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CHALLENGES FACING MULTIEMPLOYER PENSION PLANS: REVIEWING THE LATEST FINDINGS BY PBGC AND GAO

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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CHALLENGES FACING MULTIEMPLOYER PENSION PLANS: REVIEWING THE LATEST FINDINGS BY PBGC AND GAO

Tuesday, March 5, 2013
U.S. House of Representatives
Subcommittee on Health, Employment, Labor, and Pensions
Committee on Education and the Workforce
Washington, DC

The subcommittee met, pursuant to call, at 10:00 a.m., in room 2175, Rayburn House Office Building, Hon. David P. Roe [chairman of the subcommittee] presiding.

Present: Representatives Roe, Wilson, Guthrie, Brooks, Messer, Andrews, Scott, Hinojosa, Tierney, and Wilson.

Also present: Representatives Kline and Miller.

Staff present: Andrew Banducci, Professional Staff Member; Katherine Bathgate, Deputy Press Secretary; Casey Buboltz, Coalitions and Member Services Coordinator; Ed Gilroy, Director of Workforce Policy; Benjamin Hoog, Legislative Assistant; Marvin Kaplan, Workforce Policy Counsel; Nancy Locke, Chief Clerk/Assistant to the General Counsel; Brian Newell, Deputy Communications Director; Krisann Pearce, General Counsel; Nicole Sizemore, Deputy Press Secretary; Todd Spangler, Senior Health Policy Advisor; Alissa Strawcutter, Deputy Clerk; Mary Alfred, Minority Fellow, Labor; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; John D'Elia, Minority Labor Policy Associate; Daniel Foster, Minority Fellow, Labor; Richard Miller, Minority Senior Labor Policy Advisor; Michele Varnhagen, Minority Chief Policy Advisor/Labor Policy Director; and Michael Zola, Minority Deputy Staff Director.

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

Good morning. I would like to welcome our guests and thank our witnesses today for being here. This is the latest in a series of hearings examining the multi-employer pension system, and each time we have assembled a distinguished panel of witnesses to offer their unique experience and expertise on this very important topic. I am very pleased today is no different.

I would like to also note that throughout our oversight of multi-employer pensions, the committee has maintained a spirit of bipartisan cooperation. We are addressing difficult issues with no simple answers. As we continue examining the strengths and weaknesses of the system's—nation's pension system and begin discussing pos-

sible reforms, I hope we will do so with a sincere commitment to working together and advancing reforms that best serve the American people.

Since we last met, a number of headlines have announced key developments involving multi-employer pensions. In late January, the PBGC released three long-overdue reports that together offer a very detailed examination of the system. The facts they provide, however, are deeply troubling. Plans have $757 billion in benefit liabilities and a staggering $391 billion in unfunded obligations.

The reports also reveal roughly one out of every four plans is in "red zone" critical status, experiencing immediate and significant funding problems. Only 39 percent of participants are active employees, which confirms a disturbing demographic trend we have discussed during previous hearings. Additionally, there is a 90 percent chance the PBGC's multi-employer insurance program will be insolvent in less than 20 years.

The second round of news to attract our attention was the release by a report of a National Coordinating Committee of Multi-employer Plans. For over a year, members of the NCCMP's Retirement Security Review Commission worked diligently to try and craft reforms that tackle the structural problems plaguing the system and garner the support of both business and labor leaders.

Their report, entitled "Solutions, Not Bailouts" is further proof that there is no easy way to address the challenges facing the multi-employer pension system. The report also serves as an important reminder that common ground can be found when stakeholders work together in good faith and make tough choices. We will continue to carefully review their recommendations in the weeks ahead.

Finally, today we will be making some news of our own. In 2011, Chairman Kline asked the nonpartisan Government Accountability Office to examine the multi-employer pension system, including the effects of legal changes enacted by Congress in recent years.

While its report is not yet final, a representative from GAO is with us today to discuss their preliminary findings. The study provides an independent analysis of the PBGC's financial challenges and an overview of various policy proposals intended to prevent the future insolvencies of severely underfunded plans.

The GAO report also outlines the difficult choices plan trustees must confront as they try desperately to steer clear of insolvency. Too often the only options available to plans, such as steep increases in contributions employers pay or reducing workers' future benefits, can't arrest the steady decline of many plans.

Armed with the facts, we must begin charting a new and better course. Thousands of employers who participate in multi-employer pension plans are counting on us. Men and women searching for work and hoping these employers create new jobs are counting on us, and millions of workers and retirees who rely upon the multi-employer pension system for their future income security are counting on us

Again, I would like to thank our witnesses for being with us. I will now recognize my distinguished colleague, Representative Andrews, the senior Democratic member of the subcommittee, for his opening remarks.

[The statement of Chairman Roe follows:]

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

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Mr. ANDREWS. Thank you. Good morning, Mr. Chairman.

Good morning, colleagues.

Good morning, members of the panel. Good morning, ladies and gentlemen.

A few minutes ago the news came across that the Dow Jones industrial average passed its highest level in history.

Chairman, perhaps the hearing is some cause and effect there, I am not sure, but what I am sure of is that not all Americans have shared in that prosperity.

Incomes for families have been flat or shrinking. Pensioners are at risk. One of the challenges—the context in which we meet this morning is to discern a way that we can engender broad-based economic growth in our country so that many benefit from economic growth and not just a few.

One of the ways we need to do that is to bring needed improvements to the multiemployer pension plan system. A few years ago, that system was in grave, grave disrepair and trouble largely related to the financial crisis of 2008. There has been improvement since then.

The chairman went through the meaning of the terms green zone and yellow zone and red zone. As we meet this morning, we will hear information that 774 of the plans are in the so-called green zone, which means they are relatively healthy and self-sustaining, 212 are in the yellow zone, which means they need some help, but could go one way or the other, and then 319 are in the red zone, which means they are troubled and certainly require the attention of the committee. But one of the things I want to emphasize from the beginning is that the vast majority of multiemployer pension plans are actually quite healthy.

And the issue this morning is how to create a system where all of them become healthy, where pensioners can depend on those checks for the rest of their lives, where small businesses cannot be strangled by rapidly escalating contributions to those plans and/or withdrawal liability, which is a major problem for a lot of small businesses, and where we never reach the day, never reach the day where taxpayer assistance would even be a relevant issue.

There is no legal guarantee that taxpayers stand behind the Pension Benefit Guaranty Corporation, but I think recent years have shown us that there are moral hazards. There are moral suggestions that a widespread failure of financial institutions tends to yield government response. I never want to see the day when that becomes a relevant issue here in this space, and I think that we can avoid that day where such bailouts would never even have to be discussed.

In my mind, there are four elements to achieving that result. The first is the committee does have to look at that premium structure of the PBGC, and its ability to raise revenue and reduce the $27 billion projected deficit that the chairman mentioned.

Second, we have to look at creative but prudent financing mechanisms where multiemployer pension plans can find a way to amortize their existing obligations over a period of time and minimize the short-term impact of those contributions.

Third, we have to look as the bipartisan group has looked at, that the chairman mentioned, at very difficult, often controversial changes within plans that make the plans healthier through structural reform. This is a very difficult thing to achieve, and I commended the stakeholders who come together in this process and had a very important and I think necessary discussion.

And then finally, something the chairman has mentioned before that I don't want us to forget. We are all hopeful that good times

will once again return to our economy and to multiemployer plans. Presently, ERISA plans have an artificial ceiling on contributions they may receive in those good times, and there were occasions in the late 1990s when both multiemployer plans and single-employer plans were in a position to make larger cash contributions in given years.

Because of these artificial ceilings, they were not permitted to. I think, although it also involves the jurisdiction of the Ways and Means Committee, I think one of the issues we need to look at is removing those ceilings so that in good times, plans that are well-managed can save for the rainy-days event that ultimately come, and I think, frankly, that this ability to contribute in good times above and beyond the minimum and above and beyond the ceiling should extend to all ERISA trusts, including health trusts as well as pension trusts, so that an employer or group of employers can be even healthier down the line.

This is a solvable problem. It is a solvable problem, and I commend the chairman for approaching this in a very bipartisan, fact-driven method, evidence-driven method. I am confident that this morning's hearings will add to that record and I look forward to hearing from the witnesses, and even more importantly, working with the witnesses and the stakeholders and my colleagues on the subcommittee to fashion a remedy that will make pensioners more secure, employers more prosperous, and taxpayers more immune from any problems of this problem in the future. Thank you.

Chairman ROE. I thank the gentleman for yielding, and I have never seen a pension plan complain about having too much money. I agree with that.

So pursuant to Committee Rule 7-C, all members will be permitted to submit their written statements to be included in the permanent hearing record and without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted for the official hearing record.

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

First, the Honorable Joshua Gotbaum is the director of the Pension Benefit Guaranty Corporation, PBGC, where he has served since 2010. As director, he is responsible for the agency's management, personnel, organization, budget, and investments. Welcome back, Director.

Mr. Charles Jeszeck is the director of Education, Workforce, and Income Security Issues at the Government Accountability Office in Washington, D.C. He has been responsible for numerous GAO reports on government, on the retirement issues including defined benefit and defined contribution plans and PBGC. Welcome.

Mr. Anthony Mark Perrone is International Secretary Treasurer of the United Food and Commercial Workers International Union here in Washington. His responsibilities include monitoring the finances of the International Union as well as the stewardship of several pension plans.

Mr.—oh, okay. Okay.

Mr. Force is the president of Force Construction Company in Columbus, Indiana. He will testify on behalf of the Associated Gen-

eral Contractors of America and the Indiana Construction Association. Welcome, Mr. Force.

Before I recognize you to provide your testimony, let me briefly explain the lighting system. It is pretty simple. You have 5 minutes to present your testimony. When you begin, the light in front of you will turn green; 1 minute left, it will turn amber. When your time has expired, the light will turn red. At that point, I will ask you to wrap up your comments as best you are able. After everyone has testified, members will each have 5 minutes and as stated, the chair will try to limit himself to 5 minutes.

Mr. ANDREWS. See, just like the pensions, no one should be in the red zone. That is what he means. [Laughter.]

Chairman ROE [continuing]. Not in the red zone. Including the members, I might add.

Mr. Gotbaum?

STATEMENT OF HON. JOSHUA GOTBAUM, DIRECTOR, PENSION BENEFIT GUARANTY CORP. (PBGC)

Mr. GOTBAUM. Why do I think that was aimed at me?

Mr. Chairman, Dr. Roe, Mr. Andrews, members of the committee and subcommittee, thanks very much for holding this hearing. Since unlike the last time I was before this committee, you now have reports, testimony, other knowledgeable witnesses, et cetera, I am just going to try to summarize a few of the main points.

In many respects, multiemployer plans are just like other pension plans. Like other pension plans, they suffered from the downturns of the last decade. In the mid-90s, multiemployer plans were funded better than 90 percent. After the 2008 crash, the average was under 50 percent.

Also like other plans, since the crash, they have taken actions to restore their finances. Fortunately, and this is something of which this committee can be proud, Congress in the Pension Protection Act recognized that plans were in differing circumstances, that they needed flexibility, and you provided it.

As a result, as both of you said, most plans report they are recovering and will recover, but a minority are not. These are plans that are deeply distressed. They have few active employers left and cannot make up the underfunding for all retirees with the contributions of the few. These plans are asking Congress to provide even more flexibility than you did in the Pension Protection Act.

Importantly, many of their arguments are supported by healthier plans. They are supported by healthier plans because they know that the failure of one plan could cause employers to panic and withdraw from others.

The healthier plans are also asking for their own forms of flexibility. They want to be able to offer new kinds of plans to attract new employers and to keep the ones they have, and they want flexibility in withdrawal liability rules that hold the system together.

As always, primary responsibility for maintaining plans rests with the plans, with their trustees, their professionals—both management and labor—their unions, and their businesses, but government can help plans help themselves.

What can government do? Three things. First, as in 2006, we can start with the proposals developed by plans themselves; negotiated and thought through with their constituencies.

Second, again as in 2006, we can recognize that different plans have different needs, that they need flexibility to meet their own particular challenges.

Last, but as PBGC director, I hope not least, we can preserve ERISA's safety net—the PBGC.

As this committee knows, I have enormous respect for the professionalism, the knowledge, and the compassion of the people of the PBGC, but that is not enough. PBGC's multiemployer insurance program needs to be rethought. Since it was developed more than 30 years ago, the world has changed, but our program has not.

Unlike single-employer plans, PBGC generally cannot act until a multiemployer plan has completely run out of money, has become insolvent, and even then, we don't take over the plan, we just pay the bills.

Now plans do come to PBGC before they are insolvent. They propose partitions saying, PBGC: "We would like you to be responsible for orphan participants so that the active employers will stay in our plan. Or they propose that PBGC provide financial support for a merger so that the trustees of a strong plan are willing to merge with the weaker one."

However, PBGC's finances generally don't allow us to provide such financial support even when doing so would preserve plans. In fact, as both of you have noted, without additional resources, PBGC won't even be able to preserve ERISA's own safety net. As we reported in January, without changes, the multiemployer program itself will likely become insolvent within the next 10 to 15 years.

Now, these issues are complicated—pensions always are—but they are solvable. In 2006, this committee, working with the plans, with professionals, with business, with labor, with the PBGC, and with the other ERISA agencies, you tackled them. The next 2 years provides the opportunity to do it again.

As I told the committee in December—when I testified in December—the reports that we finally delivered to you—apologies for the delay—provide information, but not recommendations. We think the starting point for action, as it was in 2006, ought to be the proposals of the plans themselves.

Now that they are coming forward, we stand ready to join in the effort to analyze, to react, to provide our expertise and judgment, and to help preserve multiemployer plans for the millions who depend on them.

In closing, let me thank you again very much for your leadership. I look forward to hearing your views and answering your questions.

[The statement of Mr. Gotbaum follows:]

Prepared Statement of Hon. Joshua Gotbaum, Director, Pension Benefit Guaranty Corp.

Thank you for holding this hearing to continue discussions on efforts to strengthen multiemployer plans.

On January 29, 2013, the three ERISA agencies sent Congress a report required by the Pension Protection Act of 2006, P.L. 109-280 (PPA). The report provides information and analysis on the actions taken by multiemployer plans under PPA to

improve their funded status and the effects of those actions on the plans' financial health.

Also that day, PBGC sent to Congress two statutory reports on the agency's multiemployer insurance program, the Five-Year Multiemployer Report on premium levels and the FY 2012 Exposure Report on PBGC's potential exposure under the single-employer and multiemployer programs.

We hope these reports will be useful as this Committee evaluates the challenges that multiemployer plans face and the various options and proposals to address them.

As expanded upon below, the multiemployer system was designed more than a generation ago; the world has changed but the system has not. The challenges facing the multiemployer system are complex and somewhat different from those faced by single-employer defined benefit plans.

As with all pension plans, the last decade has seen many strains on pension funds and most multiemployer plans became underfunded. PPA and other legislation enacted since have provided much needed flexibility. Most of those plans have responded, taken advantage of self-help measures, and are on track to recover. This is, unfortunately, not true for all plans. Unless significant changes are made allowing them to take additional steps of self-help, a minority of multiemployer plans will fail.

However, there is no silver bullet. Different plans are in different circumstances, and they will need a diverse set of tools, options and solutions and the flexibility of when and how to apply them.

The PBGC, designed to be a safety net for failed plans, will also need changes if it is to fulfill its mission. Absent reforms, PBGC will continue to lack the tools to help plans improve and the resources to continue paying benefits for those that do fail.

With the PPA sunset at the end of 2014, the next two years provide an opportunity for multiemployer plans, their participants, businesses, unions, and professionals to work together with Congress and the Administration to develop approaches that are flexible and practical, and that facilitate self-help. As it did in 2006, Congress can provide the tools and authorities to help more than a thousand plans, hundreds of thousands of small businesses, and millions of American workers achieve a more secure retirement.

Why Multiemployer Plans are Important

Multiemployer defined benefit plans provide retirement security to more than 10 million participants and their families. Multiemployer plans help protect participants' retirement benefits. They provide pension portability, allowing participants to accumulate benefits earned for service with different employers throughout their careers. They pool longevity risk, which provides much lower-cost annuities than those available in the individual market, and they spread the risk of any individual employer's failure across many firms.

Benefits to Employers

Multiemployer plans have provided retirement annuities to millions of American workers for more than half a century. Among the advantages of this type of plan is that assets are pooled among employers in a single consolidated trust. Efficiencies of scale broaden and diversify investment opportunities and lessen the administrative and investment costs of operating a separate single-employer plan. Investment professionals manage the plans' assets, helping to reduce risks for contributing employers, employees, and retirees.

Importance to Small Businesses

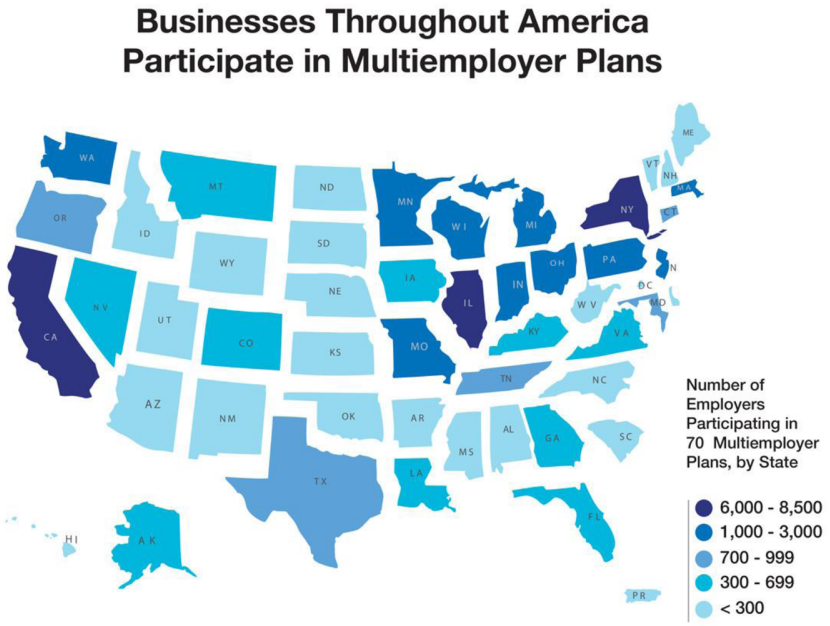
Hundreds of thousands of small businesses—doing business in every state—participate in multiemployer plans. Multiemployer plans enable employers to provide retirement benefits to their employees without imposing administrative burdens on any individual employer.

Employers generally need only to remit contributions set by collective bargaining and are relieved from the responsibilities of operating a plan, which are handled by an independent joint board of trustees, consisting of equal representatives of labor and management. Consequently, these plans have historically offered employers, especially small businesses, an affordable way to provide pensions to their employees, without the administrative burdens.

No Plan is "Typical"

There is a wide variety of multiemployer plans, in a wide variety of places, in a wide variety of industries, and in a wide variety of conditions. Multiemployer plans help small and large businesses and employees in many industries, including con-

struction, transportation, retail food, manufacturing and services. Multiemployer plans vary in size from small local plans covering a few hundred participants to large regional or national plans covering hundreds of thousands of participants. There are businesses who contribute to multiemployer plans and multiemployer plan participants in every state.[1]



The Past Decade Has Been Difficult for All Plans

In recent years, faltering markets and a weak economy exacerbated the effects of underfunding. If a plan has a small employer base and large accrued liabilities associated with a mature participant population, it can be difficult to make up funding shortfalls. The cost of contribution increases is borne by employers (through reductions to profit margin) and employees (through reductions to current pay or benefits). Finally, a plan's underfunding increases the contingent liability of contributing employers should they withdraw from the plan, which can affect their creditworthiness and discourage new employers from joining the plan.

The funding levels and demographics of these plans have changed dramatically over the years. Before the decade of the 2000s, single-employer and multiemployer defined benefit plans enjoyed historically high rates of return, which kept these plans well-funded without requiring a large ongoing contribution commitment from employers. Moreover, high investment returns financed benefit improvements: plans increased benefit accrual rates and granted past service credits; they adopted or continued early retirement subsidies, disability pensions, death benefits for non-spouse beneficiaries, and five- and ten-year certain and life guarantees.[2] These new obligations compounded the plans' liabilities during the 1990s.

Like single-employer plans, multiemployer plans suffered significant market losses during the 2000s, causing the value of plan assets to plummet. Multiemployer plans that had been nearly fully-funded often dropped to less than 50% funded. The average funded ratios of these plans (which the agency defines as the market value of assets divided by liabilities discounted using a standardized PBGC interest factor)

[1] The map below reflects the results of a survey by the National Coordinating Committee for Multiemployer Plans (NCCMP) of 70 plans that provided information on the zip codes of companies contributing to their plans in 2011. These 70 plans received contributions from approximately 53,000 companies.

[2] Because of maximum deductible limits, some plans increased benefits during this period to avoid losing deductible treatment of employer contributions, which also contributed to longer-term costs. These limits were raised in the PPA.

exceeded 90% in the 1990s, hovered in the mid-60% range in the mid-2000s, and fell below 50% after the 2008 market crisis.[3]

This unexpected surge in underfunding put huge pressures on funding costs and contributions. Tightened PPA funding requirements had also taken effect, requiring plans for the first time to publicly certify their funding status. Employers and unions—which had come to depend on relatively stable contribution rates—were now asked to accept huge contribution rate increases, and plan trustees recommended benefit reductions.

Employer contributions to multiemployer plans are generally based on number of hours worked by actively employed participants. The 2000s decade saw a decline in active participants as a percentage of total participants. Thirty years ago, three-quarters of all participants were active and only one-quarter were retired or waiting to retire. Today, the situation is largely reversed: by 2010, 39% of participants were active and 61% were inactive.

Contributing factors also include the relative decline in unionized employment and competitive pressures in some industries from non-unionized businesses, resulting in some employers with multiemployer plans going out of business. Thus, the burden of the recent increase in underfunding is borne by a smaller pool of employers and employees supporting the liabilities of much larger inactive populations.

Plans Have Taken Advantage of PPA Funding Rules and Flexibility

When Congress enacted PPA in 2006, it anticipated the need for different plans with differing situations to address underfunding and other emerging problems in differing ways. Under PPA, plans were required (i) to certify their funded status each year according to statutory classifications of "endangered" or "critical" status (or neither); (ii) to implement funding improvement or rehabilitation plans that include contribution and benefit schedules designed actuarially to improve the plan's funded status; and (iii) to achieve objective funding targets within specified timeframes.[4]

For the first time, plans in critical status were allowed to reduce certain previously earned benefits (e.g., early retirement benefits, retirement-type subsidies, optional forms of payment) that would otherwise be protected from such cutbacks by ERISA and the Internal Revenue Code. Participants who started receiving benefits before the plan's notice of critical status are generally exempted from these "adjustable benefit" reductions.[5] Also, for the first time, plans in critical status were constrained by law from increasing benefits and from offering lump sum and similar benefit payments.

After the 2008 financial crisis, when plans suffered investment losses of 20 to 30%, nearly 1,000 plans, or two-thirds of all multiemployer plans, were certified to be in endangered or critical status. This loss in plan asset values caused a drop in the funded percentage of many plans, and shortened the projected insolvency dates of other plans. Possibly the most common trigger for endangered or critical status was higher minimum required contributions, which brought plans closer to a projected funding deficiency.

In December 2008, Congress enacted the Worker, Retiree, and Employer Recovery Act of 2008, P.L. 110-458 (WRERA), to give plans respite from the effect of losses experienced during the 2008 stock market decline. The majority of multiemployer

[3] Many plans in certain industries, such as manufacturing and retail trade and services, barely exceeded 50%.

[4] Endangered status is triggered if a plan has a funded percentage of less than 80% or projects a funding deficiency within seven years (if both triggers are met, the plan is in seriously endangered status); the plan's target is to reduce the underfunding percentage by 33% in a 10-year period and to avoid a funding deficiency during the funding improvement period. Critical status is triggered if a plan has a funded percentage equal to or less than 65% and projects a funding deficiency within five years or insolvency within seven years; or the plan projects insolvency within 5 years or a funding deficiency within 4 years; or normal cost and interest on unfunded liabilities exceeds contributions for the year, the present value of benefits for inactive participants exceeds that for active participants, and the plan projects a funding deficiency in 5 years. The plan's target is to emerge from critical status using all reasonable measures in a 10-year period (if unfeasible, to emerge at a later time or forestall insolvency).

[5] Generally, reductions of adjustable benefits for active participants arise from collective bargaining. The plan trustees provide to the bargaining parties one or more schedules showing revised benefit and/or contribution structures determined to be reasonably necessary for the plan to emerge from critical status. One schedule must be a default schedule, which assumes that benefits will be reduced to the maximum extent permitted by law before contribution increases are required. Although the default schedule is common in some critical status plans, in other critical status plans very few bargaining parties adopt the default schedule, choosing instead the preferred schedule which emphasizes contribution increases with limited reductions in benefits.

plans elected WRERA funding relief in 2009—freezing their prior year's funding status and deferring any actions under a funding improvement or rehabilitation plan for one year.

Nevertheless, more than 100 critical status plans in 2009 adhered to PPA strictures and reduced adjustable past benefits; plans reported reducing a total of nearly $800 million in liabilities. In addition, almost 200 plans in all status classifications in 2009 reduced future benefits, such as future accrual rates (one-half of these plans were in critical status).

Congress then enacted the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, P.L. 111-192 (PRA 2010), to provide further funding relief from the significant investment losses that occurred in and around 2008. Plans extensively relied on PRA 2010 funding relief, which enabled them to decrease minimum required contributions, increase credit balances, and improve funded certification statuses, alleviating pressures on contribution increases and benefit cuts.

Nevertheless, 149 critical status plans in 2010 applied PPA provisions and reduced adjustable past benefits—including nearly 40% of all critical status plans in that year; plans reported reducing more than $2 billion in liabilities. In addition, more than 172 plans in all status classifications reported reducing future benefits (over 50% of these plans were in critical status).

Employer contributions have also increased as a consequence of the financial turmoil of the 2000s and PPA's tightened funding requirements. Contributions climbed from $8 billion in 2000 and $16 billion in 2005, to $20 billion in 2009 and $20.5 billion in 2010. Average annual contributions per active participant rose $700 between 2008 and 2010 from $4,300 to $5,000.

Endangered status plans had the highest average contributions per active participant ($7,500), while critical status plans had the lowest ($4,000). It is important to note, however, that contributions vary significantly from plan to plan, even among plans in the same industry (e.g., employers in one critical status plan reported contributions of $17,000 per active participant).

Plans have also used the flexibility provided under PPA to relieve excessive pressure on employers and unions that could jeopardize their continued participation in the plan. For example, PPA eliminated the excise tax assessed on employers by the IRS when a critical plan incurs a funding deficiency.[6] The intent of the tax was to induce employers to contribute the required minimum to the plan.

The tax has now been replaced by a PPA funding regime that makes similar demands on the bargaining parties. Minimum required contributions spiked after the asset losses of 2008, causing 90 plans to report funding deficiencies in 2010—more than four times the annual average over the decade prior to 2008. These plans avoided an excise tax on funding deficiencies totaling nearly $2 billion in 2010.

A second example of flexibility granted to plans under PPA is amortization extensions. To ensure pre-funding and require the recognition of costs upfront, PPA shortened the amortization periods for all types of unfunded liabilities to 15 years. However, plans also needed a safety valve in the event of unforeseen costs that the bargaining parties could not immediately afford. PPA permitted a plan that met certain solvency requirements to automatically extend amortization periods by five years if it projected a funding deficiency in the next nine years.

This proved to be a popular form of relief: Whereas only six plans were operating under amortization extensions for the 2005 plan year—under strict statutory eligibility requirements requiring IRS approval—by 2009 there were 125 plans operating under automatic five-year extensions, and by 2010 nearly one-quarter of all critical and seriously endangered status plans were operating under amortization extensions (178 plans under automatic extensions and 12 plans under approved extensions).

Today the Financial Condition of Plans Varies Widely

Most plans can recover from the market collapses of the past decade on their own but, without changes, some severely distressed plans will not.

Most Plans Are Recovering

Most plans appear to be recovering from the 2008 financial crisis and subsequent recession. Aggregate assets for all multiemployer plans have increased, from $327

[6] Multiemployer plans must maintain a funding standard account to measure whether the funding requirements are met. If total charges to the funding standard account (normal cost, and amortization of net increase in unfunded past service liability, net experience loss or net loss from changes in actuarial assumptions) exceed employer contributions and total credits to the account (amortization of net decrease in unfunded past service liability, net experience gain or net gain from changes in actuarial assumptions), an accumulated funding deficiency results.

billion at the beginning of the 2009 plan year to nearly $400 billion at the end of the 2010 plan year (a level last seen in 2006). By 2011, 60% of all plans certified they were in non-distressed or "green" zone (i.e., neither endangered nor critical status), an improvement from just 32% in 2009. Endangered status plans fell from 34% to 16% of all plans between 2009 and 2011.

But the financial condition of multiemployer plans today varies widely. Some have rebounded following the recovery in asset levels (and with the aid of funding relief). Many other plans remain substantially underfunded but are using the tools under PPA to gradually adjust income and expenses. As of the 2011 plan year, 40% of all multiemployer plans continued to be in endangered or critical status, thus subject to additional funding rules under PPA. An initial review of 2012 PPA certifications to IRS indicates a slight increase in the numbers of plans in endangered or critical status for the 2012 plan year. PBGC estimates that currently just over half of multiemployer participants are in endangered or critical status plans.

Overall, most multiemployer plans appear sustainable in the long-term, assuming they maintain a base of contributing employers able to support the plan's unfunded liabilities and benefit disbursements and avoid significant investment or other actuarial losses.

Challenges remain, however, in assessing the exact financial condition of many plans. Funding relief under PRA 2010 often results in plans overstating their financial health. Nearly 600 plans elected to recognize 2008 investment losses over a period of ten years (rather than the regular smoothing period of five years), but increasing a plan's actuarial value of assets and funded percentage can cause the plan to have a higher PPA funded status than is warranted.[7] More than 550 plans elected to use 29-year amortization to pay down 2008 investment losses. These steps reduce a plan's annual charges and minimum required contribution. This delays the date of a projected funding deficiency, which can favorably impact the plan's status under PPA. However, these steps do not reduce a plan's actual liabilities.

In addition, aggregate underfunding remains significant, exceeding $350 billion in 2010 (based on PBGC measurements). Most of the increase in underfunding relates to asset declines. In addition, while some part of the increase in underfunding over the last decade is attributable to declines in the PBGC interest factor used to measure plan liabilities,[8] most of this increase relates to the doubling in liabilities since 1999 that is independent of the decline in interest rates.[9]

Minority of Multiemployer Plans are Severely Distressed

While in the minority, a significant number of multiemployer plans today are severely distressed. These are plans in declining or highly competitive industries, often characterized by high rates of employer bankruptcies and high ratios of nonsponsored or "orphan" participants.[10]

Some large plans have lost thousands of contributing employers over the last two to three decades. These plans remain liable for the benefits of participants whose employers have withdrawn or gone out of business. In many cases, these orphan participants' benefits were nearly fully funded in 1999 and 2000, but are now substantially underfunded due to market losses.

These plans generally have many more retirees than active participants—active participants may constitute only 10% to 15% of all participants, while 50% or more participants may be retirees drawing benefits. In contrast, in 2010, 39% of participants in all plans were active and 33% were retired. Because the distressed plans have a weak employer base (that is, few employers in relation to the plan's total

[7] PPA defines a plan's funded percentage for purposes of the additional funding rules as the actuarial value of the plan's assets divided by the plan's accrued liability. Because each plan uses its own methods and assumptions for this purpose, rather than a market value of assets or a standardized interest rate for measuring plan liabilities, the funded percentage does not necessarily reflect the actual funded status of the plan and two plans with the same market value of assets and the same future benefit payments can appear to have different funded percentages (making an accurate comparison difficult). PRA 2010 increased the disparity between the actuarial and market value of assets, and lengthened certain amortization periods reducing required contributions.

[8] The agency adjusts plans' reported vested liabilities using a standardized interest factor that along with an assumed mortality table reflects the cost to purchase an annuity at the beginning of the year.

[9] Using a fixed PBGC interest factor of about 5.30%, liabilities were valued at about $350 billion in 1999 and about $700 billion in 2010.

[10] PPA required plans to begin reporting orphan participants in their annual report filings; plans reported a total of 1.3 million orphan participants in 2010. In 27 endangered or critical status plans each reporting 5,000 or more orphan participants, our research showed that orphan participants averaged between 31% and 45% of total plan participants.

unfunded liabilities), it is difficult for them to make up funding shortfalls. For these plans, investment losses can be devastating.

Severely distressed plans also pay out a large portion of their asset base each year, which means that they have less time to recover. In some of those situations, negative cash flows (benefit payments in excess of contributions and investment income) erode a plan's asset base year after year. Consequently, many of these plans project insolvency over a 10- to 15-year horizon.

Pinpointing the exact number of severely distressed plans remains elusive, though some multiemployer experts estimate they represent roughly 25% of plans in critical (or seriously endangered) status—if so, that would be about 80 to 85 plans in 2011. We are attempting to identify them, in part, through their self-reporting: PPA rehabilitation plans may reveal to us that, despite exhaustion of all "reasonable measures," the plan cannot reasonably be expected to emerge from critical status within 10 years, and is taking all available reasonable measures steps to emerge at a later time or to forestall possible insolvency. Plans, however, are not required to make such disclosures to the government and some distressed plans are not explicit about their circumstances and future prospects.

What Can Government Do?

Because multiemployer plans cover many industries and localities, and have been affected by different factors, flexibility matters. The challenges faced by these plans are often plan-specific issues that the employers and employees in each industry and each plan must tackle individually. They will need added flexibility to manage their finances and extend their solvency.

In PPA, Congress gave plans both tools and flexibility for improving their financial health. There were new requirements for fiscal discipline and funding targets, but plans were given discretion to develop their own strategies for solving their problems. And PPA provided new tools to help plans with rebalancing their costs and income and respond to market pressures.

As in PPA, discussions for further reforms should start with consideration of proposals now being developed jointly by multiemployer plans and their constituencies—including proposals to help distressed plans avoid or forestall insolvency. Many of these proposals emphasize additional flexibility in plan design, cost-sharing, as well as funding. The Administration has not taken a position on these proposals; it is too early to do that in advance of the specifics.

However, as in PPA, government should allow plans the flexibility to solve their own problems.

This is not just an issue for the distressed multiemployer plans. Because many plans have common employers—particularly large employers—the failure of one plan and resulting imposition of withdrawal liability on its contributing employers can have a ripple effect on many other plans. Furthermore, the failure of plans in one industry can affect the participation of other employers in other industries. Thus a failure in one plan could be devastating for thousands of employers and participants in many plans.

Last, we can preserve PBGC's ability to help. PBGC is not just a potential (but underfunded) safety net; we also closely monitor plans and their health and can offer assistance. A broader range of tools and adequate funding would allow PBGC to both help preserve plans and provide the safety net that ERISA intended.

PBGC's Multiemployer Insurance Program Needs to be Re-examined

PBGC's program and finances also should be re-examined. The multiemployer insurance program that was established under ERISA in 1974 was revamped in 1980. However, it has been more than 30 years since the fundamental structure of the program has been re-examined.

Unlike with single-employer plans, in most cases PBGC cannot step in until a multiemployer plan has collapsed and run out of money. When all contributing employers withdraw from a plan and the plan's assets are exhausted,[11] PBGC provides the plan financial assistance to pay participants a statutorily guaranteed benefit for the rest of their retirement lifetimes. (Unlike its insurance of single-employer plans, PBGC does not take over the plan, or its assets and liabilities; instead the agency funds the plan's guaranteed benefits and operating costs, and audits to ensure they are reasonable.)

[11] In this context, exhaustion means the plan cannot pay guaranteed benefit levels for the plan year. PBGC also pays financial assistance to ongoing plans (in which contributing employers remain) that exhaust assets.

While the guarantee—up to about $13,000 per year for long-service retirees—often does not cover a participant's full benefits, without PBGC, participants would be left with nothing when a plan runs out of money.

We lend our expertise to multiemployer plans on many issues. Mergers between multiemployer plans, for example, can help plans increase their ratio of active to inactive participants and save on administrative and investment costs. We also provide flexibility in handling withdrawal liability, where appropriate, to plans that request alternative methods in order to retain and attract new employers.

However, we do not have the financial resources to help distressed plans directly. For example, plans frequently request our financial help to facilitate the merger of a weaker plan into a stronger one. While PBGC has been able to assist in a few cases—where the weaker plan is near-insolvent and the financial assistance involved is generally small—PBGC has neither the authority nor the money to help plans achieve these goals more broadly. Some plans have proposed that they be partitioned so that active employers can support their own employees, rather than the employees of companies that withdrew or went out of business long ago. While we continue to explore use of this tool (under statutory requirements that are difficult to meet), we do not have the resources to assist plans and employers, even in circumstances where a plan could be preserved if released from the unfunded liabilities of non-sponsored participants.

PBGC is continuing to review its existing tools—which are limited—to consider whether additional authority could be useful to assist employers and plans in a variety of situations.

Without Changes, PBGC Faces Its Own Financial Shortfall

The agency paid $95 million in financial assistance for benefits and plan expenses to participants in 49 insolvent multiemployer plans in FY 2012. This allowed these plans to continue paying guaranteed benefits to about 51,000 retirees; 21,000 additional participants will receive benefits from those plans when they retire. There are 61 more plans that have terminated and will run out of money in the next few years, and there are some 46 ongoing plans that are projected to become insolvent and apply for financial assistance over the next decade.

As of the end of FY 2012, the multiemployer insurance program had a $5.2 billion deficit, with assets of $1.8 billion and booked liabilities of $7.0 billion (relating to the plans described above).

In FY 2012, PBGC collected $92 million in premiums and paid $95 million to support failed multiemployer plans. In that year, Congress raised PBGC premiums, but projected benefit payments will increase far more. The number of plans that are projected to become insolvent has more than doubled in the last decade. Financial assistance payments to these plans are projected to rise rapidly over the next ten years—as already terminated plans become insolvent and additional participants retire. PBGC projects that its financial assistance payments to plans booked as liabilities on PBGC's FY 2012 financial statements[12] will exceed $500 million annually within a decade, even without adding any new obligations. Although the timing is highly uncertain and dependent on many factors not yet known, PBGC projects that current premiums ultimately will be inadequate to maintain current guarantee levels and the multiemployer insurance program is likely to become insolvent within the next 10-15 years, even before any new obligations are added.

Future additional obligations are likely. PBGC, in its audited financial statements, estimates that it is reasonably possible that other multiemployer plans will require approximately $27 billion in future financial assistance. These "reasonably possible" liabilities are not recorded on the corporation's financial statements because they are not imminent liabilities.

PBGC has a variety of methodologies for estimating future obligations. The most carefully documented is PBGC's Multiemployer Pension Insurance Modeling System (ME-PIMS). Based on those projections, and assuming no changes either in multiemployer plans or in PBGC's multiemployer insurance program, there is about a 35% probability that the assets of the insurance program will be exhausted by 2022 and about a 90% probability of exhaustion by 2032. Like all projections these estimates are dependent on many assumptions about the future and on many factors, including investment returns and the actions of trustees, employers, and unions dealing with individual plans.

[12] This includes plans currently receiving financial assistance, terminated plans expected to require financial assistance, and ongoing plans expected to require financial assistance in the next ten years.

Premiums and Guarantee Levels Need to be Re-Examined

Of course, program insolvency can be avoided by changes in premiums and/or in guarantee levels. Since multiemployer guarantee levels are below those of single-employer guarantees, most observers analyze increased premiums, rather than changes to guarantee levels.

Although the timing is uncertain, PBGC projects that current premiums ultimately will be inadequate to maintain current guarantee levels. Multiemployer plans currently pay a flat rate premium of $12 per participant per year (until 2006, the premium rate was only $2.60 per participant). Thus, the multiemployer insurance fund has accumulated limited reserves.

Even substantial increases in premiums would amount to a negligible percentage of contributions or costs for most plans. PBGC multiemployer premiums ($93 million total in FY 2010) represented about 0.5% of total plan contributions, and about 0.27% of total plan expenses (benefit payments and administrative expenses).

Higher premiums, by themselves, are unlikely to put plans or employers out of business. However, not all plans and all employers are alike. They are in different circumstances. Some are in such dire straits that they often cannot afford any increases in costs, either the small fraction represented by PBGC premiums or other administrative expenses, or the much larger portion represented by their benefit payments.

For multiemployer plans, even with the Moving Ahead for Progress in the 21st Century Act (MAP-21) increases, absent further changes, PBGC premiums will eventually be insufficient to support the guarantee and the multiemployer insurance program. Premium reforms are a necessary part of any solution to the funding challenges facing PBGC and should be analyzed as part of and in the context of the broader changes for multiemployer plans.

The Administration is not putting forth any new premium proposal now. As we noted in our most recent Five-Year Multiemployer Report to Congress under ERISA Section 4022A(f)(1), we can't yet determine what changes to PBGC premiums for multiemployer plans will be appropriate in the future and are not requesting Congressional action now. We think the best course is to raise and discuss the issues with the Congress and the affected constituencies and develop an approach that sustains PBGC as part of a broader review of multiemployer plans.

Next Steps

We hope the information provided in the multiemployer reports to Congress can inform and assist a dialogue about critical multiemployer funding issues and PBGC's program and finances.

As it did seven years ago in the Pension Protection Act, Congress has an opportunity within the next two years to preserve and enhance the multiemployer plans on which so many small businesses and workers depend.

The next two years will require a thorough review of policy options (including those developed by multiemployer plans stakeholders and their constituencies) and, ultimately, action on practical steps that will bring long-term stability to the multiemployer system. With changes, multiemployer plans can and will continue to provide portable lifetime retirement benefits for millions.

PBGC and the other ERISA agencies look forward to working with Congress and the multiemployer community as this important dialogue evolves. We are grateful for the opportunity this Committee has provided on this important issue and look forward to hearing your views and answering any questions you may have.

Chairman ROE. Thank you, director.

Mr. Jeszeck?

STATEMENT OF CHARLES JESZECK, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. JESZECK. Mr. Chairman and members of the committee, thank you for inviting me here today to discuss multiemployer pension plans and the financial challenges they currently face.

With about 1500 plans covering over 10 million workers and retirees, they are an important component of our nation's private pension system. Today I will focus on the recent actions that the weakest multiemployer plans have taken to improve their financial

position and the current trends in the PBGC multiemployer insurance fund.

Because this testimony is based on a report to be released later this month, the findings presented here should be regarded as preliminary.

To summarize, while the most distressed plans have taken significant steps to address their funding problems, a substantial number here have determined that they have no reasonable options to do so and instead will seek to forestall insolvency.

These existing and anticipated plan insolvencies threaten to drive the PBGC's multiemployer insurance fund into insolvency in or about 2023 with serious consequences for the retirees who depend on that fund.

Under current law, multiemployer plans with inadequate funding levels designated as either endangered, yellow zone, or critical, red zone must develop and implement plans to improve their financial condition. Our analysis of 107 red zone rehabilitation plans found that a large majority took substantial corrective action.

Eighty-one of these plans proposed both increased employer contributions and reduced participant benefits to improve their financial position. An additional 21 plans propose one or the other of these actions. Many of these actions were significant, amounting to changes of 20 percent or more in the first year alone.

Many plan officials we spoke with viewed these changes as painful but necessary. They said that in many cases, contribution increases of this magnitude strained the competitiveness of their employers. They also said that eliminating benefits like early retirement subsidies was a very difficult concession for workers, particularly for those in physically demanding occupations.

These steps, coupled with improvements in financial markets since 2008 are expected to make a difference for many plans. We found that 79 of the 107 plans surveyed expected to exit red zone status after an extended period of time.

However, 28 plans, despite their best efforts, still projected that no realistic strategy of contribution increases and benefit reductions would allow them to avoid insolvency.

This continued weakness of many plans has important consequences for PBGC's multiemployer insurance fund. Already, the total amount of financial assistance PBGC provides to insolvent plans has increased markedly.

In 2012, PBGC provided $95 million in assistance to 49 insolvent plans, up from about $14 million to 29 plans in 2005. PBGC now expects plan insolvencies to double by 2017, placing even greater demands on the fund.

In addition, the liabilities to PBGC from these probable insolvencies have increased considerably, reaching $7 billion in 2012. In contrast, they funded only $1.8 billion in total assets as of 2012.

PBGC now expects that future liabilities from probable plan insolvencies will exhaust the multiemployer insurance fund in or about 2023. It should be noted that these estimates do not include the reasonably possible insolvency of two large underfunded plans. Combined, these plans paid about $3.5 billion in benefits to over 300,000 beneficiaries in 2011.

Both of these plans are projecting insolvency in the next 10 to 20 years. Irrespective of the other plan insolvencies expected to drain the fund in the next decade, PBGC estimates that the insolvency of either of these plans would exhaust the insurance fund in 2 to 3 years.

The exhaustion of PBGC's multiemployer insurance fund would have severe consequences for its beneficiaries. Because there would be no assets in the fund, all current and future benefit guarantees would have to be financed from premium collections, which totaled only $92 million in 2012.

Beneficiaries of the multiemployer insurance fund who are already receiving reduced benefits at or below the comparatively modest maximum fund guarantee of $13,000 per year would see their benefits further reduced to a small fraction of that total.

Our forthcoming report will explore these issues in greater detail and identify actions that can address the potential loss of retirement income facing workers and retirees in some of our nation's most vital industries.

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

[The statement of Mr. Jeszeck may be accessed at the following Internet address:]

http://www.gao.gov/assets/660/652687.pdf

Chairman ROE. Thank you, Mr. Jeszeck.

Mr. Perrone?

STATEMENT OF ANTHONY M. PERRONE, INTERNATIONAL SECRETARY–TREASURER, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

Mr. PERRONE. On behalf of the 1.3 million members of the United Food and Commercial Workers International Union, I am pleased to submit this testimony to the Education and WorkforceWorkforce Pension Subcommittee.

Since 2004, I have served as International Secretary-Treasurer of the UFCW and our union represents members in U.S. and in Canada predominantly in retail food and food manufacturing.

Through collective bargaining, the UFCW has over 60 multiemployer pension plans across America that we support along with large major supermarket corporations like Kroger, Safeway, Supervalu, Ahold USA.

These plans cover approximately 700,000 active workers and an additional 700,000 retirees and terminated vested workers with a right to a pension in the future, also part-time workers as well.

As a part of my responsibilities, I serve as Chairman of the largest UFCW pension fund, the UFCW Industry Fund, an industry fund that represents about $5.2 billion worth of assets that covers 92,000 active workers that are employed by 500 different employers.

In 2012, the Industry Fund paid out $268 million in benefits to 62,000 retirees. Of that, which was full-time and part-time, for an average benefit of around $500 a month. In the past decade, the

financial crises that we have experienced have destabilized many of our funds.

Starting with the tech bubble in 2000 through 2002, followed by the global financial crisis that took place in 2008, our plans have suffered two draw-downs that reduced funding ratios and in some cases, threatened plan solvency.

Since 2008, trustees have continued with highly volatile public markets, historically low interest rates, and the Federal Reserve Bank's quantitative easing strategies have been difficult if not unfriendly to pension plans.

Pension funding ratios today are more sensitive to investment risk because plans have matured. Inactive benefit liabilities are more than two times active liability and these plans are now paying more in benefits than they are receiving in contributions, resulting in negative cash flows.

Now the UFCW has supported and lobbied for the passage of the PPA in 2006, and a number of our plans proactively implemented funding improvement plans even before then. We implemented prospective benefit reductions, contribution increases even prior to 2008.

Many plans actively have reduced our investment risk in our portfolios by further diversification of assets away from the public markets, but the magnitude of the events that took place in 2008 were overwhelming.

Multiemployer plans lost between 20 and 30 percent of their assets in 2008 and that was when the PPA really came into effect. The same year that the global financial crisis hit the U.S. economy with the force of a category five hurricane, at that same time, PPA dramatically recast the funding requirements established by ERISA in 1974.

Labor and employer trustees on UFCW plans have worked with their legal and their actuaries to comply with the PPA, and we spread the pain in forms of either higher contributions or lower benefits to our participants.

However, despite these efforts, the UFCW has at least five plans that are deeply troubled and threatened by insolvency. We believe that the additional tools that are for deeply troubled plans that are recommended by the NCCMP Retirement Security Review Commission would go a long way to help us with those plans' survival.

In fact, the Joint Labor Management Committee of the Retail Food Industry, which includes the UFCW, Kroger, Safeway, Supervalu, and Ahold USA, just last week endorsed that plan and that commission's report.

The UFCW has been proactive in our defense of our pension plans and many of our plans remain green under the PPA through managed discipline, funding policies, and taking active measures to de-risk our investment programs.

However, the global financial crisis destroyed trillions of dollars of retirement wealth. Boston College Center for Retirement Research Retirement Risk Index suggests that over 50 percent of Americans today cannot support a decent standard of living when they retire.

I urge the committee to support our efforts and take all actions necessary to preserve and secure multiemployer pension plans,

which play a critical role in delivering retirement income to so many Americans.

The NCCMP Retirement Security Review Commission Report is a roadmap to help achieve those goals.

Thank you, Mr. Chairman.

[The statement of Mr. Perrone follows:]

Prepared Statement of Anthony M. Perrone, Secretary-Treasurer, the United Food and Commercial Workers International Union

On behalf of the 1.3 million members of the United Food and Commercial Workers International Union, I'm pleased to submit this testimony to the Education and Workforce Pension Subcommittee. This hearing is both timely and critical to the 10 million workers and retirees who are accruing and receiving benefits from the multiemployer pension system.

Since 2003, I've served as the International Secretary-Treasurer of the UFCW International Union. The UFCW represents members in the U.S. and Canada predominantly in the retail food and food manufacturing industries. Through collective bargaining, the UFCW sponsors over 60 multiemployer pension plans across America along with large supermarket chains like Kroger, Safeway, Supervalu, and Ahold USA. These plans cover approximately 700,000 active workers and an additional 700,000 retirees and terminated workers with a right to a vested pension in the future. UFCW multiemployer plans are especially unique in providing pension coverage to part-time workers.

As part of my responsibilities, I serve as the Chairman of the UFCW's largest multiemployer pension plan, the UFCW Industry Pension Fund. The Industry Pension Fund is a $5.2 billion plan that covers 92,000 active workers employed by 500 different employers. In 2012, the Industry Pension Fund paid $268 million in benefits to 62,000 retirees. All of our multiemployer plans are defined benefit plans that pay lifetime benefit annuities. The benefits are modest, averaging just over $500 per month.

Multiemployer Plans are governed by the funding and fiduciary rules established by ERISA. The Taft-Hartley Act requires that the Board of Trustees of these plans consist of an equal number of labor and management trustees. Neither labor nor management dominates the governance of these Plans. Labor and Employers act as co-partners in the management of these plans as it relates to administration, funding policy, and investment policy.

The past decade of financial crises has destabilized many of our multiemployer plans. Starting with the Tech Bubble in 2000-2002, followed by the Global Financial Crisis in 2008, our plans have suffered two major drawdowns that reduced funding ratios and in some cases threatened plan solvency. The experience of the capital markets in the past decade has been unprecedented and presents one of the most adverse environments for institutional investors in the post-World War II era. Since 2008 pension trustees have had to contend with highly volatile financial markets alongside historically low interest rates. The Federal Reserve Bank's quantitative easing strategies are unfriendly to pension plans.

Pension plan funding ratios today are more sensitive to investment risk because the plans have matured—inactive benefit liabilities are more than two times active liability, the workforce has aged, and the plans are now paying more in benefits than receiving in contributions resulting in negative cash flow. As a result, investment returns are critical. When returns fall below expected assumptions, the impact on the funding ratio is dramatic. Because of the PPA's annual certification process, a significant number of plans are one bad investment year away from triggering red zone critical status.

The UFCW supported and lobbied for the passage of the Pension Protection Act of 2006 (PPA). The UFCW and the Employers we bargain with adopted many of the principles of PPA well before it was legislated. A number of UFCW plans proactively implemented funding improvement plans that implemented prospective benefit reductions and contribution increases prior to 2008. Many plans actively reduced investment risk in their portfolios through further diversification of assets away from public equities. But the magnitude of events in the financial markets in 2008-2009 was over-whelming. Multiemployer Plans lost between 20-30 percent of their assets in 2008-2009. Added to these losses were the expected returns of 7-8 percent that were not realized. Five years later, plan assets have barely recovered to 2007 levels.

PPA became effective in 2008, the same year that the Global Financial Crisis hit the U.S. economy with the force of a category 5 hurricane. Congress could have never anticipated 2008 and the devastation it would incur on pension plans. At the

same time, PPA dramatically recast the funding rules first established by ERISA in 1974. Plan trustees were required to interpret and comply with PPA in the midst of a funding crisis that they were not responsible for. The regulatory agencies responsible for PPA continue to offer very little guidance. For reasons unknown to me, Congress decided not to address PPA complexity in technical corrections legislation. This is one of the reasons why the UFCW endorses the NCCMP Retirement Security Review Commission proposals.

In our experience, Labor and Employer trustees on UFCW plans have worked tirelessly with their legal and actuarial advisors to comply with PPA. Our red and yellow zone plans have adopted rehabilitation and funding improvement plans that allow these plans to emerge as safe green zone plans in 10-13 years as required by law. These efforts have spread equal pain in the form of higher contribution for employers and reduced benefits for participants. The UFCW has at least five plans that are deeply troubled and threatened by insolvency and must utilize the "reasonable measures" safe harbor provisions of PPA. We believe that the additional tools for deeply troubled plans recommended by the NCCMP Retirement Security Review Commission would help these plans survive. In fact, the Joint Labor Management Committee for the Retail Food Industry which includes the UFCW, Kroger, Safeway, Supervalu, and Ahold USA endorsed the Commission Report.

The UFCW has been proactive in defense of its pension plans. The Industry Pension Fund that I chair has successfully remained fully funded and a safe green zone plan under PPA through managing a disciplined funding policy and taking active measures to de-risk its investment program. This was accomplished through a partnership between the Union trustees, the Employer trustees and the respective bargaining party stakeholders. Every two years the trustees reset the actuarial cost of the benefits. The bargaining parties must adjust to this cost reset or future benefits will be decreased. In addition, the trustees reduced early retirement subsidies and require 10% of every contribution dollar to be held in reserve to amortize any unfunded liability. The plan's investment committee has taken a number of sophisticated steps to control investment risk. As a result, the Industry Pension Fund's losses in 2008 were half of the average losses suffered by multiemployer plans.

In 2011, the UFCW and Kroger completed a novel pension transaction that merged four red zone plans to create one fully funded green zone plan. The new plan covers 180,000 participants. The 10 year agreement that created this new fund set out an explicit arrangement to fully fund the new plan and establish a new future service defined benefit plan. In its first year of operation in 2012, Kroger contributed $1.0 billion into this plan bringing its funding ratio from 71% to 100%. Kroger utilized today's low interest rates to borrow the necessary contributions in the public debt markets to pre-fund this plan. This partnership between the UFCW and Kroger sets an example for others to ensure the pension security for their workers and retirees. Not all companies have the credit worthiness of Kroger and its access to the public debt markets. The U.S. Government could greatly enhance retirement security by offering to guarantee corporate bonds or loans dedicated to prefund pension plans.

The recent reports issued by the Pension Benefit Guaranty Corporation (PBGC) paint a grim picture of the multiemployer pension system. The global financial crisis destroyed trillions of dollars of retirement wealth. The Boston College Center for Retirement Research "Retirement Risk Index" suggests that over 50% of Americans cannot support a decent standard of living when they retire. We cannot afford to allow existing pension plans to wither and die. Millions of American workers and retirees and their families depend on multiemployer pension plans. Pension leaders in the retail food industry have been proactive and creative and through self-help have protected the retirement security of hundreds of thousands of plan participants. I urge the committee to support our efforts and take all actions necessary to preserve and secure multiemployer pension plans which play a critical role in delivering retirement income to so many Americans. The NCCMP Retirement Security Review Commission Report is a roadmap to achieving that goal.

Chairman ROE. Thank you, Mr. Perrone.

Mr. Force?

STATEMENT OF HAROLD FORCE, PRESIDENT, FORCE CONSTRUCTION CO., INC., TESTIFYING ON BEHALF OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA AND THE INDIANA CONSTRUCTION ASSOCIATION

Mr. FORCE. Thank you, Chairman Roe, Ranking Member Andrews, and members of the subcommittee for the opportunity to testify at this hearing.

My name is Harold Force, President of Force Construction Company, Incorporated, founded in 1946 and headquartered in Columbus, Indiana. My presence here today is in behalf of the Associated General Contractors of America affiliated Indiana Construction Association, and my company.

My company performs institutional, commercial, and industrial building construction as well as the construction of bridges, dams, and civil works. Our workforce includes 170 persons, the majority of them members of one of four construction craft unions.

As an employer signatory to multiple craft agreements, we find that the multiemployer pension plans are quite different from single-employer and public employee defined benefit plans.

Previous legislation has failed to give trustees, contractors, and union representatives the tools needed to deal with the challenges of managing their plans.

There are nearly 3.9 million participants in construction industry multiemployer plans. Our experience is that the plans allow construction employers to adapt to a fluctuating workforce and allow employers to share a pool of qualified employees who may work for multiple employers and at multiple sites over time, while giving them access to retirement security without being tied to a particular employer.

Although they are currently considered as defined benefit plans, this has not always been the case. The concept of signing on for anything other than the hourly contribution was not even a part of the discussion until the early 1980s. For most contractors, it is only recently that they have come to understand that such plans are defined benefit plans and not defined contribution plans.

Together with the realization that the hourly contributions being made may not cover the benefit liability accruing within the plans, the issue of pension plan insolvency poses a dire threat to companies large and small.

As recently as 2000, all of the plans to which our firm is signatory were fully funded. Due to plan consolidations, the number of plans to which our firm contributes has reduced from approximately 25 to a total of six for the same geographic area and for the same number of crafts.

All of these plans are in the red zone, meaning that they are critically underfunded on a current basis. I believe that the assessments and recommendations outlined in the report of the National Coordinating Committee for Multiemployer Plans are well-developed and necessary to consider.

Changes are needed to save the businesses of many contributing employers and to protect the retirement security of their hard-working employees. Contributions to these plans are funded entirely by employers, not unions, and pension plan relief need not

be a union bailout. Without implementing the recommendations, the failure of these plans may jeopardize solvency of the PBGC.

In summary, number one, I am concerned that the status of many plans will rapidly pass a tipping point where the issues of the deficit plan, increasing retirements, reduced numbers of new employees under the plan, and withdrawal of contractors will occur on a coincident manner that will accelerate the failure of many plans.

Such convergence of factors could precipitate failure of the plans and financial failure of the contributing employers. This prospect is made worse because of delays in plan reporting.

Secondly, available data on the status of plans to which our firm is signatory suggest the plans cannot be funded to a healthy status—cannot be restored to a healthy status by addressing only the funding side of the situation. We have tried that. I would refer you to the table and graph attached to the written testimony.

Thirdly, a central underlying assumption concerning funding for construction plans, a relatively steady flow of contractors, and employee beneficiaries is not taking place. Prospective employees consider the high contribution rates combined with minimal benefits accrual and conclude that the plan provides a low benefit return for them.

Prospective employers may choose to stay out of such plans to avoid the rapid accrual of an undefinable withdrawal liability. Signatory contractors consider winding down and closing their business rather than risk exposure to the continuing growth of an unfunded liability. And employee beneficiaries who are fully vested are taking early retirement in record numbers out of fear that the plans may fail before their normal retirement age and that benefits will be lost.

Number four, continuing efforts by the Treasury and Federal Reserve to maintain low interest rates makes it more difficult for fund earnings to reach the investment earning assumptions which drive the calculation for retiree benefits.

And lastly, prospective signatory contractors may decide not to sign union craft agreements with the result that their employees may be denied access to skills training, apprenticeship, and portability of benefits, all of which are necessary to attract and retain a competent pool of employees for our industry.

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

[The statement of Mr. Force follows:]

Prepared Statement of Harold F. Force, PE, President, Force Construction Company, Inc.

Thank you, Chairman Roe, Ranking Member Andrews, and members of the Subcommittee, for the opportunity to testify at this hearing on the "Challenges Facing Multiemployer Pension Plans: Reviewing the Latest Findings by PBGC and GAO." My Name is Harold Force and I am the President of Force Construction Company, Inc., founded in 1946 and headquartered in my hometown of Columbus, Indiana. My presence here today is in behalf of The Associated General Contractors of America; affiliated Indiana Construction Association; and my company. My company performs institutional, commercial, and industrial building construction, as well as the construction of bridges, dams, and civil construction. Our activities are fairly evenly divided between private and public work sectors, the latter of which may include elements of local, state, and federal funding.

Although we have completed jobs in seven different states over the last five years, the majority of our work is performed within the State of Indiana. Depending upon

the type, size, and location of our projects, our direct employed manual workforce includes from 125 to 250 persons, nearly all of them members of one of four construction craft unions. Our salaried non-union technical, administrative, and supervisory personnel number approximately 35 persons.

I. Multiemployer Pension Plans and the Construction Industry

A. Background

Multiemployer plans were initiated in the early 1900s but remained unregulated until 1947 when the Labor-Management Relations Act (informally known as the Taft-Hartley Act) was enacted imposing a number of procedural and substantive standards that unions and employers must meet before they may use employer funds to provide pensions and other employee benefits. The Employee Retirement Income Security Act (ERISA) in 1974, the Multiemployer Pension Plan Amendments (MPPA) in 1980, the Economic Growth and Tax Relief Recovery Act in 2001, the Pension Protection Act (PPA) in 2006 and subsequent relief legislation all provide for distinct and strict funding rules for multiemployer pension plans in recognition of the vastly different nature of multiemployer plans from single employer and public employee defined benefit plans. However, previous legislation has failed to give plan trustees, signatory contractors, and union business representatives all the tools they need to deal with the challenges of managing multiemployer defined benefit plans.

Employers contributing to multiemployer plans are not allowed, under any circumstances, to legally defer payments to their respective pension trust funds, and many of the funding issues for Multiemployer Pension Plans (MEPPs) are entirely out of the hands of individual contributing employers. They are obligated by their labor contracts to contribute a certain amount for each hour of work by a covered employee. If an employer is delinquent in its contributions, the MEPP trustees have a legal, fiduciary responsibility to take all reasonable steps to collect the delinquent amount. Each MEPP is governed by a board of trustees, with equal representation from management and labor, as required by the Taft-Hartley Act. Trustees are fiduciaries required by law to act in the best interests of the MEPP. They make plan decisions based on sophisticated modeling and advice by plan administrators, actuaries and investment advisors.

It is important to keep in mind that contractors signatory to collective bargaining agreements requiring contributions to multiemployer pension plans are firmly and legally bound to make the pension contributions called for by their agreements, and cannot elect to delay or modify such payments or use them for any other purpose while obligated to the collective bargaining agreement.

B. Construction Industry

There are nearly 3.9 million participants in construction-industry multiemployer plans, and most contributing employers to these plans are small businesses. The construction industry is comprised of mostly small employers. MEPPs offer these employers the ability to compete with larger employers and to offer attractive benefits to maintain and preserve a skilled workforce. MEPPs are also attractive to construction employers because of the unique nature of the industry; MEPPs allow construction employers to adapt to a fluctuating workforce from project to project, and facilitate the construction employers' ability to share a pool of qualified employees because the MEPPs offer employees that may work for multiple employers in a region over the course of their working lifetime, and often multiple employers in the same year, the portability to have retirement security without being tied to a particular employer.

Although MEPPs are currently considered as defined benefit plans, this may not have been the case when many of the current plans were first established. As far back as the mid-1950s, payments to the plans were negotiated on a per-hour basis as part of a larger wage and benefits package. The concept of "signing on" for anything other than the hourly contribution was not even a part of the discussion or the negotiation for such plans until the passage of ERISA in the early 1980s. For most contractor members of MEPPs, it is only in the recent past they have come to understand such plans as defined benefit plans, along with the realization that the hourly contributions being made may not cover the liability accruing within the plans and for the benefit of their employees and future (or current) retirees.

The construction industry is populated by firms of many different sizes, with the number of employees who are beneficiaries of the MEPPs varying from a handful to groups numbering in the thousands. The very real and growing issue of pension plan insolvency affects companies large and small.

Construction-industry employers are often represented by a local employers' association that negotiates a multiemployer collective bargaining agreement (CBA) with

one or more unions on behalf of its member-employers or other employers that have delegated bargaining rights. For example, Force Construction is a member of Indiana Contractor Association (ICA), a chapter of The Associated General Contractors of America. ICA negotiates multiemployer CBAs with the Carpenters, Cement Masons, Ironworkers, Laborers, Operating Engineers, and Teamsters on behalf of many ICA member companies. While Force has not assigned its bargaining rights to the ICA, and has negotiated directly with some of the craft unions, the benefit provisions are always the same as in the ICA agreements. These CBAs obligate us to contribute to local and/or regional MEPPs. In addition, they obligate us to contribute to other funds, such as multiemployer health and welfare funds, training and apprenticeship funds, and, in some cases, multiemployer defined contribution pension plans. Construction-industry MEPPs often have hundreds or thousands of participating employers.

While 54% of all MEPPs are in the construction industry and 37% of participants are in a construction industry plan. Construction industry plans vary by asset value, number of participants, number of employers, types of participants and funding status.

Seven months after the close of its plan year (ten and a half months, with extension), every qualified pension plan must file a Form 5500 with the Internal Revenue Service (IRS) and the Department of Labor (DOL). According to a report by the Mechanical Contractors Association of America and Horizon Actuarial Services, LLC, Inventory of Construction Industry Pension Plans, 2012 Edition, that analyzed the most recent Form 5500 filings——there were 819 construction-industry multiemployer defined benefit plans in the country, and approximately 20 MEPPs applicable to construction industry employers in the State of Indiana.

The report shows MEPPs vary by asset value with a median asset value of $56 million. Nine percent of the plans had assets above $500 million, 26% between $100 and $500 million and 67% less than $100 million.

MEPPs vary by number of participants with the median number of plan participants being 1,183 (participants include inactive participants with deferred vested benefits, retired participants, and beneficiaries). About 8% of the plans had at least 10,000 participants. About 46% of the plans had fewer than 1,000 participants and 24% had fewer than 500 participants.

MEPPs vary by the number of employers with the median number of participating employers being 64. About 19% of the plans had fewer than 25 employers and 61% had fewer than 100 employers and 78% had fewer than 200 employers. About 4% of the plans had more than 1,000 employers.

MEPPs vary by the types of participants with the median number of participants with deferred vested benefits increasing from 984 in 2001 to 1,152 in 2010 with most of the increase coming from inactive participants. Overall, plan populations are growing larger with the number of active participants declining while the number of inactive participants getting larger. Five percent of plans had at least 4 inactive participants for every 1 actively working participants—very unhealthy—while 5% of plans had almost 2 active participants for every 1 inactive participant. The median construction industry plan had 4 inactive participants to every 3 active participants.

Finally, MEPPs vary by funding status with median industry plan at 80% funded in 2010. Half of plans were within 71% and 88% funded, 5% were 107% funded or better and 5% of plans were 50% funded or worse. Using the PPA certification status: 57% were "Green Zone", 19% were Endangered, 4% were Seriously Endangered and 20% were Critical.[1]

II. How did Construction Get to this Place

A. Pension Funding Rules

Employers contributing to MEPPs are often asked how did the plans get into this situation. The stock market made a lot of money for quite a few years. Why didn't plans bank returns in the big years to save for the day when stock market returns were down? They were constrained by federal tax policy.

Importantly, sponsors of single-employer plans could respond to overfunding by simply suspending their contributions to plans. Unfortunately, employers contributing to MEPPs were legally bound by their collective bargaining agreements to continue to contribute to MEPPs that became overfunded. Yet, when those contributions exceeded the "maximum deductible" limit permitted by tax laws, the contrib-

[1] Inventory of Construction Industry Pension Plans, 2012 Edition *http://www.horizonactuarial.com/blog/uploads/2012/08/MCAA—Horizon—2012PensionInventory—web.pdf*

uting employers ran the risk of losing their current deduction for the contributions and of being assessed an excise tax on top of the contributions.

MEPP trustees, in actions that seemed to make sense at the time, responded to such potential overfunding by making additional benefit improvements. Stopping contributions entirely would have been much more complicated because of the collective bargaining process that would have required renegotiation of collective bargaining agreements to accomplish it. And, after all, the MEPPs had not had significant funding issues in the past

Tax law that imposed the maximum deductible limits focused on small professional companies that might be inclined to shelter income. It was not designed for construction employers who were bound by their collective bargaining agreements to make the contributions and who could in no way shelter income in the multiemployer plan to which they were contributing.

The funding provisions of the PPA expire on December 31, 2014. The PPA helped MEPPs in some respects, but it has also proven to be inflexible and insufficient to meet today's demands.

On the positive side, the PPA requires timely and extensive reporting so all employers know the status of funds and their obligation—which, regrettably, was often not the case before the PPA. The PPA has also allowed a MEPP needing corrective action to take 10 or 15 years to bring it to a better funded position; before the PPA, employers could have been required to make up deficiencies in one year andface IRS levies. The PPA has also permitted some reduction in accrued benefits by plans in the worst shape.

B. Financial Crisis

The 2008 economic downturn highlighted the inherent risks that the current system poses for contributing employers and the unpredictable costs and risks for employers. The reduction in construction activity meant since then has meant fewer hours are being worked, reducing directly that amount of money being contributed to MEPPs. At the same time, the loss of value in invested assets that occurred when the stock markets plummeted reduced the funding position of the MEPPs as well. The median construction-industry MEPP was 80% funded at the end of 2010. Even under the best of circumstances it would take 10 years or more for plans to recover from the 25%-plus market losses in 2008.

The PPA continued to be inflexible while the events that resulted in that underfunding played out. The PPA did not take into account the market cycle or the equity market downturn, which the second historic equity market plunge and industry downturn exposed.

C. Industry Demographics

Plans are facing a shrinking ratio of workers to retirees. Pension plan demographics have steadily worsened over the past decade, with sharp declines after 2008. Inactive participants (i.e., retirees in payout status) now outnumber active participants, and that trend is accelerating. It has become more difficult to improve plans' funding status merely by increasing the employers' contribution rate or decreasing the participants' future benefit accruals. In 2010, the ratio was four inactive workers for every three active workers in construction-industry MEPPs, and the number of retired participants drawing benefits is growing.

D. Industry Downturn

As referenced earlier, construction-industry MEPPs are dependent on hour-based contributions for active workers and on attracting new employers into the system; however, both of those factors are shrinking. The unprecedented downturn in construction demand in recent years has left the hours of work significantly down and fewer active participants performing work. Some construction-industry MEPPs are being funded based on 40% fewer hours of work now. The industry has two million fewer workers today compared with the start of the recession and continues to have the highest industry unemployment rate of any industry.

III. Force Construction Company Multiemployer Pension Plan Contributions

For the State of Indiana, Force has records going back as far as 1984, at which time all plans were fully funded and with many plans have funding ratios of 110% to 115% or more. As recently as 2000, all of the plans to which our firm is signatory were fully funded, meaning that there was no allocable unfunded vested liability or withdrawal liability. Because of MEPP plan consolidation, the number of individual plans to which our firm contributes has drastically reduced, from approximately 25 plans 30 years ago; to approximately 15 plans 15 years ago; to a total of 6 plans today (for the same geographic area and for the same number of crafts). Those 6

plans are all currently underfunded and in the PPA's red zone, meaning that these plans are critically underfunded on a current basis.

Attached to this report is the most currently available information on plan status for general construction trades in the State of Indiana.

IV. Impact on Construction Employers

Unfortunately, employers can be adversely affected by participating in a multiemployer plan. When an employer participates in a MEPP it expects that its contributions will fluctuate depending on the employer's business conditions—and, particularly, that contributions based on hours worked will decline as hours of work decline. But when a plan experiences funding difficulties, contributions may still need to rise—even though, and actually because, hours on which contributions are made have dropped. In this respect, an employer participating in a MEPP is subject to many of the same vagaries of the economy as a single employer with a defined benefit plan. Small employers are often less able to absorb fluctuating contribution rate increases than a large employer. When companies bid for work, accounting for this can often inflate a given company's bid costs, which, in turn makes that company less competitive in a highly competitive market. Reduced work activity thus reduces funding, but the overall funded status problem of MEPPs is exacerbated by the fact that many participants are now "orphans." That is, the employers for whom they worked are now out of business or out of the MEPP, but the benefits accrued while the participants worked for those employers were not fully funded by the former employers' contributions. Employers are often astounded, and their plans often thwarted, by extraordinary withdrawal liability created by such funding shortfalls when they are ready to sell their business or change their operations. The prospect of withdrawal liability can discourage a potential buyer from acquiring a business when its current owners want to sell and retire.

The higher pension contributions needed to work on eliminating the underfunding are detrimental to the contributing employers in their already competitive environment for signatory contractors, but they can hurt employees too. Often in the construction industry, collective bargaining parties negotiate over a wage-and-benefits package. In order to alleviate pension underfunding, a greater portion of that package must be allocated to pension plan contributions because it cannot be passed along as a cost to the construction user. This leaves less money available for wage increases and other benefits. In short, the total amount of money available for wages and benefits is finite, so one consequence of underfunded pension plans is that employee take-home pay remains stagnant or, worse, is reduced.

V. Recommendations for Congress

Trustees of a plan must be given the flexibility to make changes. New tools are needed to try to revolutionize the pension system and save the defined benefit system—both for the directly interested parties such as employers and participants, but also for the PBGC.

The PPA's current funding rules for multiemployer pension plans sunset in 2014 which will create additional challenges for distressed plans. A plan that is currently in the green zone but might face funding problems after December 31, 2014, would not be able to use the current PPA rules to improve its position. After December 31, 2014, a plan that is in red status will continue to be in that status, a plan that is in yellow or orange status will continue to remain in that status, but a plan that is in green status will not be able to go into red, orange or yellow status and take advantages of the tools that such status now permits.

The Retirement Security Review Commission (the Commission) was a labor-management, cross-industry group of stakeholders established by the National Coordinating Committee of Multiemployer Plans to develop a long-term solution to the multiemployer pension problems discussed above. The Commission has developed recommendations for legislative changes that Force Construction and the Associated General Contractors of America support. These changes are needed to give plan trustees and collective bargaining parties more tools to take prompt action to correct funding shortfalls and avoid future shortfalls, to distribute costs and risks more equitably among all stakeholders in the plan, and to secure the retirement income of employee participants in multiemployer plans.

A. Preservation: Proposals to Strengthen the Current System

Some of the Commission's proposals represent technical refinements to the PPA, while others address shortcomings of the system outside of the PPA. These recommendations are designed to provide additional security for (a) the majority of plans that have successfully weathered the recent economic crises; (b) those that are on the path to recovery as measured against the objectives set forth in their funding improvement and/or rehabilitation plans; and (c) those that, with expanded access

to tools provided in the PPA and subsequent relief legislation, will be able to achieve their statutorily mandated funding goals.

B. Remediation: Measures to Assist Deeply Troubled Plans

Under current law, a small minority of deeply troubled plans are projected to become insolvent. For the limited number of plans that, despite the adoption of all reasonable measures available to the plans' settlors and fiduciaries, are projected to become insolvent, the Commission recommends that limited authority be granted to plan trustees to take early corrective actions, including the partial suspension of accrued benefits for active and inactive vested participants, and the partial suspension of benefits in pay status for retirees. Such suspensions would be limited to the extent necessary to prevent insolvency, but in no event could benefits go below 110% of the Pension Benefit Guaranty Corporation (PBGC) guaranteed amounts. To protect participants against potential abuse of these additional tools, the Commission further recommends the adoption of special protections for vulnerable populations including PBGC oversight and approval of any proposed actions, taking into consideration certain specified criteria.

C. Innovation: New Structures to Foster Innovative Plan Designs

To encourage innovative approaches that meet the evolving needs of certain plans and industries, the Commission recommends the enactment of statutory language and/or promulgation of regulations that will facilitate the creation of new plan designs that will provide secure lifetime retirement income for participants, while significantly reducing or eliminating the financial exposure to contributing employers. While the development of new flexible plan designs—including, but not limited to, variable annuity and "Target Benefit" plans—would permit adjustment of accrued benefits, in order to protect plan participants from this risk, these models would impose greater funding discipline than is required under current defined benefit rules. The adoption of such new models would be entirely voluntary and subject to the collective bargaining process.

I believe that the assessments and recommendations outlined in the Commission's report are well-developed and necessary to consider. The condition of many, and perhaps most, plans is such that their recovery is virtually impossible under current laws and rules. Something must be done to avoid failure of the plans and the catastrophic consequences which such failures would entail.

VI. Conclusion

In conclusion, the challenges confronting the sponsors of multiemployer plans are unprecedented. Without bold, decisive action, plan sponsors will no longer be able to provide these benefits, construction company employers will be forced to recapitalize the plans or the plans will be forced to become wards of the PBGC. Changes are needed to save the businesses of many contributing employers and to protect the retirement security of their hardworking employees. Multiemployer pension plan relief is not a union bailout, as contributions to these plans are funded entirely by employers, not unions. Reform based on the Commission's recommendations will minimize government risk and alleviate the financial challenges facing the PBGC's multiemployer guaranty fund. Without implementing the recommendations, the future failure of large plans will jeopardize the PBGC's long-term viability and will put taxpayers on the hook. Enacting reforms will take pressure off the government for financial exposure while continuing to provide retirement security for participants.

I want to close with a few succinct points about the nature of the problem:

1. I am concerned that the status of many MEPP plans will rapidly pass a tipping point where the issues of a deficit plan, increasing retirements, reduced numbers of new employees under the plan, and withdrawal of employers will occur in a coincident manner that will accelerate the failure of many plans. Such convergence of factors could precipitate failure of the MEPPs and of the contributing employers. The prospect is made worse because delays in plan reporting could prevent trustees and employers from learning of the crisis, and result in delays in trying to devise a comprehensive solution.

2. Available data on the status of plans to which our firm is signatory suggest that the plans cannot be restored to a healthy status by addressing only the funding side of the situation. We have tried that.

3. One of the principal underlying assumptions concerning funding for construction MEPPs, i.e. a relatively steady flow of contractors and employees/beneficiaries, is simply not taking place. Prospective employees consider the high contribution rate combined with minimal benefit they accrue due to attempts to have an affordable plan, and conclude that the MEPP provides a low benefit return for them. Prospective employers who are not currently signatory to a plan are electing to stay

out of such plans to avoid the growing accrual of an undefinable eventual withdrawal liability. Contractors who are signatory to construction MEPPs are increasingly deciding to wind down and close their business rather than continue the growth of an unfunded liability and risk collapse or possible mass withdrawal from the plans. Employees who are fully vested and have the opportunity to take early retirement are doing so in record numbers, out of fear that plans may fail before their normal retirement age and that their benefits will be lost.

4. Continuing efforts by the Treasury Department and the Federal Reserve system to maintain low interest rates exacerbate problems that MEPP fund managers and trustees have, making it nearly impossible for fund earnings to reach the investment earning assumptions which drive the calculations for retiree benefits.

5. Because of employer liability issues associated with MEPPs, potential signatory contractors avoid signing union craft agreements, with the result that their employees are denied access to skills training, apprenticeships, and portability of benefits, all of which are necessary to attract and retain a competent pool of employees for our industry.

I would be pleased to answer any question that the members of the Subcommittee may have.

Thank you.

ICA

Pension Fund Financial Tracking Chart for Multi-Employer Pensions that are funded through collectively bargained agreements in Indiana

Fund	Date Report Filed	Report Year	Tot # Plan Participants (line 2b(4) column (1))	Total # Active Participants (line 2b(3)(c))	Total Current Unfunded Liability $ (= line 2b(4) column (2) - line 2a)	Total Current Liability $ (line 2b(4) column (2))	Current Liability Funded Percentage (refer to Note (1))	Funded percentage for monitoring plan status (refer to Note (2))	$ per Hr Contrib Rate	$ per Hr Contrib Rate	$ per Hr Contrib Rate
									H-H State (xcpt 41/81)	H-H Lcl 41/81	
Indiana State District Council of Laborers & Hod Carriers	1/10/2013	√ 2011	23,783	8,211	$ 1,170,985,810	$ 1,949,013,337	39.92%	69.79%	$ 4.80	$ 4.80	
Pension Fund	12/22/2011	2010	23,896	8,519	$ 1,408,917,457	$ 2,095,864,896	32.78%	70.72%	$ 4.55	$ 4.55	
Covers entire state of Indiana except Locals 41 & 81	1/28/2011	2009	24,715	9,738	$ 1,428,263,391	$ 2,071,359,707	31.05%	67.58%	$ 4.30	$ 4.45	
(specifically IN Counties Lake, Porter, LaPorte, Starke, Newton & Jasper)		2008	24,765	10,270	$ 1,123,433,300	$ 1,931,563,690	41.84%	74.94%	$ 4.05	$ 4.45	
("20xx" Plan Year June 1 thru May 31, 20xx)		2007	24,764	10,269	$ 649,957,265	$ 1,481,727,037	56.14%		$ 3.30	$ 3.85	
EIN: 35-6027150		2006	24,412	10,338	$ 634,196,094	$ 1,365,388,077	53.55%		$ 2.70	$ 3.25	
"		2005	23,815	9,193	$ 384,078,165	$ 1,075,541,861	64.29%		$ 2.15	$ 2.65	
"		2004	23,241	10,902	$ 336,659,292	$ 999,366,247	66.31%		$ 2.00	$ 2.00	
"		2003			$ (624,695,149)				$ 1.85	$ 1.85	
"		2002	23,651	11,208	$ 904,639,083	$ 904,639,083	unknown		$ 1.85	$ 1.85	
"		2001	23,890	11,861	$ 158,728,762	$ 824,544,457	80.75%		$ 1.85	$ 1.85	
"		2000									
									H-H State xcpt	H-H Lcl 41 /81	
Construction Workers Pension Fund of Lake County and Vicinity	3/13/2012	2010	4,955	1,807	$ 306,220,537	$ 513,336,597	40.35%	82.15%	$ 4.55	$ 4.55	
(Laborers Local 41/81 Pension Fund)	3/8/2011	2009	5,227	2,020	$ 299,107,768	$ 486,840,513	38.56%	76.84%	$ 4.30	$ 4.45	
(Plan Year June 1 thru May 31)		2008	5,189	1,991	$ 211,343,348	$ 437,633,619	51.71%	82.43%	$ 4.05	$ 4.45	
EIN: 35-6030666		2007	5,177	2,552	$ 126,789,865	$ 352,924,264	64.07%		$ 3.30	$ 3.85	
"		2006	4,516	1,846	$ 104,352,350	$ 300,583,857	65.28%		$ 2.70	$ 3.25	
"		2005	5,206	2,199	$ 97,888,586	$ 281,461,926	65.22%		$ 2.15	$ 2.65	
"		2004	4,379	2,181	$ 76,818,647	$ 252,918,209	69.63%		$ 2.00	$ 2.00	
"		2003	4,808	1,434	$ 70,139,400	$ 238,827,986	70.63%		$ 1.85	$ 1.85	
"		2002	4,015	1,954	$ 34,707,002	$ 213,385,549	83.74%		$ 1.85	$ 1.85	
"		2001			$ -				$ 1.85	$ 1.85	
"		2000	5,405	1,593	$ (11,324,917)	$ 182,698,759	106.20%		$ 1.80	$ 1.80	
									103 H-H	181 H-H	841 H-H
Central Pension Fund of the IUOE & Participating Employers	11/13/2012	√ 2011	180,948	79,365	$ 11,355,873,390	$ 22,275,000,126	49.02%	86.74%	$ 6.75	$ 5.25	$ 6.00
(Indiana IUOE Locals 103, 181, 841)	11/11/2011	2010	180,773	81,443	$ 11,686,024,854	$ 21,129,675,052	44.69%	85.59%	$ 6.45	$ 5.00	$ 5.50
(Plan Year Feb 1 thru Jan 31)	11/12/2010	2009	182,909	87,567	$ 12,513,955,816	$ 19,828,008,347	36.89%	70.96%	$ 6.25	$ 5.00	$ 5.50
EIN: 36-6052390		2008	177,573	84,573	$ 7,586,712,542	$ 17,572,588,597	56.83%	91.30%	$ 6.05	$ 5.00	$ 5.00
"		2007	183,069	130,320	$ 4,797,620,996	$ 14,579,021,822	67.09%		$ 5.80	$ 4.75	$ 4.75
"		2006	177,590	125,226	$ 3,688,189,245	$ 12,627,636,526	70.79%		$ 5.55	$ 4.75	$ 4.50
"		2005	172,592	120,890	$ 2,936,325,090	$ 11,140,345,090	73.64%		$ 5.30	$ 4.75	$ 4.25
"		2004	169,598	117,266	$ 2,426,597,362	$ 10,209,377,362	76.23%		$ 5.05	$ 4.50	$ 4.00
"		2003	165,713	115,527	$ 2,724,513,195	$ 8,970,234,195	69.63%		$ 4.80	$ 4.25	$ 3.80
"		2002	163,604	113,052	$ 2,980,948,129	$ 9,899,333,129	69.89%		$ 4.50	$ 4.00	$ 3.60
"		2001	148,668	112,607	$ 1,461,212,820	$ 8,575,690,820	82.96%		$ 4.20	$ 4.00	$ 3.40
"		2000							$ 3.90	$ 3.25	$ 3.20

Note: Feb 2006 Letter from CPF states: "... as of February 1, 2005 the date of the most recent actuarial valuation of the Fund, the CPS's actuarial value of assets is greater than the Fund's vested liabilities and, therefore no withdrawal liability will be assessed ... plan year ending Jan 1, 2006."

									150-10	150-4	
Midwest Operating Engineers Pension Fund (150)	1/8/2013	√ 2011	27,369	11,542	$ 3,664,001,177	$ 6,587,078,386	44.38%	80.65%	$ 5.25	$ 7.75	
	1/11/2012	2010	27,405	12,350	$ 3,495,347,848	$ 6,231,817,756	43.91%	82.35%	$ 5.25	$ 7.75	
(Plan Year April 1 thru March 31)	1/12/2011	2009	27,754	14,736	$ 3,737,739,961	$ 5,922,777,068	36.89%	74.88%	$ 4.95	$ 7.50	
EIN: 36-6140097		2008	27,425	15,640	$ 3,017,626,244	$ 5,202,663,351	42.00%	91.05%	$ 4.65	$ 7.00	
"		2007	27,212	15,650	$ 1,218,141,181	$ 4,294,776,108	71.64%		$ 4.35	$ 6.50	
"		2006	27,212	15,546	$ 1,008,284,118	$ 3,805,422,933	73.50%		$ 4.05	$ 6.00	
"		2005	25,197	15,028	$ 834,402,843	$ 3,347,755,344	75.08%		$ 3.75	$ 5.50	
"		2004	24,376	14,227	$ 558,456,432	$ 2,930,655,258	80.94%		$ 3.55	$ 5.00	
"		2003	23,747	13,903	$ 629,736,513	$ 2,559,122,608	75.39%		$ 3.35	$ 4.50	
"		2002							$ 3.15	$ 4.25	
"		2001							$ 2.95	$ 4.00	
"		2000							$ 2.75	$ 3.75	

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Pension Fund Financial Tracking Chart for Multi-Employer Pensions that are funded through collectively bargained agreements in Indiana

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									Hwy wkly		
Central States SE & SW Areas Pension Fund											
(Teamsters)	10/10/2012	√ 2011	416,190	73,800	$ 29,744,917,756	$ 49,588,877,112	40.02%	58.89%	$115.60/wk		
(In Indiana the H-H Contract covers all Counties except for Lake and	10/13/2011	2010	422,473	80,961	$ 30,317,238,578	$ 49,859,280,682	39.19%	63.41%	$107/wk		
Porter Counties)	10/15/2010	2009	433,199	98,799	$ 31,264,471,536	$ 48,623,124,034	35.70%	58.02%	$99.10/wk		
(Plan Year Jan 1 thru Dec 31)		2008	439,955	106,169	$ 20,246,249,018	$ 47,052,096,018	56.97%	73.20%	$91.80/wk		
EIN: 36-6044243		2007	451,625	106,169	$ 23,741,411,614	$ 44,414,159,614	46.55%		$85/wk		
EIN: 36-6044243		2006	451,623	154,926	$ 22,498,175,000	$ 41,794,504,000	46.17%		$85/wk		
"		2005	450,812	156,744	$ 20,936,185,000	$ 39,653,718,000	47.20%		$85/wk		
"		2004	454,322	157,306	$ 17,425,705,000	$ 35,150,841,000	50.43%		$85/wk		
"		2003	459,947	164,767	$ 18,320,948,000	$ 33,701,366,000	45.64%		$85/wk		
"		2002							$85/wk		
"		2001	464,944	187,229	$ 11,176,581,000	$ 31,652,006,000	64.69%		$85/wk		
"		2000							$85/wk		
Northwest Indiana Regional Council of Carpenters Pension Fund	4/9/2012	2010	3,739	1,979	$ 412,752,320	$ 684,265,858	39.68%	76.34%			
Indiana Hwy Zone 1A (not part of Hwy Contract)	4/7/2011	2009	3,860	2,198	$ 395,109,572	$ 642,215,122	38.48%	73.73%	unknown		
Indiana Bldg Zone Z1		2008	3,840	2,196	$ 291,485,416	$ 576,509,587	49.44%	80.21%	unknown		
(Plan Year July 1 thru June 30)		2007	3,840	2,196	$ 169,261,772	$ 460,539,024	63.25%		unknown		
EIN: 51-6123713		2006	3,621	1,979	$ 133,979,608	$ 387,779,765	65.45%		unknown		
"		2005	3,601	1,887	$ 111,144,403	$ 353,491,180	68.56%		unknown		
"		2004	3,350	1,846	$ 74,608,825	$ 308,697,190	75.83%		unknown		
"		2003	3,314	1,731	$ 60,515,176	$ 289,059,078	79.06%		unknown		
"		2002	3,399	1,798	$ 65,475,774	$ 280,774,548	76.68%		unknown		
"		2001	3,211	1,897	$ 24,057,562	$ 256,045,926	90.60%		unknown		
"		2000	3,185	1,746	$ (3,625,691)	$ 223,482,391	101.62%		unknown		
							Hwy/Bldg **		2-A / Z1	2-B / Z2	2-C / Z3
Indiana State Council of Carpenters	1/14/2013	√ 2011	6,926	2,610	$ 502,000,310	$ 845,069,080	40.60%	74.00%	$ 6.55	$ 6.55	$ 6.55
Indiana Hwy Zones 2A, 2B, 2C, 4A, 4B, 4C & 4D	1/17/2012	2010	6,799	2,532	$ 574,760,518	$ 883,378,164	34.94%	73.83%	$ 6.47	$ 6.02	$ 6.01
Indiana Bldg Zones Z1, Z2, Z3, Z4, Z5, Z6, Z7A, Z7B & Z8	1/14/2011	2009	7,117	3,020	$ 472,750,070	$ 720,744,701	34.41%	65.43%	$ 5.48	$ 5.03	$ 5.02
(Plan Year April 1 thru March 31)		2008	7,046	2,961	$ 230,041,737	$ 573,979,415	59.92%	85.11%	$ 4.64	$ 4.21	$ 4.20
EIN: 35-6060378		2007	6,987	2,961	$ 172,946,339	$ 521,507,180	66.84%		$ 3.92	$ 3.77	$ 3.63
"		2006	6,375	3,364	$ 108,334,390	$ 403,374,463	73.14%		$ 3.90	$ 3.64	$ 3.55
"		2005	6,547	2,693	$ 147,444,971	$ 436,216,529	66.20%		$ 3.35	$ 3.35	$ 3.35
"		2004	6,489	2,646	$ 98,594,337	$ 375,191,593	73.72%		$ 3.10	$ 3.10	$ 3.10
"		2003	6,616	2,671	$ 144,548,539	$ 366,881,926	60.60%		$ 2.90	$ 2.90	$ 2.90
"		2002							$ 2.80	$ 2.80	$ 2.80
"		2001							$ 2.60	$ 2.60	$ 2.60
"		2000							$ 2.30	$ 2.30	$ 2.30

Notes regarding Indiana State Council of Carpenters Pension Plan:

This pension plan is funded through contributions from Zones 2A, 2B & 2C of the Carpenters Statewide Highway and Heavy Agreement, Zones 1, 2 & 3 of the two Northeast Indiana Building Agreements and Zones 5, 6, 7A, 7B & 8 of the Southern Indiana Building Agreement.

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Pension Fund Financial Tracking Chart for Multi-Employer Pensions that are funded through collectively bargained agreements in Indiana

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Carpenters Local Union 215 Pension Fund	12/11/2012	√ 2011	463	178	$ 34,702,690	$ 64,023,659	45.80%	80.72%	$ 6.46		
Indiana Hwy Zone 1B	11/21/2011	2010	507	229	$ 33,642,306	$ 60,630,586	44.51%	81.48%	$ 6.46		
Indiana Bldg Zone Z2	1/5/2011	2009	603	355	$ 32,707,055	$ 54,809,825	40.33%	66.58%	$ 5.62		
(Covers Pulaski, Benton, White, Carroll, Warren, Tippecanoe &		2008	517	273	$ 16,464,235	$ 47,204,876	65.12%	n/a	$ 4.87		
Clinton Counties in Indiana)		2007	646	417	$ 15,767,997	$ 45,029,120	64.98%		$ 4.74		
(Plan Year April 1 thru March 31)		2006	508	278	$ 13,392,900	$ 40,848,217	67.21%		$ 4.59		
EIN: 35-6244812		2005	471	239	$ 12,769,087	$ 37,322,852	65.79%		$ 4.37		
"		2004	491	257	$ 10,889,194	$ 34,500,368	68.44%		$ 4.10		
"		2003	501	284	$ 9,257,959	$ 28,450,665	67.46%		$ 4.05		
"		2002	472	316	$ 3,949,722	$ 24,609,094	83.95%		$ 3.65		
"		2001	434	297	$ 3,387,035	$ 22,996,217	85.27%		$ 3.50		
"		2000							$ 3.25		
Indiana Carpenters Pension Fund	10/9/2012	√ 2011	6,541	2,576	$ 473,828,508	$ 782,853,106	39.47%	81.49%	$ 7.05		
Statewide Indiana Hwy and Hvy Agreement Zones 3A, 3B, 3C & 3D	10/5/2011	2010	6,513	2,693	$ 438,644,654	$ 726,306,427	39.61%	84.88%	$ 6.52		
Central Indiana Bldg Agreement Zones 1, 2, 3 & 4	10/13/2010	2009	6,849	3,384	$ 272,001,403	$ 525,869,067	48.28%	81.73%	$ 5.49		
(Plan Year Jan 1 thru Dec 31)		2008	6,857	3,528	$ 145,803,711	$ 478,851,494	69.55%	101.05%	$ 4.66		
EIN: 35-6057648 Plan 001		2007	6,857	3,528	$ 124,901,570	$ 452,854,045	72.42%		$ 4.15		
		2006	6,375	3,364	$ 108,334,390	$ 403,374,463	73.14%		$ 3.85		
		2005	6,529	3,086	$ 94,919,644	$ 377,614,979	74.86%		$ 3.85		
"		2004	5,718	3,488	$ 53,874,672	$ 316,889,892	83.00%		$ 3.55		
"		2003	5,891	2,755	$ 63,034,595	$ 283,750,142	77.79%		$ 3.40		
"		2002	5,835	3,045	$ (5,219,644)	$ 252,432,356	102.07%		$ 3.00		
"		2001	5,765	3,102	$ (10,898,360)	$ 256,968,001	104.24%		$ 2.60		
"		2000							$ 2.25		
Lower Ohio Valley District Council Pension	7/10/2012	√ 2010	931	253	$ 36,140,640	$ 80,723,245	55.23%	unknown	tbd		
Trust Fund	6/23/2011	2009	1,336	662	$ 30,167,613	$ 74,274,455	59.38%	unknown	tbd		
(Carpenters)	3/16/2010	2008	1,408	769	$ 29,241,677	$ 77,552,177	62.29%		tbd		
(Plan Year Oct 1 thru Sept 30)		2007	942	303	$ 15,111,851	$ 74,314,522	79.67%		$ -		
EIN: 35-6077238		2006	1,164	536	$ 17,554,439	$ 73,862,781	76.23%		$ -		
"		2005	1,189	562	$ 13,694,741	$ 69,565,052	80.31%		$ -		
"		2004	1,432	758	$ 11,129,648	$ 64,068,514	82.63%		$ -		
"		2003	1,474	838	$ 5,616,982	$ 57,083,402	90.16%		$ -		
"		2002	1,840	912	$ 4,822,622	$ 51,824,865	90.69%		$ -		
"		2001	1,805	1,220	$ 5,025,602	$ 54,963,028	90.86%		$ -		
"		2000	1,737	1,292	$ (314,653)	$ 56,013,049	100.56%		$ -		
Iron Workers District Council of Southern Ohio &	11/12/2012	√ 2011	8,481	3,273	$ 893,767,072	$ 1,496,576,907	40.28%	71.79%			
Vicinity Pension Trust	10/26/2011	2010	8,652	3,645	$ 933,152,478	$ 1,477,035,118	36.82%	69.43%	$ 7.70		
(Plan Year Feb 1 thru Jan 31)	11/9/2010	2009	8,905	4,161	$ 952,970,890	$ 1,422,361,092	33.00%	62.70%	$ 7.50		
EIN: 31-6127229		2008	8,697	4,049	$ 680,125,350	$ 1,320,912,823	48.51%	75.95%	$ 7.20		
		2007	8,695	4,049	$ 490,691,628	$ 1,136,474,984	56.82%		$ -		
"		2006	8,386	4,327	$ 471,202,345	$ 1,071,328,863	56.02%		$ -		
"		2005	8,315	3,862	$ 417,830,253	$ 999,906,453	58.21%		$ -		
"		2004	8,390	3,876	$ 343,788,115	$ 925,222,020	62.84%		$ -		
"		2003	8,300	4,041	$ 382,299,470	$ 882,539,007	56.68%		$ -		
"		2002	7,958	4,313	$ 264,525,287	$ 834,893,490	68.32%		$ -		
"		2001							$ -		
"		2000	8,235	4,419	$ 282,177,913	$ 863,719,077	67.33%		$ -		

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Notes:

Weblink to Pension Plan Reform Legislation (PPA 2006) http://www.dol.gov/EBSA/pensionreform.html

Plans with funding levels as follows shall be treated as fully funded 2008: over 90%, 2009: over 92%, 2010: over 94%, 2011: over 96%

Plan Status	Definition of:	Length of funding improvement plan	Surcharge until FIP In place
Green Zone (Green)	Liabilities at least 80% or more funded	Not required	
Endangered (Yellow)	Liabilities less than 80% funded but greater than 65% funded.	10 yrs	
Seriously Endangered (Yellow)	Less than 80% funded and there is a projected funding deficiency within 7 years.	15 yrs	
Critical (Red)	Less than 65% funded	10 yrs	1st yr 5%, 2nd yr and up 10%

Endangered Status is defined as a plan that is NOT Critical AND it is described as either: (1) Funded percentage is less than 80% or (2) there is a projected funding deficiency within 7 years.
Seriously Endangered Status is described as a plan that is NOT critical and it is both (1) Funded percentage is less than 80% or (2) there is a projected funding deficiency within 7 years.
Critical Status is defined as meeting one or more of the following: (1) Funded percentage less than 65% and there is a projected funding deficit within 5 yrs or an inability to pay benefits for next 7 years or (2) Projected funding deficiency within 4 yrs, or (3) Inability to pay benefits for next 5 yrs, or (4) Value of benefits for non-actives is greater than for actives; contributions are less than current year costs (ie "normal cost"); and projected funding deficiency within 5 yrs.

Notes:

(1) **Funded current liability percentage**: Is a ratio of the "Current value of assets" (Line 2a of IRS Schedule MB (Form 5500)) to line 2b(4) "Total" column "(2) Current liability", as of the valuation date, expressed percentage.

(2) **Funded percentage for monitoring plan status**: Is a ratio of the "Actuarial value of assets for funding standard account" (Line 1b(2) of IRS Schedule MB (Form 5500)) to "Accrued liability under unit credit as a cost method" (Line 1c(3), as of the valuation date, expressed as a percentage.

All financial and number of participants information was sourced from Department of Treasury, Internal Revenue Service Schedule MB (Form 5500) Annual Return/Report of Employee Benefit Plan documents, filed by the respective pension plans and publicly available. Applicable Form 5500 line numbers are noted.

√ = Recently updated information

Attached to the "Adobe Acrobat" (pdf) version of this spreadsheet (for reference purposes only) is a copy of the IRS Schedule MB (Form 5500) as filed by the Indiana State District Council of Laborers & Hod Carriers Pension Fund for Plan Year 2010.

Chairman ROE. Thank you, Mr. Force.

And with the panel's uplifting testimony, now we can get started, you all painted a pretty bleak picture, but there are solutions to this, and I know certainly in a bipartisan way, we are ready to do this.

Mr. Force, I think you laid it out very clearly and let me just summarize especially in the crafts industry and the contractor industry where you are, I know that certainly attracting good people that the pension benefit is a huge plus out there if a man or woman working for you and your business can go to this job or that job or that job and realize they are not losing their pension contribution, that is a huge benefit I think.

Problem is we have a good many plans that are underfunded I think because of several reasons. One you brought up; the downturn in the market. Both—and people forget that the market, and Mr. Perrone pointed out, in early 2000s we had a recession then also followed by a much deeper recession in 2008.

We have a—I think we have a system where calculating the benefits has been unrealistic. Some have calculated it at 7 to 7.5 to 8, 8.5 percent return every year without any downturns. I think that was a mistake—I think you have done—that is unrealistic.

I think certainly the economy, this particular recession hit certain parts of the economy, for instance construction housing market, much more severely than others.

Mr. Perrone, you are involved in a market where we all have to do every day, which is eat, and you are in a very fortunate—because we are going to buy food but we don't necessarily have to buy a house and—or a new home or a new business.

We may live—stay in the old building. So I think that is why some plans have been able to survive and stay in the green zone or relatively safe and others have been in the critical—trucking, construction, other entities like that, so we have had that problem.

And I think lastly, and Mr. Andrews and I were talking about it, I think certainly one of the solutions that we have to have is to be able to allow you because I went through this when I was the mayor of a city and a defined benefit plan, when things are going well your contributions may be 5, 6, 7 percent of the person's income, but all of a sudden the market takes a dive your actuaries say excuse me, you have got to donate—you have got to put 20 percent away a year, and as an employer, there is no margin to do that.

You can't invest in any new equipment or anything. I think we have to have a way and we have to talk to Ways and Means about this because it does affect taxes and we don't have any jurisdiction over that, but to allow you during good years to be able to continue those contributions so that in the bad years they level out over time and I think that is going to be one of the solutions.

I think another solution is going to be an increased PBGC contribution. I don't know how much that will be. That can be determined and you will have to obviously, with the unions, Mr. Perrone, and you all have been very, very helpful in this is to look at decreasing the contribution. We have millions of people out there, working people every day that are retired now that are relying on us to do our jobs so that they continue to get their benefits that they have been promised and earned I might add.

Mr. Jeszeck, I want to ask you if you could just discuss just a little bit of the contagion effect how one plan that is in trouble will affect another plan. If you hit your mic——

Mr. JESZECK [continuing]. Mr. Congressman, and I think the situation that Mr. Force—his company could potentially be an example of that. He contributes to multiple multiemployer plans. So if you have a company that is in a number of different plans and goes bankrupt, not only does it affect the financial status of the principal plan, but it would affect the financial status of all of these other plans.

So if you have—these other plans could be in green status, could be financially, you know, solid and yet if some—an employer which is in—may only be in part of that plan but in one of these other plans goes bankrupt, it would have an effect on these and these other—and all of these plans.

An example of this that came to us when we did our work was the Hostess company, which was in a considerable number of multiemployer plans and essentially, the contagion spread to their bankruptcy and one—and that really affected one plan hurt a number of other plans as well.

Chairman ROE. My time is about expired, but Mr. Jeszeck, you mentioned the ones that are in the red zone—do—and we have a lot fortunately in the green zone because things have gotten better. How much is that liability in the red zone and this will go to Mr. Gotbaum also, how much do we have to bring the PBGC rates up to make up or decrease the benefits in those in the red zone right now?

Mr. JESZECK. Well, I would have to defer to Mr. Gotbaum on PBGC. They do projections of the changes in revenue that would be necessary to pull out the—get these plans out of red zone status.

Chairman ROE. Mr. Andrews?

Mr. ANDREWS. Thank you, Mr. Chairman. I appreciate the panel. I think we have four problem solvers here this morning. I really appreciate that.

Mr. Gotbaum, you have really shown the desire to lead your agency and be a problem solver.

Mr. Jeszeck, the GAO is always a rich source of data and understanding.

Mr. Force and Mr. Perrone, I again want to commend you for participating in the negotiation of the joint committee that I think is given a very solid place for us to begin.

Mr. Perrone, I think you have given us in particular a compelling case study as to how we might solve this problem in other places with the Kroger/UFCW agreement that you mentioned in your testimony. Now we had a representative of Kroger before the subcommittee a few hearings back who told exactly the same story and I think it bears repeating.

My understanding is in 2011 there were four red zone plans that—of people who worked at Kroger supermarkets, UFCW employees. Is that right?

Mr. PERRONE. Yes, Congressman Andrews.

Mr. ANDREWS. And my understanding is that you then collectively bargained a solution of that, the union and the management came together. Is that right?

Mr. PERRONE. That is also correct.

Mr. ANDREWS. And there were 180,000 participants that were distributed among those four red zone plans. My understanding is that we now have one fully funded green zone plan. Is that right?

Mr. PERRONE. That is correct, and I believe that the person that came before the committee was Scott Henderson, the Treasurer of Kroger who sits on a fund—another fund with me which we had a discussion about some potential resolutions of other problems that could ultimately come up.

Mr. ANDREWS. Now my understanding is that one of the ways that you got from 71 percent funding to 100 percent funding was a credit facility where Kroger and the plan were able to borrow a significant amount of money, take advantage of low interest rates, and plug the gap. Is that how you did it?

Mr. PERRONE. Basically what Kroger did, they went to the capital markets. They arbitraged the interest rate to where that they took the rate that they were able to get on the open market, which was around 2 percent versus the 7.5 percent for the fund. And they were able to save a considerable sum of money on the contributions, which is the conversation the treasurer and I had the other day, is whether or not there might be some ability to go to investment banks for instance, take the contributions that are coming in and use those contributions as a vehicle to service the debt and reduce or arbitrage the interest rates on that.

Mr. ANDREWS. Now in your testimony you mentioned I think it is quite accurate that not all potential borrowers would have the creditworthiness that Kroger has, and you indicated there might be another mechanism where we could enhance that credit perhaps through a guarantee system or what have you.

Mr. Gotbaum, not speaking authoritatively for your agency, but just your first impression, if we were able to construct proper pro-

tections against reckless borrowing, something that Congress has not been terribly good at on our own I must admit, but if we could protect proper governors and parameters around those deals, do you think that some sort of credit enhancement in the form of a public guarantee would be a useful tool in achieving the result like we achieved in the Kroger/UFCW case? What do you think about that?

Mr. GOTBAUM. This is not something on which there is, as far as I know, an administration position, so I am giving you my personal reaction, my personal reaction.

Mr. ANDREWS. Yes, understood. This is just your opinion. Yes.

Mr. GOTBAUM. There is—I think it is a great thing that the government thinks about all possible ways to be supportive of multi-employer plans. I think you have put your finger on one of the important issues as to how we do it.

This is a system that is not funded by taxpayers, and it is a system that we want to keep not funded by taxpayers. The way we think that is is to try as much as much possible to enable plans to do self-help on their own, but to facilitate them so my——

Mr. ANDREWS. You mentioned one other thing——

Mr. GOTBAUM. So my reaction is be—I think this is something which we can and should take a look at.

Mr. ANDREWS. One other thing that comes to my mind on this is that the CBO would score such a guarantee as costing the Treasury money, you could construct a system where there is a fee that would have to be paid by the plan to the government that would offset and make it deficit-neutral if you did such a thing, where the fee would still be less in order to buy the credit enhance—anyway, it is a way to approach the problem.

Thank you.

Chairman ROE. I thank the gentleman for yielding.

Chairman Kline?

Mr. KLINE. Thank you. Thank you, Mr. Chairman.

Thanks to the panelists for being here today.

Director, always good to see you. Appreciate your testimony and that of all of the members of the panel.

I think you said, Director, that it is complicated and just listening to the conversation here today, we have got arbitrage and interest rates and guarantees and all that sort of things and it is complicated, but it being complicated doesn't mean that we don't need to address it. And there was some testimony today and some statements perhaps from some of my colleagues about how it is really not all that bad that, you know, most of the plans are sort of in green. We just have a few that are in red, and at the same time I think some, over half of the plan participants are in plans that are in yellow or red zones.

And you, Director Gotbaum, have said that there is a 90 percent likelihood of insolvency in this multi-employer insurance program in the next 20 years. That is not very encouraging, that there is a 90 percent likelihood of insolvency.

So again, it spurs the activity of this committee and in cooperation with you and others to do something about that. So in view of that 90 percent likelihood of insolvency, what does the PBGC do? How can you continue to pay promised benefits?

Mr. GOTBAUM. Mr. Chairman, thank you for being here and for asking the question. PBGC—our job is to be a safety net for plans. In some respects, I think of the PBGC as the multiemployer back up to multiemployer plans. And that means that in the same way that we worry about the financial soundness of the plans we have to worry about the financial soundness of PBGC.

Now, for a very long time PBGC premiums were low, and in the multiemployer program, they were enough. What has happened since is that it has become clear that even though most plans will not end up on the PBGC's door, enough will so that we don't have our—the current resources.

So what we hope to do is to work with this committee, with the Congress and others, to do two things. One is to figure out what changes make sense for multiemployer plans. And then, secondly, with those changes what does the PBGC need in order to be the safety net that ERISA intended?

We think those discussions have to be done together because if you say to me: "How much money would you need to get—to take care of all of the plans that might go insolvent?" The answer is: "Too much."

But if the question is: "How much—what would PBGC need in order to deal with the problems that will really occur after you have done your work over the next 2 years?" That, I have got to say, I think is manageable, and that is what we look forward to doing.

Mr. KLINE. Without any changes to current law and we are intent, I believe, on changing current law, but without any, what would premiums have to go to, to allow you to continue to pay the benefits. Have you looked at? Do you know what that number is?

Mr. GOTBAUM. To be honest, Mr. Chairman, that was a sufficiently high number that I didn't run around and ask my staff for a detailed estimate. [Laughter.]

Mr. KLINE. I can easily imagine. We now have—I see my time is about to run out—but we have the a report from the NCCMP that is I think helpful. Are you or have you taken a position on that that that is the way to go? Are there modifications to it? Do you have a comment? I think you addressed that briefly in your testimony, but where are you, having looked at that input?

Mr. GOTBAUM. As I said in my testimony, we feel very strongly that because these situations are complicated, it is important to start with the solutions that the industry themselves figure out, but that doesn't mean we stop there.

What we have done since we received the report, we have got the report a couple of weeks ago I think. Is we are starting to analyze it. We are trying to figure out what the recommendations mean. We are still some time away from analyzing those. Once we do, then we can come back and give you a sense of what are the implications.

Mr. KLINE. And we will be looking for that. We also are analyzing it. We appreciate the product and we appreciate your testimony, and I yield back.

Chairman ROE. Thank the chairman for yielding.

Mr. Scott?

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Gotbaum, following up Mr. Andrews' suggestion, if there was a guarantee, well really a guarantee in any way, how could we possibly be any worse off with this suggestion? How could we be any worse off if you adopted Mr. Andrews' suggestion because if they didn't pay the loan, I mean, we are guaranteeing it anyway, we couldn't possibly be any worse off, could we?

Mr. GOTBAUM. One of the things that I have learned, Mr. Scott, is that pensions—if as Mr. Kline said, if pensions are complicated, multiemployer pensions are even more complicated.

Mr. SCOTT. Well, let me——

Mr. GOTBAUM. And so my only point is I do think we need to think carefully and well about what we can do, what we can do to be helpful. What I hope is that especially when you do that, you give the plans enough flexibility and enough range of tools so that the plans can each solve their own set of problems.

Mr. SCOTT. Well, is withdrawal from plans by corporations a problem now?

Mr. GOTBAUM. Mr. Scott, withdrawal—the—withdrawal liability is in some respects the glue that holds the multiemployer system together. The way I think about the multiemployer system is it is an agreement entered into by many employers that in exchange for not having to go through the hassle of worrying about individual administration of pensions, they are bound together.

Now the issue is that if an employer can just walk away without consequence, then employers are not bound together, and so one of the fundamental issues we have is can you provide flexibility without undoing the basic glue that holds——

Mr. SCOTT. But that is an issue. What is the present law? Can somebody walk away without any kind of legacy liability?

Mr. GOTBAUM. No. The way the law currently works is that if an employer withdraws, there is withdrawal liability. They have a proportional share of the ongoing obligation of the plan. What plans have said to us and what employers have said to us is: "We don't think that is fair."

Mr. SCOTT. Proportional share? They don't have to take the whole weight—if they stay in, if things go south, they are stuck holding the entire bag. If you are a little teeny company and a big guy goes broke, you have now assumed his—that big liability. Is that right?

Mr. GOTBAUM. One of the issues that we do have is that with the change in the employer makeup of some plans a lot of employers, as Mr. Force said, who thought they were in basically a defined contribution plan, that they didn't have to worry once they wrote the check, now worry about residual liability. And that is why we are trying to figure out—are there ways to fairly and while protecting the integrity of the plans allow flexibility to plans.

Mr. SCOTT. Okay, well if somebody goes bankrupt, their liability goes to the other corporations ultimately to the PBGC. What if they reorganize in bankruptcy and come right back out? What happens to their liability?

Mr. GOTBAUM. Generally, in bankruptcy, the obligations of companies including their obligations to pensions are what the lawyers would say is, "discharged in bankruptcy." So they have shed them.

Mr. SCOTT. So if they reorganize, they have shed themselves of that entire liability.

Mr. GOTBAUM. Yes, Mr. Scott.

Mr. SCOTT. You have indicated that the premiums have gone up from $9 to $13 this year. Is there any thought of basing the premiums on which zone you are in?

Mr. GOTBAUM. We are in—Mr. Scott, we are in early days on that exact question. One thing of which we are confident is that we really do need to rethink our program. We need to rethink how we charge because we want to preserve the PBGC as a safety net.

Mr. SCOTT. Is that being thought of that you get charged by the zone?

Mr. GOTBAUM. It is clearly something which we should consider, yes.

Mr. SCOTT. And now in calculating your annual contribution, that can go up and down with what zone you are in, is there any problem with the formula that kind of compounds the problem? Is the formula about what you have to put in this year, is there any problem with that formula?

Mr. GOTBAUM. Mr. Scott, various plans have told us that although the basic architecture that the Congress created in 2006 makes sense, that some of the ways we have implemented the rules actually leaves them with uncertainty. And so they have come back and suggested that there be more flexibility in terms of zone certifications and the rules. That is something which we think ought to be considered and thought through as part of this review.

Chairman ROE. Thank you for yielding.

Mr. Messer?

Mr. MESSER. I am a freshman here. It took me a second to get the—my mic on.

I want to thank the panelists, you know, in a time where Washington seems to not be able to agree about much of anything, it is nice to see a group of people, that are coming together and trying to work and solve problems. I want to particularly thank Harold Force for being here today. He is a constituent from Indiana's 6th Congressional District, the area I represent.

The Force family has been a fixture and pillar of the Bartholomew County community for many, many years and appreciate the wisdom of his testimony today. We had an opportunity yesterday to speak at some length about the challenges that we face and I am going to ask you to expand a little bit upon part of that conversation today.

You know, to the average citizen sitting out here watching this discussion, one, if they are able to stay awake, which, it is an important issue, but it is just a challenge, they would ask the simple question well, wait a minute. If we don't have enough money in these funds and we have got benefits to pay out, why don't we just pay more and for the individual contributors in the plan?

And if you could, Mr. Force, if you could expand a little bit on the way that contributions have risen already in recent years and how those have spiked, and then as you answer that comment a little bit about whether that is a reasonable answer moving forward.

Mr. FORCE. Thank you, Congressman Messer. This is a complicated issue. You will find attached to my written testimony a table and some graphs that I think in the Indiana context define how the contributions have increased rather rapidly over the past 15 years to the various multiemployer plans of which we are part.

I would also clarify that each of these multiemployer plans is inside of a larger collective bargaining agreement that defines the results of a negotiation between contractors or a contractor association and the respective building trades in terms of what the wages, what the benefits, including pensions, health and welfare, and other things might be. So we are constrained by the specific terms of those collective bargaining agreements.

We believe, certainly I believe, that the key piece that has to be addressed is how the trustees, and trustees of the plans include labor and management representatives as well as the plan managers, these trustees need tools that they don't currently have to be able to look at the entire setting of what is going on—the number of retiree beneficiaries, the number of pending beneficiaries, the number of future beneficiaries, contributors to the plans through their employers, and the assets of the plans themselves—to determine what kinds of benefits can be provided, how those benefits can be best protected to match the assumed rates of returns in those plans to what can be achieved in the marketplace at an acceptable level of risk.

Those tools are not out there, and that is what we need. I am not here to suggest a bailout or a guarantee. What we need is tools so that our trustees who are close to the action can make decisions in the best interests of our employees and their beneficiaries.

Mr. MESSER. Yes, thank you. I will just follow up with this additional question. You know, out where I live in Indiana's 6th Congressional District, 19 rural counties, strong manufacturing base, the number one issue is jobs. Folks are—want a healthy economy. They want the opportunities that will come with that healthy economy and believe that we ought to be able to go into work and try to create an environment with more jobs.

Could you talk or comment just in a minute about how the uncertainties connected with these plans have influenced your business decisions at all over the course of the last several years?

Mr. FORCE. Few things light a fire under your ambition like the condition of these plans. I would say that, but quite honestly, we have a terrific cadre of construction workers that are part of our team. They are efficient, they are hard-working, they are productive. They have their own families to take care of and we are highly incented to do a good job for our customers to be competitive, to get the jobs done timely.

And keep in mind that in the construction industry, from the day that you start a project, the whole objective is to work your way out of a job and that those employees in the back of their mind are always thinking: "Where is our next job? What is next?"

So that goes to the fundamental reason for these plans existing. Our people need to be able to take their skills and their benefits package with them from employer to employer. So in Indiana, where we are kind of a shirt sleeve society, we are working hard to make sure that everyone gets their job done efficiently. And we

need a way to keep these programs viable so that our people have a reason to be attracted into these plans and that we as employers do not have this very black cloud hanging over us.

Mr. MESSER. Thank you.

Chairman ROE. Mr. Tierney?

Mr. TIERNEY. Thank you, Mr. Chairman. I am going to yield my time to Mr. Scott.

Mr. SCOTT. Thank you, and I thank the gentleman for yielding.

Mr. Gotbaum, when the market collapsed all the programs suffered. The market has come back. Is there any reason why the program—why the plans did not benefit from the stock market recovery?

Mr. GOTBAUM. Mr. Scott, plans—all plans suffered when the market collapsed and it is true that the market has come back, but what is not true is that it has come back so much that plans aren't behind the eight ball. They are and so——

Mr. SCOTT. Are there any stocks that they could not invest in, the pension-eligible investments where the market went up but those—went up with stocks that the pensions were not able to invest in?

Mr. GOTBAUM. Mr. Scott, I am not aware that the particular investment practices of multiemployer plans kept them from participating in the recovery. I think the fact is that although we have had a market recovery for which we are all very grateful, it has not been yet a strong enough recovery so that plans are in the situation where they had hoped to be 5 years ago.

Mr. SCOTT. Has there been any suggestion that plans invest mostly in insurance products where the rate of return could be more predictable and the vagaries of the market would be borne by the insurance companies rather than the plans themselves? I mean, they sell annuities all the time so this wouldn't be anything new.

Mr. GOTBAUM. Yes, Mr. Scott. There are some plans—I don't—I can't tell you how many in the multiemployer universe versus not. There are some plans which have decided that they are better off, rather than taking all of the risks of investing in the stock market to, in effect, dedicate some of their resources and cap the risk by buying an insurance product or staying with bonds or with something like that.

There are plans that do that. However if you do that, when you are underfunded, in effect, you are locking in your underfunding. And so the number of plans that have chosen to do that so far is limited.

Mr. SCOTT. Well, you lock in underfunded. You also limit—cap your risk. If you are still out there on a limb things could get worse.

Mr. GOTBAUM. They could, but I think to the credit of plans, what we see is that plans want to get out. They want to get whole. They are not trying to lock in losses and just come to the doorsteps of the PBGC. They are trying to solve their problems on their own.

Mr. SCOTT. What is the typical annual contribution? We are talking about tax fees in the $9 going up to $13. What is the typical contribution?

Mr. GOTBAUM. Mr. Scott, the range of contributions is all over the lot because there are, for example, the UFCW plans, which are good plans, okay, are plans for workers who, frankly, who earn less than some of the construction workers that work for Mr. Force.

And so, the range of contributions you get depends in part on what the industry can afford, et cetera, so there is a wide range. If it would be helpful, I am happy to submit——

Mr. SCOTT. You are charging everybody the same thing and if you are talking about $100 annual contribution, a $13 fee would be overwhelming. If you are talking about a $2000 or $3000, $5000 contribution, then the fees in this range wouldn't be troublesome.

Mr. GOTBAUM. Mr. Scott, you are absolutely right that as I said before I think the PBGC program does need to be rethought. It needs to be made fairer and it needs to be done in a way that makes sure that the PBGC is always there as a safety net.

Mr. SCOTT. Is there any thought in limiting the liability of small companies in a multiemployer plan so that if you are a small company your liability can't be—your ultimate liability can't be say more than twice your portion or something like that? Rather than the small company being involved, getting caught with a overwhelming debt that they just can't pay?

Mr. GOTBAUM. Mr. Scott, I don't know. Let me—it is certainly something worth thinking about. Let me circle back for the record if I may on that one.

Mr. SCOTT. Thank you.

Chairman ROE. I thank the gentleman for yielding.

Mr. Hinojosa?

Mr. HINOJOSA. Thank you, Mr. Chairman.

I have to agree with Rob that I am very impressed with our witnesses and the knowledge that you have on these pension plans and your willingness to try to work out something for the benefit of the employees, and I compliment each and every one of you.

My first question is to Josh Gotbaum. Mr. Gotbaum, in your testimony, you indicated that Congress has an opportunity within the next 2 years to preserve and enhance the multiemployer plans on which so many small businesses and workers depend.

Would increasing the premium paid to PBGC by the multiemployer plans improve their liabilities? And if yes, how much do you believe premiums could be increased without unduly burdening employers and their plans?

Mr. GOTBAUM. Mr. Hinojosa, thank you for asking that important question and I am—we think that it is important, just for the same reason that it is important that pension plans be financially sound, that PBGC be financially sound so that we can provide the safety net, so that we can help plans in the ways that they have asked.

And that clearly is—would involve an increase in the level of premiums. As Mr. Scott suggested, it probably ought to be just not an across-the-board increase, that we ought to think about what is fair and what makes sense based on individual plans and individual workers, et cetera.

And we are not at a position to tell you yet what that ought to be. We hope to work that out as part of your discussion. What I will say is that, how much that is also depends on what tools you give plans to avoid coming to the PBGC.

If all of the plans that right now say they don't think they can get out of red status, if all those plans come to the PBGC, then I don't even want to mention how high that number is going to be. Okay? But it is a very high number. It is a number that is high enough so that we would say it is a problem for plans.

However, what we have learned thus far is that if the plans get—if some of the plans that are in distress get tools to help solve their problems on their own to avoid coming to the PBGC, then the resulting premium increase is less, ought to be less, ought to be much less.

And so what we hope to do over the months ahead is to work with you all and say if you agreed to the kinds of changes that for example the panel has discussed and that NCCMP has discussed, then it looks like what PBGC would need is this. That is the discussion we hope to have with this committee after we have had a chance to sharpen our pencils a bit.

Mr. HINOJOSA. Thank you for your response. We will work with you.

I would like to ask the next question to Director Jeszeck and also to Mr. Perrone. See if you can respond.

If Congress permits plans to reduce certain retiree benefits, what process should the plan have to follow? And secondly, how do we make sure that the retirees are given an opportunity to submit their views and receive fair consideration?

Mr. JESZECK. Well, Congressman, in the report which will be released later this month, we do look at some of these issues. I think in any case, any reforms that Congress chooses to implement should take into account the interests of all the stakeholders and certainly that would be retirees, it would be current workers; that that would be the plans, the employers, PBGC, the taxpayer.

So in all those cases, those interests should be taken into account. Clearly, any change that would involve the reduction of benefits would be a very significant one. It certainly, it cuts to the heart of ERISA, so we would think that anything that would happen in that case would have to have sufficient protections, the potential for review, and input from the affected parties.

Mr. HINOJOSA. Do you—Mr. Perrone, can you make your response short?

Mr. PERRONE. I don't think that retiree benefits of people that are already retired should be reduced; however, in some plans that are in a position that are insolvent, if ultimately they are going to be reduced and only in those cases would you take a look at potentially having any reduction that would take place at all.

Mr. HINOJOSA. Thank you.

Thank you, Mr. Chairman.

Chairman ROE. Thank the gentleman for yielding.

I thank the panel for again a great discussion. We will continue this discussion until we have the tools, Mr. Force, to be able to help solve this problem.

I will now yield to our ranking member for his closing comments.

Mr. Andrews?

Mr. ANDREWS. I, Mr. Chairman, share your praise for the panel. Really, well done, very helpful to us.

Ultimately, this issue is about the small businesses and middle-class retirees of the country. We are not going to have a true and robust economic recovery if small businesses are not generating jobs because they account for—people like Mr. Force account for a majority of the jobs created in the private sector of this country every year.

And we are not going to have a robust recovery if middle-class retirees aren't buying automobiles and refrigerators and taking their family to restaurants and do the things that people can do when they have a decent pension, decent income.

Reconciling and aligning the interests of the employers who need to be competitive to be prosperous, the retirees who definitely need a guarantee of that income for the rest of their lives, and the taxpayers who absolutely need immunity from any responsibility to rescue these funds because that is something we don't want to do, is an achievable goal, and I think we have heard again, many of the aspects of how to achieve that goal.

It involves looking at the PBGC's premium structure in a fair and balanced way. It involves looking at financing vehicles would help would help red zone plans, as those Kroger plans did, climb to green zone status by taking advantage of lower interest rates while they are still with us.

It involves painful but fair choices within plans to restructure who gets benefits when and under what circumstances. I also, by the way, believe it involves a reconsideration of bankruptcy code and making sure that in bankruptcy, plans are treated fairly in their status, which we don't presently have.

And finally, I think it includes what you might call a sunny day fund where plans that are prospering and wish to make higher contributions than the present ceiling would allow are in fact given that opportunity.

I can never think of a good reason why an ERISA trust should not be able to put money away for the retirement or health care of its members. I just think anytime somebody wants to do it, we ought to encourage them to do that.

So this was very instructive.

I say to the chairman, we appreciate the spirit in which he and Chairman Kline have approached this problem. We would like to do what the stakeholders did in the coordinating committee, which is to listen to each other, respect each other's various points of view, and come to a good solution.

So I thank you for the hearing. I look forward to our continued progress in this regard.

Chairman ROE. Thank you, Mr. Andrews.

And Mr. Gotbaum, I think laid out the ultimate Catch-22. Director Gotbaum did when he talked about the problem that we are looking at. The problem is it is too expensive to get out and it is too expensive to stay in.

That is basically how you described that and I think so that our viewers and listeners can understand it, I looked at my own 401(k) 5 years ago when I ran for Congress and it is a very conservatively run plan with mutual funds, index funds, bonds, and cash. It is exactly where it was 5 years ago.

If—I mean, almost to the nickel of where it is 5 years ago. I haven't touched it, haven't taken any money out of it, but if I am a pension plan and I have to pay benefits out and I don't have any money going in, I haven't paid any money back into it, there is less money there to go up when the market goes up.

And that is one of the reasons I think these plans are in trouble is that they have decreased the amount of money that they have even with the market returning. That is why the red zone plans are going to have a very difficult time.

Second thing that happened is this particular recession as severe as it was hit certain aspects of the workforce much harder. For instance, Mr. Force, I saw that in my own community where we were issuing small community of 600—I mean, 60,000 people, we were issuing $200 million a year in building permits and I knew that our construction industry was doing very well and then in 2008 or 2009, I talked to friends of mine that haven't built a house in 2 or 3 years now.

So it affected them dramatically because the retirees that are out there are still taking their money out, and I think that pretty much lays it out—and Mr. Andrews did a very good job of laying out, I think, the solutions for this, and Mr. Perrone, you made a couple of great comments, I think, one about the acts of the Federal Reserve. I think that is true, what you said.

And secondly, I think we should strive in everything we do to maintain current recipients their—I mean, you have to. They are out there. They are 70 years old. They have worked 30 or 40 years in the trades. I think that ought to be the last thing that we do and I think we can do that. I agree with you on that.

The other thing that Mr. Andrews brought up is we haven't voided the economic cycle. These ups and downs will come and go. They have for the 200 and plus years this country has been here. So we are going to have another recession sometime along the way hopefully it is not nearly as severe as this one is. So that is why you should be able to not over fund, but put some rainy day money away so you have those funds available when the market goes down.

I think I have a pretty clear idea about what we need to do. It is not going to be easy and I think we will have a consensus both sides of the aisle are very—we are very committed to try to make this work and we have I think because part of the Pension Protection Act is—some parts of it I think are out in 2014, this Congress, the 113th, it is going to be on our shoulders to do something.

So I want to thank you for being here. I have learned a lot again from this, and I appreciate you taking your time to come here.

With no further comments, the hearing is adjourned.

[Additional submissions of Chairman Roe follow:]

Prepared Statement of the U.S. Chamber of Commerce

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

As sponsors of multiemployer defined benefit plans, a number of Chamber members have a substantial interest in the viability of the multiemployer plan system. Funding for multiemployer plans comes entirely from employers, who are at financial risk when a plan faces funding problems. Therefore, funding and accounting

issues create substantial challenges not just in maintaining the plan but also for the employers' business.

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

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

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

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

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

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

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

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

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

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

The Chamber Supports the Recommendations of the Retirement Review Commission. On February 19, the Retirement Security Review Commission of the National Coordinating Committee for Multiemployer Plans issued a report entitled Solutions Not Bailouts. Several members of the Chamber participated in the Commission and contributed to the findings of the report. The proposals in the report go a long way in addressing certain serious issues in the multiemployer plan system. As such, the Chamber fully supports the recommendations and believes that the recommendations can provide a critical foundation for reform of the multiemployer pension system.

Multiemployer Pension Reform Should Include Limitations on Withdrawal Liability. In addition to the recommendations from the Retirement Review Commission, the Chamber believes that additional reforms are needed to address employer concerns. For example, we recommend that limitations be placed on the amount of withdrawal liability that an employer can assume. There are many of our members who have gotten estimates of withdrawal liability that exceed the net worth of the company. Clearly, this is an outcome that was never contemplated when withdrawal liability was implemented and should be rectified.

Limiting withdrawal liability is one example of additional reforms that will be needed. The Chamber anticipates that there will be additional recommendations as we move forward with these discussions.

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

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

Prepared Statement of the National Electrical Contractors Association

The National Electrical Contractors Association (NECA) appreciates the opportunity to submit a statement for the record ahead of the Subcommittee on Health, Employment, Labor and Pensions of the House Education and the Workforce Committee's hearing entitled "Challenges Facing Multiemployer Pension Plans: Reviewing the Latest Findings by PBGC and GAO." NECA commends the Committee for holding a hearing on this important subject to examine the health of the multiemployer pension system, analyze the impact of the Pension Protection Act of 2006 and to discuss short term and long term strategies moving forward.

NECA is the nationally recognized voice of the electrical construction industry, comprised of over 80,000 electrical contracting firms, employing over 750,000 electrical workers and producing an annual volume of over $125 billion in electrical construction. NECA represents 119 U.S. chapters in addition to several affiliated international chapters around the world and is signatory to 359 local unions. NECA member companies contribute to both a national and local pension plans.

The construction industry has a substantial stake in the health and welfare of multiemployer pension plans. The industry comprises 54 percent of the total number of plans and provides coverage to 37 percent of the 10 million employees participating in multiemployer plans.

As businesses around the country begin to recover from the recession, the economic recovery in the construction industry remains stagnant. We have been plagued with uncertainty in the marketplace, high unemployment, an aging workforce, and unsustainable pension contributions, coupled with the significant investment losses and volatile equity markets. All of these forces have combined to create a perfect storm that has put many multiemployer pension plans at risk. At a time when competitive circumstances require NECA contractors to be flexible in their cost and crew structure, their pension funding challenges have a tremendous impact on the day-to-day decisions of NECA members and their ability to stay in business.

According to its 2012 exposure draft, the PBGC paints a bleak picture for multiemployer pension plans as their 10-year projections of the multiemployer program nearly all result in declines. In fact, according to its recent report to Congress dated January 22, 2013 entitled, "PBGC Insurance of Multiemployer Pension Plans Report," the agency states that it is "at risk of not having the tools to help sustain multiemployer plan or the funds to continue to pay benefits beyond the next decade

under the multiemployer insurance program." NECA is pleased to report to the Committee that the experience for the vast majority of the electrical construction industry's pension plans projects a decidedly different and positive story.

Since 1946, NECA contractors have contributed to the National Electrical Benefit Fund (NEBF), a viable pension plan which benefits participants, retirees and surviving spouses. This successful and well-managed plan is the third largest Taft-Hartley Pension Plan in the United States. It serves over 502,000 participating individuals, with 119,120 of those individuals receiving either a retirement or surviving spouse benefit. The Plan has over 8,000 contributing employers, resulting in approximately 370,000,000 hours worked annually in covered employment. In 2010, NECA companies contributed approximately $370 million to the National Electrical Benefit Funds (NEBF) with total assets over $11 billion. This total does not include contributions to local pension plans whose aggregate value is in excess of $15 billion. According to NECA's Defined Benefit Plans Study, the NEBF has remained well-funded through the great recession of 2008 and since the inception of the financial status zones under the Pension Protection Act of 2006, the NEBF has and continues to be in the Green (Safe) Zone. The NEBF is funded 84.7 percent of all accrued benefits which means that the plan still carries a certain amount of unfunded vested liabilities. NECA attributes the NEBF's current secure status to the conservative, professional management of the plan and highest level of responsibility for those they serve. More specifically, the NEBF has a "benefits policy" that was put in place in the late 1980's that prohibits increases in the benefit level if a withdrawal liability exists. This rule has undoubtedly created a level of stability and security with the plans funding levels.

Approximately 50 percent of NECA's member companies contribute to 112 local or regional defined benefit plans that exist in 165 local areas throughout the country and cover more than 174,000 workers. Based on current market values, 75 percent of the assets of all these plans are held in plans that are in the green zone, and 70 percent of the participants are covered by green plans.

As laid out in NECA's Defined Benefit Plan Study, the data indicates that a serious but not overwhelming problem exists for our local plans. However, permanent reform measures are needed to ensure all employees of NECA contractors are secure in their retirement.

Comprehensive pension reform is NECA's top priority for the 113th Congress, as the multiemployer funding rules contained in the Pension Protection Act of 2006 (PPA) will sunset on December 31, 2014. Accordingly, NECA has been preparing to address this issue for nearly two years, discussing long term solutions with NECA members that serve as trustees on local multiemployer pension plans. NECA has also entered into a partnership sponsored by the National Coordinating Committee for Multiemployer Plans (NCCMP), the Retirement Security Review Commission, a broad coalition of labor and management stakeholders (which includes NECA and the International Brotherhood of Electrical Workers), subject matter experts, and actuaries tasked with crafting a realistic proposal that provides significant recommendations for comprehensive pension reform.

The NCCMP Retirement Security Review Commission Report presents tools that will ensure these plans will have the tools available to provide a reliable retirement benefit to the millions of Americans in these plans while and enabling the employers who fund them to remain strong contributors to the national economy. The proposal offers recommendations that address the deeply troubled plans heading toward insolvency, includes technical provisions that will improve the current system and offers a new flexible plan design options aimed to reduce employers risk and eliminate withdrawal liabilities.

Over the past decade, Congress has enacted legislation that provided some relief to multiemployer pension plans and helped companies recover losses incurred as a result of the financial crisis. However, more changes are necessary to improve the health and viability of these plans. NECA is thankful this Committee is providing a platform for a meaningful discussion addressing the problems with the current multiemployer pension system and the opportunity to tackle comprehensive pension reform. NECA appreciates the opportunity to submit this statement for the record in conjunction with this hearing and looks forward to continuing to work with the Committee on this important issue.

[Questions submitted for the record and their response follows:]

U.S. CONGRESS,
Washington, DC, April 17, 2013.

Hon. JOSHUA GOTBAUM, *Director,*
Pension Benefit Guaranty Corporation, 1200 K Street, NW, Washington, DC 20005.

DEAR DIRECTOR GOTBAUM: Thank you for testifying at the March 5, 2013 Subcommittee on Health, Employment, Labor, and Pensions hearing entitled, "Challenges Facing Multiemployer Pension Plans: Reviewing the Latest Findings by PBGC and GAO." I appreciate your participation.

Enclosed are additional questions submitted by committee members following the hearing. Please provide written responses no later than May 1, 2013, for inclusion in the official hearing record. Responses should be sent to Benjamin Hoog of the committee staff, who can be contacted at (202) 225-4527.

Thank you again for your contribution to the work of the committee.

Sincerely,

PHIL ROE, *Chairman,*
Subcommittee on Health, Employment, Labor, and Pensions.

QUESTIONS SUBMITTED BY CHAIRMAN ROE

1. The Pension Benefit Guaranty Corporation's (PBGC) report on its multiemployer insurance program states that its Pension Insurance Modeling System will be modified in the future. Apparently, the current model overestimates both the number of active participants and per-capita contributions. So, the reality could be worse than the situation you presented in your testimony. When and how will these projections be revised?

2. The Employee Retirement Income Security Act of 1974 (ERISA) requires the PBGC to examine whether premiums are sufficient to support the benefits guarantee; if not, the PBGC is required to make recommendations to Congress. The Pension Protection Act of 2006 (PPA) also invited the administration to make recommendations in the context of the PPA report on the multiemployer system. These reports were submitted to Congress on January 29, 2013; however, neither contained recommended changes. Do you expect PBGC to make suggestions in the future?

3. Throughout your testimony, you acknowledge some multiemployer plans face significant funding problems. You state that "the failure of one plan and resulting imposition of withdrawal liability on its contributing employers can have a ripple effect on many other plans." How quickly could this ripple effect take hold, causing severe funding problems for many more plans?

QUESTIONS SUBMITTED BY CONGRESSMAN ROBERT C. "BOBBY" SCOTT (D-VA)

1. What recommendations do you have for limiting the ultimate expense for an employer with a small portion of a multi-employer pension plan fund in a scenario where an employer with a major portion of that fund goes under?

2. What recommendations do you have regarding risk-based premiums, where funds in the red zone pay higher premiums than those in the yellow zone, and in the same way, funds in the yellow zone pay higher premiums that those in the green zone?

3. What is the present limitation on what an employer contributes to its multiemployer pension fund? What recommendations do you have for a contribution amount in excess of what is required, in order to offset funding challenges that a plan may face in the future?

October 10, 2013

The Honorable David P. Roe, M.D.
Chairman
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and the Workforce
2181 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515-6100

Dear Dr. Roe:

This letter hereby transmits PBGC's response to the QFRs stemming from the Subcommittee's hearing on multiemployer plan issues held March 5, 2013.

Please contact me at (202) 326-4124 if you have any questions.

Sincerely,

John H. Hanley
Office of Policy & External Affairs

Attachment

Director Gotbaum's Response to Questions Submitted for the Record

QUESTIONS SUBMITTED BY CHAIRMAN ROE

1. The Pension Benefit Guaranty Corporation's (PBGC) report on its multiemployer insurance program states that its Pension Insurance Modeling System will be modified in the future. Apparently, the current model overestimates both the number of active participants and per-capita contributions. So, the reality could be worse than the situation you presented in your testimony. When and how will these projections be revised?

Like all models of complicated systems, PBGC's models are projections—the actual results are never exactly what was projected. Sometimes they turn out better and sometimes worse. At this point, we cannot say for sure whether the actual developments will be better or worse than our projections, but it is certainly true that there are many reasons why they could be worse.

We believe that PBGC's pension insurance modeling systems—the Single-Employer Pension Insurance Modeling System (SE-PIMS) and the Multiemployer Pension Insurance Modeling System (ME-PIMS)—are the best tools available by far for information and projections concerning the defined benefit pension-plan universe. Furthermore—although the results of those projections are disturbing—most analysts in the actuarial and economic communities agree that PBGC's models remain the best tools available.

That does not mean that we cannot and will not review them to make them even better. We are doing so and will continue to do so.[1] We will continue to work to improve them as we better understand trends in the economy and in pension practices and as our information improves.[2] PBGC commissioned an external review of ME-PIMS by an outside consulting firm with substantial multiemployer experience and received recommendations for changes in September 2012. We are now reviewing and incorporating the consultant's suggestions for improvements. Some of the changes will be implemented in the coming year and others in future years. We will continue to analyze the issues using ME-PIMS throughout this process, as it remains the best tool for doing so.

The Moving Ahead for Progress in the 21st Century Act (MAP-21) requires an additional independent annual peer review of PBGC modeling systems.[3] PBGC responded by contracting for a review by the Social Security Administration and outside consultants. We will incorporate the results of those reviews in future improvements.

2. The Employee Retirement Income Security Act of 1974 (ERISA) requires the PBGC to examine whether premiums are sufficient to support the benefits guarantee; if not, the PBGC is required to make recommendations to Congress. The Pension Protection of Act of 2006 (PPA) also invited the administration to make recommendations in the context of the PPA report on the multiemployer system. These reports were submitted to Congress on January 29, 2013; however, neither contained recommended changes. Do you expect PBGC to make suggestions in the future?

As I testified before the Committee, PBGC can and will suggest how premiums could be reformed. However, since the future of PBGC's program is tied so closely to other potential changes in the multiemployer system, we think the right thing is to do so as part of the broader review of potential changes for multiemployer plans as a whole. Discussions for further reforms should start with consideration of the compromise proposals now being developed jointly by the businesses and unions that form the multiemployer system. PBGC and the other ERISA agencies look forward to working with Congress and the multiemployer community as this important dialogue evolves.

3. Throughout your testimony, you acknowledge some multiemployer plans face significant funding problems. You state that "the failure of one plan and resulting imposition of withdrawal liability on its contributing employers can have a ripple effect on many other plans." How quickly could this ripple effect take hold, causing severe funding problems for many more plans?

Any possible ripple effect depends upon many factors. No one knows how quickly employers might respond to troubles in severely distressed plans by withdrawing from healthier ones. We do know that medium- and large-sized employers often participate in many plans. If the contribution burdens in one or more of these plans become so great that they force an employer out of business, that employer's participation in some plans may be significant enough to cause a mass withdrawal of all employers from those plans. For these reasons, among others, it would be better to address the problems facing the multiemployer system sooner rather than later. [0]

QUESTIONS SUBMITTED BY REPRESENTATIVE SCOTT

1. What recommendations do you have for limiting the ultimate expense for an employer with a small portion of a multiemployer pension plan fund in a scenario where an employer with a major portion of that fund goes under?

A contributing employer that remains in a plan after another employer goes out of business may become responsible for the unfunded benefit liabilities attributable to participants of the other employer. This could, for example, increase the contrib-

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[1] Over the years, SE-PIMS has been reviewed and discussed in published reports. Several years ago PBGC provided the model to the Society of Actuaries, which reviewed it and has begun using it in their own published reports.

[2] ME-PIMS was designed in 2007, before implementation of the Pension Protection Act of 2006 (PPA) changes for multiemployer plans. PBGC is revisiting certain ME-PIMS assumptions to better reflect current experience under PPA as a basis for ME-PIMS projections, but the ERISA agencies obtain information about how plans are responding to PPA only gradually.

[3] MAP-21, sec. 40233(a), states: "The Pension Benefit Guaranty Corporation shall contract with a capable agency or organization that is independent from the Corporation, such as the Social Security Administration, to conduct an annual peer review of the Corporation's Single-Employer Pension Insurance Modeling System and the Corporation's Multiemployer Pension Insurance Modeling System. The board of directors of the Corporation shall designate the agency or organization with which any such contract is entered into. The first of such annual peer reviews shall be initiated no later than 3 months after the date of enactment of this Act."

uting employer's funding costs under the plan. In addition, if the contributing employer later withdraws from the plan, it could increase the employer's withdrawal liability. However, this is subject to several limitations: de minimis amounts are excused; annual withdrawal liability payments are limited to the employer's highest contribution rate (and average contribution units) in the prior 10-year period; and payments are owed for no more than 20 years (unless there is a mass withdrawal).

The effects of the loss of a major employer may be offset by other actions as well, such as the plan's merger with another plan that has a stronger employer base. Current law also provides for the partition—or payment by PBGC—of liabilities (up to the maximum guarantee) attributable to employers that withdrew from the plan due to bankruptcy. This tool has been rarely used and PBGC lacks the financial resources to help many plans directly in this way.

2. What recommendations do you have regarding risk-based premiums, where funds in the red zone pay higher premiums than those in the yellow zone, and in the same way, funds in the yellow zone pay higher premiums than those in the green zone?

Even with the premium increases under the Moving Ahead for Progress in the 21st Century Act (MAP-21), PBGC projects that current PBGC multiemployer plan premiums will eventually be insufficient to support the guarantee and the multiemployer insurance program. Premium reforms are a necessary part of any solution to both help preserve plans and provide the safety net for failed plans that ERISA intended; they should be analyzed as part of and in the context of the broader changes for multiemployer plans.

3. What is the present limitation on what an employer contributes to its multiemployer pension fund? What recommendations do you have for a contribution amount in excess of what is required, in order to offset funding challenges that a plan may face in the future?

These are issues on which PBGC regularly consults with the Treasury Department for their expertise.

As background, we note that at the end of the 1990s, many plans were considered "fully funded" so that no deductible contributions were permitted. To protect the deductibility of negotiated contributions, such plans were often compelled to increase benefits, which diminished the cushion of overfunding (plans could also decrease contributions, but this was less common). At that time, the limit on deductible contributions was generally 100% of the accrued liability determined under the plan's funding method (alternative determinations limited even that maximum level).

Congress loosened the rules marginally in 2001, and raised the deductible limit still further under the Pension Protection Act of 2006 (PPA), which allowed employers to make deductible contributions as long as assets are less than 140% of current liability. (During the 2000s, current liability, which is based on 30-year Treasury bond rates, has been significantly higher than plans' accrued liability, which is determined using higher assumed rates of return.) Increases in the deductible limit in the 2000s decade came too late, however, as plan underfunding levels increased rapidly. By 2010, overfunded plans covered less than 1% of all multiemployer participants.

[Whereupon, at 11:17 a.m., the subcommittee was adjourned.]

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