported that most plans considered at risk were in manufacturing, transportation, services, and wholesale and retail trade. PBGC's estimate of the exposure to future losses from underfunded multiemployer plans could reach $5.5 billion over the next 10 years.

CONCLUDING OBSERVATIONS

Multiemployer plans continue to provide an important source of retirement income for millions of American workers. These plans provide a useful means for these workers—workers who change jobs frequently within the same industry—to accrue retirement benefits over the course of their careers. Similar to their single-employer cousins, multiemployer plans are suffering some serious short-term financial stresses within the larger context of a longer-term structural decline. Congress has given PBGC tools to monitor the overall financial health of multiemployer plans and a means to provide financial assistance to help these plans weather difficult financial times. Given recent financial events, however, it will take more time to determine whether the PPA requirements will achieve their intended purpose.

This concludes my prepared statement. I am happy to answer any questions that the committee may have.

The CHAIRMAN. Thank you very much, Mr. Jeszeck.

We'll begin a series of 5-minute rounds, here.

I want to start with Ms. Borzi. As you pointed out, and others have, there are more than 10 million workers covered by 1,500 multiemployer pension plans. And, as you pointed out, and others, this is often the only way that small businesses can provide pensions to their workers. After the recent meltdown, plans are struggling. We know the future looks less and less secure, as Mr. Jeszeck just pointed out.

I guess, just a generally broad question: What role do you think multiemployer plans can play in providing a secure retirement for American workers in the future? What additional steps can Congress take to keep existing multiemployer plans ongoing?

Ms. BORZI. Well, that's a terrific question. Despite the trends towards 401(k), the administration does strongly support the continuation of defined benefit plans—and multiemployer plans, in particular—for the reasons that you identified: the ability of workers to move from job to job, employer to employer, and continue to accrue their pension credit.

I think, honestly, the most important thing that Congress can do to help preserve these plans for the future is to work to deal with some of these structural problems that Senator Casey's bill identifies. I think we need to work together to figure out a way to make it easier for smaller employers to continue to make their contributions to these plans, and to strengthen their ability to work towards keeping financial stability. I think what they don't need is additional burdens and additional restrictions. I think we need to figure out ways to continue to encourage employers to stay with these plans.

Part of the important structural problem is this problem of orphan employees. The multiemployer plans have played a very, very critical role, over the past several decades since ERISA was enacted, because they serve as the first backstop so that PBGC doesn't take over these plans. It's a burden that the contributing employers have tried to take. We need to figure out a way to re-

[20] PBGC classifies the underfunding for vested benefits in other multiemployer plans as reasonably possible exposure. In the multiemployer program, a probable liability is generated when certain plan metrics are sufficiently problematic. Given a sufficiently problematic collection of plan metrics, and a cash-flow projection of insolvency, a plan is classified as probable, and is thus recognized as a PBGC liability.

duce the burdens on these contributing employers, and yet encourage them to stay with these plans and not abandon the plans, either to have no plans whatsoever or to move to a 401(k) plan. Because, for workers and retirees, defined benefit plans provide the best type of retirement security.

The CHAIRMAN. Mr. Jeszeck, in your report and your findings, you talked about the changing demographic structures. Take the Central States Plan, for example. There used to be a lot of trucking companies. Now there are few trucking companies. Well, I understand that. But, there are more trucks. There are more truck drivers. And they shift from employer to employer. It seems to me, we still have a basis for multiemployer plans. Is it simply because drivers are nonunion that they don't bargain for these? Is that the reason?

Let me see if I can say it more succinctly. Yes, there's been a demographic change—fewer trucking companies. I understand that. But, we have more trucks on the road, and we have more truck drivers. Therefore, you'd think that multiemployer plans would proliferate. Instead, there are fewer. Why do we have this paradox?

Mr. JESZECK. Well, Senator, we haven't studied the trucking industry closely, but I can see some general trends. Certainly, the trucking industry, like many of the other key sectors of the economy, are less unionized today—fewer employees are covered by collective bargaining. Collective bargaining is clearly a central element in the multiemployer model.

I think another trend that's relevant to the trucking industry has been the growth of independent operators or independent contractors. There have been a number of cases involving independent contractors around the country—misclassification. They may be a contributor, as well. But, in all likelihood, I would think, given the knowledge that I have about the industry, is that it's been—the decline of bargaining would probably be the major contributor to the decline of multiemployer plans in the trucking industry.

The CHAIRMAN. And beyond the trucking industry? Same reason, or different reasons? In other words, the decline in defined benefit plans outside the trucking industry—in the building trades, for example—why has that declined?

Mr. JESZECK. I think there are a number of different factors that people have identified. In general, the growth of defined contribution plans; there have been some surveys that employees seem to understand defined contribution plans more clearly. Certainly, collective bargaining is part of it. I would also say that, in the past, when we looked at these issues—in our 2004 healthcare report—providing pensions, any pensions at all, is becoming increasingly difficult for employers who will first provide healthcare before they provide pensions. I think there are a number of different factors that have contributed to the decline of DB plans.

The CHAIRMAN. I'd like to get into that further, but my 5 minutes is up.

I will turn to Senator Isakson.

STATEMENT OF SENATOR ISAKSON

Senator ISAKSON. Thank you very much, Mr. Chairman.

I was noting, in Ms. Borzi's testimony, that—in reference to your questions that you just asked, Mr. Chairman—that, in 1980, 75 percent of the participants in multiemployer plans were actually working and 25 percent were beneficiaries; and today, 45 percent are working and 55 percent are beneficiaries. That's an unsustainable track, I guess, under any circumstance. Is that not correct?

Ms. BORZI. I think you're right. I mean, unfortunately, the demographics are working against these multiemployer plans—working against plans generally, but certainly working against multiemployer plans. Although, I believe we've seen some up-tick in the birth rate. That doesn't necessarily mean, for the reasons that Mr. Jeszeck was talking about, that we're going to see a lot more influx of contributing employers and participants in these plans.

Senator ISAKSON. And the trend, with reference to Mr. Jeszeck's comments, which were right on target—the growth of independent contractors—for example, in trucking, where they're doing their own defined contribution plan, rather than part of a defined benefit plan, is another factor that's——

Ms. BORZI. Yes.

Senator ISAKSON [continuing]. Diminishing the number of people working to produce. Is that what you said, Mr. Jeszeck?

Mr. JESZECK. Yes, sir. Yes, Senator.

Ms. BORZI. Well, actually, a lot of them don't have any plans at all.

Mr. JESZECK. No.

Ms. BORZI. A lot of these independent contractors don't.

Senator ISAKSON. Yes. In your testimony, under "Current PBGC Partitioning Authority," is there anything that currently prohibits you from doing what Senator Casey is proposing?

Ms. BORZI. As I understand it, the Central States Plan wouldn't meet all the criteria. I think the primary one that the PBGC has indicated that they wouldn't meet is the chapter 11 bankruptcy test, they don't meet the insolvency part of the test. If you—excuse me for a minute.

Is that right, Terry?

We have Terry Deneen here, from the PBGC.

Is that correct?

[Pause.]

Ms. BORZI. Terry advises me that it's a combination of the bankruptcy and the asset losses. So, the plan wouldn't meet the current partition test.

Senator ISAKSON. This may not be the right way to put it, but does that mean it's not dire enough for you to exercise partition authority at this time?

Ms. BORZI. I think that's probably true.

I mean, that is a troubling statement for me to have to say that we can't help them, because they're not in bad enough straits. But, that is true, Senator.

Senator ISAKSON. I understand why it's troubling, but I was trying to get to the point about what the requirements are for you to be able to exercise authority. And if they don't meet them, that's one of the unfortunate requirements. You're like a backstop at a baseball game; you're the last resort to stop the ball.

Ms. BORZI. That is, in fact, what the PBGC is, the last resort. You're right.

Senator ISAKSON. Now, yesterday, PBGC partitioned the Chicago Truck Drivers, Helpers, and Warehouse Workers Union Independent Pension Fund. Is that correct?

Ms. BORZI. Yesterday, they actually announced, through a press release, that they had done it. I believe that the decision to partition the plan was made several weeks ago.

Senator ISAKSON. OK. They had met the threshold, in terms of being——

Ms. BORZI. That's right. They had.

Senator ISAKSON [continuing]. Et cetera.

Mr. Gustafson, I hate for you not to be recognized. Do you have anything to add to those comments, without jeopardizing your employment with——

Mr. GUSTAFSON. Not so——

[Laughter.]

I think that's the best answer I could give, too. Nothing to add, thanks.

Senator ISAKSON. I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Casey.

Senator CASEY. Thank you, Mr. Chairman.

Ms. Borzi, I want to, first of all, thank you for your testimony, for being here today.

I want to make reference to part of the question that Senator Isakson raised about the announcement of the partition of a multiemployer plan in Chicago this week. Is it true—or isn't it true, I should say, that the PBGC has only conducted one other partition of a plan in its 30-year history? Is that correct?

Ms. BORZI Yes. That's my understanding.

Senator CASEY. So, it's pretty rare. Could you add a little context to that, as to why there haven't been more partitions in those 30 years?

Ms. BORZI. If you look at the statute, the statutory provision is pretty narrow. I have to confess that I was on the congressional staff in 1980 when these amendments to ERISA were adopted, so I was involved in the development of this. The feeling at the time was that this should be a fairly rare occurrence. Congress recognized, at the time, that there might be instances in which the very kind of thing that we were talking about in the two instances, and the Central States situation, where the contributing employers have basically disappeared. But, the plan is still responsible for paying the benefits of those individuals who've earned benefits under the plan. The thought was that Congress should give the PBGC some flexibility, in narrow circumstances, to decide to surgically remove that group of participants who were, in essence, the—I mean you might call them the "legacy cost." They're sort of like what we see in the auto industry, because they are the legacy cost of that industry and that plan. The point of this—giving PBGC this authority was to allow it to surgically remove the part that was dragging down the plan and allow the rest of the plan to continue to provide benefits in a solvent fashion, rather than have all the participants in the whole plan lose their benefits, have their benefits drop to the guaranteed level. So, it wasn't entirely designed to be a very rare occurrence.

Senator CASEY. In your testimony today—you probably weren't able to get to your entire written testimony—just one or two lines that you may have already testified to, but I just want to make sure, in terms of the record being clear.

I'm looking at your written testimony, towards the end of the paragraph starting with, "Unlike similarly situated single-employer plans"—that paragraph. I just wanted to quote the one or two sentences, at least. You say, "Currently, the maximum PBGC guaranteed benefit is approximately $13,000" "For 30 years' service, compared with $54,000 for workers who retire at age 65 in single employer plans."

That's a stunning statement, after some of the things we've been listening to this week, that somehow—I think there was one publication that referred to these as, "gold-plated." That's actually below the poverty level for a family of two; a little more than $14,000. That statement, I wanted to highlight.

The second statement I wanted to highlight was this, the bottom of the page—the beginning of the next full paragraph, "Multiemployer plans pose a smaller risk to the PBGC than single-employer plans, because the PBGC insurance program for multiemployer plans is the second, 'backstop.'" Then continuing on, "Contributing employers are the first insurers of benefits," which I think is an important statement to have highlighted on the record, because, in this current climate in Washington—the debate—and based upon some of the things I heard this week, most people out there listening would think it was otherwise, that somehow there are a lot of multiemployer plans that need help right now—that's not true; very few—and that somehow there's going to be a takeover, that a lot of folks out there who are getting some of this information delivered to them erroneously, that somehow they're going to have to bear that responsibility. I don't know if you want to add to that, or not.

Ms. BORZI. Well, I think you're absolutely right. That's what I was trying to say, in response to Chairman Harkin's question. The employers who participate in these multiemployer plans over the years have accepted a burden that other employers, even other employers who sponsor defined pension plans, don't have. That's the burden of being their brother's keeper. Because, as these companies go out of business, they have to bear the burden financially, not just of the benefits that their own workers are going to get, but the benefits that the workers who are part of their industry have earned, but there's no one there to pay for them. This is a tremendous burden. That's why I think what we need to do is work together, the Congress and the Administration and the people in the private sector who support these plans, to make sure there's a way to at least not add to the burden—continue to add to the burden of these employers, who make great sacrifices to continue to contribute to these plans.

Senator CASEY. Thank you, Mr. Chairman. I know I'm out of time, but I failed to do this before. If you don't mind, I just wanted to ask consent to have entered into the record three letters. One is the letter I referred to earlier, dated May 27, 2010, to Members of the United States Congress from a number of representatives that—we should refer to this as the "Chamber of Commerce." There is a long list of entities that have signed it. That's one.

The second one is a letter to me, dated March 31 of this year, signed by 12 employers representing 650,000 employees, associates, and members throughout the United States.

Then finally, a third letter, dated March 22, 2010, to me, a letter from Daniel Churay, from YRC Worldwide, Inc., which is located in Overland Park, KS.

I'd ask consent that those three letters be made part of the record.

The CHAIRMAN. Without objection.

[The information referred to may be found in Additional Material.]

The CHAIRMAN. Mr. Jeszeck, I want to ask you a question, sir. Can PBGC—or, Ms. Borzi, either one of you—can the PBGC tap into the larger single-employer program to pay financial assistance to multiemployer plans?

Ms. BORZI. Not under current law, Mr. Chairman.

The CHAIRMAN. No?

Ms. BORZI. No.

The CHAIRMAN. Oh.

Ms. BORZI. The funds are absolutely distinct, because the two insurance programs are distinct.

The CHAIRMAN. Well, I am asking because the multiemployer insurance program is a lot smaller than the single-employer program.

Ms. BORZI. It is smaller. Statutorily, they're two distinct programs. They have different sets of rules, which is one of the reasons the guarantees are different.

The CHAIRMAN. OK.

Ms. BORZI. But, the law doesn't permit the funds to be commingled.

The CHAIRMAN. OK. I just thought I'd ask.

Do you have any final things, before I dismiss this panel, anything that you wanted to bring up that you didn't bring up, either Mr. Jeszeck or Ms. Borzi or Mr. Gustafson?

Ms. BORZI. No.

Mr. JESZECK. No, Senator.

The CHAIRMAN. Well, thank you, again, very much for being here and——

Ms. BORZI. Thank you, Mr. Chairman.

The CHAIRMAN [continuing]. Thank you for your testimony.

We'll now move to our second panel.

Thomas Nyhan is the executive director and general counsel of the Central States Health and Welfare and Pension Funds. Mr. Nyhan is responsible for the operational and strategic management of these funds, as principal legal advisor to the board of trustees.

Randy DeFrehn is the executive director of the National Coordinating Committee for Multiemployer Plans. The NCCMP directly represents over 600 jointly-managed pension, health, training, and other trust funds, and their sponsoring organizations across the economy.

John McGowan is a professor of accounting at St. Louis University, where he has taught in the areas of taxation and international accounting for over 15 years.

And Norman Stein is a professor of employee benefits law at the University of Alabama School of Law. Professor Stein is testifying on behalf of the Pension Rights Center, the Nation's only consumer organization dedicated to protecting and promoting the retirement security of American workers, retirees, and their families.

We welcome you all here today. Thank you, again, for staying around for this afternoon. I know you thought we were going to be at it this morning, but you know why we couldn't.

Your statements will be made a part of the record in their entirety, as I said before.

I'd like to ask you if, in 5 minutes or so, if you could just sum up your main points. I would certainly appreciate it.

Mr. NYHAN. Thank you.

The CHAIRMAN. We'll start with Mr. Nyhan, and go down the row.

STATEMENT OF THOMAS C. NYHAN, EXECUTIVE DIRECTOR, TEAMSTERS STATES PENSION PLAN, ROSEMONT, IL

Mr. NYHAN. Thank you, Mr. Chairman, Senator Casey.

My name is Tom Nyhan. I'm the executive director and general counsel of the Central States Pension Fund. I appreciate the opportunity to come here and testify before this committee.

I'd like to start by telling you a little bit about Central States, how it got in its current condition, and why we think the partition proposal, as set forth in Senator Casey's bill, will preserve jobs, preserve retirement security, and protect the employers in our plan.

As earlier indicated, Central States is a very large plan—second largest multiemployer plan in the country. It has around 423,000 participants and around 2,000 participating employers located primarily in the Midwest and in the South. Of those 2,000, as Senator Casey pointed out earlier, over 90 percent of them are small employers with 50 or fewer employees.

Since inception, Central States has provided close to $50 billion in retirement benefits to its participants and beneficiaries. The current average benefit we pay to our participants is around $13,000—just a little lower than $13,000 a year. That, with the Social Security, are the primary sources of retirement income for our participants.

Since the Motor Carrier Act of 1980, there's been substantial consolidation in the transportation industry. Central States has lost over 675 large employers to bankruptcy. Of the 50 largest employers that were in existence in Central—contributing to Central States in 1980, four remain in business today. We've lost many thousands, and thousands of small employers, as well.

As was pointed out earlier, when a corporation goes under and it has an underfunded corporate plan, PBGC assumes liability for the pension benefits, at the outset—up to the minimum guarantees. That is not the case in the multiemployer world.

As these employers have gone out of business, the surviving employers have been responsible for paying the benefits for these orphaned employees. Literally speaking, Central States has stood in the shoes of the PBGC for the last 30 years, and the employers in the plan can no longer afford to do it.

In 1980, we had 400,000 actives and 100,000 retirees. Last year, we had 80,000 actives and over 200,000 retirees. We paid $2.7 billion in benefits and collected $675 million in employer contributions. The spread, the delta there, is over $2 billion that needs to be made up with investment returns. Over 40 percent of that amount, of the 2.7 billion, went to orphans of employers who did not pay their liability on their way out of the plan. That's a tax of over a billion dollars a year that this plan has been paying for some time now.

I want the committee to understand that the plan has done a lot to try to correct these problems itself. After the first downturn, in 2000–2002, the plan cut benefits by 50 percent—the pension benefits, the equivalents—by 50 percent and froze unreduced early retirement subsidies.

There's a sister health and welfare plan that also had the benefits reduced, in order to allow the bargaining parties to reallocate money over to the pension plan.

Additionally, contribution rates were increased for participating employers, and they went from about $160 a week, per employee, to over $300 a week, in the top plan.

As a result of these measures, the plan increased its income by several hundred-millions of dollars a year, and reduced the liabilities as a result of the benefit reductions. As of January 1, 2008, the plan had nearly $26 billion in assets, and was 75 percent funded. We projected full funding by the year 2029, assuming normal returns.

The year 2008 was not a normal return year; it was a devastating year, particularly to a plan as leveraged to their assets as with Central States. The plan lost $7 billion in investment returns and also paid out another $1.7 billion in benefits over contributions coming into the plan. As a result, many assets dropped. Currently, the actuaries project the plan will need to earn 11 percent a year, each and every year, in order to simply maintain its asset base at this juncture. That is not a reasonable investment return on a go-forward basis.

Without assistance, the plan will face insolvency in 10 to 15 years. That will be devastating to our participants, as they rely on this income. It's going to force more and more of our employers out of business as these contribution rates are increased.

As a result, we think Senator Casey's proposal to update the PBGC's partition authority is a remedy for this plan that would preserve the plan's solvency on a go-forward basis, would preserve jobs, protect the contributing employers, and preserve the retirement-income security of our members. We greatly appreciate Senator Casey's efforts in this regard.

Thank you.

[The prepared statement of Mr. Nyhan follows:]

PREPARED STATEMENT OF THOMAS C. NYHAN

SUMMARY

Overview of the Central States Fund. The Central States Pension Fund (the "Fund") is one of the largest multiemployer plans in the country, providing (as of December 31, 2009) coverage to nearly 433,000 participants across the country, including 81,000 active employees and 342,000 retirees, survivors and deferred vested participants. Although these employers are in a variety of industries, historically there has been a heavy concentration of employers in the trucking industry. Because of a confluence of forces, most notably the dramatic consolidation in the trucking industry and the most significant recession in decades, the Fund faces an unprecedented financial crisis. The single largest factor contributing to the Fund's problems relates to the pension benefits that are paid to retirees of employers no longer in business (and thus not contributing to the Fund). Over 40 percent of the annual pension benefits are paid to such retirees—commonly referred to as "orphan retirees."

Qualified Partition. The Create Jobs and Save Benefits Act (S. 3157) will address this orphan retiree problem by permitting qualifying multiemployer plans to elect a Qualified Partition and transfer to a separate plan backed by the Pension Benefit Guaranty Corporation ("PBGC") the responsibility for the vested benefits of the orphan retirees. I urge Congress to pass the Qualified Partition proposal this year.

Qualified Partition Would Strengthen the Fund and Protect Participants. With fewer unfunded liabilities after a Qualified Partition, the Central States Fund would be projected to remain solvent through the 30-year projection period and the pensions of the participants remaining in the Fund would be protected. Moreover, orphan employees would not be adversely affected since they will continue to receive their promised benefits, which will not be reduced due to the partition.

Qualified Partition Would Protect Thousands of Employers and Preserve Tens of Thousands of Jobs. Without a Qualified Partition, contributing employers face escalating liabilities and cash contribution requirements as more employers fail. By stabilizing the Fund and enabling trustees to mitigate contribution requirements, partition would enable companies contributing to the Fund both to remain in the Fund and to remain financially viable, preserving tens of thousands of jobs.

Qualified Partition Would Protect the PBGC. Without a Qualified Partition, the Fund will become insolvent and the PBGC will ultimately have to fund the guaranteed benefits of all participants in the Fund. By strengthening the Fund and preventing its insolvency, a Qualified Partition of the Fund would prevent the PBGC from eventually having to fund the liabilities of all participants in the Fund. This would save the PBGC billions of dollars with regard to the Central States Fund alone.

Chairman Harkin, Senator Enzi and the other members of this committee, I would like to thank you for this opportunity to testify at this hearing on Building a Secure Future for Multiemployer Plans. My name is Tom Nyhan and I am the executive director and general counsel of the Central States, Southeast and Southwest Areas Pension Fund (the "Fund"). I will talk to you today about how the deregulation of the trucking industry and the recession that began in 2008 has affected the Fund. I will also address how the "qualified partition" provisions in the Create Jobs and Save Benefits Act of 2010 (S. 3157), introduced by Senators Casey, Brown, Stabenow and Burris, will provide essential relief to the Fund, thereby protecting the pensions of hundreds of thousands of participants in the Fund, as well as the tens of thousands of jobs of those Americans employed by businesses that contribute to the Fund.

My message today is simple. I urge Congress to enact the "qualified partition" proposal this year.

Because of a confluence of forces, most notably the dramatic consolidation in the trucking industry and the most significant recession in decades, the Central States Fund faces an unprecedented financial crisis. If no action is taken, the Fund is projected to be insolvent in the next 10–15 years. Long before the date of insolvency, the remaining contributing employers will either be forced out of business (causing catastrophic job losses) or, fearful of the ramifications of insolvency, will adopt measures that would accelerate the insolvency date. Indeed, at present, many employers are already facing such financial distress. The "qualified partition" proposal will stabilize the Fund and prevent this crisis.

While many factors have contributed to the Fund's problems, the single largest factor relates to the pension benefits that are paid to retirees of employers no longer in business (and thus not contributing to the Fund). Over 40 percent of the annual pension benefits are paid to such retirees—commonly referred to as "orphan retirees." When an employer with an underfunded corporate plan goes out of business, the PBGC assumes the obligations. When a company in a multiemployer plan goes out of business without paying its share of the liabilities, it is the surviving employers in the multiemployer plan that assume the liabilities. But, they can't continue in this role, as the increased contributions are forcing more and more of these employers out of business.

The law currently provides a mechanism to address such a situation by "partitioning" the plan into two separate plans. S. 3157 updates the existing partition rules by allowing certain qualifying funds to elect partition, but with a price—the electing fund must transfer sufficient assets to the PBGC such that the PBGC will not have to use any of its funds to pay the benefits of participants transferred in the partition for a period of 5 years from the date the partition was elected. Given the current budgetary situation, the transfer of assets strikes an appropriate balance of significantly reducing the financial exposure of the PBGC while simultaneously allowing the fund to retain sufficient assets to keep it solvent.

The following provides more detail regarding the Fund, its status, and the partition proposal.

OVERVIEW OF THE CENTRAL STATES FUND

Multiemployer pension plans are collectively bargained, jointly administered pension plans funded by a number of contributing employers that are often in the same industry. The Fund is one of the largest multiemployer plans in the country, providing (as of December 31, 2009) coverage to nearly 423,000 participants across the country, including 81,000 active employees and 342,000 retirees, survivors and deferred vested participants.[1] The Fund is projected to pay approximately $2.9 billion in benefits in 2011. Since it began, the Fund has paid nearly $48 billion in benefits to working families.[2]

I have attached a slide presentation to my testimony that outlines the financial issues that the Central States Fund currently faces and I ask that this presentation be entered into the record.

Approximately 2,000 employers contribute to the Fund. Nine out of ten of these employers are small businesses, with fewer than 50 employees. Although these employers are in a variety of industries, including trucking/freight; car haul; tank haul; warehouse; food processing distribution (including grocery, dairy, bakery, brewery and soft drinks) and building and construction, historically there has been a heavy concentration of employers in the trucking industry.

Changes in the Fund since 1980. In 1980, there was one retiree/inactive employee for every four active employees in the Fund. Today, that ratio has flipped—there are 4.2 retirees/inactive employees for each active employee. A major reason for this dramatic shift has been the increased competition and reduced margins in the trucking industry that followed on the heels of trucking deregulation in 1980. Of the 50 largest employers that participated in the Central States Fund in 1980, only four remain in business today. More than 600 trucking companies that contributed to the Fund have gone bankrupt since 1980 and many thousands of others have gone out of business without filing formal bankruptcy. Also in 1980, Congress passed the Multiemployer Pension Plan Amendments Act of 1980, adding withdrawal liability obligations to employers that stop making contributions to an underfunded multiemployer pension plan. Because employers are fearful of incurring withdrawal liability, the Fund has not been able to attract new employers.

As a result of these trends, over 40 cents of every dollar the Fund now pays in benefits goes to retirees who were employed by an employer that went out of busi-

[1] As of July 8, 2009 the IBT and YRCW, the Central States Funds largest remaining employer entered into a Memorandum of Understanding ("MOU") whereby the company was allowed to terminate its participation in the Fund as of July 1, 2009, which further reduced the number of actives by approximately 24,000. The MOU is intended to relieve the company of the pension funding obligation in an effort to allow it to weather the recession. The MOU provides that the termination will be temporary and that YRCW intends to resume participation in the pension plan on January 1, 2011.

[2] Nearly 30 years ago, the management of the Central States Fund was reformed as a result of a consent decree entered into with the U.S. Department of Labor ("DOL"). Since then, the Central States Fund has operated under judicial and DOL oversight. The investments of the Fund are managed by major financial institutions initially screened by the DOL and approved by a Federal judge. These financial institutions have *exclusive* management and control of the Fund's investment function.

ness without paying its proportionate share of the Fund's unfunded pension liability ("orphan employees"). This means the Fund is acting as the primary insurer of the unfunded pensions of employers that have gone out of business. It also means that the remaining employers in the Fund are responsible for funding the pensions of their defunct competitors' employees—or the pensions of retirees from a completely different industry.

The cost of funding these orphan benefits has grown to unaffordable levels. As an example, trucking industry employer contribution rates under the National Master Freight Agreement have doubled since 2003. The rates have increased from $140 per week in 2000 to $380 per week (nearly $9.50 per hour in a 40-hour week) per active participant at the end of the current collective bargaining agreement in 2013. Approximately $150 of that weekly contribution will be required to fund orphan participants benefits. Other contributing employers have been subjected to similar contribution increases.

Because of the increasing number of retirees and decreasing number of active employees, the Central States Fund's benefit payments to retirees have exceeded employer contributions in every year since 1984. In 2009 the Central States Fund paid approximately $2.74 billion in benefits while receiving employer contributions of approximately $675 million. This left an operating deficit of $2.1 billion that must be funded by investment returns.

Prior to 2001, investment returns were sufficient to allow the Central States Fund's asset base to grow despite paying annual benefits to retirees that exceeded annual contributions. During 2001–2003, the Fund investments lost money, and asset values declined.

The investment losses experienced during 2001–2003 were compounded by a significant decrease in covered employees due to employers going out of business. With the bankruptcy of Consolidated Freightways and Fleming Foods in 2003 and their failure to pay more than $403 million in withdrawal liability, the unfunded liabilities of the Fund increased.

These bankruptcies illustrate the role the Fund has played as insurer of pensions owed to the employees of defunct employers. For example, at the time of its bankruptcy, Consolidated Freightways maintained a "single-employer" pension plan and was also a contributing employer to the Central States Fund. When it went out of business in 2002, the Pension Benefit Guaranty Corporation (the "PBGC") assumed responsibility for Consolidated Freightways' single employer plan for salaried employees, which was underfunded by $276 million. By contrast, the Central States Fund and its remaining employers assumed responsibility for $319 million in unfunded vested benefits owed to Consolidated Freightways' rank and file employees.

The Central States Fund took aggressive action to deal with underfunding after asset values declined during 2001–2003—including freezing "early out" benefits and cutting the rate of future pension accruals in half. Moreover, the bargaining parties significantly increased contribution rates and reallocated money originally earmarked for other purposes to the Central States Fund.

Effect of the 2008 Financial Crisis on the Pension Fund. The steep decline experienced by the financial markets in 2008 compounded the Fund's problems. Not only did the Fund experience an investment loss of $7.7 billion in 2008, but benefit payments exceeded contributions by $1.75 billion, leaving the Fund with assets of $17.4 billion and a funded ratio of 48.5 percent. Given its annual operating deficit ($1.785 billion), the Fund would have to earn over 10 percent on its investments **each and every year** and maintain its employer base just to keep the asset base from deteriorating. Unless the Central States Fund reduces the liability associated with orphan participants, it will become insolvent within the next 10–15 years—the actual date of which will depend upon the Fund's investment experience and the rate at which contributing employers continue to go out of business.

PARTITION OF MULTIEMPLOYER PLANS

Current Partition Authority. Congress anticipated the problem facing funds like the Central States Fund. Since 1980, the law has provided a way to address the funding problems that occur when there are an excessive number of orphan employees in a multiemployer plan. The PBGC may order the "partition" of a multiemployer plan, which in effect removes from the plan pension liabilities that were earned with failed employers that have gone through formal bankruptcy proceedings. The PBGC transfers plan benefits attributable to the orphan employees of the failed employers to a separate plan, and then guarantees the benefits of the orphan employees in that separate plan at the PBGC benefit guaranty level for multiemployer plans. The remaining portion of the plan covering employees of ongoing employers continues, but without the burden of the orphan liabilities. In effect, PBGC's partition authority enables the agency to surgically remove liabilities from a multiemployer plan to enable the plan to survive. Since 1980, only two multiemployer plan partitions have been allowed.

Qualified Partition Proposal. Under S. 3157, the PBGC's current partition authority will be updated to provide that a "Qualified Partition" of a multiemployer pension plan could be elected by multiemployer plans that meet certain, strict requirements. The Central States Fund would be eligible to elect a Qualified Partition, as well as the Western Pennsylvania Teamsters Pension Fund and a limited number of other smaller multiemployer plans. A Qualified Partition would transfer to a separate plan backed by the PBGC the responsibility for the vested benefits of participants earned with employers that filed for bankruptcy or otherwise went out of business. Along with the transfer of liabilities, the multiemployer plan would transfer to the PBGC assets so that the PBGC will have no obligation to pay the benefits of participants transferred in the partition for a period of 5 years from the date the partition was elected. The PBGC's benefit guaranty for participants whose benefits are transferred to the PBGC in a Qualified Partition would be increased to fully protect the benefits transferred. During that same 5-year period, the trustees of the multiemployer plan may stop further escalation of the contribution rate of contributing employers if the trustees determine that such action is necessary and appropriate to preserve covered employment under the plan.

Qualified Partition Would Strengthen the Central States Fund and Protect the Participants and Beneficiaries of the Fund. Partition will prevent the Fund from becoming insolvent by removing liabilities for orphan employees. In the year after partition, the ratio of inactive to active participants in the Fund will improve from 4.2 to 1, to 2.2 to 1. The Fund's annual benefit payments will decline from $2.9 billion to $1.8 billion, assuming YRC resumes contributions as planned. Also, the gap between annual benefit payments and annual contributions that must be filled by investment earnings will be cut from $2.0 billion today to $.9 billion. With fewer unfunded liabilities, the Central States Fund would be projected to remain solvent through the 30-year projection period. As a result, the pensions of the participants remaining in the Fund would be protected. Moreover, orphan employees will not be adversely affected if a Qualified Partition is elected. They will continue to receive their promised benefits, which will not be reduced due to the partition.

Qualified Partition Would Protect Thousands of Employers—Most of Them Small Employers—and Preserve Tens of Thousands of Jobs. If the Fund's financial challenges are not addressed, contributing employers face escalating liabilities and cash contribution requirements as more employers fail. A contributing employer can stay in the plan, and risk being driven out of business. Or, if the contributing employer is unusually financially strong, it can withdraw as soon as possible and start paying off a portion of the plan's liabilities (which are capped in various ways) over 20 years as allowed by statute—leaving fewer employers to fund the plan and an even greater burden on the dwindling number of remaining employers. By stabilizing the Fund and enabling trustees to mitigate contribution requirements, partition would enable companies contributing to the Fund both to remain in the Fund and to remain financially viable, preserving thousands of jobs.

Qualified Partition Would Protect Other Multiemployer Plans. Importantly, the benefits of providing for a Qualified Partition are not confined to the jobs and retirement benefits of Central States' own population of participating employees. Many, if not most, of the employers that currently contribute to Central States Fund also do business outside the geographic regions served by the Central States Fund. Many of these companies contribute to multiemployer pension plans *other* than the Central States Fund. For example, a significant number of the contributing employers to the Central States Fund also contribute to the Western Conference of Teamsters Pension Fund—a multiemployer plan that is even larger than Central States and that offers coverage for workers in most of California and the Pacific Northwest. Without a Qualified Partition, the projected insolvency of the Central States Fund would have had a serious impact on the ability of these contributing employers to maintain their contributions to the other multiemployer plans they contributed to, thereby endangering these other multiemployer plans.

Qualified Partition Would Protect the PBGC. Because the Central States Fund will become insolvent, the PBGC will ultimately have to fund the benefits of participants in the Fund. By strengthening the Central States Fund and preventing its insolvency, a Qualified Partition of the Fund would prevent the PBGC from eventually having to assume the liabilities of the *remaining* participants in the Fund. This would save the PBGC billions of dollars with regard to the Central States Fund alone.

CONCLUSION

The partition proposal will stabilize the Fund and a limited number of other small multiemployer plans facing a similar financial crisis by allowing these multiemployer plans to elect to separate off the liabilities attributable to the orphan employees of bankrupt employers, together with a share of assets, from the liabilities and assets related to current contributing employers. It will greatly improve the actuarial soundness and long-term prospects of the plans covered by the proposal. Thus, the partition proposal will reverse the forces that are driving employers out of business and costing jobs with each passing day.

Congress is deeply concerned about job losses in the country. The partition proposal will preserve tens of thousands of jobs that otherwise will be lost in the immediate future. With a financially sound multiemployer plan, contributing employers will be able to meet their obligations to the Central States Fund while competing successfully in the marketplace. We urge Congress to address this issue as soon as it can.

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

The CHAIRMAN. Thank you, Mr. Nyhan.

Mr. DeFrehn.

STATEMENT OF RANDY G. DeFREHN, EXECUTIVE DIRECTOR, NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS, WASHINGTON, DC

Mr. DEFREHN. Thank you, Chairman Harkin. I'd like to thank you and the members of the committee for the invitation to be here again today.

My name is Randy DeFrehn. I am the executive director of the National Coordinating Committee for Multiemployer Plans. Our organization was established to represent the interest of multiemployer plans, and, over the past 35 years, we've done that.

We'd certainly like to acknowledge and thank Senator Casey for his leadership in this issue, as well as Representatives Pomeroy and Tiberi on the House side, who have done a similar job in pointing out the weaknesses in a proposal for addressing those issues.

Plans are facing some very difficult times, as is any other portion of the financial infrastructure of this country. We've all been hit—they've all been hit by the meltdown, in 2008, as they were just beginning to recover from what had happened from 2000 to 2002.

The financial straits that our plans find themselves in now are not the norm; that's not where they've always been. In fact, in the late 1990s, over 70 percent of these plans were approaching or exceeding the maximum deductible limits—the full funding limits. And, for tax reasons, to protect the contributions of the contributing employers, the benefits actually had to be increased in order to allow those contributions to continue to be deductible. That's an important factor here, as I go on to talk about some of the aspects of the other relief proposals.

As the situation played out in 2008, it became apparent that the solutions that were put together in the Pension Protection Act, which had a good objective, which is to try to strengthen the funding level of multiemployer plans—but, they were not resilient enough to be able to deal with the kinds of dramatic drop that we saw in the markets. If you look at the Pomeroy bill in the House, and where the Senate has been, there have been a kind of continuum for relief for plans, and, more importantly, for the employers who support these plans. Because the key to this, the key to preserving any of these plans, is to allow those employers to continue to remain competitive. If the costs go up too quickly, the contributions that are driven—that come into these plans to fund them, will dry up, because the employers will no longer be competitive; they won't be able to get the work. And in the final analysis, people won't have pensions, but then they won't have jobs, either.

There have been proposals that are along a continuum; first of all, to allow employers to have a longer period of time to meet these long-term obligations. The PPA pulled down the periods of time to pay off these obligations—to 15 years for multiemployer plans and 7 years for singles. If it's normal for a homeowner to have 30 years to pay off a long-term obligation, it seems a little excessive to do those in 15, for multiemployer plans. I'm glad to see that the House is prepared, and the Senate has taken some action, on the funding portion for those plans, and pointing out that those are the majority of the plans that will be able to survive, and once again thrive, when markets return to their normal situations, going forward.

There are plans that are facing difficulties here. While we focused on Central States, and there is one other plan, which is the Mineworkers Plan, which is also having some difficulties, due to not just their own industry, but for some other government policies that have produced a reduction in the workforce in those areas—we are pleased to see the recognition of Senator Casey in allowing plans to survive—those that can—by merger, with bringing some of the smaller or weaker plans into stronger plans, to have partitions available; and for those plans that aren't going to survive, to recognize the fact that the benefits being provided to multiemployer plan participants are woefully inadequate at this point.

What we're pleased to see, in terms of the proposed solutions, are not new liabilities to be imposed upon the PBGC or the government. If you think about it, these are obligations that will arrive at the doorstep of the PBGC, when the plans get to the ultimate point where they can't survive. The question is, Can the agency act in time to save those other employers who can be saved and to do what works for all three of the major stakeholder portions of this community? The partition—the contributing employers first; secondly, the participants whose benefits would be reduced if they go to the PBGC or the plan becomes insolvent and fails; and the PBGC itself, because if they act in time to either facilitate a merger—which they've done on an ad hoc basis in the past, but have actually been reluctant, in recent years—to do so by putting some money from the Guaranty Fund on the table to make these mergers more appropriate, from a fiduciary standpoint, from the receiving plan fund. Those plans can actually—if you merge some plans in a timely way, you can protect all of those stakeholders.

Same with partition. We're pleased to see that this is being talked about. I believe there's some misunderstanding of the intent of the way the third fund—or fifth fund, I guess it is—that's called in the law—is structured. I believe that the original intent was more as an administrative convenience to be able to move some monies from one fund to another, not to have one supplement or support the other one.

Clearly, we believe that we're headed in the right direction, and we commend the committee and, again, Senator Casey for his leadership, and welcome any questions.

Thank you, Senator.

[The prepared statement of Mr. DeFrehn follows:]

Prepared Statement of Randy G. DeFrehn

INTRODUCTION

Chairman Harkin, Ranking Member Enzi and other distinguished members of the committee, my name is Randy DeFrehn. I am the executive director of the National Coordinating Committee for Multiemployer Plans (the "NCCMP").[1] The NCCMP is a non-partisan, non-profit advocacy corporation created under Section 501(c)(4) of the Internal Revenue Code in 1974, and is the only organization created for the exclusive purpose of representing the interests of multiemployer plans, their participants and sponsoring organizations. It is an honor to be invited here once again to speak with you about issues of critical importance to the more than 10 millions of working Americans who depend upon multiemployer defined benefit plans for their retirement income security. I am testifying today on behalf of the NCCMP and the Multiemployer Pension Plans Coalition ("Coalition"),[2] a broad group comprised of employers, employer associations, labor unions, multiemployer pension funds, trade and advocacy groups from across the country, representing the full spectrum of the multiemployer community.

I will focus my remarks this morning on putting the effects of the 2008 market contractions into perspective and on the proposal by the Coalition to address targeted relief for plans adversely affected by those markets.

BACKGROUND

Multiemployer plans have provided retirement security to tens of millions of American workers for more than 60 years. They currently account for nearly one of every four participants covered by a defined benefit plan. This system has survived and thrived as a result of a joint commitment by labor and management (reinforced by the statutory and regulatory structure) to responsibly balance the needs of all of the stakeholders. Through the collective bargaining process, tens of thousands of small businesses have negotiated with employee representatives to provide good, middle class wages and excellent pension and health benefits while enabling employers to remain competitive. Multiemployer plans enable employees in mobile industries to receive reliable benefits through a system that enables portability of service among employers that contribute to the same plan and, through reciprocity agreements, to virtually all plans in many trades while providing employers with the benefits of economies of scale in the pooling of assets, administrative costs and liabilities. They are prevalent in virtually every area of the economy where employment patterns require frequent movement within an industry, including: construction; trucking; retail; communications; hospitality; aerospace; health care; longshore;

[1] The NCCMP is the premier advocacy organization for multiemployer plans, representing their interests and explaining their issues to policymakers in Washington since enactment of ERISA in 1974. Its members include more than 200 affiliates which directly sponsor over 700 pension, health and welfare and training trust funds, as well as employers and labor unions whose workers and members participate in multiemployer plans.

[2] The Multiemployer Pension Plans Coalition, which is coordinated by the NCCMP, came together in response to the first "once in a lifetime" bear market early in this decade, to harness the efforts of all multiemployer-plan stakeholders toward the common goal of achieving benefit security for the active and retired American workers who rely on multiemployer defined benefit pension plans for their retirement income. Collectively, these stakeholders worked tirelessly to devise, evaluate and refine proposals from all corners of the multiemployer community for funding reform. Their efforts culminated in a proposal for fundamental reform of the funding rules contained in ERISA; rules that had never been "stress-tested" under the kind of negative investment markets which prevailed from 2000 through 2002; and rules that were largely adopted in the multiemployer provisions Pension Protection Act of 2006 ("PPA"). This group recognized that benefit security rests on rules that demand responsible funding, discipline in promising benefits and an underlying notion that even the best benefit plan is irrelevant if the businesses that support it are unable to remain competitive because of excessive, unanticipated or unpredictable costs. The Coalition was reconstituted following the second "once in a lifetime" market event in 2008 when it became clear that the provisions of the PPA were not sufficiently flexible to address the magnitude of the global catastrophic market contractions that affected every part of the financial services infrastructure of the United States.

maritime; entertainment; food production, sales and distribution; mining; manufacturing; textiles; and building services.

PROBLEM STATEMENT

Since the passage of ERISA in 1974, the multiemployer pension plan system has had a history of secure funding and conservative management to systematically accumulate funds needed to meet long-term pension benefit obligations when they became due. This statutory framework was enhanced in 1980 with the passage of the Multiemployer Pension Plan Amendments Act (MPPAA) which imposed a framework within which departing employers would be assessed for their proportionate share of any unfunded vested benefits.[3] Additionally, the fiduciary rules imposed a measured discipline on plan trustees to responsibly manage the plans' assets and plan design. This system was badly damaged by the recent collapse of the financial markets. It is important to understand the factors that influenced that damage in order to craft an appropriate resolution.

As the system evolved, plan trustees prudently adhered to guidance by the Department of Labor to place their assets in broadly diversified investment portfolios. They retained professional advisors who guided them to allocate plan assets in investment classes that were thought to be uncorrelated to minimize risk. While a minority of advisors began to suggest movement to "immunized" and "risk-free" portfolios, most advisors and plan fiduciaries rejected that advice as failing to adequately recognize the equity premium which was historically realized by long-term "patient" investors. Fueled by a favorable economy and strong investment markets of the 1980's and 1990's, plans were able to eliminate the majority of unfunded liabilities. Accepting, for the moment, that this represented the prevailing advice among the investment consultant community, the system would have remained vulnerable to the volatility of the markets. Unfortunately, when "the bear" arrived at the door, few asset classes were left unscathed, as investors around the world experienced and continue to suffer from, the profound and lingering effects of its two most recent visits. Had the system been permitted to operate within the narrow context of ERISA's funding goals, however, it might still have avoided or at least moderated the effects of market volatility.

Unfortunately, plans are also exposed to a variety of other, perhaps more insidious, risks from an unexpected source—other government policies with only a tangential relationship to pension funding. These included restrictions placed on the tax-favored treatment of excess contributions to fully funded pension plans, which prevented plan sponsors from accumulating reserves that would protect plans from adverse markets; the deregulation of the trucking industry; the Clean Air Act; and, some may submit, the weakened enforcement of labor laws that depressed the historical pattern of replacement of organized firms in industries such as construction, resulting in a contracting contribution base. Each of these policies has had the unintended consequence of eroding the funding of some or all multiemployer defined-benefit plans.

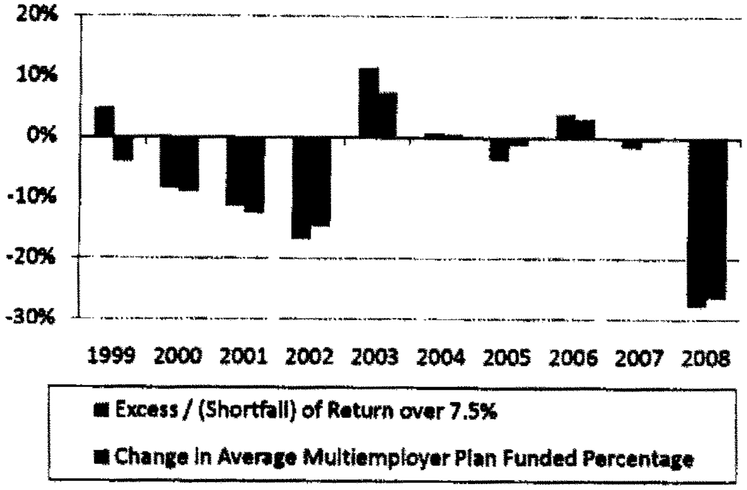
By the end of 2007, the average funded level of multiemployer plans at the beginning of that year had returned to 90 percent,[4] rebounding from the earlier collapse of the tech bubble from 2000 to 2002 and the ensuing crisis of confidence. By the end of 2008, however, multiemployer plans suffered the same kinds of losses that plagued the rest of the Nation's financial infrastructure with median investment returns reported at −22.91 percent. This situation was compounded in 2008 by the implementation of the new, more aggressive funding rules of the Pension Protection Act.

Therefore, it is entirely understandable, if not predictable, that the market contraction would have reduced the funding levels of pension plans as it has the fortunes of all investors. In fact, a similar correlation can be seen between funding levels and historical rates of returns on invested assets. (See Chart 1).

[3] MPPAA imposed the concept of "withdrawal liability" that required sponsoring employers who depart from plans pay their proportionate share (if any) of the plan's unfunded vested benefit obligations. These assessments were deemed necessary to prevent such obligations from being unfairly shifted either to the remaining employers, thereby providing a double competitive advantage to the departing employers (first, by no longer having any obligation to make contributions to the plan, and second, by imposing those costs on the remaining employers) or to the taxpayer.

[4] See "*Multiemployer Pension Plans: Main Street's Invisible Victims of the Great Recession of 2008*"; DeFrehn, Randy G. and Shapiro, Joshua; April 2010; PP 12–13.

Chart 1
Comparison of Historical Asset Returns and Changes in Funded Percentages



THE RESPONSE

The response to the market contraction by the multiemployer community was, once again, a concerted, carefully conceived proposal to comprehensively and constructively address the current situation. For the vast majority of the more than 1,500 multiemployer defined benefit plans that suffered significant losses, but are expected to remain solvent for the long-run, the objective is to provide additional time to fund these long-term obligations through measures along the lines of those contained in the tax extenders package, some of which have already been passed by the Senate.

For a very few other plans that have more serious problems, the Coalition proposed more direct intervention designed to provide a continuum of relief at appropriate levels to protect the interests of all of the stakeholders—participants, plan sponsors and the PBGC. These measures include making it easier for stronger, better-funded plans to *merge, or form alliances* with, weaker plans in the same industry. For those few plans that are projected to become insolvent, the proposal includes two additional features: *partition*, which could preserve the benefits of a portion of the participants of the failing plan and reduce the ultimate exposure of the PBGC; and an *increase in the amount of plan benefits guaranteed by the PBGC* from $12,870 for participants with 30 or more years of service (which is $1,700 below the Federal poverty level for a family of two) to an annual maximum of $20,070. It was proposed that the increase would be funded by an increase in the annual premium paid by plans. Each of these proposals are contained in S. 3157, the *"Create Jobs and Save Benefits Act of 2010."* We commend Senator Casey for his leadership in this matter and his co-sponsors for their support.

MERGERS AND ALLIANCES

Mergers have been a traditional mechanism for consolidating plans within an industry, usually involving a weaker, perhaps struggling plan and a larger, stronger plan, often national in scope. Typically mergers leverage contributions and investment income to the advantage of incoming plan participants by maximizing the economies of scale. They may be self-initiating among the groups, or they may be encouraged by plan sponsors as part of a broader consolidation within an industry. In a limited number of occasions, the PBGC has facilitated mergers where the likelihood of plan failure of the weaker plan was great, by providing funding from the guaranty fund. By doing so, it reduced the exposure to the agency, while protecting the benefits of the participants and reducing the exposure of contributing employers to withdrawal liability. Unfortunately, the agency has not incorporated this approach as an option for troubled plans. Furthermore, with the implementation of the Pension Protection Act zone system, additional fiduciary concerns have complicated the voluntary merger activity at a time when mergers could be used to the advantage of all stakeholders. For these reasons, the Coalition proposal, reflected in S. 3157, includes the formal codification of the PBGC's prior practice.

PARTITION

Partition is not a new concept. It acknowledges that even a system with the stability of a multitude of contributing employers could be at risk if the entire industry declines, making the burden of funding for liabilities associated with departed employers unsustainable for those that remain. While it has been available for decades, it has rarely been used by the PBGC and it is anticipated that its use going forward would be equally rare. Furthermore, while the instances in which it has been used in the past involved plans that are much smaller or localized than those currently at risk, the underlying principle remains the same.

"AT RISK" INDUSTRIES

While one of the major advantages of a multiemployer plan is its design as an ongoing entity disconnected from the fortunes of any one employer, the evolution of our economy and the law of unintended consequences have prevented that objective from being fulfilled. Just as the average household in the 1950's and 1960's took for granted the early morning delivery of milk, which is now only a distant memory for most of us, often what we assume to be a regular part of American life can take an unexpected turn. Two similar situations are at work that have contributed to the current problems in the trucking and mining industries.

In 1980 the trucking industry was deregulated. While the objective of this government policy was to expand the opportunities for open competition among trucking firms, one of the unforeseen consequences was that many of the new firms which entered the industry found that one way to undercut the industry pricing standards was to eliminate the strong benefits protections provided to their employees by the major carriers. Rather than expanding the opportunities for good paying jobs with pension and health care benefits that characterized this industry and contributed to the expansion of the Nation's middle class, the number of firms who were able to continue to do so declined to the point of near extinction; leaving the responsibility for funding the accrued benefits to a continually contracting remaining few and leaving only ABF as the lone freight hauler out of a universe of approximately 70 major employers at the time of deregulation. Although this situation existed throughout the trucking industry, its effect on the myriad of plans differed as a result of numerous factors including differences in the other industries served and the strength of the economy in different geographic areas.

Nevertheless, as a result of a cautious approach to asset management and plan design, even the plans that were most heavily dependent on the traditional freight industry were able to grow and prosper and throughout the 1980's and 1990's made substantial progress towards the objective of full funding. For example, Central States was approximately 97 percent funded going into the first of the two "once-in-a-lifetime" market contractions of this past decade, despite carrying the additional burden of a substantial cash-flow deficiency largely attributable to the "orphan" retiree population. Even after suffering significant losses between 2000 and 2002, the fund had constructed a plan that eventually would enable it to reach full funding. The second "once-in-a-lifetime' market was much more devastating, however, and, coupled with a continuing cash flow deficit, has placed the prospects of long-term plan solvency under normal operations out of reach.

Though not precisely the same, the story of the decline in the fortunes of the mining industry has some striking similarities. The UMWA and bituminous coal industry have a long and significant history as having created the most influential of all multiemployer plans in the Nation's history. Their health plans brought the residents of Appalachia out of the worst conditions in the country and into the 20th century as a result of their construction of the Appalachian regional hospital system. Similarly, the pension plans sponsored by the coal industry brought dignity to millions of those whose sacrifice brought this Nation our primary source of energy since it issued the first pension check to Horace Ainscough of Rock Springs, WY on September 9, 1948. These funds had also benefited from the structure of ERISA's funding rules and despite experiencing fluctuating fortunes in the 1970's, ultimately achieved full funding during the 1990's. However, the employment base that enabled the coal industry to accumulate was also adversely affected by government policy. The Clean Air Act virtually eliminated the production of high sulfur coal East of the Mississippi (especially in the State of Illinois) and with it the jobs that generated the contributions to the fund. Instead the production has been moved to the largely non-union coal fields of the Powder River Basin where fully one-third of the country's entire production is now mined. Rather than tens of thousands of active miners on whose hours contributions were made to the plans in the 1980's, there are now approximately 11,000. The assets of the plan that were invested in a diversified portfolio adopted pursuant to the Department of Labor's guidance were also severely eroded as a result of the 2008 market performance.

Coupled with a severe cash flow shortfall, this mature plan is also facing insolvency without direct intervention.

PROPOSED SOLUTION

By definition under either the existing or proposed legislation, partition is only available to plans that are projected to be insolvent; plans that, in the absence of intervention, represent certain and unavoidable liabilities for the PBGC at the point such insolvency is reached. To place this topic in its proper context, we are not discussing a proposal that would impose additional liabilities on the PBGC; rather partition is a tool that, if managed properly, will actually **reduce** the risk of substantial loss to all stakeholders, including PBGC.

While the proposal contained in the Create Jobs and Save Benefits Act contains provisions to limit the acceleration of cuts that have been a characteristic of prior partitions, to date participants whose plans have been partitioned have suffered immediate reductions to the PBGC guaranty levels. Without partition, it is a virtual certainty that *all* of the participants in such plans will suffer significant, if not catastrophic reductions in benefits. Similarly, contributing employers will face potentially enormous withdrawal liabilities, ironically, imposing (at best) crippling financial burdens upon the same employers that have provided a financial safety net for thousands, if not tens of thousands of workers in an industry who may never have worked for them; the same safety net that, in the single employer universe is provided by the PBGC. Truly, this is a classic example of the old adage that "no good deed goes unpunished."

Let there be no misunderstanding, the notion of arbitrarily allowing the value of a participant's service to be reduced by plan sponsors after the fact strikes at the very heart of the multiemployer system and must be avoided wherever possible. The concept has been abundantly clear since the enactment of ERISA. A participant in a defined benefit plan ***must have a definitely determinable benefit***. For the multiemployer system to work, participants whose work patterns require regular movement from one employer to another must have the assurance that the credits they earn throughout their careers will be protected. Although the Pension Protection Act enables critical status plans to reduce certain "adjustable" benefits in certain narrowly defined circumstances, the labor and employer representatives who worked cooperatively through that process to address the issues confronting the survival of their businesses and plans were united from the beginning in endorsing the principle that normal retirement benefits at normal retirement age must remain fully protected. For plan sponsors to have discretionary authority to reduce the value of such benefits of participants—including pensioners already in payment status, whose service was earned working with employers who no longer exist or are no longer required to contribute—would destroy the multiemployer system and is unacceptable as a general notion—with one exception. That exception arises when a plan has passed the "point of no return" and would otherwise become "Wards of the State" through the PBGC. In that instance, partition becomes a vehicle to preserve the portion of the plans that can continue to be self-sustaining. It has been described as analogous to a medically necessary amputation of a limb that is required to save the life of the patient. While there will be plans that cannot be salvaged, for a limited number of others, partition can reduce the ultimate cost to the PBGC, protect the benefits of a portion of the participants, and enable the remaining contributing employers to continue to meet their funding obligations to the remaining participants.

In addition to the direct benefits to the stakeholders, partition would present indirect benefits to the countless other plans to which these same contributing employers contribute. Many of these employers contribute to dozens and in some examples, hundreds of other plans in the retail food and construction industries, among others. If faced with massive additional contribution requirements, the other plans to which these employers contribute may find them unable to make their required contributions, further disrupting those plans as well.

INCREASING PBGC GUARANTEES

The PBGC guarantee program serves a different function for multiemployer plans than for single employer plans. For single employer plans, the agency is the insurer of first resort. In the event a single employer is unable to meet its funding obligations, the PBGC must step in and take over the plan liabilities and administer the plan. For multiemployer plans, however, the pool of contributing employers assumes that role and the agency acts as insurer of last resort, becoming involved in the funding of a plan only when it becomes insolvent.[5] Further, the PBGC never assumes the administration of multiemployer plans, but delegates the administration to the fund trustees.

This system has worked reasonably well, given the limited number of plan terminations of multiemployer plans in comparison to their single employer counterparts, however, the recent market upheaval has increased the likelihood of a small number of plan failures. The number of such plans is uncertain and could be favorably influenced by both of the interventions described above.

The level of benefit guarantees under the PBGC multiemployer guaranty program were set at $5,850 per year for participants with 30 or more years of service in 1981. The corresponding premium for that coverage was $1.40 per participant per year and was raised several times from then through 1989 when it was set at $2.60. It remained at that level until 2006 when it was raised to the current level of $9.00 and was indexed to inflation going forward. These premiums were more than adequate for most of the history of the guaranty program, emerging from a deficit to a surplus position in 1982 and remaining there until falling to a deficit in 2002. The benefit was raised only once in its 30-year history, going to $12,870 in 2001. Putting this into perspective, *the Federal poverty level for a family of two is $1,700 higher than the maximum guaranteed amount for workers with 30 or more years of service*. Also unlike the single employer program, the benefit is not indexed. Furthermore, the benefit guarantee formula was designed to combat the "moral hazard" of encouraging plan sponsors from simply abandoning plans to the PBGC by imposing a formula that guarantees 100 percent of only the first $11 of benefit accrual, falling to 75 percent of the next $33, with no level of guarantee for benefits paid above that amount.

Charts 2 and 3 show the relationships between the current benefit and premium levels when compared with the 1981 levels, adjusted for inflation at the national average wage rates. They clearly demonstrate that, had these simply been indexed for the modest adjustments in wages over the 30-year period, maximum benefits would have been nearly $20,000 and premiums would have been less than $5.00.

Chart 2
Comparison of Actual Guarantee Level and 1981 Level Indexed with National Average Wages

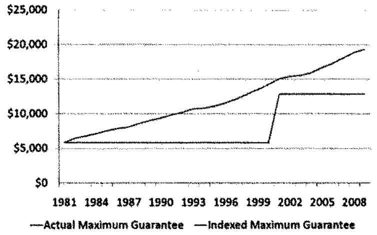
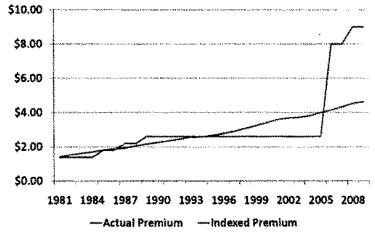


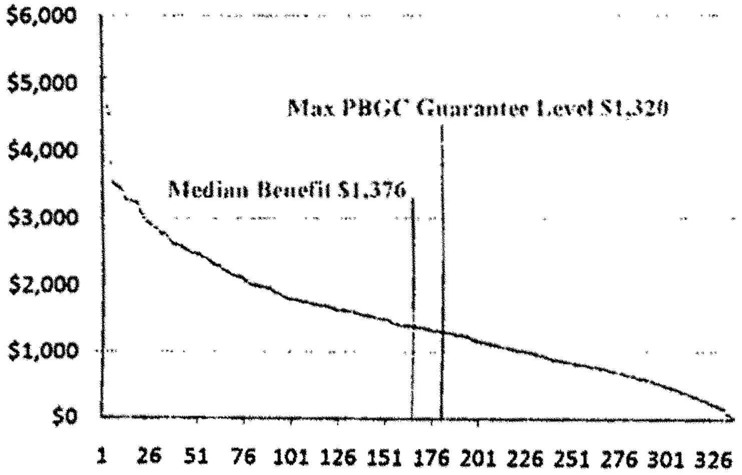
Chart 3
Comparison of Actual Premium Level and 1981 Level Indexed with National Average Wages



Furthermore, over time the fixed benefit provided by this formula has become less adequate with greater and greater portions of the participant's benefit becoming "at-risk" as accruals were increased through the 1990's. While it is true that very few plans have had to avail themselves of the PBGC guaranty program, for those plans that face insolvency, the current benefit level is unacceptably low. As shown in the following Chart 4, over one-half of all new pensions awarded in 2008 exceeded the maximum level at which benefits are protected, before adjusting for years of service.

[5] The multiemployer community was divided over the need for a guarantee fund at all, with some arguing that maintaining this fund would amount to a tax on plans for no benefit, as multiemployer plans would never fail.

Chart 4
Distribution of Average Monthly Pensions Awarded in 2008



In response, the Coalition proposed adding one more layer to the existing formula in a manner consistent with the current formula to avoid the question of moral hazard. Under the proposal, the benefit levels would be increased by 50 percent of the next $40 of accrual. The total annual benefit guarantee level for a participant with 30 years of service would be $20,070. The protection against sponsors irresponsibly dumping plans to the PBGC is the extent to which benefits would be reduced. For example, the same participant with 30 years of service, and an accrual rate of $74 per month per year of service would forfeit approximately one-third of his benefit. Persons with higher accrual rates, or fewer years of service would suffer greater reductions, but a maximum benefit of $20,070 is considerably better than $12,870.

S. 3157 proposes paying for the benefit increase with an increase in the annual premium level from the current $9 per employee, to $16. We support the proposal and urge passage of S. 3157 as introduced.

CONCLUSION

We appreciate the opportunity to provide you with this testimony and to separate the facts from much of the rhetoric regarding multiemployer pension plan funding. As representatives of a Coalition of stakeholders that include groups as diverse as the member unions of the AFL–CIO and Change to Win and their employer association counterparts in the diverse industries that sponsor multiemployer plans; the U.S. Chamber of Commerce; UPS; Bechtel; and the Washington Group, to name a few, we believe it is critical to understand the need for comprehensive funding relief for multiemployer defined benefit plans as a means of preserving the financial viability of tens of thousands of small, medium-sized and large employers and the jobs they provide. The continuation of this system and the protection of all of the stakeholders is in the balance.

We look forward to speaking with the members of the committee at the upcoming hearing and welcome any questions you may have.

The CHAIRMAN. Thank you, Mr. DeFrehn.

Now, Mr. McGowan. Please proceed.

STATEMENT OF JOHN R. McGOWAN, PROFESSOR OF ACCOUNTING, ST. LOUIS UNIVERSITY, ST. LOUIS, MO

Mr. McGowan. Thank you, Senator Harkin. It's an honor to be here. I appreciate the chance to speak to the committee.

I know I have 5 minutes, so if I have to speak like the guy from Jimmy John's here, bear with me.

My remarks are divided into three parts: first, speaks to the role of defined benefit plans in the United States and around the world, the 21st century; second, a few specific questions about the bill, which Ms. Borzi, already addressed—I'll very quickly reiterate them; and third, some policymakers are beginning to talk about—the ratio of national debt to GDP in the United States is potentially untenable. I'll talk a little about those three areas.

To begin with, the discussion has centered around how important and beneficial defined benefit plans are and how they should be preserved by the government. Companies in the United States have been freezing and replacing their defined benefit plans with defined contribution plans faster than a bunch of kids riding down a world-class roller coaster. A number of factors have already been talked about; how, a risky proposition is potentially a thing of the past.

A one-time trickle of employers freezing their defined benefit pension plans turned into a flood in 2009. Nearly one-third of Fortune 1000 companies with defined benefit plans have frozen at least one of those plans, up from 7 percent 5 years ago. Among the Nation's biggest companies, defined benefit plans declined by an even greater—only 45 percent of Fortune 100 companies still offer defined benefit plans to new salaried employers.

Increasingly this year, employers froze their defined benefit plans and did not sweeten their 401(k) plans. Some companies, due to severe financial pressures, went even further and froze their defined benefit plans and suspended their 401(k) plan match.

I looked at, internationally, how defined benefit plans are faring in other countries, because we do operate in a global economy and we have to compete with businesses around the world. And so, that context is important. Also, the four countries with the greatest defined benefit plans are Japan, Finland, Germany, and Sweden. All these countries have a strong tradition of defined benefit plans. They, themselves, have also been freezing and cutting back defined benefit plans, and mixing them with a combination of defined contribution and defined benefit.

Just a couple questions—not to be redundant—about the bill that Ms. Borzi talked about. The fifth fund was essentially going to raid the funds of the single employer plan. I mean, that's just a concern that's been addressed. And second, the full faith and credit backing of the fifth fund was a concern. Will the taxpayers end up being on the hook as a result of the bill? Ms. Borzi very eloquently addressed those concerns. I don't need to really reiterate those.

Central States, Mr. Nyhan talked about paying $2.3 billion in benefits and getting some $700 million in employer contributions, which really does illustrate the nature of the problem. Over a billion of those benefits are for, as he mentioned, orphan retirees. That really is a problem that needs to be addressed.

In terms of how bad it is, though, for the current state of multiemployer plans, I think that's illustrated with UPS paying $6 billion to get out of Central States. That might illustrate how bad things are currently, that UPS is willing to pay $6 billion to sort of extricate themselves from that liability.

And last, just in terms of the government's role in this, Is there a tipping point for too much U.S. debt? This is what Robert Samuelson, a very esteemed economist says. Some of us may have studied his textbooks, going through school. You might think that Europe's economic turmoil would inject a note of urgency into America's budget debate. After all, high government deficits and debt are the roots of Europe's problems, and these same problems afflict the United States. Most Americans dismiss what's happening in Europe as a continental drama with little relevance to them. He just talks about the current problems of Greece and Europe. The ratio of debt to GDP in Greece is about 101 percent. Their debt is slightly greater than GDP. Right now, our national debt to GDP is about 88 percent; but in 5, 6, 7 years, it's scheduled to be 100 percent. We'll have the same ratio of debt to GDP that Greece now has. Robert Samuelson has said, what before was thought to be unthinkable, that policymakers are beginning to talk about a little bit—the fact, that the United States could default on its national debt. So, I appreciate Senator Casey's assurance that taxpayer funds are not going to be used to address this very important problem.

I'll finish my remarks in time.

Thank you, again, very much for the invitation.

[The prepared statement of Mr. McGowan follows:]

Prepared Statement of John R. McGowan

1. Pension Benefit Guarantee Corporation (PBGC) is experiencing a significant increase in financial liabilities for failed pension plans. PBGC's combined financial condition declined by $10.80 billion, increasing the corporation's deficit to $21.95 billion, increasing the corporation's deficit to $21.95 billion as of September 30, 2009, from $11.15 billion as of September 30, 2008. The single-employer program's net position declined by $10.40 billion and increased the program's deficit to $21.08 billion.

2. Multiemployer pension plans also contribute to the financial overload being experienced by the PBGC. PBGC currently insures about 1,500 multiemployer (sometimes referred to as union) plans. These plans provide or promise benefits to roughly 10 million participants or their beneficiaries.

3. One avenue for multiemployer pension plans to improve solvency is to cut benefits for future retirees. For example, on March 27, 2008 the Teamsters for a Democratic Union announced that the third largest pension fund in the Teamsters Union is reportedly planning new benefit cuts.

4. Another avenue for multiemployer pension plans to improve solvency is to increase employer contributions, including large "withdrawal" payments for employers who want to get out of a union pension plan. The Central States Pension Fund demanded a one-time $6 billion withdrawal payment from UPS in order to allow UPS to leave the Central States Pension Fund and start a different pension plan.

5. Multiemployer (union) pension funds are facing serious financial solvency issues. Under the Federal law, funds that fall in the Yellow Zone (less than 80 percent funded) or the Red Zone (less than 65 percent funded, as well as a poor credit balance) have to develop a rehabilitation plan to get above 80 percent funding. Funds can raise their funding level by increasing employer contributions or by cutting members' benefits. In extreme cases, funds in the Red Zone can even cut benefits that members (but not retirees) have already earned—money trustees could not touch before the new law.

6. The Senate has recently introduced a bill entitled: Save Jobs and Protect Benefits Act of 2010. A more accurate title for this bill is: "The Government Sponsored Bailout of Union Defined Benefit Pension Plans Which No Longer Make Economic Sense." While it is true that multiemployer pensions and the PBGC are having major financial problems with defined benefit pension plans, it is also true that the solution may not be another massive infusion of U.S. debt and red ink. Union pension officials should consider following the examples of so many companies in the private sector. Given global business pressures, companies are being forced to offer either defined contribution or no pension plans at all.

STUDY FINDINGS

1. Pension Benefit Guarantee Corporation (PBGC) is experiencing a significant increase in financial liabilities for failed pension plans. PBGC's combined financial condition declined by $10.80 billion, increasing the corporation's deficit to $21.95 billion, increasing the corporation's deficit to **$21.95 billion** as of September 30, 2009, from $11.15 billion as of September 30, 2008. The single-employer program's net position declined by $10.40 billion and increased the program's deficit to **$21.08 billion**. The multiemployer program's net position declined by $396 million and increased that program's deficit to $869 million. PBGC's assumption of corporate pensions is resulting in a sharply widening deficit. The PBGC will assume responsibility of $3.2 billion in pension obligations over the next 5 years. The Congressional Budget Office estimates that the shortfall will widen to $86.7 billion by 2015.

2. Multiemployer pension plans also contribute to the financial overload being experienced by the PBGC. PBGC currently insures about 1,500 multiemployer (sometimes referred to as union) plans. These plans provide or promise benefits to roughly 10 million participants or their beneficiaries. As of September 30, 2007, the multiemployer insurance program reported a deficit of over $900 million. PBGC's multiemployer (union) program deficit was $955 million dollars at the end of fiscal year 2007. This was a $216 million increase in the deficit compared to the previous year, when there was a $739 million deficit.

3. One avenue for multiemployer pension plans to improve solvency is to cut benefits for future retirees. For example, on March 27, 2008 the Teamsters for a Democratic Union announced that the third largest pension fund in the Teamsters Union is reportedly planning new benefit cuts. A second example was announced that same day. Teamsters in New Jersey Local 641 were hit with major pension and health and welfare cuts on March 10—just 9 days after the Local 641 pension fund announced it was in critical status (the "Red Zone"). In November 2008, the Boilermaker—Blacksmith National Pension Trust announced that, despite benefit reductions announced in August 2008, the pension "is now facing serious financial challenges."

4. Another avenue for multiemployer pension plans to improve solvency is to increase employer contributions, including large "withdrawal" payments for employers who want to get out of a union pension plan. The Central States Pension Fund demanded a one-time $6 billion withdrawal payment from UPS in order to allow UPS to leave the Central States Pension Fund and start a different pension plan.

5. Multiemployer (union) pension funds are facing serious financial solvency issues. Under the Federal law, funds that fall in the Yellow Zone (less than 80 percent funded) or the Red Zone (less than 65 percent funded, as well as a poor credit balance) have to develop a rehabilitation plan to get above 80 percent funding. Funds can raise their funding level by increasing employer contributions or by cutting members' benefits. In extreme cases, funds in the Red Zone can even cut benefits that members (but not retirees) have already earned—money trustees could not touch before the new law. When financial solvency is calculated relative to assets maintained in the stock market and the market's recent performance, all five of the union pension plans examined are in the red zone.

6. The Senate has recently introduced a bill entitled: Save Jobs and Protect Benefits Act of 2010. A more accurate title for this bill is: "The Government-Sponsored Bailout of Union Defined Benefit Pension Plans Which No Longer Make Economic Sense." While it is true that multiemployer pensions and the PBGC are having major financial problems with defined benefit pension plans, it is also true that the solution may not be another massive infusion of U.S. debt and red ink. Union pension officials should consider following the examples of so many companies in the private sector. Given global business pressures, companies are being forced to offer either defined contribution or no pension plans at all.

7. Employees should consider the financial shortcomings of multiemployer (union) pension plans when employment changes are considered, and employers must con-

[1] The views of this study are the author's and do not necessarily reflect those of Saint Louis University.

sider the potential financial obligations (withdrawal payments) that can be levied by pension programs when an employer wants to leave a particular pension plan.

INTRODUCTION

News stories about companies' pension problems abound in 2010. Generally speaking there are two types of pension plans. The first is a defined contribution plan. These plans normally consist of contributions from both the employer and the employee. The amount available for retirement is simply a function of the amounts contributed and their performance in the market. The second type is a defined benefit plan. As the name suggests, defined benefit pension plans provide specified levels of benefits for retirees. Companies have the responsibility for funding these plans until they grow and provide promised benefits to retirees. A number of factors are now making defined benefit plans a risky proposition, and potentially even a thing of the past. In some cases, companies (cities) promised more generous benefits than they could realistically afford. Beyond that, the combination of a weak economy and declining stock market has also provided a one-two punch that has knocked many companies defined benefit pension plans down for the count.

According to Geisel (2009), the one-time trickle of employers freezing their defined benefit pension plans turned into a flood in 2009. Nearly, one-third of Fortune 1000 companies with defined benefit plans have frozen at least one of those plans, up from 7 percent 5 years ago, according to a Watson Wyatt Worldwide analysis. Among the Nation's biggest companies, defined benefit plans' decline has been even greater. Only 45 percent of Fortune 100 companies still offer a defined benefit plan to new, salaried employees, Watson Wyatt found. While the decline of defined benefit plans has been going on for some time, this year has been different.

In prior years, some employers remained in the defined benefit plan system and simply converted traditional final pay plans to cash balance plans, which they believed were a better fit for a more mobile workforce. Other employers, concerned about the cost of and volatility of required contributions and increased life expectancies, froze their pension plans and beefed up their 401(k) or other defined contribution plans.

Increasingly this year, employers froze their defined benefit plans and did not sweeten their 401(k) plans, such as San Francisco-based banking giant Wells Fargo & Co. and Denver-based phone and Internet service provider Qwest Communications International Inc. Some companies, due to severe financial pressures, went even further and froze their defined benefit plans and suspended their 401(k) plan match, such as Sacramento, CA-based newspaper publisher McClatchy Co., whose advertising revenues have declined sharply.

However, as many workers have become painfully aware, companies with defined benefit plans can go bankrupt. Consider such companies as Worldcom, Enron, Global Crossing, Kmart, and Delphi. The fate of employees' pension plans depends on what type of bankruptcy the firm takes: chapter 7 or chapter 11 (USA Today, 2002). The more common form is Chapter 11, where the business continues to operate and reorganizes financially. However, the employer may and often does reduce or eliminate matching contributions. Filing Chapter 7 bankruptcy is far more serious. Here, the firm shuts down and any company-sponsored retirement plans are terminated. Another possible action is for the pension plan to "freeze" the assets. The term "freeze" can mean closing the plan to new entrants or ceasing accruals for some or all plan participants.

STUDY OBJECTIVE

The first goal of this article is to review the current trends among companies' defined benefit pension plans. The number of companies going bankrupt is shooting upward and out of control. The Pension Benefit Guarantee Corporation (PBGC) is taking over the pension obligations for many of these failed companies. Evidence is presented to show the PBGC is becoming overwhelmed with failed single-employer pensions. In addition, there is a cap on the amount of benefits, which can be paid from PBGC.

The second objective of this article is to examine the financial health of multiemployer pension plans in general. Unlike single employer plans, the PBGC makes loans to these pensions when they experience funding problems. However, with the passage of the Pension Protection Act of 2006 (applicable to plan years after 2007), there is substantial pressure on multiemployer pension plans to either raise premiums or lower benefits in an effort to achieve minimum solvency ratios. In an effort to examine the solvency of a sample of multiemployer plans, a sample of trade unions is studied next. This analysis is based on data obtained from an IRS Form 5500 Web site called freeERISA.com. Form 5500 discloses important information about the solvency of the pension plan. The goal of this analysis is to provide a glimpse of the current financial condition of these particular pension plans. An examination of Form 5500 can provide employees information that will help them analyze the financial health of their companies' pension plan. Next, the recently proposed Save Jobs and Benefits Act of 2010 is discussed. In light of these major financial challenges, the final section presents some questions and facts about pension alternatives for employees' consideration as they evaluate new employment opportunities.

TRENDS AMONG COMPANIES' DEFINED BENEFIT PENSION PLANS

The number of private-sector defined benefit plans reached a peak in the mid-1980s. At that time, about one-third of American workers were covered by defined benefit plans. From 1986 to 2004, 101,000 single-employer plans with about 7.5 million participants were terminated. In about 99,000 of these terminations, the plans had enough assets to purchase annuities in the private sector to cover all benefits earned by workers and retirees (a "standard termination"). In the remaining 2,000 cases, companies with underfunded plans shifted their pension liabilities to the PBGC. By the end of 2005, the number of plans supported by the PBGC was at about 30,000 (PGBC 2005). In recent years, many employers have chosen not to adopt defined benefit plans, and others have chosen to terminate their existing plans.

DECLINING PEFORMANCE OF DEFINED BENEFIT PLANS

A 2007 survey by the Employee Benefit Research Institute (EBRI) suggests that U.S. workers are slow to see or adapt to a changing U.S. retirement system. In addition, those who are aware of these changes may not be adapting to them in ways that are likely to secure them a comfortable retirement. The Retail Confidence Survey finds pension-plan changes by employers have left nearly half of workers less confident about the benefits they will receive from a traditional pension plan. There is reason for their lack of confidence.

PBGC PENSION OBLIGATIONS GROWING AT AN ALARMING RATE

On top of the shooting numbers of companies dumping their pension plans on the PBGC, in 2008, it experienced a loss of $4.8 billion in equity investments. With a newly adopted investment strategy that includes more equity, George Miller, a California Democrat who heads the congressional committee that oversees the PBGC brings up the question of whether it is wise to invest our Nation's pension backstop in volatile equities considering the current market turmoil. However, the PBGC downplays the risks. "It gives us a better chance—three times better—to eliminate the deficit without taxpayer bailout," PBGC Director Charles Millard said.

"Retirees who depend on us should not be concerned. PBGC's assumption of corporate pensions is resulting in a sharply widening deficit. The deficit could swell substantially if the Chapter 11 filings of Delta, Northwest and Delphi lead them to offload unfunded pension liabilities on the agency. In addition, United Airlines, which is operating in bankruptcy protection, received court permission to terminate its four employee pension plans, setting off the largest pension default in the three decades that the government has guaranteed pensions. The PBGC will assume responsibility of the $3.2 billion in pension obligations over the next 5 years. Analysts have predicted that if United wins its case, there could be a domino effect for other airlines to cut their pension obligations as well. If this domino effect takes place, the PBGC might find itself seeking Congress' help for a bailout since it is already facing more than a $9 billion shortfall. The Congressional Budget Office estimates that the shortfall will widen to $86.7 billion by 2015."

The trend for escalating pension burdens for the PBGC is likely to continue. In fact, the PBGC has become an increasingly popular option for private-capital funds and other investors who are seeking to spin investments in near-bankrupt industrial companies into gold. Shifting the heavy pension liability from the balance sheet to the pension corporation does this. Thomas Conway, VP of the United Steel Workers of America has said, "It's become a kind of system to bail out companies." Robert S. Miller has been known to take this approach in turning around companies such as Bethlehem Steel, Federal-Mogul and now Delphi. Many other executives at airlines and other troubled companies have also copied this approach. Although these companies are turning around, and the people relying on Miller are becoming rich, this approach may be creating a multibillion-dollar mess for taxpayers.

Many cities are heading toward bankruptcy due to ridiculous pension plan benefits. Recently, Vallejo, CA became the largest city in the State's history to declare bankruptcy. "Thanks to retroactive benefit enhancements approved by the city council in 2000, police officers and firefighters can now retire at age 50 and receive an annual pension equal to 90 percent of their final pay (assuming 30 years on the job), an amount that gets increased every year to help keep pace with inflation." More cities are likely to follow due to similar overextensions of their pension plan obligations. As government pension plans are protected by constitutional and legal guarantees, the only way out is for the city to declare bankruptcy. Once again the pension plan goes off to the PBGC.

The PBGC is already facing a large long-term funding gap before all these major companies unload their defined benefit pension plans. As a result, the funding burden will shoot higher for companies with existing plans. For example, the first inflation-triggered increase of multiemployer premiums becomes effective in 2008. Accordingly, the premium rate will increase from $8 to $9 per participant as required by the Deficit Reduction Act of 2006. Furthermore, on May 22, 2010 the Pension Benefit Guaranty Corp., which insures pensions for 44 million retirees, reported a $33.5 billion deficit for the first half of fiscal 2009, up from $11 billion in fiscal 2008. That shortfall, the largest in the agency's 35-year history, could increase dramatically if the agency is forced to take over pension obligations for General Motors and Chrysler.

PBGC AND MULTIEMPLOYER PENSION PLANS

PBGC currently insures about 1,500 multiemployer (sometimes referred to as union) plans. These plans provide or promise benefits to roughly 10 million participants or their beneficiaries. Activity in PBGC's multiemployer insurance program has increased substantially over the last few years. PBGC has also seen significant increases in requests for financial assistance. To put matters in perspective, consider the following evolution of requests for financial assistance.

In the first 17 years since the inception of MPPAA,[2] PBGC had provided financial assistance to only 19 plans in the approximate amount of $35 million. In 1997, PBGC recorded liability for future financial assistance in the amount of $361 million to 45 troubled plans. Moreover, PBGC was paying only 14 of those plans $4 million annually in financial assistance. By the end of 2007, the multiemployer program recorded liability for 94 plans with a present value of future financial assistance of $2.1 billion. In fiscal year 2007, PBGC paid nearly $71 million to 34 plans. This represented an eighteenfold increase in payments to more than double the number of plans. Finally, by the end of fiscal year 2008, PBGC expects to pay financial assistance to 44 plans; and by the end of 2009, 50 plans.

Moreover, PBGC's combined financial condition declined by $10.80 billion, increasing the Corporation's deficit to $21.95 billion as of September 30, 2009, from $11.15 billion as of September 30, 2008. The single-employer program's net position declined by $10.40 billion and increased the program's deficit to $21.08 billion. The multiemployer program's net position declined by $396 million, and decreased that program's deficit to $869 million. During fiscal year 2009, 144 underfunded single-employer plans were terminated. Because of PBGC's previous efforts to evaluate its exposure to probable terminations, $3.08 billion of the net claims for these plans were already reflected in PBGC's 2008 results. The 144 plans had an average-funded ratio of approximately 63 percent. Their terminations resulted in an aggregate net loss to PBGC of $5.83 billion.

In summary, PBGC's multiemployer program deficit was $955 million at the end of fiscal year 2007. This deficit grew to over 32 billion by the end of 2009. The increased deficit is due primarily to PBGC's booking of additional liabilities arising from expected future financial assistance to troubled plans—most of these increased liabilities were attributable to plans that terminated in 2007.

SPECIFIC PROBLEMS WITH MULTIEMPLOYER PENSION PLANS

The following case illustrates what is happening to multiemployer pension plans. Consider the example of a historically strong and over-funded multiemployer plan with over 1,500 participants.[3] During the late 1990's, the plan was over 100 percent funded. Based on its funding status, the ERISA required plan contributions were less than the plan's negotiated contributions. Trustees continued to grow the plan and often were required to increase benefits for participants to ensure that their

[2] Multiemployer Pension Plan Amendments Act of 1980.

[3] See J. Sparling, "The Fallout of Reform: How Multiemployer Plans Can Better Manage Credit Balances & Funding Levels." See *http://www.seic.com/institutions/documents/Fallout_Reform_ME_Plans_FINAL.pdf.*

contributions were tax deductible, resulting in increased overall liabilities of the plan.

Between 2001 and 2004, poor financial markets resulted in a significant decrease in the plan's assets. The decrease in assets, coupled with the higher liabilities, created a funding gap that began to raise the plan's minimum contribution. The plan's credit balance was used to offset the growing gap between the minimum contributions and negotiated contributions. However, the gap was understated due to favorable actuarial smoothing rules, which allowed the use of asset values based on averages from the bull market 5 years earlier. As a result of the perceived smaller funding gap, minimum contributions remained low and the credit balance was not significantly drawn down. In addition, trustees actually increased benefits in 2003 because their current model for management did not forecast the potential problems they were yet to experience.

Today, the plan is in significant trouble. As market volatility persisted, the benefits of smoothing decreased and funding levels dropped significantly and the plan's credit balance has eroded. In retrospect, the plan management model failed to alert trustees because it did not budget for market volatility. Last year, trustees were forced to cut benefits by 85 percent because of market volatility that caused a significant decrease in assets. This benefit reduction then caused a strain on recruiting new members. To make matters worse, the plan's actuary assumed the plan would meet the assumption rate for 2006 and instructed trustees to increase benefits to about half of what they had previously been. Although typical practice is to use this standard assumption, the investment management strategy was not changed to align with this goal. Recently, when the actuary revisited this case and realized the plan might not meet the return assumption, he recommended that the trustees retract their promise to plan participants to increase benefits.

To further illustrate what is going on in the area of multiemployer pension plans, consider the following comments from the Multiemployer Pension Fund Coalition (MPFC) regarding their position on the PPA of 2006. The MPFC was predicting what would happen if a poor economy and stock market negatively impacted multiemployer Pension Plans. They were concerned that plans in critical status could bankrupt the plans and lead to their transfer to the PGBC. Contributing employers to a multiemployer plan in critical status that has adopted and is complying with a rehabilitation plan must be protected from potentially devastating, extra-contractual contribution requirements and excise taxes that could trigger bankruptcies and, eventually, plan failures, the transfer of liabilities to the PBGC, and drastic reductions in participant benefits.

There are also specific examples in 2008 where multiemployer plans are admitting to the need to cut benefits. For example, on March 27, 2008 the Teamsters for a Democratic Union announced that the third largest pension fund in the Teamsters Union is reportedly planning new benefit cuts. However, as also noted, teamster members in New England have not yet been informed of these developments by the fund or its union trustees.[4] A second example was announced that same day. Teamsters in New Jersey Local 641 were hit with major pension and health and welfare cuts on March 10—just 9 days after the Local 641 pension fund announced it was in critical status (the "Red Zone").

UPS, the world's largest package-delivery service, wants Congress to allow employers to cut pension benefits already promised to some workers in plans funded by multiple companies. Atlanta-based UPS says the plans can no longer afford to pay full benefits because so many companies that used to pay into the pool have gone out of business. UPS is currently trying to withdraw from its pension obligations and set up a new independent pension plan. The following excerpt typifies the challenge:

> "Even retirees, whose pension benefits are guaranteed, could be at risk. If the funding woes at Central States continue, the plan could, in the worst-case scenario, end up in the hands of the PBGC. But the PBGC limits benefits in multiemployer plans to about $13,000 a year per retiree, compared with roughly $52,000 for single-employer plans. That would be a big cut for Frank Bryant, a 67-year-old former UPS driver who retired in 2003 and now collects a $37,000 annual pension from Central States. 'It looks like a downward spiral right now,' says the Greensboro (NC) resident. Central States says it has no plans to alter benefits or employer contributions."

[4] See *http://www.tdu.org/node/1900.*

FORM 5500 ANALYSES FOR DEFINED BENEFIT PLANS IN TRADE UNIONS

Defined benefit pension plans are featured as an important benefit for trade unions. For purposes of this study we analyzed the financial health of a number of defined pension benefit plans for a small sample of the trade unions. While the sample was not large enough to provide statistical significance, the local chapters selected appear to be a fair representation of the financial health of the defined benefit pension plans for the trade unions. The data for this analysis is available at *www.freeERISA.com* at no charge. This Web site provides free access to pension and benefit data. Specifically, pension data is available for IRS Form 5500. Schedule B of Form 5500 provides specific data that enables interested parties to analyze the financial health of their pension plans.

FUNDING STANDARDS FROM PENSION PROTECTION ACT OF 2006

Federal law has a number of special rules that apply to financially troubled multiemployer plans. Under so called "plan reorganization rules," a plan with adverse financial experience may need to increase required contributions and my reduce benefits that are not eligible for the PBGC's guarantee (generally, benefits that have been in effect for less than 60 months). If a plan is in reorganization status, it must provide notification that the plan is in reorganization status and that, if contributions are not increased, accrued benefits under the plan may be reduced or an excise tax may be imposed (or both). The law requires the plan to furnish this notification to each contributing employer and the labor organization.

The main goal of the Pension Protection Act was to raise each pension's funding level. The funding level is determined by comparing the amount of money they have on hand with the amount of benefits they expect to pay out. The goal of better funding was taken advantage of and stringent new restrictions were placed on funds. In addition, it became easier to cut members' benefits.

Under the law, funds that fall in the Yellow Zone (less than 80 percent funded) or the Red Zone (less than 65 percent funded, as well as a poor credit balance) have to develop a rehabilitation plan to get above 80 percent funding. Funds can raise their funding level by increasing employer contributions or by cutting members' benefits. In extreme cases, funds in the Red Zone can even cut benefits that members (but not retirees) have already earned—money trustees could not touch before the new law. Even when funds are healthy, the new law makes it less likely that they will improve benefits. Raising benefits lowers the funding level—something fund trustees are less likely to do with the threat of slipping into the Red Zone.

LIMITATION ON PENSION BENEFITS PAID BY PBGC

The law mandates the maximum benefit guaranteed by the PBGC. Moreover, only vested benefits are guaranteed.[5] Specifically, the PBGC guarantees a monthly benefit payment equal to 100 percent of the first $11 of the Plan's monthly benefit accrual rate, plus 75 percent of the next $33 of the accrual rate, times each year of credited service. The PBGC's maximum guarantee, therefore, is $35.75 per month times a participant's years of credited service.

- **Example 1:** If a participant with 10 years of credited service has an accrued monthly benefit of $500, the accrual rate for purposes of determining the PBGC guarantee would be determined by dividing the monthly benefit by the participant's years of service ($500/10), which equals $50. The guaranteed amount for a $50 monthly accrual rate is equal to the sum of $11 plus $24.75 (.75 * $33), or $35.75. Thus, the participant's guaranteed monthly benefit is $357.50 ($35.75 * 10).
- **Example 2:** If the participant in Example 1 has an accrued monthly benefit of $200, the accrual rate for purposes of determining the guarantee would be $20 (or $200/10). The guaranteed amount for a $20 monthly accrual rate is equal to the sum of $11 plus $6.75 (.75 x $9), or $117.75. Thus, the participant's guaranteed monthly benefit would be $177.50 ($17.75 x 10).

In calculating a person's monthly payment, the PBGC will disregard any benefit increases that were made under the Plan within 60 months before the earlier of the plan's termination or insolvency. Similarly, the PBGC does not guarantee:

- Pre-retirement death benefits to a spouse or beneficiary if the participant dies after the plan terminates;
- Benefits above the normal retirement benefit;
- Disability benefits not in pay status, or;

[5] See Boilermaker Blacksmith National Pension Trust Annual Report, November 2008.

- Non-pension benefits such as health insurance, life insurance, death benefits, vacation pay or severance pay.

Accordingly, the maximum monthly benefit is $357.50.

DATA ANALYSIS

The funding level is determined by dividing current assets by total liabilities. This ratio is used as a proxy for the financial health of the plan. The Form 5500 available at freeERISA.com provides this data. The results of analyzing these trade union pension plans are revealing. All the plans examined are in the yellow zone and two in the red zone. The trade union with the largest assets in the sample is the Carpenters Trust Fund. Current assets are almost $1.2 billion. Total liabilities however are just over $2 billion. The resulting funding percentage is 70 percent. The next largest pension plan is Construction Laborers Fund of Greater St. Louis with assets of just under $400 million. Total liabilities are $519 million. This plan, while still in the yellow zone, had the strongest funding level in the sample at 75 percent. The third sample of plans came from a number of local chapters of IBEW. The average assets in these pension plans are $158 million and liabilities are $244 million. The resulting funding level was in the red zone at just under 65 percent. A number of local chapters of Plumbers and pipe fitters Union were examined. Average current assets were $79 million and total liabilities were $118 million. The average funding level for these plans was 67 percent. Finally, the National Sheetmetal Workers pension fund revealed assets of $129 million compared with over $201 million in liabilities, a funding level of 64 percent.

Pension Fund	Current Assets	Total Liabilities	Percentage
Carpenters Pension Trust Fund of St. Louis	$1,435,159,165	$2,031,453,937	70.65
Construction Laborers Fund of Greater St. Louis *	$391,340,770	$519,434,403	75.34
International Brotherhood of Electrical Workers	$158,832,878	$244,512,913	64.96
Plumbers and pipe fitters Misc. Local Chapters	$79,631,277	$118,332,486	67.29
Sheet Metal Workers Local 194	$129,274,465	$201,574,482	64.13

Serves Laborers' International Union of North America Locals #42, #53, and #110.

The funding level analysis for these plans is based on tax return data available for fiscal years ranging from December 31, 2006 through May 31, 2007. Therefore, the pension asset values were updated to reflect the estimated change in value through December 2008. The calculation is based on the assumption that two-thirds of the assets are invested in the stock market.[6] The change in the value of the Dow Jones Index was used to restate the value of the assets in the plans. By December 2008, the Dow Jones plunged to 8,500. The liabilities were estimated to increase by 3 percent. Accordingly, a recalculation of funding ratios for the union pensions places them all in the red zone.

Pension Fund	Current Assets	Total Liabilities	Percentage
Carpenters Trust Fund	$1,118,796,591	$2,092,397,555	53
Construction Laborers	$305,074,678	$535,017,435	57
IBEW	$121,596,183	$251,848,300	48
Plumbers and pipe fitters	$63,001,560	$121,882,461	52
Sheet Metal Workers	$102,131,615	$207,621,716	49

Clearly, all the multiemployer-sponsored pension plans in the sample would be in trouble if the standards and requirements of the Pension Protection Act of 2006 applied to the financial statements examined. In fact, they would all be in the red or "critical" zone with solvency ratios well below 60 percent.

BILL TO BAILOUT MULTIEMPLOYER PENSION PLANS INTRODUCED

A bill to reform the Nation's multi-employer pension program was introduced in the U.S. Senate in late March 2010. The Create Jobs and Save Benefits Act of 2010 (CJSBA) is designed to provide relief for unionized truckers by easing pension obli-

[6] An experienced actuary supplied this data.

gations. The bill would "ensure the solvency" of multiemployer plans for the 10 million workers and retirees covered under multi-employer plans. One of the most striking provisions in this bill enables the transfer of all pension liabilities of "orphan" retirees to the Pension Benefit Guaranty Corp. (PGBC). Orphan retirees are those who have worked at now-defunct trucking firms whose pensions are being funded by the surviving truckers. If passed, this bill would be a windfall to YRC Worldwide, Inc. and the ABF Freight System, which employs about 45,000 unionized workers represented by the Teamsters.

CJSBA: MPP SOLUTION OR A VAIN ATTEMPT TO KEEP CHICKENS FROM COMING HOME TO ROOST

The heart of the solution to the multi-employer pension problem in the Casey Bill involves a massive government bailout. The first source of funds is a contribution from the multiemployer plan, which would "earmark" enough assets to pay benefits for the first 5 years. Next, once these assets run out, the PBGC would be responsible for paying full benefits under a partitioned plan. The bill essentially creates a new "PBGC Fifth Fund" that would pay the benefits. The problem is the new fund is not capitalized with any income or assets. The fifth fund would raid the funds that are currently earmarked for single-employer pension funds. If and when the PBGC single-employer premium fund runs out of money, the "full faith and credit" of the United States is pledged to cover the partitioned benefits.

The Proposal also prohibits any increase in multiemployer premiums to cover PBGC's obligations to a partitioned plan. Currently the rate is $9 per participant. In addition, the proposal requires PBGC to guarantee 100 percent of all plan benefits in the partitioned plan, no matter how large. On top of that, the proposal almost doubles the maximum benefit from $12,870 to $20,070 for non-partitioned plan. The higher guarantee would apply retroactively to include about 40 plans that have previously terminated by mass withdrawal but not yet begun to receive financial assistance. The liability for these plans would have to be increased and reflected on PBGC financial statements. This would further balloon the current PBGC deficits.

How Many MEPPs Will Be Eligible for the Bailout?

Under the Proposal, a multiemployer plan can elect to partition if the plan: (a) is in critical status; (b) had a substantial reduction in contributions due to employer bankruptcies; (c) is likely to become insolvent unless contributions are increased significantly; (d) had at least a 2 to 1 ratio of inactive to active participants, and benefit payments to contributions; and (e) partition would significantly reduce the likelihood of insolvency.

These entry criteria are quite expansive. The proposal was initially marketed as a means of helping Central States, who has a ratio of 6.2 inactive participants for every active worker. The Proposal sets a threshold ratio of 2 to 1. Most MPPs should have little trouble meeting this condition. Similarly, there were about 500 multiemployer plans in critical status in 2009 (without a WRERA election), which included some of the largest plans covering tens of thousands of participants. Every Teamster related pension plan experienced numerous employer bankruptcies after trucking deregulation occurred in 1980.

How Much Does Central States Cost?

A careful examination of 2008 Schedule MB for Central States reveals some interesting facts. For example, the RPA 94 liability section indicates that the total current liability is over $47 billion for a total of 439,955 employees. The current value of assets in this section is $28.5 billion. The resulting funding percentage is listed as 56.97 percent. This percentage is under 65 percent and therefore in the critical zone according to the PPA 2006.[7] The number of current retirees for Central States is often cited as near 209,000. However, Schedule MB shows that these retirees represent just 48 percent of the total. Another 124,196 retirees are in the terminated

[7] While it is true that pension actuaries perform the official calculations under PPA '06 to determine funding status. The simple ratio of current assets to future liabilities provides a good indicator of fund solvency status. Schedule MB also shows the interest rate used for RPA 94 calculations as 5.06 percent. It should also be noted that page 1 of Schedule MB provides another measure of liabilities using the larger discount rate of 7.5 percent and the unit credit cost method. Using this rate reduces the value of liabilities to $35.6 billion. The effect of the discount rate is huge. The present value of liabilities is reduced by over $12 billion with the higher discount rate. Using this method yields the funding ratio of 73.2 percent and would place Central States in the Yellow Zone category under PPA '06. However, Exhibit IV of Section 4 entitled Certificate of Actuarial Valuation for the Central States, Southeast and Southwest Areas Pension Plans uses the $47 billion value for liabilities and resulting funding ratio of 56.97 percent.

vested participant category. This group represents 28 percent of the total. At just over 106,000, the third and smallest group is the total active participants.

The proposal states that Central States would transfer $5.2 billion to the partitioned plan to pay benefits for the first 5 years and PBGC would pay benefits equal to $5.5 billion over the succeeding 5 years. First, it is not clear that the $5 billion estimate for benefit payments over a 5-year period is realistic. In 2008, Central States paid out $2.7 billion in benefits. Adding this up over 5 years far exceeds $5 billion. Second, the effect of the stock market for 2008 is illustrated by the fact that the fund lost over $9 billion on the income statement and in net assets. In other words, net assets declined by over 35 percent from $26.8 to $17.3 billion in 1 year. Moreover, employer contributions were only $849 million. That means even without the effect of investment losses, Central States is collecting less than one-third of the cost of current benefit payments to retirees. Third, the length of the stream of payments for current retirees is uncertain. Many retirees will be receiving benefits well after the initial 10-year period of the partitioned plan. Fourth, current figures do not include the additional retirees in the deferred or terminated vested category. Since the proposal caps employer contributions at current limits and greatly enhances the number of retirees who will be eligible for support from PBGC, the likely outflow of red ink from this government agency, along with the other record national debt, makes the current oil spill in the Gulf of Mexico look like a small trickle. It should be noted this scenario also does not include the myriad of other multiemployer plans that will be included in the fifth fund described in the proposal.

Where Does the Money Come From?

The proposal does not identify a funding source for the fifth fund nor is there any provision for this fund in Federal appropriations. It is not clear where PBGC would get funds to make payments. As of September 30, 2009, PBGC had a net deficit of $869 million. In 2010, PBGC will pay over $100 million to participants in 50 insolvent multiemployer plans. The number of insolvent multiemployer plans would grow significantly under the conditions enumerated in the proposal. After a number of years the good faith and credit of the United States would back the PBGC. However, at some point the United States cannot keep adding unlimited amounts of debt.

Is There a Tipping Point for Too Much U.S. Debt?

According to a recent report by the IMF, the U.S. national debt will soon reach 100 percent of GDP. The sharp rise in national debt started in 2006 and by 2015 the IMF suggests it could exceed GDP. At the end of the first quarter of 2010, national debt was already 87.3 percent of GDP. Concerning the effect of soaring debt as a percentage of GDP, a recent paper by Carmen Reinhart and Ken Rogoff, the authors of This Time Its Different found that when government debt-to-GDP rise above 90 percent, it lowers the future potential GDP of that country by more than 1 percent. It also locks in a slow-growth, high-unemployment economy. The authors point to history that shows that public debt tends to soar after a financial crisis, rising by an average of 86 percent in real terms. Defaults by sovereign entities often follow.

The current problems of Greece and Europe offer a current example of the problems a country faces when their debt gets out of control. When Greece joined the union, it misled the other members about its finances. After joining, the government continued to spend beyond its means. The current Greek debt is now ¢254 billion and their GDP is ¢250.9 billion. The Greek debt to GDP ratio is 101.2 percent, greater than Reinhart and Rogoff's threshold. According to various reports, Greece needs to finance another ¢64 billion this year, ¢30 billion of it in the next few months. The potential that Greece could fail is looming, as they are unlikely to be able to borrow all of this money.

Respected economists such as Paul Samuelson are also beginning to question whether the United States will ultimately collapse from the weight of ever expanding levels of debt. In a recent article, he suggested that the unthinkable had become thinkable: some advanced society—say, the United States, Spain, Italy, Japan, or Great Britain—might someday default on its government debt. It wouldn't pay its creditors all they were owed or wouldn't pay them on time. Just a few days later, and completely coincidentally, the International Monetary Fund (IMF) issued a report that, without saying so, added credence to this unsettling hypothesis. The report, done by IMF staff economists, comes with the forbidding title "The State of Public Finances Cross-Country Fiscal Monitor: November 2009." It isn't much fun to read, because it's full of tables, charts, and various ratios. The central conclusions, buttressed strongly by all the statistics, are simple enough: the economic and financial crisis has dramatically increased the deficits and debt of most countries, and many wealthy countries are in worse shape than major developing nations.

Fairness and a Government Issued Blank Check to MPPs

By bailing out the plans, Congress would be compromising the remedial provisions of the Pension Protection Act of 2006. The act requires under-funded pension plans to put their houses in order by raising retirement ages; increasing contributions by employers, workers, or both; and lowering benefits. A bailout would remove any incentive for multiemployer pension plans to reorganize their plans responsibly. A very important point in this debate is the fairness of one politically favored constituency, union workers and their pension plans, getting a tax-payer funded windfall while the rest of the workers in the U.S. economy have to make do with either defined contribution, 401(k) plans or no pension at all.

QUESTIONS AND FACTS FOR EMPLOYEES CONSIDERATION

In view of the shaky financial conditions of many companies' defined benefit plans, employees should be asking specific questions about their companies' plan:

1. What type of pension plan is there? Is it a traditional defined benefit pension, a cash balance plan, a defined contribution plan, or a retirement savings plan?
2. Is the pension in question underfunded? By how much is it underfunded? What does it mean to me if my pension is underfunded?
3. How are plan benefits calculated?
4. When and in what form are benefits paid. What types of options are available?
5. What are the financial consequences of retiring early? When can you start participating in the plan?
6. When do pension benefits become vested? [8]
7. What is the vesting period? Usually it is a certain number of years you must work before you are eligible to receive benefits (usually 1–5 years).
8. How do you file for pension benefits?

The answers to these questions should be carefully considered before workers accept new employment opportunities.

SUMMARY

News stories about companies' pension problems abound in 2010. The combination of a weak economy and declining stock market has had a profoundly negative effect on companies' defined benefit pension plans. The Pension Protection Act of 2006 was passed to ensure minimum funding levels in pension plans. If funding levels fall below minimum levels, the plan must either increase funding or reduce benefits. Many companies have passed their failed or failing pension plan benefit liabilities to the Pension Benefit Guarantee Corporation. The unprecedented and ever increasing size of these failed pension obligations is raising serious concerns that benefits will have to be reduced further to avoid a collapse of this government-sponsored program.

A form 5500 database sponsored by freeERISA.com was examined to determine the financial health of a number of trade union defined benefit pension plans. Evidence was provided that virtually all of these plans (as adjusted for current market conditions) are in the red or critical zone, which may lead to significant cuts in benefits for retirees. As further evidence of the dire nature of companies' defined benefit pension plans, a large number of companies recently made an impassioned plea to Congress for financial assistance for their pension plans.[9]

[8] According to one Union Pension Booklet, vesting required 5 credits. A credit was earned by working 1,000 hours in a year. Workers who worked less than 1,000 hours in a year would not receive a credit (even though sizeable pension payments may have been made). This may be particularly significant in the construction trades where seasonal restraints may combine with gaps between construction projects to reduce total hours worked to less than 1,000. It may take many more than 5 years to become vested. Moreover, if a worker started mid-year he or she might not receive a credit for that year. A second surprise from this booklet was the stipulation that a union member might forfeit his benefits if he (she) ever worked for a non-union company in that trade at any time in the future. This would include working for himself or herself in a non-union capacity. This could be severely limiting if the number of union companies in that trade in that geographical area was small, or if the worker happened to move to a community where there were few or no union companies in that trade.

[9] The AICPA and more than 300 other businesses and non-profit organizations sent letters to four House and Senate committees warning that the "drop in the value of pension plan assets coupled with the current credit crunch has placed defined benefit plan sponsors in an untenable position." The identical letters to the House Ways and Means Committee, Senate Finance Com-

Continued

Certain policymakers in Washington have recently proposed the Protect Jobs and Save Pension Act of 2010. The stated objective of the bill is to rescue multiemployer pensions. Under this proposal, assets would be set aside by multiemployer plans to finance pension benefits for 5 years. For the following 5 years, the PBGC would fund these pensions placed in their custody. After that, the full faith and credit of the United States would back the pensions. Besides the fact that the United States is approaching post-world war 2 high levels of debt to GDP, it does not make sense to rescue the defined benefit pension plans promised by union employers. Businesses are dropping defined benefit pension plans fast.

The number of companies offering traditional defined benefit pension plans was shrinking even before the recession, but the downturn has accelerated the decline. Since the beginning of the year, at least 20 companies have frozen their defined pension plans, exceeding the number of plan freezes for all of 2008. A recent survey by Watson Wyatt found that, for the first time, the majority of Fortune 100 companies are offering new salaried employees only one type of retirement plan: a 401(k) or similar "defined contribution" plan. Many other companies are no longer offering any pension benefits to their employees given competitive pressure. A very important point in this debate is the fairness of one politically favored constituency, union workers and their pension plans, getting a tax-payer funded windfall while the rest of workers in the U.S. economy have to make do with either defined contribution, 401(k) plans or no pension at all. Unions should consider following the example of most every business competing in the modern global economy. Defined benefit pension plans should be phased out in place of defined contribution plans. It seems clear that the economics of defined benefit plans are no longer sustainable. Therefore, for the U.S. government to step and use taxpayer funds to keep them going cannot be supported on any grounds of fairness or appropriate government policy.

When workers consider new employment opportunities they should ask a number of important questions about their pension plans. What type of pension plan is there? Is it a traditional defined benefit pension, a retirement savings plan, or a defined contribution plan? When are pension benefits vested?

Due to the increasing troubles for defined benefit plans, there is a move toward defined contribution plans in the United States (DeGennaro and Murphy, 2004). Defined contribution plans frequently provide greater control and more flexibility for participants. For example, funds may be transferred from equities to bonds or even money markets when market conditions decline.

In today's volatile stock market, having the ability to transfer investments between different types of funds can provide an enormous amount of protection for workers. Furthermore, there is no chance that benefits will be cut due to weak funding levels in the plan.

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The CHAIRMAN. Thank you, Mr. McGowan.

And we'll finish up.

Mr. Stein.

mittee, House Education and Labor Committee and Senate Health, Education, Labor, and Pensions Committee urged lawmakers to modify pension plan funding rules to avoid increased unemployment and a slower economic recovery.

STATEMENT OF NORMAN P. STEIN, DOUGLAS ARANT PROFESSOR OF LAW, UNIVERSITY OF ALABAMA SCHOOL OF LAW, TUSCALOOSA, AL

Mr. STEIN. Yes, I want to start just by noting that I've taught at Alabama for 25 years, but June 1st I'm moving to Drexler University, and Senator Casey will by my Senator.

[Laughter.]

Mr. Chairman and members of the committee, I thank you for inviting me here to speak to you on the critically important subject of multiemployer pension plans, which have provided millions of American workers with the opportunity to enjoy an adequate income in retirement.

As I will explain, the subject should be of interest, not only to the hardworking men and women who continue to rely on these plans for their retirement, but also to policymakers, who believe that, as a society, we should, can, and must do better to help Americans prepare for retirement than to give each of them an empty savings account and tell them that they are on their own.

For such a do-it-yourself system to work, workers have to combine Spartan discipline, a Harvard business degree, and a Cassandra-like ability to predict not only the direction of different investment markets, but also the precise date of their own demise. Such a system would not work well in an ideal world. The world that most of us inhabit is far from ideal. As I said, we should, can, and must do better. One important step in doing better is to build a secure future for multiemployer pension plans.

I want to begin by discussing why defined benefit plans are worth preserving. From a worker's perspective, defined benefit plans are the best type of retirement vehicle. They do not require workers to figure out how much to contribute to a plan and how to invest their contributions. They do not require workers to monitor investment performance, to periodically re-balance their portfolio, or pay high fees to mutual fund companies. They do not tempt workers to dip into their retirement savings before retirement, and they do not require retired workers to devise strategies to make their retirement savings last until they die.

In addition, defined benefit plans save workers time and anxiety, something we often overlook. They are a true automatic pilot mechanism for employees to prepare for retirement. They worked well for our parents and they can work well for our grandchildren.

Some commentators, however, have claimed that our employment markets have spoken, and that the verdict is clear, employers and employees no longer want defined benefit plans. But, that is simply not the case. It is true that many employers have frozen or terminated their plans because of concerns about funding volatility, but it is also true that some of the Nation's most prominent corporations continue to sponsor defined benefit plans, because they know they have tremendous value. More importantly, working people value defined benefit plans greatly in those segments of the economy where they still exist. This is especially true today, when investment markets and high fees have devastated so many 401(k) accounts. In short, workers know that defined benefit plans work.

But, are they too expensive? In fact, they're less expensive, in many ways, than defined contribution plans. Investment and administrative fees are lower and rates of return are higher in defined benefit plans. Economists, such as Jeff Brown, have demonstrated that annuitization of retirement wealth, which defined benefit plans provide automatically, is generally welfare-maximizing.

My written testimony includes several observations about multiemployer plans, and I had planned to stress one of them, but when you gave us license to go a minute or 2 over, I think I'll mention a few of them.

The first is that multiemployer pension plans, as Secretary Borzi told us, cover approximately 25 percent of all Americans participating in PBGC-covered pension plans. Multiemployer plans comprise less than 3 percent of the PBGC's current deficit. Less than 3 percent. The real problem for PBGC isn't multiemployer plans, it's single employer plans. That's where, if there's going to be a bailout from taxpayers, we're going to feel pain.

I want to speak briefly now about the partition proposal in S. 3157. Firms and employees in multiemployer plans are responsible to provide benefits for employees of firms that have gone out of business and have not contributed their share of funding for their former employees. This is an ordinary structural feature of multiemployer plans. Plans are ordinarily protected from severe financial loss by ERISA's withdrawal liability provisions.

In a few troubled industries, too many firms become insolvent, while in contribution arrears and without paying their withdrawal liability. The remaining employers and employees are now paying liabilities left over from these defunct firms. Compounding the problem is that these industries have low ratios of active workers to retirees, and are thus unable to contribute their way to plan solvency. If we do nothing, these plans, and perhaps the employers who are now forced to cover liabilities of their former competitors, will ultimately fail, and responsibility for the plan's benefit liabilities will be shifted to the PBGC.

The legislation proposed by Senator Casey would deal with this legacy cost problem in a few vital but financially stressed industries by allowing, under very limited circumstances, a plan to partition off liabilities attributable to bankrupt firms and other firms that went out of business without paying withdrawal liability. The plan would transfer the liability for these benefits and certain assets to the PBGC.

Senator Casey's proposal is, in my view, a classic stitch-in-time-saves-nine approach, for it will make probable that the surviving plan, itself, will be financially viable for the long term. By taking on some liability now, the PBGC will avoid taking on much larger liabilities later, and will improve the future viability of troubled but critically important industries, such as trucking and mining.

I would, however, suggest a change to the legislative proposal. Partition retirees should be treated identically to the participants in the parent plan after partition. This should mean that the benefits for which partitioned retirees are eligible immediately after partition are determined under the parent plan's then-current provisions, and that if the plan ultimately fails, their benefits will be subject to the same guarantees and limits that are applicable to the participants in the parent plan. In other words, the participants in the partition portion of the plan should fare no better, but certainly no worse, than the participants in the parent plan. This is not only a matter of fair treatment of all participants in the pre-partition plan, but also provides important protection for the PBGC.

I also want to note, although it hasn't really been commented on that much at the hearing—I think you, Senator Harkin, mentioned it—that PBGC guarantees for multiemployer plans have not been raised in 10 years. Unlike the guarantees for single employer plans, they are not indexed with inflation, even though premiums, from now on, will be indexed to inflation for multiemployer plans. I think that's something that we may want to think about; if not today, sometime in the not-too-distant future.

Thank you.

[The prepared statement of Mr. Stein follows:]

PREPARED STATEMENT OF NORMAN P. STEIN

Mr. Chairman and members of the committee, I am Norman Stein, and I teach tax and employee benefits law at the University of Alabama School of Law. Starting next week, I will be teaching at the Earle Mack School at Drexel University in Philadelphia. I am testifying today on behalf of the Pension Rights Center. The Center is a nonprofit consumer organization that has been working since 1976 to promote and protect the retirement security of American workers and their families. It is the only consumer organization devoted exclusively to this purpose.

Thank you for inviting me here to speak to you this morning on the critically important subject of multiemployer pension plans, which have provided millions of American working people with the opportunity to enjoy an adequate income in retirement. As I will explain, the subject should be of interest not only to the hard-working men and women who continue to rely on these plans for their retirement, but also to policymakers who believe that as a society we should, can, and must do better to help Americans prepare for retirement than give each of them a savings account and tell them you are on your own. For such a do-it-yourself system to work, workers must combine Spartan discipline, a Harvard investment degree, and a Cassandra-like ability to predict not only the direction of different investment markets but also the precise date of their own death.

Such a system would not work well in an ideal world, and the world that most of us inhabit is far from ideal. As I said, we should, can, and must do better. An important step in doing better is to build a secure future for multiemployer pension plans.

I will divide my testimony into four parts.

The first part will explain why defined benefit plans are worth preserving, not only to provide a secure retirement for American workers, but also because such plans are the most fiscally responsible means of preparing Americans for retirement.

The second part will provide some observations on multiemployer pension plans that are germane to today's topic. Here I will show that the problems of such plans are not quite as severe as some claim and that those problems that do exist are not the fault of participants or mismanagement, but of structural changes in the economy and the financial meltdown caused by Wall Street.

The third part will explain why the legislation proposed by Senator Casey on partition—especially if it were modestly amended—is both equitable and economically responsible.

The fourth part will detail some other legal changes for multiemployer plans that we believe will contribute positively to retirement policy.

I. DEFINED BENEFIT PLANS ARE WORTH PRESERVING

Almost all pension experts agree that from a worker's perspective, defined benefit pension plans are the best type of retirement vehicle. They do not require workers to figure out how much to contribute to a plan or how to invest their contributions. They do not require workers to monitor investment performance, to periodically rebalance, or to pay high fees. They do not tempt workers to dip into their retirement savings before retirement. They do not require retired workers to devise strategies to make their retirement savings last until they die. In addition, defined benefit plans save workers time and anxiety—they are a true automatic pilot mechanism for employees to prepare for retirement. They worked well for our parents and they can work well for our grandchildren.

Some commentators, however, have claimed that our employment markets have spoken and that the verdict is clear: employers and employees no longer want defined benefit plans. That is simply not the case. It is true that some employers have frozen or terminated their plans because of concerns about funding volatility. It is also true that some of the Nation's most prominent corporations continue to sponsor them because they know they have tremendous value. More importantly, working people value defined benefit plans greatly in segments of the economy where they still exist. Unions continue to bargain for them and public-sector workers advocate for their continuation. This is especially true today, when investment markets and high fees have devastated so many 401(k) accounts. In short, workers know that defined benefit plans work.

But are they too expensive? In fact, they are in many ways less expensive than defined contribution plans. Investment and administrative fees are lower and rates of return are higher in defined benefit plans, and economists such as Jeff Brown have demonstrated that annuitization of retirement wealth—which defined benefit plans provide—is generally welfare maximizing.

Moreover, defined contribution plans also have a potentially steep future economic cost to society. It was hardly costless when the market meltdowns of the last decade destroyed hundreds of billions of dollars in 401(k) accounts. Many millions of older workers will have to delay retirement if they are physically able to keep working, depriving younger workers of jobs and job advancement opportunities. When workers do retire with lower savings than needed, there will be costs as government is called upon to widen the safety net for older Americans and as younger generations are asked to take up the slack. Moreover, defined benefit plans tend to provide a more patient source of capital than do 401(k) plans, which is good for the economy generally.

Sound retirement policy requires that we determine ways to preserve the defined benefit plans we have and expand them if possible. Multi-employer plans figure prominently in the current defined benefit plan universe. Many believe that multiemployer plans can furnish a template for new defined benefit vehicles outside the collective bargaining arena. For these reasons, I applaud this committee's concern with preserving multiemployer plans.

II. SOME OBSERVATIONS ON MULTI-EMPLOYER PLANS

(i) Approximately 10 million Americans, who live in every State, rely on multiemployer plans. The continuation of these plans is vital to their retirement security and the spending power the plans provide to retirees is vital to our economy.

(ii) The PBGC's estimated multiemployer plan liability is considerably smaller than that of the single-employer plan program. Multiemployer pension plans cover approximately 25 percent of all Americans participating in PBGC-covered pension plans, but multiemployer plans comprise less than 3 percent of the PBGC's current deficit. This is true despite multiemployer plans being almost alone among private-sector pension plans in occasionally providing post-retirement cost-of-living adjustments to benefits.

(iii) The funding problems currently being experienced by multiemployer plans are attributable primarily to two causes: the Wall Street-created financial meltdown and structural changes in the economy, which have devastated certain industries. The problems are not attributable to so-called overreaching unions or poor management by plan trustees. Indeed, at the start of this decade, most multiemployer plans were overfunded. And unlike businesses sponsoring single employer plans, which sometimes enter bankruptcy to strategically shift unfunded liabilities to the PBGC, employers who contribute to multiemployer plans must pay steep withdrawal liability if they leave a plan.

(iv) The heavy legacy costs that have resulted from structural changes in certain industries—such as the trucking and coal extraction industries—are being paid for by today's surviving businesses and their workers. Employees in the Central States Pension Fund currently have $16,000 of their wages contributed to the Fund each year. The resulting financial stress of such contribution obligations on surviving firms in these troubled industries—industries that are critical to our Nation's economy and security—threaten their economic viability.

(v) Some observers incorrectly claim that multiemployer plans imprudently increased benefits during the 1990s. This claim misses two key points. First, tax laws virtually dictated that overfunded multiemployer plans use surplus assets to provide improved benefits. Second, unlike most single employer plans which are based on final pay and thus automatically adjust to reflect inflation, benefits in multiemployer plans are typically stated in nominal terms. Often, benefit improvements in multiemployer plans do nothing more than adjust benefit formulas to reflect inflation, which as I just noted occurs without amendment in most single employer plans.

(vi) Unlike the PBGC guarantees for benefits in single employer plans, the guarantees for benefits in multiemployer plans are not adjusted to reflect inflation. The multiemployer guarantees are today approximately ⅕ of the guarantees for single employer plans.

III. PARTITION PROPOSALS

Firms and employees in multiemployer plans are responsible to provide benefits for employees of firms that have gone out of business and have not contributed their share of funding for their former employees. This is an ordinary structural feature of multiemployer plans and plans are ordinarily protected from severe financial loss by the ERISA's withdrawal liability provisions. In a few troubled industries, too many firms became insolvent while in contribution arrears and without paying their withdrawal liability. The remaining employers and employees are now paying the liabilities left over from these dead firms. Compounding the problem is that these industries have low ratios of active workers to retirees and are thus unable to contribute their way to plan solvency. If we do nothing, these plans—and perhaps the employers who are now forced to cover liabilities of their former competitors—will ultimately fail and responsibility for the plans' benefit liabilities will be shifted to the PBGC.

The legislation proposed by Senator Casey would deal with this legacy-cost problem in a few vital but financially stressed industries by allowing—under very limited conditions—a plan to partition off liabilities attributable to bankrupt firms (and other firms that went out of business without paying withdrawal liability). The plan would transfer the liability for these benefits—and certain assets paid to the plan by those defunct firms—to the PBGC.

Senator Casey's proposal is a classic "stitch in time saves nine" approach, for it will make it probable that the plan itself will be financially viable for the long term. By taking on some liability now, the PBGC will avoid taking on much larger liabilities later and will improve the future viability of troubled but critically important industries, such as trucking and mining.

I would, however, suggest a change to the legislative proposal: partitioned retirees should be treated identically to the participants in the parent plan—both before and after partition. This should mean that the benefits for which partitioned retirees are eligible immediately after partition are determined under the parent plan's then-current provisions, and that if the parent plan ultimately fails, their benefits will be subject to the same guarantees that are applicable to the participants in the parent plan. In other words, the participants in the partitioned portion of the plan should fare no worse or better than the participants in the parent plan.

This is not only a matter of fair treatment of all participants in the pre-partitioned plan, but also provides important protections for the PBGC.

IV. OTHER MULTIEMPLOYER CHANGES

(i) PBGC guarantees for multiemployer plans should be improved and in the future automatically increased to reflect increases in the cost of living.

(ii) The red zone provisions that allow plans to reduce already earned benefits are harsh and penalize employees and retirees, who played by the rules. These cutbacks in benefits should be automatically restored when a plan becomes adequately funded.

(iii) The PPA changes to the funding rules should be revisited for ongoing plans, to allow for greater actuarial smoothing and longer amortization periods for experience gain and loss. Indeed, we think similar changes are desirable for non-frozen single employer plans.

The CHAIRMAN. Thank you, Mr. Stein.

Thank you all very much. It's a great panel.

Let me first start with Mr. Nyhan. Of course, Central States' problems have come to the attention of this committee on more than one occasion. Obviously, we are concerned about what could possibly happen. Is it your opinion that you have exhausted every option at your disposal to expand the contribution base?

Mr. NYHAN. Yes, sir. There was a question earlier about, Why aren't multiemployer plans bringing in more employers? I think the answer to that question is, new employers are unwilling to subject themselves to the contingent withdrawal liability of these plans, much of which is due to this orphan liability that has been absorbed over time. Additionally, the plans are not stable. In the case of Central States, it's not stable. No new employers are willing to join the plan. In fact, as was pointed out by a witness on this panel, some employers are now leaving the plan because of their concern about the instability of it, UPS being a prime example. There is nothing else we can do to expand our employer base at this juncture.

The CHAIRMAN. Are you doing everything in your power to ensure that PBGC gets all of the information it needs? Have PBGC actuaries been working with the Central States actuaries?

Mr. NYHAN. Yes, we're in the process of doing that right now. We have been asked by the administration to share information with the PBGC and to try to reach some understanding on numbers. It's an ongoing process that we're working through as we speak. We have made our actuaries available to the PBGC for consultation at any time, though.

The CHAIRMAN. Mr. DeFrehn, you highlighted some of the systemic issues faced by multiemployer plans and have a proposal to correct some of them. One idea was to allow weaker plans to merge with stronger plans. Well, right away, that raised the question, Wouldn't that put the stronger plans at risk? How could trustees, who are bound by an obligation to act solely in the interest of the participants and their plan, enter into one of these mergers without undermining their fiduciary obligations?

Mr. DEFREHN. That's an excellent question. A comment was made earlier, that the number of multiemployer plans has shrunk considerably since the 1980s. In fact, that's true; they have. But, they haven't failed. As you know, PBGC's only taken over 61 plans since this program started. They've merged. And they've continued to merge over the years. That's how the consolidation of the system has worked.

As we've gotten into the PPA, we've created a structure, with these zone systems, that has raised the fiduciary issue even more so, though, to the trustees of plans. They've looked at it and said, "Well, if we bring this other plan in, what's that going to do to our zone status?" Which they should do. The comment I made earlier, about the kinds of activities that PBGC engaged in on an ad hoc basis in the past, where they recognized that if they put some of the money that they would normally be spending if they received a plan—if it failed—into the merger, to close the gap between the liabilities and the assets of the weaker plan, to bring it into the stronger plan—you eliminate the problem for the receiving-plan trustees of having a fiduciary breach in not representing the interest of their own plan. It's a way for both the agency and the participants and contributing employers of the weaker plan, in particular, to benefit.

Actually, when you expand the size of the plan through the merger, you would have a larger contribution base there, because there would be more employers coming into the system.

The CHAIRMAN. Mr. Stein, what do you think of that proposal? Because I've thought about that—letting the weaker ones go in with the stronger ones. But, I still have a problem with that. It sounds good, but I'm not certain that we wouldn't run into some problems.

Can you define it, Mr. DeFrehn?

Mr. DEFREHN. If I might just expand one second, Senator.

The CHAIRMAN. Yes.

Mr. DEFREHN. This has happened in the past—and I've spent a number of years in the actuarial consulting side of this business—when it's happened in the past, bringing the weaker plan into a stronger plan usually accompanies—you're not allowed to reduce the benefits of the plan that's brought in, after the merger.

The CHAIRMAN. Yes.

Mr. DEFREHN. But, you don't have to increase them, either. Sometimes they come in at a substandard level. They're not receiving the same benefits as the stronger plan, because there's essentially, another benefit category set up.

The CHAIRMAN. You have different levels.

Mr. DEFREHN. You can have different levels of benefits. So, you're not necessarily paying greater benefits out. You are able to allow the weaker plan to take advantage of the economies of scale; they don't have to pay all those professionals.

The CHAIRMAN. If you said that in your first answer, I didn't get it.

Mr. DEFREHN. I didn't say it. Sorry.

The CHAIRMAN. OK, now I understand a little bit better. OK. I just didn't know if anybody had any observations on that.

Mr. Stein.

Mr. STEIN. Yes, I think one of the things you said is really important on—and I think there are tremendous economies of scale that can be realized, and that these alliances and mergers can make a lot of sense. When you mentioned the fiduciary standards—if you were a trustee of a healthy plan, and you were looking at a merger with a less healthy plan, you have personal liability if you go ahead and do that. I think those trustees are going to make darn sure that this is going to be good for both plans. That is, you'll have two sets of trustees making independent decisions that this will benefit their plan. If they can't make that determination, I don't think these mergers and alliances are going to happen.

The CHAIRMAN. Right. Can we do that under present law? Could a stronger and a weaker plan join like that and keep different levels of benefits?

Mr. DEFREHN. Yes. And they have. The problem is—again, I've mentioned this as an ad hoc approach to what the PBGC has done. When we've approached them about doing these kind of things in recent years, they've been very reluctant to do this. The proposal that our coalition had come up with, originally, which is reflected in both the House version and was something that was talked about in early discussions with Senator Casey, was an attempt to give the PBGC explicit authority to do this, so they didn't feel like they were stepping outside of their bounds in order to do it. I believe they—I know they have done it. They've just been reluctant to do it.

The CHAIRMAN. I want to examine, as it pertains to Central States, after I yield to Senator Casey.

Go ahead.

Senator CASEY. The Chairman could have taken more time, but he's trying to stick to the rules.

I'm tempted to say to Mr. Stein that since you're going to be at Drexel, you get more time, but I can't do that.

[Laughter.]

I want to start with Mr. Nyhan, and thank you for the testimony and the work that you've done to help us understand this better over time.

I want to make sure—as we go back and forth here over both panels, I want to get something clarified. We have a situation where you've got a very small number of multiemployer plans that need the help of this legislation—maybe two, at present. There was also a discussion about dire—I think it might have been in the first panel—about dire consequences, dire need. I just want you to outline for us, so the record is clear, just answering a basic question. Is Central States in dire need of PBGC assistance at this time?

Mr. NYHAN. It is. We have been facing a situation where employers are unwilling to continue to participate in the plan unless it's stabilized. We've been advised that. We've seen employers leave the plan—as we alluded to earlier, with UPS. We really have tens of thousands of participants who are facing not only the possibility of a loss of retirement security, but their jobs, as well, because many of the small employers, which make up the vast majority of our contribution base, can't withdraw—can't afford to withdraw, and the contributions are pushing them out of business. And we really believe that your proposal will both preserve jobs, preserve retirement security, protect those employers, and, in our view, be less expensive, in the long run, to the PBGC, than if we wait for ultimate insolvency.

Senator CASEY. I was noting, earlier, about the number of employers in your plan—2,000—9 out of 10 of them, small businesses with fewer than 50 employees—but, I thought it is interesting, for the record—it's in your written testimony—but, just to give people a sense—who may not be familiar with the component parts of those 2,000 employers. I mean, your testimony, regarding the variety of industries here—trucking and freight, car-haul, tank-haul, warehouse, food processing distribution. You give some examples of that—grocery, dairy, bakery, brewery, soft drinks. Finally, of course, a big category being building and construction. This is a pretty diverse set of industries and businesses and a diverse workforce. I guess right now you've got—included within your 423,000 participants are 342,000 retirees.

Mr. NYHAN. Retirees and terminated. Yes, sir.

Senator CASEY. Right. That gives some background on the nature of what's in the plan.

Mr. DeFrehn, I wanted to raise an issue with you about the advantages of the multiemployer system over the single employer, known sometimes as "corporate plans." Can you elaborate on that?

Mr. DEFREHN. Yes. I mean, I think that was something that Phyllis had mentioned in her remarks, as well.

In a typical corporation, if they fail, there's no other place for the participant to receive his benefits than to go to the Pension Benefit Guaranty Corporation. And if you move from one employer to another, you have to start over with your eligibility and investing periods and your service is not portable.

In the multiemployer system, one of its strengths is its portability, and particularly in the industries where you require a mobile workforce. You can look at a variety of industries, in addition to construction and trucking; the entertainment industry, the longshore industry. There are a number of different industries where people move quite frequently. As long as those participants stay in that industry, generally speaking, if they stay in one local area or region, and the plan happens to be a regional plan, most of the contributing employers would be sending their contributions to that plan and people would continue to earn credits during their entire career.

Many industries, like construction, have reciprocity agreements, where, even if the economy in your area is bad and you have to travel several States away, there's an arrangement where those dollars that are earned are sent back to your home fund, and you continue to earn credit in that plan.

If you look at the stability of the systems over the years, I think there's nothing clearer than to just simply say, "How many plans have been at risk? How many plans have gone to the PBGC for assistance?" The numbers as of 2008, were somewhere like 3,860 plans on the single employer side had failed. The dollars to the agency were $39.4 billion. For multiemployer plans, the numbers were 57 plans had failed, at a cost of $417 million. I think there's no question as to which system actually is more stable and can provide better benefits in the long run.

Senator CASEY. Thank you.

The CHAIRMAN. I still want to kind of orbit around this idea of merging smaller and larger firms. Mr. Stein, picking up on what Senator Casey said about your describing the businesses that are still involved in your fund—a lot of them small, very small businesses. But, you say, the majority in the trucking industry.

I'm just reading from your statement. You said,

> "Of the 50 largest employers that participated in the Central States fund in 1980, only four remain in business today. More than 600 trucking companies that contributed to the fund have gone bankrupt since 1980. Many thousands of others have gone out of business. As a result of these trends, over 40 cents of every dollar the fund now pays in benefits goes to retirees who were employed by an employer that went out of business without paying its proportionate share of the fund's unfunded pension liability."

Mr. NYHAN. Yes, sir.

The CHAIRMAN. The orphans, right?

Mr. NYHAN. Yes, sir.

The CHAIRMAN. Well, instruct me here, now. Again, there's no legal liability for these people, when they go out, to pay a proportionate share?

Mr. NYHAN. There is a requirement that they pay withdrawal liability. That's seldom collected in full. In most cases of bankruptcy, the plan's collection rate is under 10 cents on the dollar.

The CHAIRMAN. Right.

Mr. NYHAN. In cases now, given where the liability of the plan is, there are certain caps in withdrawal liability. When companies pull out of the plan, they don't pay their full withdrawal liability; it's capped on 20 years of payments. In many instances, they don't even chip in to the principal. They pay the interest on it, and they're gone. When they go—there is legal liability, but the withdrawal liability provisions don't fully compensate the plan for the liabilities associated with that employer.

The CHAIRMAN. I've been reading all this, and there's fewer trucking companies than there were in 1980, as you point out, but there are a lot more trucks and there are more truck drivers. Why not examine the possibility of bringing in some of these small trucking companies who may only have four or five employees.

Now, again, one of the problems they would have is, they can't then absorb the liability for all the rest under the law. If they were exempted from that and if you could build in different benefit levels it would seem to me—those independents are probably not unionized, but it would seem to me that they would have a better shake and a better retirement program coming into a Central States fund, if they didn't have their liability problem and if they could accept the lower level of benefits than others—somebody else that's been in for 30 years, for example. Then they would contribute to the plan. Wouldn't that help Central States Plan?

Mr. NYHAN. Yes, I think that would help, in terms of bringing in small employers. I don't think it would be enough to right the ship. It would begin to—if these companies could be assured that they would not have any responsibility for the legacy cost associated with the plan, and that would be responsibility for the costs associated with their employees.

The CHAIRMAN. Right.

Mr. NYHAN. Yes, I think you would be able to attract some new participants into the plan.

The CHAIRMAN. Well, I would think so. I mean, they would get the benefit of a larger risk pool.

Mr. NYHAN. Right.

The CHAIRMAN. I would think that their defined benefit plan, then, would be better than what they might be contributing to whatever single plan they have out there right now.

Mr. NYHAN. Correct. I would agree with that.

The CHAIRMAN. Well, has this been examined? Have you suggested that we might change the law to allow this to happen?

Mr. NYHAN. We'll get to work on it.

The CHAIRMAN. OK.

[Laughter.]

Well, I don't know. Maybe I'm way off base. But, I'm just trying to think about how you get these plans expanded out.

Mr. NYHAN. Yes, sir.

The CHAIRMAN. I'd like to pursue that, if at all possible.

Mr. McGowan, this is sort of tacked on to what I just said here. While personal savings, through 401(k) plans, is an important part of what I always call the three-legged stool of retirement security, the value of a defined benefit pension plan shouldn't be disregarded. Shouldn't Congress be taking steps to try to figure out some way to keep these defined benefit plans going, as part of that three-legged stool, rather than having everybody out of that and into 401(k)s?

Mr. McGowan.

Mr. MCGOWAN. Yes, definitely. I think, going back to the first panel, Secretary Borzi's suggestion and, I think, Senator Enzi's suggestion, reforming the entire system might be a better way to go. It just sounds like the contributions that the employers are making are not sufficient to cover all the benefits that are out there. That basic math doesn't seem like it's going to change. I think this most recent idea that you and Mr. Nyhan discussed is more systemic. I think that makes more sense than little piecemeal legislative proposals. Yes, I think they're worth supporting, but it's a systemwide problem I think, more than a piecemeal solution, while it's a good idea to take care of these orphan retirees—but, there's a bigger problem out there with the basic math of the contributions from the employers not being sufficient to fund the defined benefit pension benefits.

The CHAIRMAN. I was told, the other day, on 401(k) plans, for example, that there's about $140 billion in liabilities. This is people who have borrowed against their 401(k)s. Quite frankly, I don't know if they can pay it back. I don't know how accurate that number is, but somewhere in that figure. Don't we have a looming problem with 401(k)s now, because people put into them, they've borrowed the money out for whatever, because of the economic downturn, and now they're in a situation where they may not be able to pay that back? Isn't that also a problem on the horizon that we have to look at?

Mr. MCGOWAN. Yes.

The CHAIRMAN. You're aware of this. Right?

Mr. MCGOWAN. Yes, yes. At the university, it's called a "403(b)," and they won't let you borrow anything. That's probably good, because it keeps our hands out of the pot, there.

The CHAIRMAN. Well, you can't borrow against defined benefit, either.

Mr. MCGOWAN. Right, right, right.

The CHAIRMAN. OK. Is that what you're referring to? No.

Mr. MCGOWAN. Well, you asked me if—

The CHAIRMAN. What's a 403(b)?

Mr. MCGOWAN. 403(b) is that same thing as 401(k), but for universities.

The CHAIRMAN. Oh.

Mr. MCGOWAN. It's a defined contribution plan.

The CHAIRMAN. Oh. I'm sorry. I don't even know what that is.

Mr. MCGOWAN. Right.

The CHAIRMAN. OK.

Mr. MCGOWAN. Sorry. I'm throwing these terms around. I'm a tax professor; I assume everyone knows these terms.

The CHAIRMAN. Do you have that at the University of Alabama, Mr. Stein?

Mr. STEIN. We actually have the best of both worlds at Alabama. We have a defined benefit plan and then we have what's called a 403(b) annuity—TIAA–CREF, you probably heard of it. That's the large 403(b) annuity provider to universities.

The CHAIRMAN. Oh.

Mr. STEIN. I can tell you that I'm very glad I have the defined benefit plan. In my testimony, one of the things which I left out was, one of the reasons I think multiemployer plans are so important and worth saving is—there have been a number of very thoughtful people, including Mike Warden, who often is credited as being the engineer behind ERISA, or the architect of ERISA—have said, multiemployer plans can be a template for defined benefit plans outside the collective bargaining sector, that you can use the structure to help lots of small employers create defined benefit plans for their employees in a cost-efficient way that they couldn't do alone. That's one thing that I think is—I mean, why I feel so passionately about multiemployer plans; it's not only important that people are in them, but there's this really powerful idea behind them that could be used, I think, to bring more defined benefit plans to more Americans.

The CHAIRMAN. Well, because this is what I wrestle with. Sure the economy's changed in the last 20, 30 years. Twenty, thirty years ago, you might graduate from college or high school, and you get a job, and you stay with that company for 20, 30 years. Now, people change jobs. What's the average, now? Five or seven times in the first 10 years. People are shifting jobs all the time.

Mr. STEIN. I do it every 25 years.

The CHAIRMAN. What?

Mr. STEIN. I do it every 25 years.

[Laughter.]

The CHAIRMAN. Well, every 25—well, I think it's more like 5 years now, or 7, or something like that.

It seems to me that some kind of a multiemployer template that would cover people who are going from job to job might be in the best interest of the employers and the employees. And then have a separate 401(k), if people want to add on to that.

Mr. STEIN. Yes.

The CHAIRMAN. If you want to have a little bit more security, put something in, against which they could borrow, later on, for contingencies. What would be wrong with that kind of a template?

Mr. STEIN. That would be perfect.

The CHAIRMAN. Well, all right. Let's do it.

[Laughter.]

Senator Casey.

Senator CASEY. Thanks, Mr. Chairman.

I want to raise a question about one letter that I received that I entered into the record, from YRC Worldwide, Incorporated. I was struck by this part of the second paragraph. It says that—and I'm quoting from this March 22d letter that we received—"YRCW now faces three interrelated problems in meeting our pension obligations." And then they list them. "We have been funding the benefits of hundreds of thousands of workers who have never worked for YRCW." Others have made that point today, but it's important to put it in the context of one company. Then the letter continues, "The second problem, the multiemployer plans to which we have been contributing have suffered significant investment losses." That's problem No. 2. Problem No. 3, "We face a worsening demographic challenge, as fewer workers support the pension obligations of more and more retirees."

I was going to ask Mr. Nyhan about YRC, in particular, what you can tell us about it, in terms of this question: At this point in time, why isn't YRC a contributing employer to the plan?

Mr. NYHAN. They reached the point where they were unable to continue to stay afloat and make the pension contributions into our plan and other plans. They are one of the companies whose contribution rates at the $300-per-person-per-week rate. And continuing paying that would have bankrupt the company, literally. We entered into an agreement with the company, where they terminated participation, on a temporary basis. They have an agreement, with the International Brotherhood of Teamsters, to resume participation in the various pension plans, beginning January 1, 2011. We're now striving to find out what, if anything, the plans can do in order to allow this company to survive, because we have nearly 40,000 jobs at stake with that one company alone.

Senator CASEY. That's a good example of what we're talking about.

Mr. Stein, I wanted to make sure that—since you're going to Drexel, I want to make sure you get some more time, here.

[Laughter.]

I know that you've made the point, in your testimony, about the benefits of a defined benefit plan, as opposed to defined contribution. I don't know if there's some other aspect of that, that you didn't get a chance to cover, if you wanted to add to that.

Mr. STEIN. Well, there are a couple of things that I talk about in my written testimony, that really is germane in thinking about multiemployer plans. One of them, nobody really—I mean, there's been talk about this in the abstract—but, there are really heavy legacy costs that have resulted from, basically, structural changes in the industry. We have to remember that, at the turn of the century, these plans were fully funded, for the most part. Right?

Teamsters, now, are paying approximately $16,000 apiece for contributions into these plans. That's an enormous contribution per employee, much more than any single, or most single employer plans don't touch that—$16,000 a year. These are middle-class workers. It's a very substantial portion of their payroll which is going into these plans.

Another thing which—I think Mr. DeFrehn mentioned this—there's been some discussion about multiemployer plans having improvidently increased benefits during the last 8 or 9 years. What Randy said was, "if you have an overfunded plan"—and these plans were overfunded—"the employees not only couldn't deduct contributions to the plan, but they would be hit by penalty taxes for contributing to an overfunded plan." So, there was tremendous pressure to increase benefits.

The other thing that I think is often overlooked—in most single employer plans, the benefits are based on final pay, and they're adjusted automatically; you don't need to amend the plan to keep up with inflation. Most multiemployer plans are not set up that way.

The benefits are stated in nominal terms. If you don't periodically amend the plan to increase benefits, inflation erodes them away.

And the last thing is, there's been some discussion—I know Senator Enzi alluded to this—that part of the problems are overreaching unions and incompetent managers, trustees. I don't think that's really the case at all. A lot of single employer plans also invested in Madoff. Unlike single employer plans—in the single employer plan situation, employers can strategically use bankruptcy to dump liabilities on PBGC. Lots of companies have done that. Supposedly, they can't do it; but if they go into bankruptcy, they can. They can come out of bankruptcy restructured, relatively healthy. One reason they're relatively healthy is, they've dumped their liabilities on the PBGC, using bankruptcy strategically. That option does not exist in multiemployer plans.

Senator CASEY. Well, I think the numbers back this up. In terms of the difference between the PBGC deficit that's associated with single employer plans, I'm told that number is just a little bit above $21 billion, which is virtually all of the PBGC deficit associated with single employer plans.

Last year, in terms of the numbers that PBGC took over—single employer plans, PBGC took over 144; multiemployer plans taken over by PBGC: 0. I think we've made the point, by way of two or three different examples.

I think that's all we have time for, Mr. Chairman, thank you.

The CHAIRMAN. You can have more time.

Senator CASEY. I think I'm all set. I'm all set.

Mr. STEIN. Can I make one point.

We do need a new ERISA. There are a number of organizations—AFL–CIO, SEIU, Change to Win, Pension Rights Center—that have been, in the last 2 years, creating or working to create a template for a new retirement system—Retirement USA. I hope we'll be hearing more from that.

The CHAIRMAN. Anybody else? New ERISA?

Mr. DEFREHN. I don't know about a new ERISA. I think it is time to revisit what we've got, because there are clearly some changes that have occurred over the years.

There's one point that I wanted to make with respect to the question of partition versus what the entire universe of multiemployer plans look like. As I mentioned, most plans are not in trouble. But, for those plans that are, to have them fail—to have any of them fail—the repercussions that will just jar through the rest of the industry can't be overstated.

Senator Casey went through some of the different industries that are involved in Central States. The next largest group besides trucking was the food industry. They also contribute to pension plans sponsored by the UFCW, United Food and Commercial Workers. I recently spoke with a number of large construction employers—the largest construction employers in the country, probably a group of about 60 of them and over half of them contribute to Central States.

This is not a limited situation here, even if it deals with one or two plans, because these contributing employers, if they get hit very hard with liabilities for a plan like Central States, they're unable to make their obligations to the other plans. And trustees or employers will be loathe to sign an agreement that required contributions to these plans if that kind of thing were to happen.

We strongly advise and urge the committee to think about what we heard the PBGC say—that, right now, Central States couldn't qualify under the current partition rules, which is why they need to be amended. Quite simply, if you wait too long, you will lose the opportunity to preserve the remainder of that plan and other plans like it.

So, with that, I thank you for the opportunity to be here.

The CHAIRMAN. Anybody else?

Mr. MCGOWAN. Can I just add one thing?

The CHAIRMAN. Yes, sir, Mr. McGowan.

Mr. MCGOWAN. Thank you.

I think the idea of systemwide reform is good. Maybe a mix of defined contribution and defined benefit plans, may make sense in the modern era.

The only other concern is using taxpayer funds, because the State and local government pensions—there's a $2-trillion deficit there, and they're going to be here if they see that Federal funds are available for multiemployer pensions. They're going to probably be lining up next. It's just a little concern there.

I wish all you policymakers great luck in solving this important problem.

The CHAIRMAN. Thanks a lot.

[Laughter.]

Well, if there's nothing else.

Did you have anything, Mr. Nyhan?

Mr. NYHAN. I would have one point, if I might, Mr. Chairman.

The CHAIRMAN. Yes, sir.

Mr. NYHAN. Senator Casey alluded, earlier today, about a lot of discussion with respect to costs and what have you. In my view, some of it's been irresponsible. I think some of the dialogue has been a little off-base. It seems to me, the question is—given the fact that the PBGC has exposure, upon insolvency—the question presented is whether or not the partition proposal enlarges or reduces that exposure. In our view, it reduces that exposure by encouraging employers to remain in the plan, to continue to fund down those liabilities that would otherwise go to the PBGC, in the case of insolvency.

The CHAIRMAN. Right. I agree.

Well, thank you all very much. It was a great panel. I appreciate it.

The record will remain open for 10 days for other questions from other Senators.

With that, the committee will be adjourned.

[Additional material follows.]

ADDITIONAL MATERIAL

Prepared Statement of John Ward, President, Standard Forwarding LLC, East Moline, IL

Executive Summary

Chairman Harkin, Senator Enzi and members of the committee, I thank you for the opportunity to provide this statement concerning multiemployer pension plans. My name is John Ward and I am the President of Standard Forwarding LLC, a small union trucking company located in East Moline, IL. Standard Forwarding is a wonderful company with 475 employees, including 385 members of the Teamsters Union. The business has operated for 76 years and has been fighting for survival in recent years. Since the 1950's, Standard has contributed to the Central States Teamsters Pension Plan.

Unless significant reform is enacted, the Central States Plan will inevitably become insolvent and, even before that, the contributions required to fund the Plan will place an unfair and intolerable burden on the remaining contributing employers and their employees. The employers did not cause the problem, and they cannot solve it.

Key Facts Regarding Standard Forwarding

BACKGROUND ABOUT THE COMPANY

Standard Forwarding LLC is a Midwest-based regional less-than-truckload (LTL) trucking company, headquartered in East Moline, IL. We provide exceptional overnight service between points in Illinois, Indiana, Iowa, Minnesota and Wisconsin as well as Omaha, NE and St. Louis, MO.[1]

In business since 1934, Standard Forwarding employs 475 people (including 385 represented by the Teamsters Union) and has annual revenues of approximately $60 million. Having begun operations as a dedicated contract carrier for John Deere, we now serve several thousand loyal customers while continuing our proud tradition as John Deere's oldest continuous supplier.

Standard Forwarding has been a union firm for the majority of our 76 years. As demand for our services has grown, we have expanded our workforce with union employees.

STANDARD'S BANKRUPTCY

In November 2009, despite significant initiatives to reduce labor and other costs, Standard Forwarding Co., Inc. (the predecessor to Standard Forwarding LLC) was forced into bankruptcy, wiping out all shareholder value. The main driver of the bankruptcy was the Company's multiemployer pension contribution obligation.

The rate of pension contribution increases had significantly outpaced revenue growth and reached a point where the contributions were unsustainable. Contribution rates to the Central States Pension Fund for Standard Forwarding and other trucking employers under the National Freight Agreement had doubled in cost in nine (9) years, increasing from a rate of $154 per union employee per week in 2001 to $312 per week last year. By the end of the collective bargaining agreement in 2012, the pension contribution rate per union employee would have been $380.00 per week, or $9.48 per hour.

From 2004 to 2009 alone, our operating profit margin eroded 4.6 points as a direct result of increases in pension contribution rates. Compared to non-union companies in our industry that may (or may not) offer a 401(k) plan (and may or may not provide an employer match), the cost differential between our pension contribution costs and the non-union companies amounted to approximately 10 operating margin points. Standard was spending 625 percent more on pension contributions for a bar-

[1] Standard is the only six-time winner of "Carrier of the Year" for Schneider Logistics and the only carrier to win John Deere's Logistics Supplier of the year. We are also a two-time winner of "Carrier of the Year" for Xerox Corp and won CNH's inaugural carrier of the year selection. Most notable, however, is the significant industry recognition Standard has earned as the two-time recipient of Carrier of the Year honors in Mastio & Company's annual LTL Value and Loyalty Benchmarking Study. Mastio's survey, the most comprehensive study on LTL industry quality, includes interviews with key decision makers of over 2,400 shippers rating 260 LTL carriers.

gaining employee than it did on a non-bargaining employee (covered by a 401(k) plan).[2]

Significant efforts were made to sell the company, both before and after filing the bankruptcy petition. An investment bank was retained and marketed it. As you would expect, because of the unsustainable contribution costs and contingent liabilities tied to orphan retirees, it was impossible to sell the company to a buyer willing to continue contributing to the Central States Pension Fund. The only option for a continuation of this business was to sell its assets to a management group composed of four senior officers, who formed Standard Forwarding LLC. Even this option required a restructuring of the company's pension obligations.

During the bankruptcy, extensive and difficult negotiations with the Teamsters led to a new collective bargaining agreement which, among other things, reduced the company's weekly pension contribution rate from $312 to $112.50. The employees' pension benefits are being reduced accordingly, subject to a transitional period for people close to retirement. Under the Pension Protection Act, it would have been illegal for the parties to agree to this reduction, absent a bankruptcy and the resulting sale of the business.

On March 4, 2010, the Bankruptcy Court approved the sale under section 363 of the Bankruptcy Code. It has been suggested that Standard Forwarding may be the first LTL carrier to ever emerge from bankruptcy proceedings. This was made possible only because we have an exceptional company, with the highest quality employees and a loyal customer and supplier base that stood with us despite the months of uncertainty surrounding the bankruptcy process.

THE FUTURE OF STANDARD FORWARDING LLC

I believe that the future of our company is bright at this time, but as is the case with many of the 2,000+ employers that participate in it, the Central States Pension Fund continues to be the dark cloud that threatens our ability to survive and grow.

Without major legislative relief in the near future, the exodus of employers from the plan will continue; pension contribution rates will continue to escalate, even though they already are at unsustainable, uncompetitive levels for many employers; and, despite yeoman efforts to shore up the plan's funding, the unfunded benefit liabilities of the Plan will continue to increase. Although our bankruptcy proceedings provided an opportunity to bargain to a lower cost plan within the Central States Fund, because of the death spiral caused by the burden of funding orphan retirees, Standard Forwarding LLC will again be saddled with future increases to contribution rates that outpace our normal product pricing curve. In other words, history will repeat itself, and there is nothing we can do to avoid this unless Congress intervenes.

These problems cannot be solved by the Central States Board of Trustees, the Teamsters Union and the contributing employers. In the end, without relief from Congress, this Plan will be insolvent and the enormous sacrifices made by employees and employers will accomplish little or nothing.

Key Facts Regarding Central States

Other witnesses provided detailed facts and figures regarding the evolution and depth of the Central States Pension Fund's financial crisis. I will not attempt to duplicate that effort except to offer the following key observations:

1. Benefits for all active Central States participants have been reduced significantly by the Central States Board and contributions have been increased very significantly, as discussed in detail above. Further contribution increases cannot solve the problem, but rather, will only exacerbate it (as it will drive more employers out of business).

2. We are now contributing to a plan that has more than six retired and deferred vested participants for every active employee. Annual benefit payments exceed contribution income by over $2 billion.

3. The majority of every contribution dollar is being used to fund the benefits of people whose employers are no longer in business and who defaulted on their obligations.

[2] Central States has estimated that more than half of the company's contributions were used to fund pensions of so-called orphan participants whose employers were no longer in business. Therefore, Standard Forwarding's employees benefited from these large contributions only to a limited extent. The increased amounts were mandated by the Central States rehabilitation plan which, in turn, was mandated by the Pension Protection Act of 2006. If the Company had attempted to exit the plan, it would have triggered a withdrawal liability under ERISA of over $80 million. The company had no practical alternative to the large increases in pension contributions than to file for bankruptcy.

4. Thousands of contributing employers have left the Fund in the past 30 years, most of them in an insolvent condition. Almost all of the 100 largest employers as of 1980 are no longer in business.

5. The dismal performance of the capital markets over the past 10 years has affected almost every pension plan. I do not perceive that Central States was at fault in any way regarding the manner in which the assets have been invested over the past 10 years.

Based on these facts, I conclude that the crisis could not have been avoided by the responsible parties.

Why Should Congress Intervene?

I believe defined benefit plans are worth saving and that American workers are not likely to do as well under a 401(k) regime.[3] I am not so much concerned with the future of defined benefit plans. I am concerned with the present consequences of a retirement system that has been in place since World War II. I feel very strongly that the issue facing Congress is not just pensions. The more important and pressing issue is preserving jobs and allowing the U.S. economy to recover.

Congress should repair the flaws in the current multiemployer system, in which companies are being driven out of business by uncompetitive pension contributions which are at unsustainable levels in order to fund the retirement obligations of other out-of-business employers (often leaving their pension liabilities to be funded by the remaining companies, leading to a death spiral for a plan's contributing employers). It is unreasonable and unfair to expect these companies to fund the pensions of people whose employers have gone out of business and failed to pay their pension obligations. It damages the U.S. economy for all of us. Business owners are losing the value of their companies and workers are losing jobs.

In the absence of strong and swift congressional action, the financial condition of the Central States Pension Plan is beyond repair. Even as the remaining companies are ruined by increasing contribution rates or withdrawal liability that exceeds their net worth, the Plan will still become insolvent and the workers will receive only a portion of their promised pensions. These workers may be losing both their jobs and a good chunk of their pensions while the PBGC inherits billions of dollars in new obligations.

In testimony to the Senate HELP Subcommittee on Retirement and Aging in June 2005, I warned that uncontrolled increases in pension contributions could bankrupt small privately-held companies like mine. I requested that Congress limit the amount by which pension contributions could be increased to remedy the funding deficiencies which arose from circumstances completely beyond our control. I also asked that the law be restored to the condition that it was in prior to the enactment of MPPAA in 1980, when a company's withdrawal liability was limited to 30 percent of its net worth. Quite obviously, Congress did not act on my requests and the owners of the family-owned company which I led paid the price. While I am thankful that the business was able to emerge from bankruptcy with new ownership, absent congressional action, other companies will not be so fortunate and even our new company remains in jeopardy.

It is imperative that Congress amend the partition rules so that the Central States orphan liabilities can be transferred to the PBGC where they belong. Failure to act on this will most certainly lead to the insolvency of the Fund. The Fund's termination will in turn lead to the failure of numerous contributing employers, the loss of thousands of good jobs and an even greater burden inherited by the PBGC. I cannot think of a single reason why it would be better for this country to let events take their course and to allow these inevitable results to occur.

RESPONSE TO QUESTIONS OF SENATOR ENZI AND SENATOR ISAKSON BY PHYLLIS C. BORZI

SENATOR ENZI

Question 1. Besides the Central States pension plans, which multiemployer pension plans would be able to qualify for the partition relief contained in S. 3157?

[3] My father, Bob Ward, is a perfect example. He currently draws less than $500 per month from a painting and drywall pension plan and although the sum is small, it is crucial to my parents' retirement income. My dad consciously accepted a lower laborer's wage rather than choosing a more lucrative self-employed contractor's path because of the pension that came with employment at a firm that contributed to a defined benefit pension. He readily admits that he would not have had the discipline to save and invest the money which he might have earned in lieu of a pension plan.

Answer 1. Under the bill, a significant criterion for partition is that the plan be in critical status ("red zone") or endangered status ("yellow zone").[1] Such plans must also: (i) have suffered a substantial reduction in contributions due to employer bankruptcies and other inability to collect the full amount of withdrawal liability; (ii) have at least a 2-to-1 ratio of inactive (retired and separated vested) to active participants (10-to-1 ratio for endangered status plans), and at least a 2-to-1 ratio of benefit payments to contributions; and (iii) be likely to become insolvent absent partition or significant contribution increases—an actuarial determination not subject to any prescribed assumptions.

In addition to Central States, representatives of Central States informed the Department that the United Mine Workers 1974 Pension Plan ("UMW Plan") may qualify for partition under S. 3157. We are unable to determine the plans that may qualify for the partition relief contained under S. 3157 taking into consideration all of the criteria for partition without additional data from plans.

Question 2. In 2009, the PBGC took over the administration of pension benefits for 201,000 workers and retirees. It is estimated that plans electing partition relief in S. 3157 would place over 200,000 "orphaned" participants in just the multiemployer pension system alone. How many staff does PBGC have devoted to administering the multiemployer system? Does PBGC have enough staff and resources to handle that large number of multiemployer pension claims? Where do the monies come from to pay for the administrative costs for the oversight of the multiemployer system?

Answer 2. The PBGC's Multiemployer Program Division currently has 6 full-time employees and even if there are no changes to the partition rules, the program needs substantial additional staff to manage the growing workload under current law. Efforts are underway to address multiemployer staffing deficiencies by reallocating and retraining existing agency staff.

Although multiemployer plans themselves would continue to administer the partitioned plans under the bill, depending on how many plans were to seek partition under the new standards, PBGC's existing multiemployer program resources could be overwhelmed in reviewing partition applications, auditing requested outlays to ensure that the transfer to the partition plan includes only the orphan liabilities, and otherwise verifying that the correct amount of administrative costs are transferred. During fiscal year 2009, PBGC paid $86 million in financial assistance into 43 insolvent plans. Over the next 5 years, PBGC expects approximately 50 additional multiemployer plans will become insolvent and require financial assistance.

Apart from staffing issues, PBGC would remain obligated to pay millions of dollars in administrative costs each year to the partitioned plans. These expenses are paid from PBGC's multiemployer plan revolving trust fund, the assets of which come from multiemployer plan premiums. As an illustration of the magnitude of just the administrative costs, through only the first quarter of 2010, the Central States plan reported expending almost $8.49 million in administrative costs. In the event of partition, the portion of these administrative costs attributable to the partitioned plan would be paid by PBGC through financial assistance.

Question 3. What are the ramifications to the Central States plan and the PBGC, the companies contributing to the plan and to the workers and retirees if this legislation is not enacted?

Answer 3. The Central States Pension Fund is one of the Nation's largest multiemployer defined benefit plans. According to information provided by the Fund, the plan covers over 433,000 participants and provides monthly benefits to over 200,000 retirees and beneficiaries; active participants who provide the plan's contribution base have now dropped to 61,000.

Over the last two decades, the number of employers and active workers supporting the retirees in the plan has declined substantially, compounding a long-term trend caused, in part, by trucking deregulation in the 1980s. The obligation to pay benefits to employees and retirees of defunct companies remains with the Central States Pension Fund. Like many other plans, Central States also recently suffered investment losses, which have contributed to its financial problems. Reductions in benefits and substantial increases in employer contributions during the past few years have not been able to fill in the gaps caused by the rapidly shrinking contribution base.

[1] Plans are classified as being in the yellow zone if they are in "endangered status" (funding below 80 percent and funding deficiency farther out), or the red zone if they are in "critical status" (funding below 65 percent and a funding deficiency on the horizon, usually within 5–7 years).

Based on Central States' December 2009 financial statements, the fund pays approximately $2.7 billion in benefits per year and receives only $643 million in contributions, resulting in a $2.1 billion annual operating deficit. As of January 1, 2009, the fund had assets of $17 billion (after a negative 30 percent return for 2008), liabilities of $36 billion, and a funded ratio of 48 percent. As of September 30, 2009, the fund had assets of $19 billion (after a 21.9 percent return through September), liabilities of $36 billion, and a funded ratio of 53 percent.

Representatives from Central States have told the Department that, due to the large drop in active participants and 2008 investment losses, Central States is unlikely to recover without major structural reforms, some of which require legislative amendments.

It is impossible for us to gauge the effect of not enacting the specific legislation before the committee, but we are concerned about the circumstances faced by plans like Central States. We want to work with the committee to determine the best solution to address the needs of multiemployer plans.

Question 4. The Segal Group in its Winter 2010 survey found, "data indicates, that over the next few years, 30 percent of the plans that are certified as green for 2010 could migrate into the yellow or red zones unless additional actions are taken." In light of this, please provide to the committee based upon 2008 data the number of multiemployer plans that have funding percentages below 10 percent, 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, 80 percent, 90 percent and 100 percent.

Answer 4. A complete set of 2008 Form 5500 data for all multiemployer plans is not yet available. Therefore, the following information is based on 2007 Form 5500 data.[2]

FUNDING RATIOS OF MULTIEMPLOYER DEFINED BENEFIT PENSION PLANS

Department of Labor Tabulations of Form 5500 Data for 2007

Funding ratios were calculated using assets measured at market value.[3]

- 25 multiemployer plans, or 1.8 percent, are less than 40 percent funded.
- 80 multiemployer plans, or 5.9 percent, are less than 50 percent funded.
- 223 multiemployer plans, or 16.3 percent, are less than 60 percent funded.
- 528 multiemployer plans, or 38.7 percent, are less than 70 percent funded.
- 891 multiemployer plans, or 65.2 percent, are less than 80 percent funded.
- 1,127 multiemployer plans, or 82.5 percent, are less than 90 percent funded.
- 1,249 multiemployer plans, or 91.4 percent, are less than 100 percent funded.
- 117 multiemployer plans, or 8.6 percent, are more than 100 percent funded.
- There are 1,366 multiemployer plans included in these calculations. Those represent all the multiemployer plans for which a funding ratio could be calculated.
- Another 98 multiemployer plans filed a form 5500 for 2007, but a funding ratio could not be calculated for them, usually because there was no Schedule B.

PBGC Tabulations of Form 5500 Data for 2007

The PBGC conducts a similar analysis. Unlike the Department of Labor information presented above, the PBGC adjusts liabilities using its own interest factor and mortality assumptions. Additionally, the PBGC tabulations only include plans insured by the PBGC.

- 38 multiemployer plans, or 2.5 percent, are less than 40 percent funded. These plans contain approximately 211,000 participants, or 2.1 percent.
- 99 multiemployer plans, or 6.5 percent, are less than 50 percent funded. These plans contain approximately 986,000 participants, or 9.8 percent.
- 288 multiemployer plans, or 18.9 percent, are less than 60 percent funded. These plans contain approximately 1,799,000 participants, or 17.9 percent.
- 651 multiemployer plans, or 42.8 percent, are less than 70 percent funded. These plans contain approximately 4,383,000 participants, or 43.7 percent.
- 1,079 multiemployer plans, or 70.9 percent, are less than 80 percent funded. These plans contain approximately 6,915,000 participants, or 68.9 percent.

[2] 2008 was the last year of EFAST 1 and the first year for which schedule SB and MB were required. The IRS, EBSA, and PBGC weighed options for handling those data, taking into consideration funding constraints, and chose to limit the processing of those data to scanning to create images (pictorial data). Data from those schedules were not captured in the form required to enter them into the data base to support calculations.

[3] The liability measure is taken from 2b(4) column (3). The asset measure used for the numerator of the funding ratio is taken from Schedule B, line 1b(1). Although the form 5500 data provide other assets measures, this is the only one that is required to be measured on the same valuation date used for liabilities.

- 1,289 multiemployer plans, or 84.7 percent, are less than 90 percent funded. These plans contain approximately 8,918,000 participants, or 88.9 percent.
- 1,405 multiemployer plans, or 92.3 percent, are less than 100 percent funded. These plans contain approximately 9,727,000 participants, or 97.0 percent.
- 117 multiemployer plans, or 7.7 percent, are more than 100 percent funded. These plans contain approximately 305,000 participants, or 3.0 percent.
- There are 1,522 multiemployer plans with approximately 10,032,000 participants included in these calculations.

Source: Pension Benefit Guaranty Corporation, *Pension Insurance Data Book 2009*, forthcoming in the summer of 2010, Table M–13.

Question 5. If the PBGC has calculated that its unfunded liability exposure may be as high as $4 billion by 2019, are the premium increases contained in S. 3157 sufficient to cover this anticipated potential liability for PBGC?

Answer 5. In attempting to clarify the projected financial position of the multiemployer program, PBGC develops a range of possible scenarios. The 2009 Annual Report states that "*The **median** net-position outcome is a $2.4 billion deficit in 2019 (in present-value terms). This means that half of the simulations show either a smaller deficit than $2.4 billion or a surplus, and half of the simulations show a larger deficit. The **mean** outcome is a $4.0 billion deficit in 2019 (in present value terms).*" Page 16 of the 2009 Annual Report also includes a distribution of the potential 2019 financial position for the multiemployer program. This distribution shows a wide range of possible outcomes. For example, 5 percent of the simulations show a deficit of at least $14.5 billion. At the other extreme, 5 percent of the simulations show a surplus of at least $0.3 billion.

The premium increase proposed in S. 3157 is designed to cover the cost of the increase in the maximum guarantee level in the legislation, not to cover the underlying deficit in the PBGC's multiemployer program.

Question 6. Should any legislation to help the multiemployer pension system allow the PBGC to use monies from other trust funds overseen by the PBGC, for example using money from the single-employer's trust fund?

Answer 6. No. The single employer and multiemployer programs are separate programs by law. If Congress were to change that, we would be concerned about the impact on participants in single employer plans trusteed by the PBGC. Using monies from PBGC's single employer program only shifts the problem within PBGC while failing to improve workers retirement security.

We need to make certain that any solutions protect the retirement security of workers and retirees and secure the PBGC's ability to continue to pay guaranteed benefits to all of the workers and retirees whose defined benefit plans it is responsible for insuring in both the single employer and multiemployer programs.

Question 7. PBGC appears to already have authority to partition multiemployer pension plans. As of this date, it appears that no decision to partition the Central States plan has been made by PBGC or even broached with PBGC staff. If PBGC already has this authority under Section 4233 of ERISA, then should this forced partition contained in S. 3157 be necessary? What would happen if the language in S. 3157 were changed to allow all multiemployer plans to place their orphan plans with the PBGC?

Answer 7. Current law (29 U.S.C. §1413) authorizes PBGC to grant a multiemployer plan partition relief if the plan satisfies four objective financial and actuarial tests. The Central States Plan has not asked PBGC to consider a current law partition because the Plan probably does not satisfy some or all of the tests in current law.

Under current law, a multiemployer plan must show:

1. Contributions have substantially fallen due to employer bankruptcies;
2. The plan is likely to become insolvent—that is, the assets of the plan will fall to the point where the plan is unable to pay benefits guaranteed by PBGC (about $12,800 per year);
3. The plan is or will be in reorganization, requiring significant increases in contributions to meet contribution requirements and prevent insolvency; and
4. Partitioning the benefits of retirees and workers of the bankrupt companies would "significantly reduce the likelihood" that the remaining plan will become insolvent.

If partition occurs, the transferred retirees and workers may not be paid their full promised plan benefits. The law specifies that they can receive no more than the PBGC-guaranteed benefit of $12,870 per year for 30 years of service.

A current-law partition would result in benefits being limited to the PBGC-guarantee level rather than S. 3157's full plan benefits level, and we assume that is one reason the Plan is seeking legislative change.

If S. 3157 were enacted in its current form to allow all multiemployer plans to partition and transfer orphan liabilities without any impact on participants' benefits amounts or employers' obligations, then we would expect that most plans would seek partition. Without new funding, the PBGC would not be able to absorb these liabilities.

Question 8. The Pension Protection Act requires that multiemployer pension plans that enter the critical or endangered status [file a notice with the Department of Labor containing certain information about their financial condition.] The Department of Labor publishes these notices on its Web site. However, in discussions with actuaries it appears that letters from firms that entered the critical or endangered status are not posted on the Web site. Exactly how many letters has the Department received regarding critical or endangered status for 2008, 2009 and 2010?

Answer 8. The Pension Protection Act of 2006 requires an Annual Actuarial Certification be made by the plan actuary to the Secretary of the Treasury and to the plan sponsor whether or not the plan is in endangered status (funding below 80 percent and funding deficiency farther out) or critical status (funding below 65 percent and a funding deficiency on the horizon, usually within 5–7 years) for the plan year. This must be completed no later than 90 days after the end of the plan year. If a plan is certified to be in endangered or critical status, notification of the endangered or critical status must be provided within 30 days after the date of certification to the participants and beneficiaries, the bargaining parties, the PBGC and the Secretary of Labor. WRERA permits a multiemployer plan sponsor to elect to temporarily freeze the plan at the prior year's status. The plan sponsor must provide notice of the election to the Department of Labor. Below is a chart that summarizes responses to the question.

	2008	2009	2010
Critical Status notices	102	140	27
Endangered Status notices	133	102	16
WRERA notices	Not applicable	320	3

The table summarizes the notices that had been received by the Department of Labor and posted on its Web site as of June 29, 2010. During this time of the year, however, many notices are arriving at the Department and being processed. There are approximately 200 additional notices currently in process that will be posted to the Web site in the near future.

Question 9. Despite the EFAST system being implemented at the Department of Labor, there is a significant lag time from the end of a plan year to the filing of Form 5500's by plans with the Department. Should the PBGC be given authority to obtain financial information from a multiemployer plan, similar to the information PBGC can collect under ERISA Section 4010 for single employer plans, if it knows or suspects that a multiemployer plan is in endangered or critically underfunded status?

Answer 9. Yes, PBGC should be given authority to obtain financial and pension-related information from multiemployer plans. In addition, Congress should reinstate the pre-Pension Protection Act section 4010 reporting requirements for single employer plans.

Under statutory provisions in Title I of ERISA, plan administrators have until 7 months after the end of the plan year to file the plan's Form 5500 annual report. An extension of up to 2½ months to file is also available by filing IRS Form 5558.

While neither the Department nor the Administration have reached conclusions about specific reporting requirements, PBGC suggests that PBGC's ability to assess risk would be enhanced if multiemployer plans in critical and endangered status were required to provide the following information to PBGC within a reasonable time (perhaps 90 days) after the end of the plan year:

1. The asset and liability levels of the plan as of the end of the plan year;
2. Any investment gains or losses experienced by the plan during the plan year;
3. Total benefits paid during the plan year;
4. Total contributions paid and required to be paid during the plan year; and

5. A list of employers that ceased contributing to the plan, and for each such employer, the contributions made, and contribution base units for each of the prior 5-plan years.

Plans should also be required to respond to PBGC requests for any additional information needed to assess the financial condition of the plan.

Question 10. Back in 2005, I held a hearing on a fraud scheme perpetrated by Capital Consultants of Oregon on several multiemployer pension plans. Recently, the New York Local 147, the Sandhogs, was a victim of a $42 million fraud. Both of these frauds were done by insiders or close consultants to the multiemployer pension plans. In addition, the Department of Labor Inspector General's Office has highlighted many similar type frauds in recent years. What is the Department doing to ensure that multiemployer pension plans do not fall victim to insider-type fraud or fraud from consultants?

Answer 10. *Enforcement.*—EBSA's Strategic Enforcement Plan (StEP) identifies and describes EBSA's national enforcement priorities and assists EBSA in leveraging its enforcement resources by emphasizing targeting, the protection of at-risk populations, and deterrence. The priorities identified in the StEP allow EBSA to focus its enforcement resources on issues and individuals where the most serious potential for ERISA violations exists and on situations that present the greatest potential for harm. EBSA emphasizes the protection of at-risk populations by seeking to identify situations and apply enforcement resources where there is the greatest danger of harm to security and livelihood of participant and beneficiaries as a result of violations of the law. Deterrence is obtained through the continuing effectiveness of EBSA's enforcement program; EBSA's criminal enforcement program is a key component of deterring violations.

The StEP includes several national investigative priorities. One of these focuses on plan service providers. The term "plan service provider" refers to the range of businesses that provide services to employee benefit plans, such as third party administrators, accountants, attorneys, and actuaries. Plan service providers can also include financial institutions, such as banks, trust companies, investment management companies, and insurance companies. By concentrating on plan service providers, EBSA can obtain correction of ERISA violations that may involve many plans. Below we describe some recent major EBSA criminal investigations of consultants and other service providers who committed fraud against multiemployer pension plans. These examples not only display EBSA's determined pursuit of fraud against pension plans, but they also pose powerful deterrents to potential corrupt investment consultants and plan officials.

EBSA conducts its investigations of both civil violations of Title I of ERISA and related criminal laws through its 15 regional and district offices around the country. EBSA's Office of Enforcement, located in the national office, provides policy leadership and coordinates the agency's enforcement program.

EBSA's Regional Criminal Coordinators oversee the conduct of criminal investigations in every EBSA regional office. EBSA Criminal Coordinators and investigators consult with local U.S. Attorneys as early as possible in criminal investigations to determine whether there is interest by the U.S. Attorneys in the case and to receive any specific directions as may be necessary.

In February 2010, John Orecchio, a co-owner and president of AA Capital Partners, Inc., pleaded guilty to embezzlement and wire fraud for his participation in a scheme that defrauded approximately $24 million from six large ERISA-covered Taft-Hartley pension plans. On June 17, 2010, John Orecchio was sentenced to 112 months in prison followed by 3 years of supervised release. Orecchio was also ordered to pay restitution in the amount of $26,411,414 and a special assessment of $200.

Orecchio had provided kickbacks to persuade the executive secretary-treasurer of the Michigan Regional Council of the Carpenters' Union, who was also the chairman of the Board of Directors of both the Detroit and Vicinity Carpenters Pension and Annuity funds, to hire AA Capital Partners. Among Orecchio's co-conspirators in the defrauding of the multiemployer pension funds was "Roxy" Jewett, the president of a company purporting to provide consulting services for the casino industry. Jewett has also pleaded guilty. EBSA worked together with the SEC, the Federal Bureau of Investigation and the Department of Labor's OIG to uncover the fraud and to prepare the criminal case against Orecchio and his cohorts.

EBSA worked jointly with the Department's OIG in two other recent criminal cases out of Illinois that involved private consultants who defrauded multiemployer pension plans. Both cases, *United States* v. *Michael G. Linder, et al*. and *United States* v. *Michael J. Brdecka, et al*. resulted in successful, and widely-reported, prosecutions. In the first example, Michael Linder was the president of Joseph/Anthony and Associates, Inc., a third-party administrator for multiemployer pension plans. In June 2006, Linder pleaded guilty in Federal court to defrauding 11 local pension funds of $5 million and embezzling over $1.9 million from five local multiemployer pension and health and welfare plans. Earlier, in December 2004, Linder entered a guilty plea in which he admitted providing graft in the form of two Harley-Davidson motorcycles, worth over $19,000 apiece. He gave one motorcycle to a former business agent of Ironworkers 498 in Rockford and plan administrator for its pension funds, and the second to the former president of Machinery Movers Local 136, who served as a trustee of its benefit plans.

Michael J. Brdecka, a Registered Investment Representative for Intersecurities, Inc. was sentenced in November 2006 to 3 years' probation, 6 months' home confinement with electronic monitoring, 200 hours of community service, and a $15,000 fine, for his role in Michael Linder's kickback scheme involving several employee benefit plans. He had stated in his plea agreement that he paid kickbacks worth $9,700 to Linder because of Linder's relationships with two local multiemployer pension plans in Illinois, the Ironworkers Locals 136 and 498.

Regulatory.—We believe that EBSA's current initiative to amend the ERISA regulatory definition of "fiduciary" will assist in protecting plans and enhancing EBSA's enforcement efforts in this area. The current regulatory definition of "fiduciary" was adopted in 1975, and has not been updated despite significant changes in plan practices, service arrangements, and the financial marketplace. Based on its experience, EBSA believes that this regulation may not adequately encompass service providers who exert significant influence over plan investment decisions, particularly with respect to 401(k) plans which did not even exist when the regulation was promulgated. EBSA intends to propose amendments to the regulation to re-define the types of advisory relationships that give rise to fiduciary duties on the part of those providing advisory services. Conferring fiduciary status on such persons will subject them to ERISA's strict fiduciary responsibility rules, and will enhance the ability of plans and EBSA to seek meaningful remedies for fiduciary violations.

Question 11. The Employee Free Choice Act of 2009, S. 560, would allow for the use of an arbitration board if a collective bargaining agreement has not been reached within a certain period of time. Should an arbitration board be allowed to mandate that companies join multiemployer pension plans as part of a collective bargaining agreement?

Answer 11. The Obama administration supports the Employee Free Choice Act. As we understand it, S. 560 does not amend ERISA and EBSA does not have an opinion on these provisions.

Question 12. Do you believe that it is ethically correct for companies and their unionized employees be mandated to participate in "critically" underfunded pension plans that have no hope of ever becoming fully funded?

Answer 12. I support the right of employers and employee representatives to negotiate in good faith the terms of their collective bargaining agreement, consistent with labor law, including negotiating the contribution amounts for pension plans. Once the collective bargaining parties have reached an agreement, all parties have an obligation to follow the terms of the agreement.

The underlying issue that we need to address is providing assistance and finding solutions to help underfunded pension plans. The Administration is sympathetic to providing short-term funding relief for multiemployer plans impacted by the economic downturn by extending the amortization period to fund the plans.[4] As I discussed in my testimony, a small number of multiemployer plans, however, are facing severe long-term financial problems that short-term funding relief will not solve. The Department is examining proposals to help multiemployer plans keep their commitments to workers and retirees and address long-term solvency issues.

SENATOR ISAKSON

Question 1. Under your understanding of S. 3157, is Central States the only multiemployer plan that could elect the partitioning option? If not, how many other plans could make such an election?

Answer 1. Under the bill, a significant criterion for partition is that the plan be in critical status ("red zone") or endangered status ("yellow zone"). Such plans must also: (i) have suffered a substantial reduction in contributions due to employer bankruptcies and other inability to collect the full amount of withdrawal liability; (ii)

[4] The "Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010" (P.L. 111–192), signed into law on June 25, contains short-term funding relief for multiemployer plans.

have at least a 2-to-1 ratio of inactive (retired and separated vested) to active participants (10-to-1 ratio for endangered status plans), and at least a 2-to-1 ratio of benefit payments to contributions; and (iii) be likely to become insolvent absent partition or significant contribution increases—an actuarial determination not subject to any prescribed assumptions.

In addition to Central States, representatives of Central States informed the Department that the United Mine Workers 1974 Pension Plan ("UMW Plan") may qualify for partition under S. 3157. We are unable to determine the plans that may qualify for the partition relief contained under S. 3157 taking into consideration all of the criteria for partition without additional data from plans.

Question 2. Why has the Central States plan not been partitioned under current law?

Answer 2. Current law (29 U.S.C. §1413) authorizes PBGC to grant a multiemployer plan partition relief if the plan satisfies four objective financial and actuarial tests. The Central States Plan has not asked PBGC to consider a current law partition because the Plan probably does not satisfy some or all of the tests in current law.

Under current law, a multiemployer plan must show:

1. Contributions have substantially fallen due to employer bankruptcies;
2. The plan is likely to become insolvent—that is, the assets of the plan will fall to the point where the plan is unable to pay benefits guaranteed by PBGC (about $12,800 per year);
3. The plan is or will be in reorganization, requiring significant increases in contributions to meet contribution requirements and prevent insolvency; and
4. Partitioning the benefits of retirees and workers of the bankrupt companies would "significantly reduce the likelihood" that the remaining plan will become insolvent.

If partition occurs, the transferred retirees and workers may not be paid their full promised plan benefits. The law specifies that they can receive no more than the PBGC-guaranteed benefit of $12,870 per year for 30 years of service.

A current-law partition would result in benefits being limited to the PBGC-guarantee level rather than S. 3157's full plan benefits level, and we assume that is one reason the Plan is seeking legislative change.

Question 3. What would the effect on the PBGC be if benefits payable to multiemployer pension plans participants taken over by the PBGC were increased as imagined in S. 3157?

Answer 3. For non-partitioned plans, S. 3157 would increase the current maximum guarantee of $12,870 per year to $20,070 per year for a participant with 30 years of service. To finance this increase, the bill would increase the per participant annual premium rate from $9 in 2010 (indexed for wage inflation), to $16 in 2011 (not indexed). PBGC's projections indicate that this premium increase would not cover the cost of the guarantee increase; the projections suggest that the premium should increase to approximately $18–20 (indexed for wage inflation) to cover the cost.

For partitioned plans, S. 3157 would pay benefits at the full plan benefits level rather than the PBGC-guarantee level, adding to PBGC's multiemployer plan program deficit. Partition under S. 3157 would further impact PBGC's program. Although multiemployer plans themselves would continue to administer the partitioned plans under the bill, depending on how many plans were to seek partition under the new standards, PBGC's existing multiemployer program resources could be overwhelmed in reviewing partition applications, auditing requested outlays to ensure that the transfer to the partition plan includes only the orphan liabilities, and otherwise verifying that the correct amount of administrative costs are transferred. The PBGC's Multiemployer Program Division currently has six full-time employees and even if there are no changes to the partition rules, the program needs substantial additional staff to manage the growing workload under current law. Efforts are underway to address multiemployer staffing deficiencies by reallocating and retraining existing agency staff. During fiscal year 2009, PBGC paid $86 million in financial assistance into 43 insolvent plans. Over the next 5 years, PBGC expects approximately 50 additional multiemployer plans will become insolvent and require financial assistance.

Apart from staffing issues, PBGC would remain obligated to pay millions of dollars in administrative costs each year to the partitioned plans. These expenses are paid from PBGC's multiemployer plan revolving trust fund, the assets of which come from multiemployer plan premiums. As an illustration of the magnitude of administrative costs, through only the first quarter of 2010, the Central States Plan reported expending almost $8.49 million in administrative costs. In the event of partition, the portion of these administrative costs attributable to the partitioned plan would be paid by PBGC through financial assistance.

Question 4. As you understand S. 3157, would the act result in the "tearing down of the wall" between PBGC funds and the general Treasury?

Answer 4. As we read S. 3157, the bill would make the U.S. Government liable for PBGC's obligations arising from the partitioned plan, in contrast to all other single employer or multiemployer benefits guaranteed by PBGC. The bill would establish a "Fifth Fund" on the books of the U.S. Treasury to finance PBGC's obligations for partitioned multiemployer plans. The Fund would be credited with "funds made available to the corporation [PBGC] that are designated for special matters and the earnings thereon, including any amounts received in connection with a qualified partition. . . ." The proposal permits this Fund to engage in transactions with other PBGC funds if needed to meet liquidity demands and to maximize PBGC's ability to accomplish its mission without increasing premiums. Other than this, the bill does not identify a funding source for the Fifth Fund and there is no explicit provision for Federal appropriations. However, the bill would pledge the full faith and credit of the United States, and therefore, it is not clear at the moment how the Fifth Fund would operate.

The bill also prohibits PBGC from taking partitioned benefits into account when recommending premium increases for multiemployer plans to Congress.

The provisions discussed above are of great concern to the Administration, and we would like to work with the committee to address these concerns in a practical and balanced manner.

Question 5. Section 221(a) of the Pension Protection Act requires a study by the Department of Labor, the IRS, and the PBGC on the effect of PPA on small employers. It seems to me that this is a very important aspect with regard to the future of these plans—how the small employer is going to survive. Do you know the status of this study?

Answer 5. Section 221(a) of the Pension Protection Act (PPA) requires the Department of Labor, the Department of the Treasury, and the PBGC to conduct a study of the effect of the PPA changes on the operation and funding status of multiemployer plans. A report of the results of the study, including any recommendations for legislation, is due to Congress not later than December 31, 2011. The matters required to be included in the study, among other issues, include the effect on small businesses participating in multiemployer plans of funding difficulties, funding rules in effect before the date of enactment of the PPA, and changes made by the PPA to the multiemployer plan funding rules. The Department agrees that this study will help inform the impact of the funding rules on multiemployer plans and small employers.

The multiemployer plan funding rules under the PPA are generally effective for plan years beginning after 2007. While some of the data is available to conduct the study, information for plan year 2008 is not yet completed. Moreover, information for later plan years will be needed to provide a fuller picture of the impact of the PPA funding rules. The agencies are collaborating and will conduct the study and prepare the required report once the data is available.

Response to Questions of Senator Enzi by Charles A. Jeszeck (GAO)

U.S. Government Accountability Office,
Washington, DC 20548,
June 28, 2012.

Hon. Michael Enzi, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Dear Mr. Enzi: The enclosed information responds to the post-hearing questions in your letter of June 11, 2010, concerning our May 27, 2010, testimony before your committee on the status of multiemployer pension plans. If you have any questions or would like to discuss this information, please contact me at (202) 512–7215.

Sincerely,

Charles Jeszcek, Acting Direcor,
Education, Workforce, and Income Security Issues.

Question 1. What are the ramifications to the Central States plan, the companies contributing to the plan and to the workers and retirees if nothing is done?

Answer 1. As noted in the hearing, the Central States plan does not currently qualify for partition from PBGC. If the Central States plan were to become insolvent, PBGC would provide loans to the plan so that it would be able to pay benefits to each eligible participant up to the guarantee limit of $12,870 for 30 years of service. In instances where participants' accrued benefits exceed the PBGC guaranteed benefit level, the plan would likely pay them a benefit lower than what they had accrued. In instances where the accrued benefit is less than the PBGC guarantee, participants would likely receive full benefits. Companies contributing to the plan would continue making contributions and retain their proportion of the withdrawal liability that they had accrued.

Question 2. Since both PBGC trust funds are running deficits, why should the American taxpayer be on the hook for benefit costs of these retirees as envisioned by S. 3157?

Answer 2. We have not analyzed S. 3157 and therefore cannot comment as to its effect on participants, including retirees, of PBGC insured defined benefit plans receiving the benefits promised to them by employers. Currently, in instances where PBGC lacks sufficient resources to provide financial assistance, the agency is authorized to receive up to $100 million in additional funds from the U.S. Treasury. As noted in my testimony, the multiemployer program poses less liability to the government and potentially the taxpayer, than the framework of the single employer program. However, long-term economic and other trends are generating fiscal pressures that will likely make it increasingly difficult for PBGC, which now faces an $869 million deficit in its multiemployer insurance program, to continue to provide the level of insurance protection currently promised to participants.

Question 3a. In your testimony, you cite that since 2002 the number of retired and separately vested plan participants outnumbered active participants and that ratio will continue to get worse in the future. In other words, we now have an upside down system where the number of people contributing to the pool is smaller but the number of people receiving retirement benefits is growing. In the tax bills before the House and the Senate, there are provisions to grant funding relief for multiemployer pension plans that include upwards of 15 years to get back into the Green Zone funding status, provide up to 30 years to amortize losses and to grant up to 10 years to smooth those losses.

Does this extremely long-term approach make any sense in light of the system being upside down?

Answer 3a. We have not analyzed the legislative provisions referred to in the question. We have also not conducted any recent work examining the effects of alternative amortization schedules or the "smoothing" of investment losses for multiemployer plans. Pensions are long-term arrangements that operate over many years, even decades. It is possible that there are situations where, properly structured, short-term funding relief may be warranted to help a plan recover from adverse economic conditions. However, some relief efforts could also result in discouraging employers from making contributions sufficient to improve a plan's funding status. This could increase a plan's unfunded liabilities, creating greater long-term funding pressures on the plan and on PBGC and heightening the risk that participants may not receive their full promised benefits. Ultimately, it is up to Congress to decide on policy that balances the risks to PBGC with the preservation of participant benefits.

Question 3b. Would you recommend similar time periods for single employer plans?

Answer 3b. Single-employer pension plans share many of the same challenges as their multiemployer counterparts. The same potential tradeoff between the possible need to provide short-term relief to help employers recover from adverse economic conditions versus the potential creation of incentives for employers to chronically underfund their plans over the longer term would be relevant. As stated above, it is up to Congress to decide on policy that balances the risks to PBGC with the preservation of participant benefits. Again, however, we have not conducted any recent work examining the effects of alternative amortization schedules or the "smoothing" of investment losses for multiemployer plans.

Question 4. The Segal Group in its Winter 2010 survey found, "data indicates, that over the next few years, 30 percent of the plans that are certified as green for 2010 could migrate into the yellow or red zones unless additional actions are taken." In light of this, please provide to the committee based upon 2008 data the number of multiemployer plans that have funding percentages below: 10 percent, 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, 80 percent, 90 percent and 100 percent.

Answer 4. We are conducting ongoing work on the funded status of multiemployer plans for another committee and we plan to report on the funded status of multiemployer pension plans later this year.

Question 5. PBGC appears to already have authority to partition multiemployer pension plans. As of this date, it appears that no decision to partition the Central States plan has been made by PBGC or even broached with PBGC staff. If PBGC already has this authority under Section 4233 of ERISA, then should this forced partition contained in S. 3157 be necessary? What would happen if the language in S. 3157 were changed to allow all multiemployer plans to place their orphan plans with the PBGC?

Answer 5. As was noted in the committee hearing on May 27, 2010, PBGC currently has partition authority. However, PBGC officials have determined that the Central States plan did not meet the agency's criteria for partition. Partitioning is one of the tools PBGC may rely on in working with the stakeholders of weakened multiemployer plans to protect the benefits promised to participants. We have not studied the consequences of revising PBGC's partitioning authority and are, therefore, unable to comment on the possible effects. We do note, however, that a historical strength of the multiemployer framework has been the continuation of the pension plan after some contributing employers have ceased operations or withdrawn from the plan, at comparatively little cost to PBGC and the taxpayer.

Question 6. The Employee Free Choice Act of 2009, S. 560, would allow for the use of an arbitration board if a collective bargaining agreement has not been reached within a certain period of time. Should an arbitration board be allowed to mandate that companies join multiemployer pension plans as part of a collective bargaining agreement?

Answer 6. We have not evaluated the use of arbitration boards and are therefore unable to comment on this issue.

Question 7. Do you believe that it is ethically correct for companies and their unionized employees be mandated to participate in "critically" underfunded pension plans that have no hope of ever becoming fully funded?

Answer 7. We have not studied the consequences of requiring employers to participate in critically underfunded multiemployer pension plans and are, therefore, unable to comment on the possible effects of such a mandate.

Question 8. Last year, Moody's, Barclay's, Standard and Poor's and Goldman Sachs all issued reports citing significant concerns with the multiemployer system. Moody's took the extra step and reviewed the Form 5500's of 126 larger plans to find out the extent of the underfunding situation. In addition, just last month the Financial Accounting Standards Board authorized a new project to increase footnote disclosure for companies that participate in the multiemployer system. Has GAO undertaken a similar effort to find out the extent of the underfunding?

Answer 8. As you know, we are conducting ongoing work on the funded status of multiemployer plans for another committee and plans to report on the funded status of multiemployer pension plans later this year.

Question 9. Despite the EFAST system being implemented at the Department of Labor, there is a significant lag time from the end of a plan year to the filing of Form 5500's by plans with the Department. Should the PBGC be given authority to obtain financial information from a multiemployer plan, similar to the information PBGC can collect under ERISA Section 4010 for single employer plans, if it knows or suspects that a multiemployer plan is in endangered or critically underfunded status?

Answer 9. We have commented on the timeliness and content of Form 5500 data in previous reports and have been longstanding advocates of increased transparency and timely, understandable information regarding pensions.[1] Under current rules,

[1] See GAO, *Private Pensions: Additional Changes Could Improve Employee Benefit Plan Financial Reporting* GAO–10–54 (Washington, DC: Nov. 5, 2009); *Private Pensions: Government Actions Could Improve the Timeliness and Content of Form 5500 Pension Information* GAO–05–491 (Washington, DC: June 3, 2005); *Private Pensions: Timely and Accurate Information Is Needed to Identify and Track Frozen Defined Benefit Plans* GAO–04–200R (Washington, DC: Dec. 17, 2003); and *Employee Benefit Plans: Efforts to Streamline Reporting Requirements and Improve Processing of Annual Plan Data* GAO/HEHS–98–45R (Washington, DC: Nov. 14, 1997).

multiemployer plans must notify PBGC when they are in critical status (equal to or less than 80 percent funded) or endangered status (less than 65 percent funded). We plan to address data availability and timeliness in the ongoing work we are conducting for another committee.

Question 10. Back in 2005, I held a hearing on a fraud scheme perpetrated by Capital Consultants of Oregon on several multiemployer pension plans. Recently, the New York Local 147, the Sandhogs, was a victim of a $42 million fraud. Both of these frauds were done by insiders or close consultants to the multiemployer pension plans. In addition, the Department of Labor's Inspector General's Office has highlighted many similar type frauds in recent years. Has the GAO undertaken any review of frauds perpetrated on multiemployer pension plans?

Answer 10. We have not undertaken any review of frauds perpetrated on multiemployer plans. We currently have no plans to undertake such a review. However, at your request, and at the request of the committee, in 2007, we issued a comprehensive review of the Employee Benefit Security Administration's (EBSA) enforcement program.[2] In that review, we found that EBSA had made improvements to its enforcement program, but additional actions were needed to enhance its oversight efforts. Specifically, we recommended that EBSA evaluate opportunities to conduct a more targeted, risk-based approach to enforcement, identify areas where its enforcement efforts are hampered by a lack of access to timely data, coordinate more formally with the Securities and Exchange Commission, and evaluate factors that may be affecting its ability to attract and retain qualified enforcement staff.

Question 11. With respect to the New York Local 147, the fraud took place over a 7-year period of time. The current plan administrator was the administrator for almost as long as the fraud took place. In addition, New York Carpenters Local 280 filed a suit against its trustees for being too heavily invested in one hedge fund in violation of the prudent investment standards of ERISA. Has the GAO undertaken any review of the knowledge and qualifications of administrators and trustees of multiemployer pension plans?

Answer 11. We have not undertaken any review of the experience and qualifications of administrators and trustees of multiemployer plans.

Response to Questions of Senator Enzi by Thomas C. Nyhan

Question 1. What are the ramifications to the Central States plan, the companies contributing to the plan and to the workers and retirees if nothing is done?

Answer 1. Required contribution rates for trucking employers in the Central States Pension Fund have doubled since 2003 and are set to reach $380 per week, or almost $9.50 per hour, for each active employee by the end of the current collective bargaining agreement. In addition, benefit accrual rates were cut in half, and various benefits were frozen, in 2004. Nonetheless, the Pension Fund is projected to be insolvent in the next 10 to 15 years. When that occurs, the PBGC will be required to provide financial assistance to the Fund to pay for the benefits of *all* participants up to the PBGC guaranty level.

For both retirees and active workers, the insolvency of the Pension Fund will mean that retirement benefits that they depended on will be reduced even further. Under the current guarantee rules, a participant with 30 years of covered service will begin to lose benefits if his or her pension exceeds $3,960 per year, and the maximum guaranteed benefit is $12,870 per year. Active workers also will continue to see their jobs imperiled as their employers react to increases in required contributions to the Pension Fund.

Faced with escalating contribution rates and substantial benefit losses, financially strong employers have a powerful incentive to withdraw from the Plan as soon as possible, and their active workers have an incentive to agree to their withdrawal. Thus, the pension plan's *long-term* problems result in employer withdrawals now that seal the pension plan's fate *forever*.

This is not mere theory. Seventy major employers in the Pension Fund have bargained out of the Fund or gone bankrupt in the last 24 months. YRC Worldwide, which was the largest employer in the Pension Fund until July 9, 2009, has temporarily suspended contributions under all of its multiemployer plans, costing the Pension Fund nearly one-third of its ongoing contributions. YRC is due to resume contributions to its multiemployer plans on January 1, 2011. If, instead, YRC fails, the effect on the multiemployer plans to which it contributed, and on the financial via-

[2] See GAO, *Employee Benefit Security Administration: Enforcement Improvements Made but Additional Actions Could Further Enhance Pension Plan Oversight* GAO-07–22 (Washington, DC: Jan. 18, 2007).

bility of the remaining employers in those plans, will be devastating. At YRC alone, approximately 36,000 jobs hang in the balance in 2010, and at many of the remaining employers, tens of thousands of jobs are immediately at risk, as well. Many of the multiemployer plans to which YRC contributed will face insolvency, jeopardizing hundreds of thousands of retirees' pensions.

Those employers that cannot afford to withdraw or otherwise continue to contribute to the Pension Fund will find that they are at a severe competitive disadvantage against those companies that do not have to contribute to the Pension Fund or a similar plan. In many instances, these contributing employers will be forced out of business, causing catastrophic job losses. These employer failures, combined with employer withdrawals, would accelerate the insolvency date of the Pension Fund.

Question 2. The Segal Group in its Winter 2010 survey found "data indicates, that over the next few years, 30 percent of the plans that are certified as green for 2010 could migrate into the yellow or red zones unless additional actions are taken." Do you believe that it is ethically correct for companies and their unionized employees be mandated to participate in "critically" underfunded pension plans that have no hope of ever becoming fully funded?

Answer 2. For most multiemployer plans, being in the red or yellow zone is not a permanent status. The Pension Protection Act, which instituted this zone status concept, gives most of these plans the tools to eventually become fully funded.

For a very small number of plans like the Pension Fund, however, the tools provided by the PPA do not alone provide a way to financial stability. These are funds where a substantial number of employers have gone out of business without paying their share of the plan's unfunded benefits. To the extent that the Pension Fund cannot collect the full amount of withdrawal liability from an employer that went out of business, the remaining employers assume responsibility for funding the unpaid amount. In effect, the remaining employers have to fund the benefits of employees that never worked for them (and, in many cases, actually worked for a competitor). For these funds, the partition proposal is the only way to financial health, because it removes from the plan liability for pensions of participants whose employers left the fund without fully funding their share of liability.

Without the ability to have these liabilities partitioned, a contributing employer is faced with a Hobson's choice: continue to make unaffordable contributions to the plan to pay for the benefits of individuals that never worked for the employer (and probably worked for a competitor), or withdraw from the plan and trigger unaffordable withdrawal liability. Partition provides a third choice where, after the partition of a multiemployer plan, the employer can remain in the plan and make more affordable contributions to the plan that will fund the retirement benefits of its employees.

There is no mandate that an employer participate in a multiemployer pension plan—participation in a multiemployer plan is the result of the collective bargaining process between the companies and a union. That said, many employers joined plans like the Pension Fund before Congress deregulated the trucking industry in 1980 and before Congress imposed employer withdrawal liability, also in 1980. Since 1980, over 600 trucking companies in the Pension Fund have filed for bankruptcy and thousands of others have simply gone out of business without filing for bankruptcy or paying for their share of the Fund's vested benefits. The remaining approximately 2,000 employers, 9 out of 10 of whom have fewer than 50 employees, do not believe it is ethically correct to require them to continue to sacrifice their businesses and their employees' jobs to pay for the pensions of their defunct competitors' employees. They feel this is especially inappropriate in view of the fact that the PBGC has for over 35 years assumed the cost of guaranteed benefits when a corporation can no longer afford to maintain a single-employer defined benefit plan.

Question 3. Despite the EFAST system being implemented at the Department of Labor, there is a significant lag time from the end of a plan year to the filing of Form 5500's by plans with the Department. Should the PBGC be given authority to obtain financial information from a multiemployer plan, similar to the information PBGC can collect under ERISA Section 4010 for single employer plans, if it knows or suspects that a multiemployer plan is in endangered or critically underfunded status?

Answer 3. Under the PPA, a multiemployer plan must notify the PBGC, as well as plan participants and beneficiaries and bargaining parties, when it will be in critical or endangered status for a plan year. This notice is given not later than 30 days after the date of the annual certification of the plan's status by the plan's actuary, which, in turn, must be made no later than the 90th day of each plan year. Consequently, the PBGC will know whether a multiemployer plan is in critical status within the first 120 days of the plan year in question—a point in time far earlier than the ERISA § 4010 reporting date for single employer plans. PBGC can then review the Form 5500 when it is filed after the end of the plan year, or ask the plan to provide information relevant to its situation. We note in this regard that the Pension Fund has provided PBGC volumes of information in response to PBGC requests, and has volunteered additional information. In the unlikely event a multiemployer plan refuses to provide the PBGC information it needs, the PBGC has subpoena power under section 4003 of ERISA.

In its single-employer plan program, the PBGC sometimes initiates an involuntary termination of a plan to prevent an increase in potential losses for the agency. PBGC needs information quickly for this purpose, because the sooner that the PBGC receives information about the financial status of the plan, the sooner the PBGC can act to protect itself. The PBGC does not initiate involuntary terminations of multiemployer plans, so the earlier submission of information by a multiemployer plan will not provide the PBGC with any additional tools to mitigate additional liabilities.

We believe that, under current law, the PBGC receives information about the financial status of multiemployer plans in a timely fashion and that additional information similar to that required by the PBGC of single employer plans is not necessary. Requiring multiemployer plans to make Section 4010 filings would impose a substantial additional cost on multiemployer plans without conferring a substantial additional benefit on the PBGC (just as would be the case if single employer plans were required to make the filings multiemployer plans must make under the PPA). While it is important that the PBGC be informed about the funding status of the multiemployer plans, the costs of requiring additional financial information must be weighed against what the PBGC can do with that additional information.

Question 4. Currently, S. 3157 contains provisions that allow for the partition to happen but only supplies monies to cover the first 5 years. In year 6 and on into the future, the PBGC is expected to take over the costs from its Multiemployer Trust Fund and if that runs out of money then from PBGC's other trust fund and eventually the costs are backed by the Federal Government. Since both PBGC trust funds are running deficits, why should the American taxpayer be on the hook for benefit costs of these retirees as envisioned by S. 3157?

Answer 4. The PBGC *already* is legally obligated to provide financial assistance to multiemployer plans when they become insolvent. That financial assistance results in plan participants' retirement benefits being guaranteed up to the PBGC's multiemployer guaranty amount. While the PBGC's guaranty is not a general obligation of the Federal Government, Congress has never allowed an agency of the Federal Government to default, and to do so here would cost hundreds of thousands of retired U.S. citizens' retirement income upon which they depend.

The partition proposal envisioned by S. 3157 would reduce, not increase, the PBGC's ultimate liability for these multiemployer plans. Without the partition, the Pension Fund will become insolvent in 10 to 15 years and the PBGC will have to step in and provide financial assistance to fund the guaranteed pensions of *all* of the participants in the Pension Fund. With the partition, the PBGC will be obligated only to fund the partitioned portion of the plan and—relieved of the cost of providing pensions to the former employees of defunct employers—the remaining Pension Fund is projected to remain solvent throughout the 30-year projection period. Thus, with partition, the PBGC will not have to provide financial assistance to all of the participants in the plan. We believe that the U.S. taxpayer is better served by having financially healthy multiemployer plans and lower claims on the PBGC.[1]

RESPONSE TO QUESTIONS OF SENATOR ENZI BY RANDY G. DEFREHN

Question 1. What are the ramifications to the Central States plan, the companies contributing to the plan and to the workers and retirees if nothing is done?

Answer 1. Failure to act in a timely way will have significant negative implications for all of the plan's stakeholders and the PBGC. The first group to be immediately affected will be the contributing employers, whose increased contributions to meet the terms of the plan's rehabilitation plan would render them non-competitive. Because contributions to the plan are a function of hours worked, when employers

[1] We do not believe that S. 3157 was intended to back PBGC's multiemployer guarantee with assets in PBGC's single-employer trust fund and, in any event, we do not believe that would be appropriate.

are unsuccessful in bidding for work, a decline in contributions that fund the plan would further exacerbate the decline in invested assets. The largest and most visible such company is YRCW. Assuming that it returns to the fund as a contributor in January, its financial status is reportedly so tenuous that the expected contribution increase could be sufficient to drive it into bankruptcy, costing over 40,000 employees not only their benefit security, but their jobs as well.

Furthermore, were YRCW and other similarly situated employers to exit the plan without sufficient assets to pay their withdrawal liability (as would likely be the case in bankruptcy) the unfunded liabilities would be redistributed among the remaining employers. As the second largest multiemployer plan in the Nation, inaction would have implications that reach far beyond that plan alone. The thousands of employers that contribute to the Central States plan cover a broad array of industries in addition to trucking including (among others) retail food, agriculture and dairy, and construction, many of which have historically thin profit margins. Many also contribute to other plans in their primary industries, more than a few of which also will require contribution increases to meet their own funding targets. In combination, these additional costs will further threaten the competitiveness of such common employers, if not their financial viability. Under existing law, to the extent the remaining employers are unable to fund these obligations these liabilities will become the responsibility of the PBGC once the plan becomes insolvent.

Were the Casey bill to be promptly enacted, it would protect the participants and employers of that portion of the plan that would be partitioned by enabling them to continue to participate in a viable plan, receive benefits as earned and keep the remaining employers from paying presumably massive withdrawal liability payments. Moreover, because these are liabilities that otherwise must be paid by the PBGC, it would *reduce* the agency's liabilities accordingly. As noted above, however, in order for these objectives to be met action will need to be taken promptly, before the remaining employers decide to exit the plan through individual withdrawals or through a mass withdrawal.

Question 2. The Segal Group in its' Winter 2010 survey found, "data indicates, that over the next few years, 30 percent of the plans that are certified as green for 2010 could migrate into the yellow or red zones unless additional actions are taken." Do you believe that it is ethically correct for companies and their unionized employees be mandated to participate in "critically" underfunded pension plans that have no hope of ever becoming fully funded?

Answer 2. While the findings of the Segal Company indicate a continued decline in the funded status of plans "*unless additional actions are taken*" the purpose of the Pension Protection Act (PPA) was precisely to ensure that plans do take action and that they use the tools with which they can successfully emerge from either endangered or critical status. For the past 60 years multiemployer plans have provided secure retirement benefits to tens of millions of working Americans and have experienced fluctuating funding levels. As these plans are funded pursuant to contributions negotiated in collective bargaining through contracts that span from 3 to 5 years, the parties have traditionally allocated additional contributions to shore up the funded positions of plans as economic conditions required. This practice is further evidenced by their behavior following the market contraction or, as it is often described the bursting of the "tech bubble" in the early part of this decade. However, in an overly aggressive response to the collapse of the steel industry, airline deregulation and bankruptcy rules that made it far too easy for companies to off-load their pension obligations to the PBGC, all of which caused a number of large *single employer plans to default to the PBGC, the PPA set overly aggressive short-term funding targets for the long-term obligations of funding future benefits.*

Despite suffering losses ranging from 15 percent to 25 percent, plan fiduciaries and bargaining parties rolled back benefits and increased funding sufficiently that the average funded position of multiemployer defined benefit pension plans leading into the 2008 economic crisis was greater than 90 percent.

In fact, looking back to the passage of ERISA's pre-funding requirements in 1974, most plans had been operated on a pay-as-you-go basis with few assets set aside to fund future benefits. Many had forecast at the time that the combination of the pre-funding requirements and the subsequent imposition of withdrawal liability would spell the end of defined benefit plans generally and multiemployer plans, specifically. Nevertheless, through careful attention to benefit and administrative expense management and prudent investment policies, unfunded liabilities became a distant memory for nearly all plans by the end of the 1980's and by the mid-1990's over 70 percent of all multiemployer plans were overfunded and had to increase benefits to protect the current deductibility of employer contributions that were otherwise required by collective bargaining agreements.

With rare exceptions, nearly all of which can be traced to influences beyond the structure of multiemployer plans, these plans are in no danger of failing to meet their ongoing obligations to pensioners and beneficiaries, and they will be able to meet their obligations to active employees, many of which will not become payable for decades, if they are given additional time along the lines of the funding relief signed into law last week by the President. In fact, it is only reasonable to expect the parties to take all reasonable actions to return these plans to a firm financial footing.

Finally, with respect to whether it is ethical to require employers and employees to continue to participate in critical status plans with no hopes of becoming fully funded, the PPA sets forth specific procedures for plans that are not capable of emerging from critical status that would defer the date of insolvency and ERISA provides mechanisms for the withdrawal of any employer from a multiemployer plan which balances the need to fund promised benefits with an employer's ability to pay.

Question 3. Since both PBGC trust funds are running deficits, why should the American taxpayer be on the hook for benefit costs of these retirees as envisioned by S. 3157?

Answer 3. The point is that the PBGC already has responsibility to assume liabilities of insolvent plans that are unable to meet their obligations to plan participants. Inasmuch as S. 3157 provides for the partition of plans that by definition are projected to be insolvent, it does exactly the opposite, by enabling portions of the plan that, through partition, can remain solvent to remain the responsibility of the remaining contributing employers, thereby reducing the exposure of the PBGC.

Question 4. Despite the EFAST system being implemented at the Department of Labor, there is a significant lag time from the end of a plan year to the filing of Form 5500's by plans with the Department. Should the PBGC be given authority to obtain financial information from a multiemployer plan, similar to the information PBGC can collect under ERISA Section 4010 for single employer plans, if it knows or suspects that a multiemployer plan is in endangered or critically underfunded status?

Answer 4. Actually, the information regarding zone certifications (due within 90 days of the beginning of the plan year) from each plan determined to be in either endangered or critical status pursuant to the PPA is required to be shared with the PBGC. This information is based on the most current information and is prepared even before the plan audit can be completed. The potential for inconsistencies between zone certification data and audited numbers to be reported on the Form 5500 were raised during the development of the PPA, but the quest for current information was deemed more important than its accuracy. No more current information is available, therefore, any additional reporting requirements would be unlikely to produce any more reliable information.

Question 5. In your testimony you came out strongly in favor of S. 3157 even though the partition relief would only apply to 2 or 3 pension plans. Over the past couple of years, nearly 400 letters have been filed by plans with the Department of Labor indicating that the plans are in endangered or critical status. Will we see more plans seeking partition relief in the future? How much say should the PBGC have in the approval of mergers and alliances as contemplated by S. 3157? Should the PBGC have the authority to veto any merger or alliance that is not beneficial?

Answer 5. While there may be a few smaller plans that ultimately seek partition, it is unlikely this will be a direction chosen by many plans. The criteria have been intentionally designed quite narrowly and access is only available to plans that are projected to be insolvent. While plans have fallen into the endangered and critical status, they have done so as a direct result of the decline in the investment markets (see: "*Multiemployer Pension Plans: Main Street's Invisible Victims of the Great Recession of 2008*" by Randy DeFrehn and Joshua Shapiro, April 2010). Because of their statutory joint management structure, both employers and the union representatives in these plans have a vested interest in their long-term viability and success. As noted above, plans are likely to regain their financial footing as the economy improves and both interest rates and investment returns begin to return to more normal historical rates.

With respect to mergers and alliances, plans considering mergers must be careful to comply with their fiduciary obligations (including the personal liabilities which fiduciaries assume as part of their responsibilities) and are unlikely to propose such an arrangement if it could be construed as detrimental to either of the pre-merger plans. Additionally, the PBGC currently has the ability to review proposed mergers and raise concerns if they determine the merger to be potentially problematic. For the types of mergers or alliances envisioned in S. 3157 which could directly involve having the agency provide financial assistance in order to make the merger of a plan that would, but for the merger, become insolvent and therefore a plan for which the PBGC will ultimately assume full responsibility for any unfunded liabilities, the agency should have both input and the authority to facilitate such a merger when it is determined to be in the best interests of the participants and the PBGC.

Question 6. The Employee Free Choice Act of 2009, S. 560, would allow for the use of an arbitration board if a collative bargaining agreement has not been reached within a certain period of time. Should an arbitration board be allowed to mandate that companies join multiemployer pension plans as part of a collective bargaining agreement?

Answer 6. While I am not directly familiar with nor do I have any position regarding *The Employee Free Choice Act of 2009* as proposed, if such a provision were to survive the legislative process, presumably the arbitrator would have to make his/her decision based on the facts and circumstances presented by the bargaining parties and the specifics of the plan in question. Whereas the "free-look" provisions provided under ERISA and offered by many plans could enable a new employer to make contributions to the plan on behalf of covered participants for a period of up to 5 years without assuming any broader, long-term liabilities, it may be conceivable that an arbitrator could require contributions for shorter periods without exposing the employer to unnecessary risk. The intent of ERISA's free-look provisions is precisely to enable employers to gain experience with multiemployer plans without assuming that additional risk.

For other plans, especially construction industry plans for which the adoption of "free-look" is optional, it is difficult to envision a situation wherein a competent arbitrator would order an employer to assume unreasonable liabilities as part of an initial collective bargaining agreement; however, it seems reasonable that as the statute moves through the legislative process, safeguards could be included to require arbitrators to take such factors into consideration.

RESPONSE TO QUESTIONS OF SENATOR ENZI BY JOHN MCGOWAN (PBGC)

Question 1. What statistical analysis has the PBGC conducted on S. 3157 regarding the proposed Central States partition, and if no analysis has been done, then why?

Answer 1. We have done extensive actuarial analysis of the Central States proposal, including building a special model to help us understand the financial impact of the proposal. PBGC's current multiemployer deficit is less than $1 billion. As proposed, S. 3157 could increase this deficit very substantially.

In light of the potential impacts, we are conducting extensive, in-depth analysis that will permit us to test the assumptions and the estimates that Central States and others have provided to:

- Reproduce their results;
- Appraise the reasonableness of their analysis; and
- Use our model to generate additional results if there are areas where we have differences of opinions about their assumptions or methods.

Question 2. At the hearing, Mr. Nyhan for Central States stated that they were in the process of supplying all of the information requested by the PBGC to help the agency undertake its analysis of partition proposal and to make Central States' actuary available to answer PBGC staff questions. Does the PBGC have any outstanding data/information requests with Central States? Has the PBGC talked with Central States' actuary?

Answer 2. Yes. We initially met with Central States, its outside counsel, and its consulting actuaries at the end of April to discuss their analysis. We subsequently made several information requests to Central States which they responded to. In early June, we requested an opportunity to meet with the plan's consulting actuaries, The Segal Company. Several PBGC actuaries and the Segal actuaries responsible for the analysis met on June 24 in New York in order to better understand the data, assumptions, and methods that they had used. Some progress was made and additional information was requested relative to: (a) the sensitivity of the results to certain key assumptions, (b) the plan's projected cash flows and their key components, and (c) a consolidated seriatim data-base of participants in the on-going plan and the partitioned plan. We have recently received item (c) and expect to have items (a) and (b) in the near future. We will then schedule another meeting of the actuaries later this month.

Question 3. Has the PBGC conducted an analysis of the effects of nearly doubling, retroactively, the benefits insurance coverage for multiemployer pension plans participants taken over by the PBGC?

Answer 3. For non-partitioned plans, S. 3157 would increase the current maximum guarantee of $12,870 per year to $20,070 per year for a participant with 30 years of service. To finance this increase, the bill would raise the per participant annual premium rate from $9 in 2010 (indexed), to $16 in 2011 (not indexed). PBGC's projections indicate that this premium increase would not cover the cost of the guarantee increase; the projections suggest that the premium should increase to approximately $18–20 (indexed) to cover the cost.

PBGC's projections do not take into account the possibility that increasing benefit guarantees may lower the incentives for plans to remain in the multiemployer program, particularly those plans that provide benefits between the current and proposed higher guarantee levels. In such cases, it would be more costly to the bargaining parties to negotiate higher contributions than to terminate the plan knowing that all or most of the participants' benefits will be guaranteed.

Question 4. Recently, the PBGC released its Annual Report stating that the agency's possible liability exposure to multiemployer plan underfunded could run as high as $4 billion by 2019. Will the premium increases in the bill be enough money to cover these possible anticipated losses?

Answer 4. In attempting to clarify the projected financial position of the multiemployer program, PBGC develops a range of possible scenarios. The 2009 Annual Report states that "*The* ***median*** *net-position outcome is a $2.4 billion deficit in 2019 (in present-value terms). This means that half of the simulations show either a smaller deficit than $2.4 billion or a surplus, and half of the simulations show a larger deficit. The* ***mean*** *outcome is a $4.0 billion deficit in 2019 (in present value terms).*" Page 16 of the 2009 Annual Report also includes a distribution of the potential 2019 financial position for the multiemployer program. This distribution shows a wide range of possible outcomes. For example, 5 percent of the simulations show a deficit of at least $14.5 billion. At the other extreme, 5 percent of the simulations show a surplus of at least $0.3 billion.

The premium increase proposed in S. 3157 is designed to cover the cost of the increase in the maximum guarantee level in the legislation, not to cover the underlying deficit in the PBGC's multiemployer program.

Response to Questions of Senator Enzi by Norman P. Stein

Question 1. What are the ramifications to the Central States plan, the companies contributing to the plan and to the workers and retirees if nothing is done?

Answer 1. The answer to this is of course complex and depends in part on future events. The worst case problem would be that the remaining employers will shoulder an increasing financial burden to support the plan, placing enormous stress on them and perhaps bankrupting firms whose business would otherwise be profitable; a failure of the plan, with severe benefit reductions for participants; and a weakening of the PBGC's financial strength.

Question 2. The Segal Group in its' Winter 2010 survey found, "data indicates, that over the next few years, 30 percent of the plans that are certified as green for 2010 could migrate into the yellow or red zones unless additional actions are taken." Do you believe that it is ethically correct for companies and their unionized employees be mandated to participate in "critically" underfunded pension plans that have no hope of ever becoming fully funded?

Answer 2. This question raises interesting issues about the relationship between firms and organized labor; the obligations of firms and organized labor to older workers and retirees and to what extent those obligations terminate at the end of employment (and whether there is an implied debtor/creditor relationship because of the unfunded plan between the employer and retirees); the relationship between different age cohorts of workers to each other; and whether there was an implicit undertaking for some employers to take on industry-wide rather than firm-specific burdens. Also in the mix is the responsibility of current participating employers to other former contributing firms (some of which are now bankrupt).

Depending on how one resolves these issues, one could plausibly consider it ethically questionable for existing firms and current employees to continue to participate in the funds. The way I view these issues, I do not believe it is unethical. Let me explain at least part of my view: current workers presumably can leave employment if they believe that their individual wage packages are inadequate, whether because of their employer's funding obligations or other factors. If the employees can do better, I assume they will change jobs, unless perhaps they value the knowledge that their bargaining representative does not abandon individuals after they approach retirement age or after they retire. I believe it is ethical for employers to keep their implicit bargain to their former employees, even when they are legally free to breach that bargain. The more significant issue may be more economic rather than ethical: whether certain employers can survive if their financial obligations to the plan become too steep to afford wages (immediate and fringe) to current employees and legacy obligations to their plan. Of course tied into this is the PBGC's own status—there will be consequences to the PBGC if firms are not required to participate.

Question 3. Since both PBGC trust funds are running deficits, why should the American taxpayer be on the hook for benefit costs of these retirees as envisioned by S. 3157?

Answer 3. There are two responses to this question, one of which may require a comparison of different estimated costs and others may require some speculation about our national economy and the role played by industries that would receive assistance under the legislation. I also want to note that there were aspects of the legislation that I do not support—especially the notion that benefits of "orphaned" participants would remain fully guaranteed if the remaining participants in the remaining plan later have their benefits reduced under Title IV of ERISA.

The first response is whether the legislation (particularly if adjusted in the way suggested by the previous paragraph) will cost the PBGC more than if the plan becomes insolvent. If the legislation rescues the parent plan and the costs of the plan for the "orphaned" participants are lower than the costs of the overall plan failing, it will be a net cost saving.

The second response is that the costs might help preserve critical sectors of the economy—such as the transportation and mineral extraction—or at least spare the country substantial economic disruptions in these industries to the extent that future contribution obligations will result in a wave of corporate failures.

Question 4. Despite the EFAST system being implemented at the Department of Labor, there is a significant lag time from the end of a plan year to the filing of Form 5500's by plans with the Department. Should the PBGC be given authority to obtain financial information from a multiemployer plan, similar to the information PBGC can collect under ERISA Section 4010 for single employer plans, if it knows or suspects that a multiemployer plan is in endangered or critically underfunded status?

Answer 4. My initial thought is that this would be worthwhile, assuming that the PBGC would benefit from earlier information and that the informational benefit to the PBGC does not outweigh the additional administrative burden on the plans. I realize that this answer somewhat sidesteps the question, but the empirical information needed to give a more definitive answer is outside my areas of experience. My answer is a resounding, but highly qualified, yes.

Question 5. Just last month, you authored an article regarding pension funding relief for single employer plans. In that article you state,

> "A pension relief bill is the proverbial 'Dutch boy' plugging holes in the dike. It is a short-term solution for one small part of the long-term problem of the retirement insecurity that this Nation faces."

In your statement, you urge the repeal of the Pension Protection Act provision that stops benefit accruals for multiemployer pension plans that are critically underfunded, in the Red Zone. Generally, when I'm in a hole I stop digging when the hole is about to collapse on top of me. Why should benefits be allowed to accrue when there is no money to pay for them? And, as we heard previously that there are more retirees in the system than workers, who is going to pay for them?

Answer 5. I have three responses:

- First, the parties to the plan do have authority to stop accruals, but there are other ways to deal with plan underfunding. The government should not mandate cessation of accruals, but should leave the issue of how to deal with underfunded plans with the responsible parties. Sometimes the only option is to stop digging, but that only takes a plan amendment, not a government mandate.
- Second, and related, the law could be amended to provide that new accruals under a seriously underfunded plan will be permitted but not be guaranteed by the PBGC until such future time as the plan achieves a satisfactory funding level. This would allow employees to share the risks of plan underfunding without creating potential liability to the PBGC. It would also facilitate the employer and employees jointly assuming both the risk and reward of the firm's future performance, which in theory, at least, might enhance worker productivity and strongly align the inter-

ests of shareholders and workers. (Such an approach would have to be combined with a funding regime that assures that contributions are dedicated to amortize past liabilities until they reach a comfortable level of funding.)

I have previously spoken in favor of this approach, which protects the PBGC while allowing maximum bargaining flexibility to the firm and its workers. And of course, even if the law were so amended, the parties would still be free to amend a plan to eliminate future accruals if they wished. I have given some thought to how such legislation might be shaped and would be delighted to discuss these ideas with Senator Enzi or the committee,

- Third, parity suggests that if a cutback of accruals is automatic, then the benefits should automatically be restored in the future if the plan and firm's financial health sufficiently improve.

Question 6. Currently, S. 3157 contains provisions that allow for the partition to happen but only supplies monies to cover the first 5 years. In year 6 and on into the future, the PBGC is expected to take over the costs from its Multiemployer Trust Fund and if that runs out of money then from PBGC's other trust fund and eventually the costs are backed by the Federal Government. Since both PBGC trust funds are running deficits, why should the American taxpayer be on the hook for benefit costs of these retirees?

Answer 6. The PBGC is already on the hook for plan deficits if the plan fails. I have suggested in my answer to question 3 that partition might save the PBGC money in the long term, but this is an issue that can be financially modeled. And there may be ways of altering the partition proposal to mitigate the risk of future liabilities to the PBGC and Federal Government.

Question 7. The Employee Free Choice Act of 2009, S. 560, would allow for the use of an arbitration board if a collative bargaining agreement has not been reached within a certain period of time. Should an arbitration board be allowed to mandate that companies join multiemployer pension plans as part of a collective bargaining agreement?

Answer 7. I do not have a well-informed opinion on this question at this time. As a matter of labor law, though, the subject of pensions is a mandatory subject of bargaining and it might be inconsistent with the ideas behind the proposed mandatory arbitration and our existing laws on collective bargaining to carve from the arbitrator's jurisdiction what would otherwise be a mandatory subject for bargaining. It might also result in a firm deliberating delaying serious negotiation if it was important to the firm to avoid participating in a multiemployer plan, which could have an adverse overall effect on the collective bargaining process.

FOR THE RECORD FROM SENATOR ENZI

Mr. Chairman, last night we received a letter from the Associated Builders and Contractors voicing their concerns with S. 3157. In addition, we received a letter this morning signed by 34 trade associations and representatives of employers speaking in support of finding a solution to the multiemployer situation. I would request unanimous consent to add both letters to the hearing record.

ASSOCIATED BUILDERS AND CONTRACTOR, INC.,
ARLINGTON, VA 22203,
May 26, 2010.

Chairman HARKIN,
Health, Education, Labor, and Pensions Committee,
U.S. Senate,
Washington, DC 20510.

Ranking Member ENZI,
Health, Education, Labor, and Pensions Committee,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN HARKIN AND RANKING MEMBER ENZI: On behalf of Associated Builders and Contractors (ABC), a national association with 77 chapters representing 25,000 merit shop construction and construction-related firms with 2 million employees, we are writing to express our concerns with the "Create Jobs and Save Benefits Act of 2010" (S. 3157) scheduled for a hearing on May 27th in the Senate Health, Education, Labor, and Pensions Committee. If this bill is brought to the

Senate floor in its current form, ABC will consider the vote a "KEY VOTE" for our congressional scorecard.

S. 3157, while aimed at strengthening the current funding status of underfunded multi-employer pension plans, is a taxpayer bailout of deliberately underfunded rank and file union pension plans. Under this bill, the Pension Benefit Guaranty Corporation (PBGC) would have the authority to take over the pension obligations of employers who have withdrawn from the plans and pay the benefits out of taxpayer dollars.

While we realize how severely underfunded these pension funds are, we feel this problem was foreseeable and that the American taxpayer should not be forced to shoulder this economic burden. While the economic downturn has surely weakened these plans, multi-employer union plans have always been more commonly underfunded than non-union plans. According to a study done by the Hudson Institute, "Union Sponsored and Private Pension Plans: How Safe Are Workers' Retirements?" in 2006, even before the market crash, 6 percent of multiemployer pensions were fully funded, compared with 31 percent of single employer pensions. With the unemployment rate at 10.2 percent and the Federal deficit at an all-time high, forcing the taxpayer to clean up the mess of these pension funds is beyond the realm of fair.

ABC feels this is a free enterprise issue and one in which we should not turn to the government for help. We have already seen massive government bail outs for banks, insurance giant AIG, and automakers General Motors and Chrysler. All of whom were declared "too big to fail." Where does it end?

We feel that there are some potential alternatives to this bill instead of subjecting the American taxpayers to this additional economic burden. The following are some of those:

- Immediately freezing the troubled multi-employer pension plan to new entrants, followed by paying out the remaining assets amongst those already enrolled based on the length of time people have been invested in them.
- Amend the existing Employee Retirement Income Security Act (ERISA Secs. 4041, 4219 and 4281) provisions that allow termination of a multiemployer plan if all contributing employers of a plan withdraw (a mass withdrawal).
    - Employers who withdraw during the 3 years prior to the mass withdrawal are presumed to be part of the arrangement or agreement and are treated as if they had withdrawn in a mass withdrawal.
    - Allow an option of mass withdrawal to terminate a multiemployer plan with a demographic deficiency.
- If a multiemployer plan is in critical status and does not adopt a rehabilitation plan to provide funding levels and benefit cuts that will bring the plan out of critical status by the end of a 10-year period, which starts with the next collective bargaining agreement, then all parties to the collective bargaining agreement will be liable for funding related to excise taxes and penalties.
- Require yearly written notices to be issued to all participants and beneficiaries when the ratio of the number of retirees, beneficiaries of deceased participants, and terminated vested participants in a multiemployer plan to the number of the active participants in the plan for each such year is 3:1 or less.

Due to our concerns we will consider this a **KEY VOTE** for the 111th Congress if this bill comes to the floor for a vote in its current form. Thank you for considering our concerns with this legislation and we look forward to working with you on alternative options to S. 3157, the "Create Jobs and Save Benefits Act of 2010."

Sincerely,

GEOFFREY BURR,
Vice President, Federal Affairs.

U.S. CHAMBER OF COMMERCE,
May 27, 2010.

TO THE MEMBERS OF THE UNITED STATES CONGRESS: As employer organizations representing companies who participate in both single and multiemployer-defined benefit plans, we are writing to express our concern about misinformation that has been circulating regarding H.R. 3936, the Preserve Benefits and Jobs Act of 2009, and S. 3157, the Create Jobs and Save Benefits Act of 2010.

Recent press stories have referred to the proposals as a "union bailout" and to multiemployer plans as "union plans." However, this is not the case. *In fact, contributions to these plans are funded entirely by employers, not unions*.

As you may be aware, defined benefit plans have been negatively impacted by the recent financial crisis. Certain multiemployer plans, however, 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. Admittedly, this is a difficult problem that will require difficult solutions.

The provisions of H.R. 3936 and S. 3157 aim to correct problems associated with joint and several liability rules that govern these plans. Because of the nature of multiemployer plans, when one employer goes bankrupt, the remaining employers in the plan become responsible for paying the accrued benefits of all the workers—this is often referred to as "the last man standing." As the number of employer participants dwindles, employers remaining in the plan see their liabilities increase exponentially—forcing them to cover retirees that never worked for them. H.R. 3936 and S. 3157 aim to address this inadequacy in the law, making these plans more stable for both employers and employees.

We appreciate the work done by Representative Pomeroy, Representative Tiberi, and Senator Casey to bring this issue to the forefront and urge you to continue to work with them to find appropriate solutions.

In addition, we thank the Senate Health, Education, Labor, and Pensions Committee for holding a hearing on May 27th, entitled "Building a Secure Future for Multiemployer Pension Plans," which will allow for further discussion and debate on this issue.

Without a real resolution to this problem, 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.

Sincerely,

American Bakers Association; American Society of Association Executives; American Trucking Associations; Building Contractors Association of Westchester and Mid-Hudson, Inc.; Construction Industry Council of Westchester and Hudson Valley, Inc.; Eastern Contractors Association, Inc.; Edison Electric Institute; Engineering & Utility Contractors Association (EUCA); Food Marketing Institute; Mechanical Contractors Association of America (MCAA); Mechanical Contractors Association of Eastern PA Greater Delaware Valley; National Association of Manufacturers; National Association of Waterfront Employers; National Association of Wholesaler-Distributors; National Council of Farmer Cooperatives; National Electrical Contractors Association National Retail Federation; Newspaper Association of America; Printing Industries of America; Quality Construction Alliance; Service Contractors Association of Eastern PA Greater Delaware Valley; Society for Human Resource Management; The Associated General Contractors of America; The Association of Food and Dairy Retailers, Wholesalers and Manufacturers; The Association of Union Constructors (TAUC); The Bituminous Coal Operators' Association, Inc.; The Business Council of NYS; The Financial Services Roundtable; The Finishing Contractors Association; The Great South-Western Illinois Association of Plumbing-Heating-Cooling & Mechanical Contractors; The International Council of Employers of Bricklayers and Allied Craftworkers (ICE–BAC); The Sheet Metal and Air Conditioning Contractors' National Association; U.S. Chamber of Commerce.

March 31, 2010.

Hon. ROBERT CASEY,
U.S. Senate,
Washington, DC 20510–3804.

DEAR SENATOR CASEY: On behalf of our more than 650,000 employees, associates, and members throughout the United States, we are writing to express our appreciation for your leadership in introducing the *Create Jobs & Save Benefits Act of 2010* (S. 3157). More broadly, we are very grateful for your commitment in seeking a solution to the funding problems that confront a number of multiemployer pension funds.

Due to a combination of business, regulatory and demographic factors, some multiemployer pension funds have a large number of participants whose employers have gone out of business, leaving the remaining employers with the obligation to fund the benefits of participants (commonly referred to as "orphans") that never worked for these employers. For plans with large numbers of orphans, benefits payments greatly exceed contributions by the remaining employers *and the annual amount of retirement benefits paid to orphan retirees significantly exceeds the annual amount* *paid to retirees of the contributing employers*. The problems facing multiemployer plans with large numbers of orphans were exacerbated by the steep stock market decline in 2008 and the current economic crisis. Because of the investment losses suffered in 2008, these plans are in crisis and will never recover, jeopardizing the pensions of many Americans.

For the better part of the past 30 years, higher investment returns and increased employer contributions funded the benefits of these orphans and kept these plans solvent. The market crash of 2008 destroyed any hopes of permanent solvency for these funds. Today's status quo is unsustainable. Employers are being required to divert funds that could be invested in creating jobs and growing their businesses because of rising multiemployer pension obligations attributable to orphan retirees who never worked for them. Most of these employers contribute to several multiemployer plans, and the financial strain on an employer due to the failure of even one multiemployer plan could have a catastrophic domino effect on other pension plans.

Your legislation will allow a multiemployer plan to "partition" a plan and transfer to the PBGC the responsibility for the vested benefits of orphan retirees of employers that have either become bankrupt or otherwise gone out of business without paying its full share of withdrawal liability. To benefit from this proposal, the plan must transfer to the PBGC assets sufficient to pay the retirement benefits transferred in the partition for a period of 5 years. The PBGC's benefit guaranty for orphan retirees whose benefits are transferred to the PBGC would be increased to fully protect the hard-earned pensions of plan participants.

Your legislation will create and save jobs. It will provide retirement security to the 10.4 million participants of the 1,500 multiemployer pension plans in the United States. It is supported by both businesses and labor unions. Your legislation is needed now.

Again, we appreciate your leadership on S. 3157 and look forward to working with you to advance this legislation.

Respectfully submitted,

ASSOCIATED WHOLESALE GROCERS, INC.; CONAGRA FOODS, INC.; DAIRY FARMERS OF AMERICA; DEAN FOODS; HP HOOD LLC; KELLOGG COMPANY; LAND O'LAKES, INC.; PRAIRIE FARMS DAIRY; SARA LEE CORPORATION; SCHNUCK MARKETS, INC.; SUPERVALU; THE KROGER CO.

YRC WORLDWIDE INC.,
OVERLAND PARK, KS 66211,
March 22, 2010.

Hon. ROBERT P. CASEY, JR.,
SR–393, Russell Senate Office Building,
Washington, DC 20510.

DEAR SENATOR CASEY: On behalf of our approximately 40,000 employees, I write to thank you for introducing the Create Jobs and Save Benefits Act of 2010. Enactment of your legislation is vital to preserving good-paying jobs for hundreds of thousands of workers, maintaining pension benefits for hundreds of thousands of retirees, and helping our company and other companies in the trucking, grocery, and warehousing industries meet our pension obligations to our employees, the majority of whom are members of the International Brotherhood of Teamsters. We are grateful for your support and endorse your legislation without reservation.

Why is this legislation so important? Prior to the start of the recession, our company had delivered record earnings and operating margins. Since the freight recession began in the second half of 2006, however, we have gone from producing strong earnings to significant losses. In this exceptionally difficult business environment, YRCW now faces three inter-related problems in meeting our pension obligations: We have been funding the benefits of hundreds of thousands of workers who never have worked for YRCW; the multiemployer plans to which we have been contributing have suffered significant investment losses; and we face a worsening demographic challenge as fewer workers support the pension obligations of more and more retirees. Given our significant pension obligations, the downturn in business volume in the current economic environment has had especially adverse consequences for the company. In short, our contribution burden has now grown to an unsustainable level as our business continues to suffer from the global economic meltdown.

By establishing a mechanism by which certain of the plans to which we contribute can address the ongoing funding obligations for non-sponsored retirees, your bill addresses the central challenge facing these plans. By requiring qualifying plans to contribute sufficient assets to fund the liabilities of these individuals for the first 5 years, your bill will ensure that help can be provided at no cost to American taxpayers during this period. By addressing the funding obligations sponsoring companies face, you have given us a basis to move forward to rebuild our business to put more people to work.

We want to especially commend Will Hansen and Richard Spiegelman of your staff, who have worked with our company and other affected parties to make sure the legislation would address our core needs. In short, they have produced legislation that will create jobs and save benefits for individuals in Pennsylvania and throughout the country.

We look forward to working with you to secure enactment of the bill this year.

Sincerely yours,

DANIEL J. CHURAY,
Executive Vice President,
General Counsel and Secretary.

[Whereupon, at 3:58 p.m., the hearing was adjourned.]

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