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EXAMINING REFORMS TO MODERNIZE THE MULTIEMPLOYER PENSION SYSTEM

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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EXAMINING REFORMS TO MODERNIZE THE MULTIEMPLOYER PENSION SYSTEM

Wednesday, April 29, 2015
House of Representatives,
Subcommittee on Health, Employment, Labor, and Pensions,
Committee on Education and the Workforce,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:34 p.m., in room 2175, Rayburn House Office Building, Hon. David P. Roe [chairman of the subcommittee] presiding.

Present: Representatives Roe, Walberg, Carter, Grothman, Allen, Polis, Pocan, Wilson of Florida.

Also present: Scott.

Staff present: Andrew Banducci, Professional Staff Member; Janelle Belland, Coalitions and Members Services Coordinator; Ed Gilroy, Director of Workforce Policy; Callie Harman, Staff Assistant; Nancy Locke, Chief Clerk; Zachary McHenry, Legislative Assistant; Daniel Murner, Deputy Press Secretary; Michelle Neblett, Professional Staff Member; Brian Newell, Communications Director; Krisann Pearce, General Counsel; Lauren Reddington, Deputy Press Secretary; Alissa Strawcutter, Deputy Clerk; Juliane Sullivan, Staff Director; Loren Sweatt, Senior Policy Advisor; Alexa Turner, Legislative Assistant; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Austin Barbera, Minority Staff Assistant; Denise Forte, Minority Staff Director; Carolyn Hughes, Minority Senior Labor Policy Advisor; Kendra Isaacson, Minority Labor Detailee; Brian Kennedy, Minority General Counsel; Veronique Pluviose, Minority Civil Rights Counsel.

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

Good afternoon. I would like to begin by extending a warm welcome to our witnesses and guests who have joined us this afternoon.

Today's hearing represents the next step in a long process to strengthen the retirement security of America's workers by reforming the multiemployer pension system. This effort began more than three years ago for a simple reason: a pension crisis threatened the well-being of countless workers, employers, and retirees as well as American taxpayers. Without congressional action, this crisis would have forced businesses to close their doors and lay off workers, re-

tirees would have had their benefits cut, if not wiped out entirely, and taxpayers would have been on the hook for a multi-billion-dollar bailout of a bankrupt pension system. As a nation and, more specifically, as elected policymakers we had a responsibility to act.

That is why this subcommittee convened numerous hearings and called more than a dozen witnesses—including employers, union leaders, administration officials and retiree advocates—in order to thoroughly examine the challenges facing this system and discuss possible solutions. As part of this effort, in the Spring of 2014, Chairman Kline discussed four key principles necessary for any serious, responsible reform of the system. Those principles included protecting taxpayers, encouraging greater employer participation, and providing trustees new tools to restore troubled plans back to financial health. At the time of the chairman's remarks, only one proposal embodied all four principles, and that was the proposal crafted by the National Coordinating Committee for Multiemployer Plans, or the NCCMP.

A coalition of management and labor representatives organized by the NCCMP spent months crafting a consensus proposal that would give trustees the best shot they had to save dying pension plans without a taxpayer bailout. No one else came forward with a credible plan to responsibly reform the system. The NCCMP proposal became the framework for a bipartisan legislative solution the President signed into law last December. This new law extended funding rules put in place almost a decade ago, raised premiums to improve the financial outlook of the federal backstop for the multiemployer pension plans at the PBGC and allowed trustees to adjust benefits as a last resort to rescue a plan from insolvency.

This was not an easy thing to do, but doing nothing would have been far worse. Regardless of whether we did or didn't act, retirees in badly failing plans were going to have their benefits cut. That is the harsh reality we were forced to confront, and the choice we faced was either to watch the federal government inflict maximum pain on the maximum number of individuals or provide flexibility to save these plans and ensure retirees are better off. George Miller, the former congressman from California and senior Democrat on our committee, described these bipartisan reforms this way, "The approach we have put forward, which is backed by business and labor leaders, will secure the multiemployer pension system for millions of current and future retirees' inputs."

Congressman Miller urged his colleagues to, "trust these workers enough to give them this opportunity and this responsibility to make these decisions about their own retirement." That is precisely what we did, and as difficult as it was, it was the right thing to do. Now it is time to complete this important effort. One principle I neglected to mention earlier in the subject of today's hearing—Modernizing the Multiemployer Pension System—through our continued oversight. It has become abundantly clear that workers need new options to help plan for their retirement.

As part of its work, NCCMP devised a new "composite pension plan design," combining aspects of both the defined benefit and defined contribution plans. The goal of the proposal is to deliver an annuitized lifetime income without the drawbacks associated with traditional multiemployer defined benefit plans.

For example, many plans face unfunded liabilities that threaten the retirement security of other participants. The current rules discourage employers from agreeing to participate in this system, and pose a financial burden for those who do. Finally, despite improvements resulting from the new law, the federal backstop for these plans continues to face fiscal challenges in meeting its modest benefit guarantees.

Our witnesses today will describe these and other shortcomings. They will also explain how the composite plan design could address these concerns, while providing robust, well-funded retirement benefits for America's working families. I look forward to our discussion and, more importantly, to finishing this important effort.

It is easy to find the areas of disagreement in this subcommittee, especially when we address policies so central to the well-being of the American people. But I have always appreciated the bipartisan approach the committee has taken on this important issue, and I pledge to do my part to continue that tradition in the work that lies ahead of us.

And with that, I will now yield to Ranking Member Polis for his opening remarks.

[The statement of Chairman Roe follows:]

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

Good afternoon. I'd like to begin by extending a warm welcome to our witnesses and guests who have joined us this afternoon.

Today's hearing represents the next step in a long process to strengthen the retirement security of America's workers by reforming the multiemployer pension system. This effort began more than three years ago for a simple reason: A pension crisis threatened the well-being of countless workers, employers, and retirees, as well as American taxpayers.

Without congressional action, this crisis would have forced businesses to close their doors and lay off workers, retirees would have had their benefits cut, if not wiped out entirely, and taxpayers would have been on the hook for a multi-billion dollar bailout of a bankrupt pension system. As a nation, and more specifically, as elected policymakers, we had a responsibility to act.

That is why this subcommittee convened numerous hearings and called more than a dozen witnesses – including employers, union leaders, administration officials, and retiree advocates – in order to thoroughly examine the challenges facing the system and discuss possible solutions.

As part of this effort, in the spring of 2014, Chairman Kline discussed four key principles necessary for any serious, responsible reform of the system. Those principles included protecting taxpayers, encouraging greater employer participation, and providing trustees new tools to restore troubled plans back to financial health.

At the time of the chairman's remarks, only one proposal embodied all four principles, and that was the proposal crafted by the National Coordinating Committee for Multiemployer Plans or NCCMP. A coalition of management and labor representatives organized by NCCMP spent months crafting a consensus proposal that would give trustees the best shot they had to save dying pension plans without a taxpayer bailout. No one else came forward with a credible plan to responsibly reform the system.

The NCCMP proposal became the framework for a bipartisan legislative solution the president signed into law last December. This new law extended funding rules put in place almost a decade ago, raised premiums to improve the financial outlook of the federal backstop for multiemployer pension plans, and allowed trustees to adjust benefits as a last resort to rescue a plan from insolvency.

This was not an easy thing to do, but doing nothing would have been far worse. Regardless of whether we did or didn't act, retirees in badly failing plans were going to have their benefits cut. That's the harsh reality we were forced to confront, and the choice we faced was to either watch the federal government inflict maximum pain on the maximum number of individuals, or provide more flexibility to save these plans and ensure retirees are better off.

George Miller, former congressman from California and senior Democrat of our committee, described these bipartisan reforms this way: "The approach we have put forward, which is backed by business and labor leaders, will secure the multiemployer pension systems for millions of current and future retirees."

Congressman Miller urged his colleagues to "trust these workers enough to give them this opportunity and this responsibility to make these decisions about their retirement." That is precisely what we did, and as difficult as it was, it was the right thing to do.

Now, it is time to complete this important effort. One principle I neglected to mention earlier in is the subject of today's hearing: Modernizing the multiemployer pension system. Through our continued oversight, it has become abundantly clear that workers need new options to help plan for their retirement.

As part of its work, NCCMP devised a new "composite" pension plan design, combining aspects of both defined benefit and defined contribution plans. The goal of the proposal was to deliver annuitized, lifetime income without the drawbacks associated with traditional multiemployer defined benefit plans.

For example, many plans face unfunded liabilities that threaten the retirement security of their participants. Current rules discourages employers from agreeing to participate in the system and poses a financial burden for those who do. Finally, despite improvements resulting from the new law, the federal backstop for these plans continues to face fiscal challenges in meeting its modest benefit guarantees.

Our witnesses today will describe these and other shortcomings. They will also explain how the composite plan design could address these concerns while providing robust, well-funded retirement benefits for America's working families.

I look forward to our discussion, and more importantly, to finishing this important effort. It is easy to find areas of disagreement on this subcommittee, especially as we address policies so central to the well-being of the American people. But I have always appreciated the bipartisan approach the committee has taken on this important issue, and I pledge to do my part to continue that tradition in the work that lies ahead.

Mr. POLIS. Thank you. And I want to thank Chairman Roe for his effort in working in a bipartisan way to arrange this hearing and begin the important discussions that our committee and our Congress need to undertake to address what some of us call phase two of multiemployer pension reform—new plan designs.

I want to acknowledge that there were several individuals in the audience from the Colorado Association of Mechanical and Plumbing Contractors, who are in full support of the work we are doing. I think some of them might have had to leave to take a flight, but I did want to acknowledge that they came out here to watch the good bipartisan work of this committee.

Last year, as the chairman acknowledged, some hard decisions were made to ensure the multiemployer pension system will exist for years to come. But our work isn't done because we have not fully fixed our system. And establishing a strong and sustainable pension system needs to be our goal as we figure out details here in phase two.

I believe phase two must encourage innovative new plans that would allow for some flexibility for employees and employers, while also providing adequate protection for our workers. It needs to be our goal to ensure that hardworking Americans are able to retire with the dignity and respect that they deserve.

Securing lifetime incomes for retirees is an important feature of each of the plan designs that we are going to be hearing about here today. As people live longer, they generally need more money than they might have expected, and one way to address the situation is through a lifetime income stream that would ensure that an individual does not outlive his or her assets.

The sources of retirement income were once compared to a three-legged stool, with Social Security, your employer's retirement plan, and personal savings each establishing a leg of the stool. The strength of each leg of the stool may change, but it could be reinforced with one of the other two.

We know that Americans on average are not saving enough, so retirees are relying more heavily on Social Security and their employer's retirement plans. While Social Security provides lifetime income, it is only designed to provide a minimum level of support.

Today, we are looking at options to strengthen the third leg of the stool, employer's retirement plans. While we explore new options, we need to be sure that any existing plans, which we would call "legacy plans," once a new plan is adopted, are preserved in such a way so that all workers and retirees covered under that plan are also protected. We also know that the current system isn't working for everybody, and doing nothing and allowing some of these plans to go bankrupt would only hurt our seniors and retirees and is simply unacceptable.

We need to create a space where smart, innovative and flexible ideas can come to fruition. And the NCCMP's "Solutions, Not Bailouts" recommendations, are a great place to start. And for those of you who haven't had a chance to read it, I encourage you to do so. The recommendations were put together with input from a wide variety if organizations and stakeholders. And I would like to submit for the record a statement from one of those groups, the National Electrical Contractors Association.

Chairman ROE. Without objection, so ordered.

[The information follows:]

Statement of the

National Electrical Contractors Association

to the

Subcommittee on Health, Employment, Labor, and Pensions

Committee on Education and the Workforce

U.S. House of Representatives

For a hearing on

"Examining Reforms to Modernize the

Multiemployer Pension System"

April 29, 2015

NECA is the voice of the $130 billion electrical construction industry that brings power, light, and communication technology to buildings and communities across the U.S. NECA's national office and 119 local chapters advance the industry through advocacy, education, research and standards development.

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Statement of the National Electrical Contractors Association
to the
Subcommittee on Health, Education, Labor, and Pensions
Committee on Education and the Workforce
U.S. House of Representatives
For a hearing on "Examining Reforms to Modernize the Multiemployer Pension System"
April 29, 2015

The National Electrical Contractors Association (NECA) appreciates the opportunity to submit a statement for the record in response of the Subcommittee on Health, Education, Labor, and Pensions of the House Education and the Workforce Committee's hearing on "Examining Reforms to Modernize the Multiemployer Pension System." NECA commends the Committee for holding a hearing on this important subject to examine the health of the multiemployer pension system 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. NECA chapters are 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.

According to the Pension Benefit Guaranty Corporation's (PBGC) most recent exposure draft, the outlook for multiemployer pension plans is alarming as the agency's 10-year projections for 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 plans 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.

NECA contractors contribute to the National Electrical Benefit Fund (NEBF), a viable pension plan that 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 over 370,000,000 hours worked in covered employment.

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. With this positive report, NECA acknowledges that the PBGC must do something to address the impending financial problems. As businesses continue to recover from the recession,

the construction industry continues to face uncertainty in the marketplace, stagnant unemployment, an aging workforce, unsustainable pension contributions and unprecedented increases in health care costs. NECA welcomes the opportunity to discuss a real and serious solution to the problem with the PBGC and the Congress.

In the early 1900's, NECA and the International Brotherhood of Electrical Workers (IBEW) partnered in labor-management relations to lead the nation's electrical industry. Since then, NECA contractors have provided their workforce with strong, competitive wages, health and pension benefits and will continue to do so. However, pension funding challenges continue to have a tremendous impact on the day-to-day decisions of NECA members and their ability to stay in business.

NECA recognizes that collaboration is essential to successfully reform the multiemployer pension system with more than 1,400 pension plans throughout the country, providing for 10 million participants. More than three years ago, NECA 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 business management stakeholders (which includes NECA and the IBEW), subject matter experts, and actuaries tasked with crafting a realistic proposal that offers significant recommendations for comprehensive pension reform.

A proposal issued by the NCCMP Retirement Security Review Commission Reform Proposal, entitled *Solutions Not Bailouts* laid out a comprehensive plan to ensure that multiemployer pension plans would have the tools available to them to continue to provide a promised and

reliable retirement benefit to the millions of Americans in these plans while enabling the employers who fund them to remain strong contributors to the national economy. The proposal offered recommendations to address deeply troubled plans heading toward insolvency, included technical provisions designed to improve the current system and – most significantly for the purpose of this hearing – offered the endorsement of new flexible plan design options aimed to reduce employers risk and eliminate withdrawal liabilities. We firmly believe futher reform efforts must include additional modifications to current law that will help the pension system finally recover, create more jobs and continue to grow the economy.

NECA is especially grateful to the Committee for taking action in passing many of the reforms laid out by *Solutions Not Bailouts*. The *Multiemployer Pension Reform Act of 2014 (MPRA)* codified a number of technical corrections that will help plans that have regained their financial footing to remain healthy; will help stop the bleeding for the many plans in need of assistance; and provide tools to plan trustees to voluntarily address the particular needs of their own plans to avoid devastating benefit reductions that accompany plan insolvency and intervention by the PBGC.

The next step towards modernizing the multiemployer system lies within Congressional approval of a key component presented by *Solutions Not Bailouts* that was unfortunately omitted from the MPRA – new flexible plan design options aimed to reduce employers risk and eliminate withdrawal liabilities. While NECA businesses will continue to provide retirement security to its workforce and contribute to hundreds of local defined benefit plans throughout the country, concurrent with our national plan, the industry constantly works to develop and improve industry

standards in an effort to meet the competitive challenges of today's global market economy. However, changing economic markets, an aging workforce and increasing concerns regarding withdrawal liabilities continue to strain the ability of NECA contractors to keep their doors open. To accommodate these changes, we need to ensure that reform is innovative and can address the needs of the construction industry not only in the near term but for future generations as well. Innovative, new structural designs for retirement plans must be the future of multiemployer benefit plans and in order to maintain a secure retirement benefit for our employees.

We encourage the Committee to examine several points while considering the numerous benefits new plan design would offer to the multiemployer reform system. First, the adoption of flexible plan designs would be voluntary and subject to the collective bargaining process. No current defined benefit plan would be required to adopt any of these provisions. In addition, when the collective bargaining process produces a decision to convert from a traditional defined benefit plan to a new plan design, the new plan design provisions would apply prospectively only. All of the current funding rules, benefit protections, zone status provisions, and withdrawal liability requirements, would continue to apply to the benefits earned in the traditional defined benefit plan up to the point of conversion.

Second, new flexible plan designs are needed to secure the viability of the multiemployer retirement system. These plans would include, but not be limited to, variable annuity and "Target Benefit" plans, which would permit adjustment of accrued benefits. Both of these options would share risk amongst the employer and the employee and significantly reduces an employer's exposure to withdrawal liability.

Lastly, and most significantly, we believe additional reform will keep participating employers in the multiemployer system. Changing economic realities and reduced credit opportunities resulting from widespread confusion in the financial community over withdrawal liability are placing additional obstacles in the path of some existing contributing employers to continue their participation and further reducing the ability of funds to attract new employers. Facing growing risks, employers are forced to consider paying their withdrawal liability, cutting special deals or in some cases even bankruptcy, to exit the system. This harms retirees receiving benefits, saddles other participating employers with a larger financial burden, and weakens the system overall. New and innovative plan designs will limit the financial risk for the employers while providing effective benefit protections for plan participants.

NECA is thankful the Committee continues to closely examine the future of the multiemployer pension plan system and remains committed to passing reform legislation that authorizes new plan design. 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.

Mr. POLIS. As I see it, we have several different ideas to discuss today, including variable annuity plans and target benefit plans and composite plans. Whatever route we decide to take must allow workers and employers to negotiate a plan and benefit so it would allow the economy to expand, keep companies competitive, allow employers to grow, while giving those that have worked their lives at a good job the ability to enjoy retirement with their loved ones without the threat of that security being taken away. Our seniors shouldn't have to choose between heating their homes or putting food on the table.

As always, the devil will be in the details: the specifics of these plans. I am interesting in learning from our great panel of experts about the recommendations for alternative plan designs and their advice for avoiding pitfalls. This is a great bipartisan way to start the conversation and fact-finding mission. I believe we have the same goal. I look forward to finding a shared bipartisan path forward on legislation, just as we are in this hearing today.

I yield back the balance of my time.

[The statement of Mr. Polis follows:]

Prepared Statement of Hon. Jared Polis, Ranking Member, Subcommittee on Health, Employment, Labor, and Pensions

Thank you.

I first want to thank Chairman Roe for his effort in working in a bipartisan way to arrange this hearing, and to begin the important discussion to address what we can call "phase two" of multiemployer pension reform- New Plan Designs.

I also want to acknowledge several individuals in the audience from the Colorado Association of Mechanical and Plumbing Contractors who are in full support of the work we are doing.

Last year some hard decisions were made to ensure the multiemployer pension system will exist for years to come. Our work is not done yet, because we have not fully fixed our shaky system, and establishing a strong and sustainable pension system must be our goal as we figure out the details for this phase two.

I believe phase two must encourage innovative new plans that would allow for some flexibility for employers, while also providing adequate protection for our workers. It must be our goal to ensure hardworking Americans are able to retire with the dignity and respect they deserve.

Securing lifetime income for retirees is an important feature of each of the plan designs we are discussing today. As people live longer, they generally need more money than they expect and one way to address this situation is through a lifetime income stream that would insure an individual does not outlive his or her assets.

The sources of retirement income were once compared to a three-legged stool: with Social Security, your employer's retirement plan, and personal savings establishing each leg of the stool. The strength of each leg of the stool may change, but it could be reinforced with one of the other two. We know that Americans on average are not saving enough, so retirees are relying more heavily on Social Security and their employer's retirement plans. While Social Security provides lifetime income, it is only designed to provide a minimum level of support. Today, we are looking at options to strengthen that third leg of the stool – employer's retirement plans.

While we explore new options, we must be sure that any existing plans (which would be called legacy plans once a new plan is adopted) are preserved in such a way so that all workers and retirees covered under that plan are protected. We also know that the current system is not working for everyone. And doing nothing, and allowing some of these plans to go bankrupt, which does nothing to help our seniors and retirees, is not acceptable. Instead we must create a space where smart, innovative and flexible ideas can come to fruition. This should be our goal.

The NCCMP's Solutions, Not Bailouts recommendations are a great place to start, and for those of you who haven't read it, I encourage you to do so. These recommendations were made with input from all types of organizations and groups, and I would like to submit for the record a statement from one of those groups- the National Electrical Contractors Association. As I see it, we have several different

ideas to discuss today, including variable annuity plans and target benefit plans/ composite plans.

Whatever route we decide to take must allow workers and employers to negotiate a plan and benefits that would allow the economy to expand and employers to remain competitive, while giving those that have worked their entire lives at a middle-class job the ability to enjoy retirement with their loved ones. Our seniors should not have to choose between heating their homes, putting food on their tables or filling a prescription.

As always, the devil will be in the details around the specifics of these plans, so I am interested in learning from our great panel of experts about their recommendations for alternative plan designs, and their advice for pitfalls along the way.

This is a great way to start the conversation- in a bipartisan, fact finding fashion. I believe we all have the same goal, and I look forward to finding a shared path forward.

Because our time is short today, I will keep my comments brief, so that we can hear from our witnesses. I yield back the remainder of my time.

Chairman ROE. I thank the gentleman for yielding. Thank you, Mr. Polis. And pursuant to committee rule, 7(c) all subcommittee members will be permitted to submit written statements to be included in the permanent hearing record. And without objection, the hearing record will remain open for 14 days to allow statements, questions for the record, and other extraneous material referenced during the hearing to be submitted in the official hearing record.

It is now my pleasure to introduce our distinguished panel of witnesses today. First, Mr. Randy DeFrehn, is the executive director of the National Coordinating Committee for Multiemployer Plans, the NCCMP, based here in Washington, D.C. Mr. DeFrehn has extensive experience working with multiemployer plans. Additionally, he served a three-year term as a member of the Department of Labor's ERISA Advisory Council from 2007 to 2009. Welcome.

Mr. Andrew Scoggin is the executive vice president for human resources, labor relations, public relations, and government affairs of Albertsons, LLC of Boise, Idaho. Albertsons is the nation's second-largest supermarket chain, with over 2,300 stores and 250,000 employees. Over the years, Mr. Scoggin has served as an employer trustee for several large multiemployer pension funds. Welcome.

Mr. Mark McManus of Annapolis, Maryland is the general secretary-treasurer of the United Association of Journeymen and Apprentices of the Plumbing, Pipefitting, and Sprinkler Fitting Industry of the United States and Canada. His career with the United Association began in March of 1983, when he was initiated into the Plumbers Local 24, and he has held several positions since then. Welcome, Mr. McManus.

Mr. Steven Sandherr is the CEO of the Associated General Contractors of America of Arlington, Virginia. AGC represents 27,000 construction and related member firms in 93 state and local chapters. Mr. Sandherr coordinates the association's advocacy work in support of the commercial construction industry and oversees the association's extensive educational safety and networking operations.

And welcome, gentlemen. I will now ask our witnesses to stand and raise your right hand.

[Witnesses sworn.]

Chairman ROE. Let the record reflect the witnesses answered in the affirmative. You may be seated.

Before I recognize you for your testimony—and many of you have been here before—let me briefly explain our lighting system. You have five minutes to present your testimony. When you begin, the light in front of you will turn green; when one minute is left the light will turn yellow; when your time is expired the light will turn red. At that point, I will ask you to wrap up your remarks as best as possible, and each member will also have five minutes of questioning.

I will now begin with Mr. DeFrehn. You are recognized for five minutes.

TESTIMONY OF MR. RANDY G. DEFREHN, EXECUTIVE DIRECTOR, NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS, WASHINGTON, D.C.

Mr. DEFREHN. Thank you, Chairman Roe. Chairman Roe, Ranking Member Polis, and members of the subcommittee, my name is Randy DeFrehn and it is an honor to speak with you once again on the subject of multiemployer retirement security. I am the executive director of the National Coordinating Committee for Multiemployer Plans, which you have referenced a number of times this morning, and we appreciate the acknowledgment.

It is also an honor to say thank you on behalf of the more than 10 million participants in multiemployer defined benefit plans, for the bipartisan leadership shown by this committee and subcommittee in the enactment of the *Multiemployer Pension Reform Act*, which was signed into law last December.

That legislation addressed two of the three major categories of recommendations in the Retirement Security Review Commission report, which Chairman Roe had discussed a little bit earlier: Solutions, Not Bailouts. These categories included recommendations to preserve the financial health of more than two-thirds of the plans, which have already or will soon regain their financial stability following the back-to-back recessions since 2000, and recommendations designed to preserve plans headed for insolvency and pay benefits at a higher level than they otherwise would ultimately have received.

The third category of the commission's recommendations, which remains to be adopted, concerns innovative new plan benefit structures designed to combine the best features of the current defined benefit and defined contribution plans. It is the need for this remaining set of reforms that I will address today.

For a number of employers, recent past developments, including the reemergence of withdraw liability, which several of the other witnesses will elaborate in their remarks, have convinced them that the current DB structure presents an unsustainable and unacceptable risk, causing them to seek other forms of pension coverage for their employees.

For these employers, the only other alternative is a defined contribution plan based on an individual account. As a primary form of retirement security versus a wealth accumulation vehicle, however, DC plans present certain inefficiencies which result in lower alternate benefits for average workers.

To the commission, this presented yet another challenge: how to structure an alternative plan design for the future that would re-

duce or eliminate the risks of unfunded liabilities to the employers, yet enable workers to receive a regular monthly retirement income check and maximize the utility of employer contributions. The result of their analysis was a recommendation to encourage the development of innovative shared risk plan designs offering two different models: the variable defined benefit plan and the composite plan.

As the variable defined benefit model has already been adopted by a number of plans, and in at least one situation has received a tax qualification letter, my comments will focus on the composite model.

The composite plan is neither a defined benefit nor a defined contribution plan under current law. The variable nature of the benefit is neither definitely determinable nor is it based on an individual account. It would be made available to jointly managed multiemployer plans as a successor to their current DB plans. The model includes very clear criteria for the parties to pay off the liabilities of the legacy DB plans as their first priority for contributions.

It also requires that the contributions to fund the future accruals be subject to a higher funding standard than is currently required for DB plans. The plan design could mirror the current DB plan, and it can include other current features of DB plans.

From the participant's perspective, this new structure would provide higher monthly benefits than would be derived from simply purchasing an annuity from his or her DC account by pooling longevity risk and by limiting other features that result in plan leakage such as loans, hardship distributions, distributions before retirements and lump sums, as more benefits would remain in the retirement plan and benefits would have to be paid as annuities.

This new structure is clearly not a DB plan, as benefits are variable based on the market value of assets, as currently happens with all defined contribution plans. Because it is not a DB plan, service earned after adoption would not be subject to the PBGC guarantee nor would employers be subject to withdrawal liability. However, both of these features would remain in place for remaining obligations under the legacy plan.

Contributions to both plans would be determined by the plan's actuary. However as the market risk for future service rests with the participant, the minimum contribution requirements to fund the cost of future accruals would be set at 120 percent of the actuarial projected cost to provide a buffer against market volatility.

The plan would conduct an annual actuarial valuation to determine whether assets are sufficient to meet that level of funding, projected over a 15-year period. Assuming the plan continues to meet that target, no action would be necessary. And if a sufficient margin were to develop, the plan trustees could consider benefit improvements provided they do not reduce the projected funding below the 120 percent target.

If, however, the projections fall below that level, trustees would be required to take remedial action within 210 days of the certification of the plan funding based on a clearly defined hierarchy which resembles actions currently available to DB plans under the PPA, *Pension Protection Act*, as amended.

Because it provides the best of both worlds, many within our community see the composite plan as the next logical step in the evolution of multiemployer plans. Enacting this remaining element of comprehensive multiemployer pension reform will provide greater long-term retirement security for workers by creating a path for contributing employers to remain in, and for new employers to enter, the multiemployer system without assuming existential risks. Thank you for the opportunity to share these thoughts.

I welcome any questions you may have.

[The testimony of Mr. DeFrehn follows:]

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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

April 29, 2015

Examining Reforms to Modernize the Multiemployer Pension System

Testimony of:

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

Chairman Roe, Ranking Member Polis and Members of the Committee, it is an honor to appear before you today on this important topic. I am Randy DeFrehn, Executive Director of the National Coordinating Committee for Multiemployer Plans, an advocacy organization chartered under Section 501(c)(4) of the Internal Revenue Code, created following the enactment of ERISA to represent the interests of multiemployer benefit plans, their participants and their sponsors.

Multiemployer plans are the product of collective bargaining agreements between one or more labor unions and more than one contributing employer which require contributions to a trust to be held and administered for the sole and exclusive benefit of plan participants. While commonly associated with the construction and trucking industries, they are found across the economy including in the agriculture, aerospace, bakery and confectionery, building service, clothing, entertainment, food production, distribution and sales, health care, hospitality, longshore, maritime, mining, manufacturing, retail, textile, and transportation industries.

I would like to thank the Committee for the opportunity to appear here before you once again on the topic of multiemployer retirement security. It is also an honor to say thank you, on behalf of the more than 10 million participants in multiemployer defined benefit plans, for the bi-partisan leadership shown by this Committee and Sub-committee in the enactment of the *Multiemployer Pension Reform Act*, passed as part of the *Consolidated and Further Continuing Appropriations Act 2015*, which was signed into law last December.

That legislation addressed two of the three major categories of recommendations of the Retirement Security Review Commission (or Commission), a broad based consortium of stakeholders representing more than 40 stakeholder groups including labor unions, employer associations, large plans, large individual employers and advocacy organizations from industries across the multiemployer community. For a period of eighteen months this group met to review the strengths and weaknesses of the multiemployer defined benefit pension system and formulate recommendations designed to weather its current challenges and to facilitate its success in the future. These categories included recommendations to preserve the financial health of the more than two-thirds of plans which have already, or will soon regain their financial stability following the back-to-back recessions since 2000, including technical corrections to the Pension Protection Act; and recommendations to preserve plans headed for insolvency and preserve benefits for participants in such plans above levels they would have otherwise ultimately received under prior law.

The third category of recommendations from the Commission remaining to be addressed concerns innovative new benefit structures designed to address the shortcomings of both the current defined benefit or defined contribution plans. It is the need for this remaining set of reforms that I am here to address today.

Background

For over seventy years, multiemployer defined benefit pension plans have provided tens of millions of American men and women and their families with regular, though modest retirement income which, along with Social Security and personal savings, have allowed them to retire in dignity. Since the PBGC multiemployer guaranty fund was initiated in 1980, the number of plans has declined from slightly over 2,200, consistent with the decline in defined benefit plans in corporate America. Contrary to that trend, however, the number of covered participants has increased from 8 million to over 10 million, largely due to the mergers of many smaller funds into larger ones. According to the PBGC, approximately 1,350 multiemployer defined benefit plans cover approximately 10.4 million active, retired and terminated vested workers. Defined benefit plans continue to be the primary retirement plans for multiemployer participants, with defined contribution plans being used as supplemental income plans.

Over that period, multiemployer plans have gone through a number of evolutionary changes. They began as true "union plans," but were subsequently replaced in favor of equal labor-management plans with the passage of the Taft-Hartley Act. These pay-as-you-go plans were then forced to pre-fund when ERISA was passed. Many employers believed that since only the contribution rates are negotiated, these plans were defined contribution until the late 1970's when the Supreme Court ruled in Connolly v. PBGC that they are defined benefit plans.

While ERISA provided for the creation of the PBGC to provide a safety net for plans in industries that fail, the multiemployer plan guaranty fund was not implemented until the passage

of the Multiemployer Pension Plans Amendment Act of 1980. A second aspect of that legislation was the creation of withdrawal liability – in essence, an exit fee – to be paid by employers who withdraw from plans with unfunded vested benefits. While theoretically a sound idea, industry specific limitations on when this fee is imposed, the 20 year cap on the amount ultimately imposed, amounts excused by bankruptcy courts and departures of small employers that are judgment-proof have resulted in recovery of less than 10% of assessed liabilities and have made withdrawal liability more of a hindrance than a help to the long-term financial health of plans by creating a barrier to new employers that might otherwise join the system.

When this fee was first imposed, it was forecast by some to be the end of multiemployer plans; however, a combination of conservative benefit payments, an expanding economy and robust investment markets soon made unfunded liabilities a thing of the past for the vast majority of plans. Instead the focus of attention for most plan sponsors shifted to the part of the tax code which limited the current deductibility of contributions to over funded plans. The remedy for the vast majority of plans was to increase benefit payments to preserve the current deductibility of contributions. While effective for addressing the immediate problem these actions also increased recurring plan liabilities prior to the inevitable market corrections and re-emergence of unfunded liabilities that followed soon after the turn of the century.

To compound the problem, additional financial disclosures required by the Financial Accounting Standards Board (regardless of the potential for incurring such liability) imposed after the 2008 recession has resulted in the downgrading of the credit rating of at least one publically traded firm and has had an adverse effect on the ability of other contributing firms to access credit markets. These new rules have made a bad situation worse by making it nearly impossible to bring new contributing employers into the contribution base in many industries. Without the influx of new employers, plans will be destined to deal with a continually contracting base of contributing employers – a prospect that has dire implications for the long-term viability of many such plans.

For the majority of industries and employers, multiemployer defined benefit plans have recovered or are on a path to recovery from the devastating losses of the past decade and will continue to be the norm. For others, the MPRA has provided a life line for plans and their participants for those plans that choose to utilize the new tools that have become available.

For still other employers, however, these recent past developments have left them feeling that the current structure presents an unacceptable risk of recurrence, causing them to seek other forms of pension coverage for their employees. For these employers, the only alternative is a defined contribution plan based on an individual account. As a primary form of retirement security vs. a wealth accumulation process, however, defined contribution plans present certain inefficiencies which may result in lower ultimate benefits for average workers, many of which are vexing even to those of us who specialize in retirement policy matters, including assuming the responsibility

for making correct investment choices, paying the lowest possible fees and in estimating life expectancy.

To the Commission this resulted in yet another challenge: how to find an alternative plan design for the future that would reduce or eliminate the risks of unfunded liabilities to the employers, yet addresses the shortcomings of the current defined contribution system so that workers can continue to receive a regular monthly retirement income and maximize the utility of employer contributions without requiring each participant to take on responsibilities of actuary and investment manager for which they are ill equipped. The result of their analysis was a recommendation to encourage the development and approval of innovative, "shared risk" plan designs, offering two different models: the variable defined benefit and the composite (or target plan as it was described in the Commission's report) as illustrative rather than finite solutions for the future. As the variable defined benefit model has already been adopted and, in at least one situation received a tax qualification letter from Treasury, my comments here will focus on the composite model.

The composite plan is neither a defined benefit, nor defined contribution plan under the current statutory structures as the variable nature of the benefit is neither definitely determinable, nor is it based on an individual account. It would be made available to jointly managed, multiemployer plans as a successor plan to their current defined benefit plan. The model includes very clear conditions for the parties to pay off the liabilities of the "legacy" defined benefit plan as the first priority for contributions. It also requires that contributions to fund future accruals be subject to a higher funding standard than are required for the current defined benefit plans. If the parties so desire, the benefit plan design could mirror the current plan design for the defined benefit plan. It could also continue many of the more favorable features of defined benefit plans. From the participants' perspective, this new structure will provide higher monthly benefits than would be derived from simply purchasing an annuity from his or her account balance in a defined contribution account. This can be accomplished in several ways including through the pooling of longevity risk, and by limiting other features that result in plan leakage and ultimately lower retirement income such as loans, hardship distributions, distributions before retirement and lump-sum distributions, as benefits would be required to be paid as annuities.

This new structure is clearly not a defined benefit plan, however, as benefits are variable based on the market value of assets (as currently happens with defined contribution plans). The amount one would receive would be adjusted on an annual basis to mitigate the frequency and impact of market fluctuations, projected for a fifteen year period. As it is not a defined benefit plan, service earned after adoption would not be subject to PBGC guaranty, nor would employers be subject to withdrawal liability. Both of these features would remain in place, however, for remaining obligations under the legacy plan.

Contributions to both plans would be determined by the plan's actuary however, as the market risk for future service rests with the participant, the minimum contribution requirement to fund

the cost of future accruals would be set at 120% of the actuarial projected costs to provide a buffer against market volatility. Each year the plan would conduct an actuarial valuation to determine whether the assets were sufficient to meet that funding projection over a fifteen year period. Assuming the plan continues to meet that target, no action would be necessary and, if a sufficient margin were to develop, the plan trustees could consider possible benefit improvements, provided that such improvements do not reduce the projected funding below the 120% target. If, however, the projections fall below the 120% target, the trustees would be required to take remedial action within 210 days of the date of the certification of plan funding based on a clearly defined hierarchy.

If the asset decline is modest, the parties would negotiate additional contributions, or the trustees could adjust the value of future accruals, much the same as is currently done for defined benefit plans. Because this is not a defined benefit plan, however, in the event projected plan assets fall more precipitously, action would be required to adjust benefits for all participants to return the plan to the required funding level. Benefits that could be adjusted include those that are not considered "core" benefits – normal retirement benefits payable at normal retirement age – such as post-retirement benefit improvements, subsidized early retirement or surviving spouse benefits or other benefits that are currently adjustable for critical status plans under the PPA.

In the event of a catastrophic market event, rules similar to those for defined benefit plans in critical and declining status plans would be imposed in order to restore required funding.

Conclusion:

In the past few years much as been made of the need to improve the retirement security of workers. Both the Departments of Labor and Treasury have embarked upon a program to encourage lifetime income to participants in defined contribution plans. This body has taken bold action to preserve the long-term solvency of multiemployer plans in last year's passage of MPRA. Yet there remains one last aspect reform to be enacted.

For some, the composite plan is the next logical step in the evolution of collectively bargained multiemployer plans. For those who are no longer willing to assume the risk of ensuring the performance of the investment markets, yet are genuinely concerned that many if not most of the workers covered by multiemployer plans do not possess the income levels, sophistication or discipline to accumulate sufficient wealth in a traditional defined contribution plan to meet the lifetime income objective (a concern that is not limited to this population but shared by many in the retirement community), the composite plan provides the best of both worlds. If enacted, the structure and safeguards will provide greater long-term retirement security by creating a path for contributing employers to remain in and new employers to enter the multiemployer system without presenting existential risks, while providing the greatest possible benefit for covered participants.

I thank you for the opportunity to share these thoughts and welcome any questions you may have.

Respectfully submitted,

Randy G. DeFrehn
Executive Director

Chairman ROE. Thank you.

Mr. Scoggin, you are recognized for five minutes.

TESTIMONY OF MR. ANDREW SCOGGIN, EXECUTIVE VICE PRESIDENT, HUMAN RESOURCES, LABOR RELATIONS, PUBLIC RELATIONS & GOVERNMENT AFFAIRS, ALBERTSONS, LLC, BOISE, IDAHO

Mr. SCOGGIN. Thank you very much. Chairman Roe, Ranking Member Polis, and members of the subcommittee thank you for inviting me to testify before your today on the incredibly important and timely matter of multiemployer pension reform. Being here reminds me, I had a pleasure of testifying before this committee almost 10 years ago. Thanks to the work and leadership of this committee, and the bipartisan cooperation that it has demonstrated, the Congress made significant progress since my last appearance in June of 2005 to strengthen the multiemployer pension system.

And in many respects, my testimony today serves as an endorsement for a number of the proposals under consideration; none of which would be possible were it not for the work this committee has already accomplished.

Thank you also to Randy DeFrehn and his colleagues at NCCMP for their thoughtfulness in presenting solutions to this serious problem. To provide a bit of context as I appear before you today, Albertsons, LLC's parent company, named AB Acquisition, LLC also operates New Albertsons Inc. and Safeway Inc., with more than 2,200 stores in 34 states and the District of Columbia. We operate under 18 banners, and you may have heard of some of these: Albertsons, Safeway, Vons, Jewel-Osco, Shaw's, Acme, Tom Thumb, Randall's United, and Carrs, to name a few.

With approximately a quarter million employees, 68 percent of which are unionized—primarily with the UFCW, with whom I have had extensive discussions on these matters at the most senior levels of the UFCW including the international president, Marc Perrone—a key aspect of my responsibility is to provide a robust and competitive benefit package for our associates, for their retirees, for our retirees.

Over the past two decades, I have personally served as a trustee on the boards of trustees of numerous multiemployer pension funds throughout the U.S. I have repeatedly seen the negative consequences that have resulted from regulatory restrictions, coupled with massive change in the unionized grocery industry, namely the exit of many unionized grocery chains. These have led to enormous obligations shouldered by the remaining contributing employers across the country.

In order to solve the significant pension problems we now face, the bargaining parties must be given the types of tools that NCCMP has carefully crafted.

Currently, our company actively participates in 31 major multiemployer pension plans. Albertsons Safeway represents 50 percent or more of the contribution base of six of those plans plan. We contribute $350 million annually to our full complement of multiemployer plans. And most significantly, we face right now over $4.8 billion in nominal withdrawal liability under those plans.

Today, over 10 million Americans are enrolled in multiemployer pension plans. It goes without saying that all of us—policymakers, legislators, regulators, employers, participants—are responsible for putting a framework in place that safeguards retirement security for this significant segment of the American workforce.

Failure to act and to act expeditiously will have potentially catastrophic effects not only on the companies that provide these pensions but, just as importantly, on the employees and their families. Modernizing the regulatory framework for multiemployer pensions is not an easy task. We know that. The structural reforms that Randy has outlined this afternoon will require sacrifice all around and considerable cooperation from all parties, with input and support from industry, from unions, and from employers. I believe this is possible, I have seen this committee do it before.

Over the last 10 years, Congress has worked to strengthen ERISA through the *Pension Protection Act* in 2006; more recently with the MPRA, last Congress, as a strong proponent of PPA.

Coupled with MPRA, these pieces of legislation represent a significant improvement to retirement security. But from an employer's perspective, in spite of this progress there remains much to be done to address shortfalls that previous legislation has not yet been able to correct.

The policy recommendations presented to you by NCCMP shaped much of the 2014 reform bill and provided a blueprint for what we would like to see happen as we move forward.

Now, more than ever, employers are facing incentives to exit the multiemployer pension system and to avoid entering the system. As with most unionized employers, Albertsons continues to pay increasing contributions to troubled pension funds.

And I point out that many of these are still suffering from 2008. And, in increasing proportions, our contributions are going toward the pensions of employees whose employers have left the business. Money spent on these funds in keeping them afloat is money we would rather spend on hiring workers, on raising wages, on building new stores, on expanding our business.

We need new tools in our toolbox to address the challenges, which were not contemplated when multiemployer pension rules were initially put into place. For example, under existing law neither the bargaining parties nor the trustees have the option of managing a plan that doesn't include the concept of withdrawal liability.

New employers have a strong disincentive to participating in troubled plans. Strong operating companies who are potential industry consolidators are disinclined to purchase or to invest in companies with significant multiemployer plans. These are only a few of the many problems within the multiemployer pension system, which we would like to see legislation address.

In conclusion, Congress needs to equip employers and employees with the regulatory flexibility necessary to make changes to benefits programs that don't run afoul of our beneficiaries, employers, or the system as a whole.

Thank you.

[The testimony Mr. Scoggin follows:]

Testimony of Andrew J. Scoggin
Executive Vice President, Human Resources, Labor Relations, Public Relations & Government Affairs
Albertson's LLC

Before the Subcommittee on Health, Employment, Labor and Pensions
U.S. House of Representatives

Hearing on "Examining Reforms to Modernize the Multiemployer Pension System"
April 29, 2015

Chairman Roe, Ranking Member Polis, and Members of the Subcommittee:

Thank you for inviting me to testify before you today on the important and timely matter of multiemployer pension reform. Being here reminds me that I had the pleasure of testifying before this committee almost ten years ago. Thanks to the work and leadership of this committee and the bipartisan cooperation it has demonstrated, the Congress has made significant progress since my last appearance in June 2005 to strengthen the Multiemployer Pension System. And in many respects, my testimony today serves as an endorsement for a number of the proposals under consideration, none of which would be possible were it not for the work this committee has already accomplished.

I would also be remiss if I didn't take this opportunity to thank Randy DeFrehn and commend him and his colleagues at the National Coordinating Committee for Multiemployer Plans (NCCMP) for their thoughtfulness and commitment to arrive at sustainable solutions to this serious problem.

To provide a bit of context as I appear before you today, Albertson's LLC's parent company is AB Acquisition LLC, which also operates New Albertson's, Inc., and Safeway Inc., and is the second largest supermarket chain in the nation with more than 2,200 stores in 34 states and the District of Columbia. We operate stores under 18 banners, many of which may be familiar to you – including Albertsons, Safeway, Vons, Jewel-Osco, Shaw's, Acme, Tom Thumb, Randalls, United, and Carrs to name a few. With approximately 250,000 employees -- of which 68% are unionized -- a key aspect of my responsibility in the company is to provide a robust and competitive benefits package for all our associates and retirees.

Today, as you're all undoubtedly aware, over 10 million Americans are enrolled in multiemployer pension programs. It goes without saying that all of us – policymakers, legislators, regulators, employers and participants – are responsible for putting a framework in place that safeguards the retirement security of this significant segment of the American workforce. Failure to act – and act expeditiously - will have potentially catastrophic effects not only the companies that provide these pensions, but most importantly its employees and their families.

Modernizing the regulatory framework for multiemployer pensions is no easy task, however. The structural reforms that Randy has outlined this afternoon will require sacrifice all around and considerable cooperation from both parties, with input and support from industry participants, unions, their employers. I believe this is possible because I've seen this committee do it before.

Over the last ten years, Congress has worked to strengthen the Employee Retirement Income Security Act (ERISA) through the Pension Protection Act (PPA) in 2006, and most recently, the Multiemployer Pension Reform Act (MPRA) last Congress. I was a strong proponent of PPA. Coupled with MPRA, these pieces of legislation represent a significant improvement to the retirement security of the workforce that participates in covered plans. From an employers' perspective, in spite of this progress, there remains work to be done to address shortfalls that previous legislation has not corrected. The policy recommendations presented to you by the NCCMP shaped much of the 2014 reform bill and provides a blueprint for what we would like to see happen as we move forward.

Now more than ever, employers face incentives to exit the multiemployer pension system, ultimately undermining employers' willingness from entering the system. As with most unionized employers, Albertsons continues to pay increasing contributions to troubled pension funds, which are still suffering underfunding from the 2008 financial crisis. In some instances, our increased contributions go toward pensions of employees whose employers have gone out of business. Money spent on keeping these funds afloat is money we would rather spend on hiring workers, raising wages, expanding our business and contributing to the American economy.

We need new tools in our toolbox to address the challenges which were not contemplated when multiemployer pension rules were initially put in place. For example, under existing law, neither the bargaining parties nor trustees have the option of managing a plan that does not include the concept of withdrawal liability.

Another problem we've seen progress is the maturity of multiemployer pension programs. Gradually, the population of these programs has shifted from active, to retired, terminated and vested participants. Although anticipated, this transition creates an increase in both assets and liabilities of multiemployer plans, increasing an already-growing funding shortfall. Generally speaking, the more reliant pensions become on assets, the more reliant they also become on investment income, putting them at greater risk of insolvency.

In recent years, large-scale rating agencies and the Financial Accounting Standards Board (FASB) have increased their focus on multiemployer pension programs. There exists, however, significant misunderstanding of how multiemployer plans calculate liabilities. This unfortunate and avoidable confusion creates an ominous cloud around employers who participate in multiemployer pension programs, resulting in stricter lending requirements and crosscurrents to their fiscal stability.

These are only a few of the many problems within the multiemployer pension system we would like to see legislation address. New reporting and disclosure requirements have also created challenges that make it harder for employers to maneuver when entering in and out of multiemployer pension programs.

Congress needs to equip employers and employees with the regulatory flexibility necessary to make changes to benefits programs that do not run afoul of beneficiaries, their employers, or the system as a whole.

Chairman Roe, Ranking Member Polis, and Members of the Subcommittee, I thank you again for inviting me to testify before you today in support of modernizing the multiemployer pension program. I look forward to working closely with you to create a holistic approach to safeguard the retirement security of hard-working Americans who participate in the multiemployer system. I look forward to your questions.

Chairman ROE. Thank you, Mr. Scoggin.

Mr. McManus, you are recognized for five minutes.

TESTIMONY OF MR. MARK MCMANUS, GENERAL SECRETARY–TREASURER, UNITED ASSOCIATION, ANNAPOLIS, MARYLAND

Mr. MCMANUS. Good afternoon. Chairman Roe, Ranking Member Polis, and the members of the subcommittee it is an honor to appear before you today on this important topic affecting millions of working men and women. My name is Mark McManus, and I am the general secretary-treasurer of the United Association of Journeymen and Apprentices of the Plumbing, Pipefitting and Sprinklerfitting Industry of the United States and Canada.

The UA and its affiliated locals cosponsor, with the collective bargaining partners, more than 150 multiemployer defined benefit plans. The UA welcomes the opportunity to present testimony in this subcommittee in support of this legislation that would modernize the multiemployer pension system by making additional options available to the boards of trustees and collective bargaining parties to continue to provide lifetime retirement income to the employees in the multiemployer plans.

Multiemployer plans developed and exist in industries, such as construction, trucking, and entertainment, characterized by frequent short-term employment. In a typical single-employer context, such frequent changes in employment would make it unlikely for employees in such industries to vest in a retirement plan, or if vested to accumulate sufficient benefits to insure adequate retirement.

I will speak primarily on the knowledge of the construction industry, but many of the issues and concerns affect other industries, as well. Multiemployer defined benefit plans have enabled skilled workers to earn and retain a pension that provides lifetime income. They provided essential safeguards for financial security of the construction workers and have been the primary form of benefit delivery in the construction industry.

While defined contribution plans have replaced defined benefit plans in many industries, in construction they remain as a supplement to defined benefit plans. Many multiemployer defined benefit plans suffered significantly from the investment losses of two economic downturns within a decade.

Defined benefit plans in many industries, including construction, sustained further losses from reduced contributions when work on which employer contributions were required remained depressed three years following 2008. Plans that have been solidly funded found themselves in endangered or critical status under the *Pension Protection Act*.

In most cases, unions and employers have worked together to stabilize these plans, but even those plans are recovering financially and are not as secure as they once were due to changes that threatened the continued existence of multiemployer defined benefit plans and the financial security of covered employees.

In 2010, financial accounting standards boards proposed changes in corporate financial statements that would have required burdensome and complicated disclosures about potential withdrawal liability to which an employer might be subject if he withdrew from a

multiemployer plan. Although this proposal was ultimately modified to limit disclosure, the publicity surrounding this proposal made lending institutions aware that employers potentially faced withdrawal liability.

But few are sufficiently familiar with the issues to have even a rudimental understanding that withdrawal liability is only assessed if, and when, the employer ceases to have an obligation to pay into the pension fund. Nevertheless, employers have advised that they now find it difficult to obtain credit. Employers cannot operate with access to credit. And given a choice between the company or withdrawing from a multiemployer defined benefit plan, employers have used various methods to leave these plans.

In some cases, an employer will simply negotiate and pay withdrawal liability rather than face continuing uncertainty that even if they make the required contributions, forces beyond their control could cause such liabilities to reemerge.

Perhaps more importantly, new employers will not enter the defined benefit plan for fear of withdrawal liability. As employers leave a multiemployer defined benefit plan, no new employers replace them. The contribution base of the plan is severely undermined. Employers and employees may see little advantage to continuing the plan.

The NCCMP Retirement Security Review Commission recognized, in Solutions, Not Bailouts, that plans have to be sustainable long-term for the benefit of both workers and plan participants and their families and contributing employers. Both goals have to be achieved at the same time or neither will be achieved.

The United Association believes that it is essential to the retirement security of our members to offer a plan that will provide lifetime income. The proposed reforms which remain unaddressed in the last Congress offer a new composite plan design that will preserve the life of the income feature of the defined benefit plan, but will not drive contributing employers out of the system because of the threat of withdrawal liability.

The eroding employer support is causing significant harm to traditional defined benefit plans and is currently one of the reasons for the plan's insolvency. PBGC premiums for multiemployer plans projected to become insolvent are adding an extra burden.

As long as there is a threat of withdrawal liability, the pool of employers contributing to the multiemployer plans will not increase significantly to support the system.

There is a growing trend towards defined contribution plans, which also presents challenges to ensuring the desire for income security to the people and the mobile industries that rely on multiemployer plans. We believe the innovative plan structure provides with composite plans are necessary as an additional option to provide adequate lifetime retirement security to the UA members, amongst others. Composite plans are not permitted under law as proposed by features of defined benefit and defined contribution plans.

Mr. Chairman, if I may have another minute?

Chairman ROE. You can go on ahead, Mr. McManus.

Mr. MCMANUS. Thank you, sir. From the perspective of the UA, the most important feature is that these plans provide the accumu-

lation of benefits and provide a lifetime benefit in a manner similar to traditional defined benefit plans. We understand that in times of economic distress benefits may be reduced. We believe, however, that the advanced funding provisions are sufficient to protect participants.

During the preparation of the Solutions, Not Bailouts report, the NCCMP Retirement Security Review Commission actuarially stress-tested the composite plan. It performed well through an economic downturn similar to 2008.

Subsequent stress testing of 106 multiemployer defined plans examined to determine the impact of the employer contributions the fund's similar benefit structure demonstrated that the majority of the plans tested can replicate the benefit provided at a lower contribution rate than required for the current members defined in the plan. Furthermore, our Canadian members have plans subject to these provisions.

While the debate among proponents of either defined benefit or defined contribution plans continues, we believe it is more constructive to move beyond the rhetoric and focus on the common objective of providing adequate retirement income to men and women who spend their career working for our country.

The *Multiemployer Pension Reform Act of 2014* gave some new tools to the trustees and the government agencies to save failing defined benefit plans. This helps. But the legislation to provide new tools to the bargaining parties through innovative plans like the composite model is still needed for the future.

The proposed composite plan design provides additional options to secure lifetime benefits to the employers. The opportunity for creative solutions for our retirement income dilemma is within our grasp. We strongly encourage Congress to take advantage of it, expand availability offerings, and enable labor and management to find solutions which best meet their specific goals.

In closing, I once again like to thank you for your work to improve the retirement security for our members and the rest of the 10.4 million participants.

Thank you.

[The testimony of Mr. McManus follows:]

Committee on Education and the Workforce
Subcommitte on Health, Employment, Labor, and Pensions

"Examining Reforms to Modernize the Multiemployer Pension System"

Wednesday, April 29, at 2:00 p.m.
Rayburn House Office Building, Room 2175
Washington, DC.

Chairman Roe, Ranking Member Polis and Members of the Committee, it is an honor to appear before you today on this important topic affecting millions of working men and women. My name is Mark McManus. I am the General Secretary Treasurer of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada. The United Association and its affiliated local unions co-sponsor with their collective bargaining partners more than 150 multiemployer defined benefit pension plans. The United Association welcomes the opportunity to present testimony to this Subcommittee in support of proposed legislation that would modernize the multiemployer pension system by making additional options available to Boards of Trustees and collective bargaining parties to continue to provide lifetime retirement income to the employees in multiemployer plans.

Multiemployer plans developed and exist in industries such as construction, trucking and entertainment characterized by frequent short term employment. In a typical single employer context, such frequent changes in employment would make it unlikely for employees in such industries to vest in a retirement plan or, if vested, to accumulate sufficient benefits to insure an adequate retirement. I will speak primarily from my knowledge of the construction industry but many of the issues and concerns affects other industries as well.

Multiemployer defined benefit plans have enabled skilled workers to earn and retain a pension that provides lifetime income. They have provided essential safeguards for the financial security of construction workers and have been the primary form of benefit delivery in the construction industry. While defined contribution plans have replaced defined benefit plans in many industries, in construction they remain as supplemental to defined benefit plans.

Many multiemployer defined benefit plans suffered significantly from investment losses in two economic downturns within a decade. Defined benefit plans in many industries including construction sustained further losses from reduced contributions when work on which employer contributions were required remained depressed for years following 2008. Plans that had been solidly-funded found themselves in endangered or critical status under the Pension Protection Act. In most cases, unions and employers have worked together to stabilize these plans but even those plans that are recovering financially are not as secure as they once were due to changes that threaten the continued existence of multiemployer defined benefit plans and the financial security of covered employees.

In 2010 the Financial Accounting Standards Board proposed changes in corporate financial statements that would have required burdensome and complicated disclosures about potential withdrawal liability to which an employer might be subject if it withdrew from a multiemployer plan. Although this proposal was ultimately modified to limit disclosures, the publicity surrounding this proposal made lending institutions aware that employers' potentially face withdrawal liability, but

few are sufficiently familiar with the issue to have even a rudimentary understanding that withdrawal liability is only assessed if and when the employer ceases to have an obligation to pay into the pension fund. Nevertheless, employers have advised that they now find it difficult to obtain credit.

Employers cannot operate without access to credit and given a choice between losing the company or withdrawing from a multiemployer defined benefit plan, employers have used various methods to leave plans. In some cases an employer will simply negotiate and pay withdrawal liability rather than face continued uncertainty that even if they make their required contributions, forces beyond their control could cause such liabilities to re-emerge. Perhaps more importantly, new employers will not enter a defined benefit plan for fear of withdrawal liability.

As employers leave a multiemployer defined benefit plan and no new employers replace them, the contribution base of the plan is severely undermined. Employers and employees may see little advantage to continuing the plan. The NCCMP Retirement Security Review Commission recognized in ***Solutions Not Bailouts*** that plans have to be sustainable long term for the benefit of both workers and plan participants and their families and contributing employers – both goals have to be achieved at the same time or neither will be achieved.

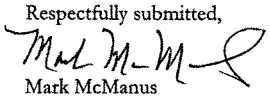
The United Association believes that it is essential to the retirement security of our members to offer a plan that will provide life time income. The proposed reforms which remain unaddressed in the last Congress offer a new "composite" plan design that will preserve the life time income feature of a defined benefit plan but will not drive contributing employers out of the system because of the threat of withdrawal liability. The eroding employer support is causing significant harm to traditional defined benefit plans and is certainly one of the reasons for plan insolvency. PBGC premiums for multiemployer plans projected to become insolvent are adding an extra burden and threat to the survival of plans. As long as the threat of withdrawal liability exists, the pool of employers contributing to multiemployer defined benefit plans will not increase sufficiently to support the system. There will be a growing trend toward defined contribution plans which also present challenges to ensuring the desired income security to people in the mobile industries that rely on multiemployer plans. We believe that the innovative plan structures provided by composite plans are necessary as an additional option to provide adequate life time retirement security to United Association members among others.

Composite plans are not permitted under current law. As proposed they have features of both defined benefit and defined contribution plans. From the perspective of the United Association the most important feature is that these plans provide for the accumulation of benefits and provide a life time benefit in a manner similar to traditional defined benefit plans. We understand that in times of economic distress, benefits may be reduced. We believe, however, that the advance funding provisions are sufficient to protect participants. During the preparation of the ***Solutions Not Bailouts*** report, the NCCMP Retirement Security Review Commission's actuary stress tested the composite plan design and it performed well through an economic down turn similar to 2008. Subsequent stress testing of 106 multiemployer defined benefit plans examined to determine the impact on employer contributions to fund similar benefit structures demonstrated that in the majority of plans tested, plans can replicate the benefit provided at lower contribution rates than are required for the current defined benefit plan. Furthermore, our Canadian members have plans subject to similar provisions and those plans have run very well over the years providing life time benefits to our Canadian members.

While the debate among proponents of either defined benefit or defined contribution plans continues, we believe it is more constructive to move beyond the rhetoric and focus on the common objective of providing adequate retirement income to men and women who spend a career working to make our country all that it can be. The Multiemployer Pension Reform Act of 2014 gave some new tools to plan trustees and the government agencies to save failing defined benefit plans. This helps. But legislation to provide new tools to the bargaining parties through innovative plans like the composite model is still needed for the future. The proposed composite plan design provides an additional option to secure life time retirement income for our employees where support for traditional defined benefit plans continues to erode. If composite plans are not made available, we believe that many existing defined benefit plans will eventually be replaced with traditional defined contribution plans. The opportunity for creative solutions to our retirement income dilemma is within our grasp. We strongly encourage Congress to take advantage of it and expand available offerings to enable labor and management to find solutions which best meet their specific needs.

In closing, I would once again thank you for your work to improve the retirement security for our members and for the rest of the 10.4 million participants in multiemployer pension plans. I look forward to your questions.

Respectfully submitted,



Mark McManus
General Secretary-Treasurer

Chairman ROE. Thank you, Mr. McManus.

Mr. Sandherr, you are recognized for five minutes.

TESTIMONY OF MR. STEVE SANDHERR, CHIEF EXECUTIVE OFFICER, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, ARLINGTON, VIRGINIA

Mr. SANDHERR. Thank you, Mr. Chairman, Ranking Member Polis, and members of the subcommittee for the opportunity to testify today on behalf of the Associated General Contractors. My name is Steven Sandherr, and I am the CEO of AGC, the leading association for the construction industry. AGC represents more than 27,000 firms consisting of both union and open shop contractors engaged in building our nation's infrastructure.

The vast majority of our member firms are small and closely-held family businesses. I should point out that I have represented the construction industry for the last 30 years, and I recognize how unusual it is for me to walk into this particular room and be on the same side with the Building Trades Unions offering a solution to a problem.

The Building Trades deserve credit for their advocacy in the last Congress in support of the reform measures that we are discussing today. And, of course, we thank the committee and Congress for passage of the *Multiemployer Pension Reform Act of 2014*. This series of long-overdue and necessary reforms track closely with the joint labor-management reform proposal AGC participated in with the NCCMP in 2013: Solutions, Not Bailouts.

Looking forward, AGC encourages Congress to act promptly on an important component of the Solutions, Not Bailouts proposal that was not included in last year's law: changing the law to recognize a new composite plan design. This would give collective bargaining parties or plan trustees the option to decide whether to adopt a composite plan model, which more equally distribute some of the risk associated with retirement plans so employers don't have to shoulder the entire burden.

The new plan design is essential to the shared goal of protecting both those who earn benefits and those employers that contribute retirement benefits to those plans. Under the current defined benefit system, the creation of contingent withdrawal liability makes the employer liable for the ups and downs of investment returns and the size of the asset base. This model creates a system that imposes crippling withdrawal liability and little remedies for employers to account for their exposure.

In most cases, under the current rules an employer will never be able to pay down its liabilities. Let me briefly highlight the potential benefits for both employers and employees if a composite plan were adopted. For employees, they would get increased fund stability; secondly, retain a guaranteed benefit; and third, it provides for the potential of higher wages because the pension share of the overall compensation package will be reduced. For employers, it eliminates the potential for withdrawal liability, which can be crippling to contributing employers and is a major barrier to new employer participants.

Withdrawal liability can also affect a company's bonding ability and their ability to sell or pass down a company to the next genera-

tion. The composite plan structure is innovative, but not untested. It is similar to the model that is in practice throughout much of Canada and has been successful there. It mimics the U.S. plan design prior to the enactment of ERISA.

Let me point out that the adoption of a composite plan design would not eliminate legacy liabilities under existing defined benefit plans. The employers will continue to make contributions to the pension trust, where a portion of the contribution would then pay down legacy costs and a portion would go towards the new plan.

Acting quickly to allow composite plan designs is important because the industry has finally begun to expand again, giving employers and employees their best chance to add new plan participants in over a decade.

With the vast majority of construction industry plans returning to the green zone, this is a perfect opportunity to adopt these changes and provide limited disruption of benefits for participants. Transitioning to the new plan design will also eliminate unfunded liabilities and, in turn, future PBGC liabilities.

Regarding the PBGC, they reported potential insolvency and the need for additional funding. I would encourage Congress to allow the recent premium increase to take effect and allow plans to take advantage of last year's tools before any additional increases are levied on plans.

In conclusion, the *Multiemployer Pension Reform Act* was a step in the right direction. It provides many needed reforms to the multiemployer system. But Congress should also enact additional reforms to the system that allow multiemployer plans to modernize by choosing from additional retirement plan models, including the composite plan concept. Thank you for this opportunity to testify.

I would be pleased to answer any questions that the members of the subcommittee may have.

[The testimony Mr. Sandherr follows:]

Statement of

Stephen E. Sandherr

on behalf of

The Associated General Contractors of America

to the

U.S. House of Representatives

Education & the Workforce Committee
Subcommittee on Health, Employment, Labor, and Pensions

For a hearing on

"Examining Reforms to Modernize the Multiemployer Pension System"

April 29, 2015

AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.

The Associated General Contractors of America (AGC) is the largest and oldest national construction trade association in the United States. AGC represents more than 26,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, site preparation/utilities installation for housing development, and more.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
2300 Wilson Boulevard, Suite 300 • Arlington, VA 22201 • Phone: (703) 548-3118 • FAX: (703) 548-3119

Statement of Stephen E. Sandherr
Associated General Contractors of America; Arlington, VA
Education & the Workforce Committee
Subcommittee on Health, Employment, Labor, and Pensions
United States House of Representatives
April 29, 2015

Thank you, Chairman Roe, Ranking Member Polis, and members of the Subcommittee, for the opportunity to testify on behalf of the Associated General Contractors of America for a hearing on the "Examining Reforms to Modernize the Multiemployer Pension System."

My name is Stephen E. Sandherr and I am the Chief Executive Officer of the Associated General Contractors of America (AGC), the leading association for the construction industry. AGC represents more than 26,000 firms, including over 6,500 of America's leading general contractors, and over 9,000 specialty-contracting firms. More than 10,500 service providers and suppliers are also associated with AGC, all through a nationwide network of chapters. These firms, both union and open shop, engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities, and other improvements to real property. Most are small and closely held businesses.

I would first like to thank the Committee and Congress on passage of the Multiemployer Pension Reform Act of 2014 (MPRA) last year. The law included a series of long overdue and necessary reforms designed to protect and improve multiemployer retirement programs, and they track closely with a joint labor-management reform proposal AGC helped craft in 2013, in *Solutions Not Bailouts*. Reaching a private-sector consensus was far from easy, but after three long years of discussions, consensus was reached and key reforms were included that only a few years ago would have been unthinkable for most groups. The law should go a long way in helping to protect the investments of our members and the retirement security of retirees.

Specifically, MPRA will provide certainty and better facilitate long-term plans to protect retiree benefits. It will help keep thousands of employers competitive and ensure that the broader economy continues to benefit from the billions of dollars that pension funds invest each year. Among the most important changes included in the law is making the Pension Protection Act (PPA) permanent. The law also included a number of technical changes to the multiemployer system that were badly needed. One of the most significant authorized plans to elect to be in critical status early, allowing them to significantly reduce liabilities and recover sooner. The law also provides employers and employees with the flexibility to voluntarily act to shore up multiemployer retirement plans. Without these new measures, thousands of retirees would likely have been forced to accept the savage cuts to their retirement benefits that come when the Pension Benefit Guaranty Corporation (PBGC) is forced to step in. Also important to note, the law does not require additional federal funding. To the contrary, it raises funds by including a significant (100 percent) increase in PBGC premiums paid by the plans.

Now that we have the law in place, AGC and Congress need to make sure that the administration implements the new measures in a way that is truly helpful for employers and employees. That is why we continue to work closely with officials from the Labor and Treasury Departments and the PBGC to make sure they get the details right as they craft the new rules required by the new law, and keep the congressional intent of the law intact.

AGC has had concerns regarding the fiscal viability of multiemployer plans for decades. However, the back-to-back economic collapses in the 2000s, followed by the industry's greatest downturn, really exacerbated the funding status of many plans and previous legislative remedies proved insufficient. That is why over 40 groups came together to form the National Coordinating Committee of Multiemployer Plans' Retirement Security Review Commission to develop the *Solutions Not Bailouts* proposal. This private-sector proposal and recommendations to Congress would not have been possible without the groups negotiating and compromising in good faith. One of the fair and honest parties throughout the multiyear process was the North America's Building Trades Unions, which has one of their trades represented here today. Neither management nor labor representatives thought this process would be easy. Tough choices were made on both sides, followed by tough votes and legislative action by Congress, but we can all agree that the reforms are in the best interest for all stakeholders. Without the support of the labor organizations, these reforms would not have been possible, and AGC thanks them for their support. Continued labor support will be a prerequisite for additional reforms to the system, and we hope to continue to work closely with labor to demonstrate to Congress the presence of sufficient stakeholder support to enact a key element of the *Solutions Not Bailouts* proposal left unresolved by MPRA.

Looking forward, AGC encourages Congress to act on an important component of the *Solutions Not Bailouts* proposal that was not included in last year's law: changing the law to recognize a new "composite plan" design. Congress needs to give management and labor the voluntary option to select new, more flexible and pragmatic retirement plans for the future. In particular, we think Congress should allow collective bargaining parties or plan trustees the option to decide whether to adopt the composite plan model, which more equally distributes some of the risks associated with retirement plans so employers don't have to shoulder the entire burden. The current defined benefit ("DB") plan system puts employers otherwise in business to build and construct our nation's vital infrastructure in the antiquated and unfair position of insuring against losses in the equity market. The new plan design is essential to the shared goal of protecting both those who earn benefits and those employers that contribute retirement benefits to them.

The composite plan design can facilitate the modernization of strong plans that will not be taking advantage of MPRA's tools, but are still far from fiscal sustainability. Enacting a composite plan design option will not directly change how the construction industry operates, but will facilitate change and allow plans to voluntarily adapt in the future. Under the current DB system, the creation of contingent withdrawal liability makes the employer liable for the ups and downs of investment returns and the size of the asset base. Historically, two-thirds of a plan's assets are based on investment returns rather than on employer contributions over the life of a plan. This model creates a system that imposes crippling withdrawal liability and little remedies for employers to account for their exposure.

MPRA still leaves uncertainty and concern for contractors regarding their withdrawal liability, and the new plan design, if enacted, could provide immediate benefits. In fact, the current pension rules can impose withdrawal liability that can exceed the value of a company despite an employer acting in good faith. This prospect of withdrawal liability can discourage a potential buyer from acquiring a construction business when its current owners want to sell or retire. These liabilities also raise concerns from project owners and financiers on a company's long-term liabilities, neither of which have any bearing on a contractor's ability to perform the construction work they are being contracted to perform, which is an unfortunate liability unique for union contractors. In most cases, under the current rules, an employer will never be able to pay down its liabilities.

The composite plan design that we are advocating would limit an employers' liability to the hourly contributions that the employer makes. These contributions would be negotiated during collective bargaining and incorporated into collective bargaining agreements, similar to how today's DB plans are funded. The risk for the employers under the new composite plan design would be limited to ensuring their hourly contributions are sufficient given the volatility of market returns and other factors. This design change gives trustees more flexibility on a year-to-year basis by evaluating if current contribution rates are sufficient.

In a composite plan, plan participants would shoulder some of the risk as their benefits would be tied to the plan's performance and the ability of the plan to meet the promised benefits levels, similar to a traditional 401(k) model. However, a significant improvement over the 401(k) model is that the composite plan would provide the benefits as a lifetime annuity rather than a lump sum. The composite plan model also pools the assets, expenses, and actuarial projections just like a DB plan, limiting the individual expenses that a plan participant is subjected to under the 401(k) model.

The plan's structure would require first-year employer contributions to be 120 percent of the first-year liabilities. Employers will work with plan actuaries in the collective bargaining process to determine what these contributions will be. Thereafter, the trustees must maintain a fully-funded plan level or better. If the plan were to fall below 100 percent, then the benefits would drop accordingly. If this were to occur, it would provide an opportunity for the bargaining parties to restore those benefits during the next collective bargaining process. The plan is more financially responsible by using assumed rate of returns for investments that are more reasonable and conservative, thus avoiding potential crippling unfunded liability. This design change also eliminates statutory requirements that employers potential withdrawal liability increases if the plan lacks the assets to pay the benefits, including those in pay status. The design change would bring along regulatory guidelines to try and keep plans solvent, dictate contribution rates, and contain protections for vulnerable populations.

The composite plan structure is innovative but not untested. It is similar to the model that is in practice throughout much of Canada and that mimics the U.S. design prior to enactment of the Employee Retirement Income Security Act (ERISA). A review of the history of these Canadian plans shows very few incidents of a reduction in benefits.

Let me point out that the adoption of a composite plan design would not eliminate legacy liabilities under existing DB plans. Accrued liability for unfunded vested benefits will remain, and they will continue to be the employer's responsibility and to be subjected to PPA funding rules. Employees who are covered under such DB plans would continue to receive benefits under those plans, and the combination of those benefits and the new plan would be virtually the same. The employers would continue to make contributions to the pension trust where a portion of the contribution would pay down legacy costs and a portion would go towards the new plan.

AGC urges Congress to quickly enact legislation that creates the new plan design concept. Despite MPRA, some plans will still 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 an otherwise healthy plan. Such convergence of factors could precipitate failure of plans and of contributing employers.

Construction contractors that are signatory to collective bargaining agreements requiring contributions to DB multiemployer plans are increasingly deciding to wind down and close their businesses rather than endure mounting 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 their benefits will be lost. We would love to keep these valuable seasoned workers in the industry.

Additionally, the reports of a worker shortage and problems recruiting and retaining a skilled workforce cannot be understated. Addressing the skills gap is another priority for AGC and one component to training the next generation of skilled workers is the union apprenticeship model. Fewer employees of signatory contractors will cause a further decline and weakening of pension funds, and will have ripple effects throughout the industry and across the country. This will lead to employees missing out on some of the other benefits that can be provided to them including the training provided through union apprenticeship training programs, in addition to other sources.

The ability for employers to choose from a broader variety of retirement plan models, including the composite plan model, will minimize employer and PBGC liabilities in the future and provide more certainty for workers. The timing of this legislation is important because the industry has finally begun to expand again, giving employers and employees their best chance to add new plan participants in over a decade. But without the greater tools, the industry will have a hard time securing a stronger future for their plans. If this current growth window is missed, there is no telling how long it will be before the industry has such a prime opportunity to shore up their plans again. The vast majority of construction industry plans are returning to the green zone; this is a perfect opportunity to adopt these changes and would provide limited disruption of benefits for participants. Absent new plan design, workforce age demographics and mass retirements will put further strains on the funding status of a plan and jeopardize the viability of an otherwise healthy plan. This could push even further liabilities onto the PBGC, which is woefully unprepared to take on additional exposure.

The PBGC has reported significant budget shortfalls in their multiemployer pension fund. However, the effects of last year's doubling of PBGC premium increases need to be fully reviewed and the reforms in MPRA need to be allowed to take place before any future debilitating increases are leveled on the plans again. Our contractors who will be entering their next round of collective bargaining agreements can be assured that discussions on these plan fees will be a major topic of negotiations. If the plans cannot absorb the increased premiums, then the labor parties will look to employers to increase their contributions, which will in some cases cause the employers to become uncompetitive and ultimately have an even further negative impact on a plan due to decreased work hours by the remaining contributing contractors of the plan.

Additionally, as the Committee knows well, employers contributing to multiemployer pension funds backed by the PBGC are still bracing for equally devastating fee increases imposed by the Affordable Care Act on their health care benefits. While these issues are not directly related, this is certainly a further expense that signatory contractors will be facing in the coming years. Given the potential harm that further premium increases will have on plans and contributing employers, Congress should not impose any further hike in premiums without waiting for a proper assessment of 2014 reforms and a determination of the need for such further increases.

Congress should likewise wait for the enactment of the proposed new plan design measure and wait to see how that affects PBGC's needs before increasing premiums. Because the composite plan design eliminates future withdrawal liability, future exposure to the PBGC would be reduced and, over the long-term, shore up PBGC assets.

In conclusion, MPRA was a step in the right direction and provides many needed reforms to the multiemployer system. AGC is also calling on Congress to enact additional reforms to the pension system that allows multiemployer plans to modernize by choosing from additional retirement plan models, including the composite plan concept. The new plan design is essential to the shared goal of protecting those who earn benefits and the employers who contribute retirement benefits to them. The proposed amendments to the law are not a union bailout. They would remain completely voluntary and ensure employers and the pension system are fiscally viable in the future. Finally, the design change further alleviates future financial strains on the PBGC.

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

Thank you.

Chairman ROE. Thank you, Mr. Sandherr.

I will now recognize myself for five minutes. I think the title of the bill that we began last year, we had three titles, we left the third title off, which maybe that was a good thing. We will have a chance to rehash it and hear why it needs to be done.

But it sounds to me like—just in summary—what I heard was with the withdrawal liability that is out there now for employers: it discourages them going in. Number two, it reduces the ability for them to borrow money to expand their business. Because when the bank looks—or their loaning institution looks—at their liability, their balance sheet, they see this, in Albertsons' case, a $4 billion liability. That would make you pause.

And we have had no new tools in decades to meet these needs. So, what I heard you all say really almost uniformly was, this is very much needed for the economy, for the worker. And the new composite plan would provide a stable guarantee, or a relatively guaranteed income so someone would know what they are going to get at the end of the day. The current legacy plans, the current plans as they are, would continue. Is that correct? The question I have then is, how, what—should we get this done? How quickly should we get it? In other words, how important is it to do now and not put this off?

Are the plans in need of this now? Not two years from now or next administration or whatever, but now? And anyone can take that question.

Mr. SCOGGIN. I would be glad to speak from the employers' standpoint to say that we feel like we are at a precipice. We have got a bus that is headed over a cliff and we really need to turn the bus quickly. And waiting a year or two years, many of the challenges that already have snowballed are going to continue to grow.

And all this does is give collective bargaining parties, which is both the unions and the employers, the ability to meet together to address these problems. So quicker is not only better, but probably essential.

Chairman ROE. Thank you.

Mr. DeFrehn, would you explain to me just how pooling longevity risk, how that works to lower the—

Mr. DEFREHN. Certainly. If you think about a current defined contribution plan, a 401(k) plan, you have accumulated an amount of money in an account. And when it comes time to retire, even if you consider yourself the average guy in an average industry—say you are a plumber—the average life expectancy in the plumbing industry may be age 72, as demonstrated in the defined benefit plans.

So you think, well, you know, I am the average guy, I will just use this money. I will draw it down, and I probably won't live past 72. You didn't really take into account the fact that both of your parents lived into their late 80s. So by the time you get to your late 80s, since you are in a risk pool of one, you will have wished that you would have died at 72.

Unfortunately, what the risk pool in a current defined contribution does is, it does not allow you to maximize the contributions. If, in this model, we could take those contributions—we can pool the risk of longevity, the longevity risk—we can allow then the

benefit structure to be designed around that mortality, the average mortality of the group, which allows the person who would have to set aside those dollars for his advanced years, into his 80s, to be able to draw down the full benefit as though he were age 72.

It takes those people who won't live as long and allows the savings from those people to pay the benefits for the people who live longer.

Chairman ROE. Well, I think we mentioned this yesterday in a meeting you and I both attended—that when the Atlanta airport opened that life expectancy in America was 57. The year I was born it was 62. Social Security worked great then. But we know people are living longer and longer and longer, and that is not about to reverse any time soon. It is going to get longer.

So I think this new plan gives us a tool, gives you all the tools—and unions and the employees, employers I mean—an opportunity to provide a benefit throughout that lifetime that is fairly predictable as opposed to the train wreck that we were facing last year.

I will now yield to Mr. Scott. I will yield to you five minutes.

Mr. SCOTT. Thank you, Mr. Chairman. And thank you, as you mentioned, this is an issue that we are trying to work on from a bipartisan perspective. And one of the challenges is that we are constrained by fundamental principles of arithmetic; if the money isn't there, you can't wish it there. You got to come up with some solutions. And working together, I hope we can get there.

Mr. DeFrehn, one of the problems we have is that every 20 years or so the stock market collapses. So all these funds that are invested in equities, all of a sudden about once every 20 years becomes essentially insolvent.

What is the problem with requiring the funds to purchase insurance products like annuities so that the ups and downs of the market will be the problem of the insurance company, not the beneficiary, not the employer, and certainly not the last man standing?

Mr. DEFREHN. Well, thanks for that question, Mr. Scott. Well, you know, the idea of purchasing an annuity is not a new one. And in earlier times during my career I have seen funds use that mechanism to offload some the liabilities when the interest rates are higher.

Currently, the interest rates for an annuity are below 3 percent, looking at a purchased annuity. If you were to fund that kind of a benefit through the current structure, the DB system, for a $1,000 benefit—if you were to go out into the annuity market right now and purchase it—you would get—the equivalent of that would be about $657.

If you were to try to then increase and say, well, what would be the additional contribution required to provide an equivalent benefit as the one paid through the trust funds, you would have to increase contributions by about 52 percent. It is all a function of interest rates.

Now, I remember back in the late 1970s—many of us around here remember the mid-1970s—when the interest rates were very high. I remember having a mortgage rate of 14 percent. And there were guaranteed investment contracts being paid by the insurance industry at that time at 20, at 18 percent. Mutual Benefit Life,

Pilot Life, Executive Life were all guaranteeing those kinds of returns.

You might notice that none of those plans, those companies, are still around. And although the trust funds who had purchased some of those guaranteed instruments were able to regain most of the money that they had thought they were going to get. Again, there are still no guarantees. There is never—

Mr. SCOTT. Well, part of the problem is you say you can't get a rate of return. Well, it is a phantom rate of return because you could get, for 19 constructive years a nice fat rate of return and in the 20th year it collapses. What the insurance company does is kind of smoothed it out so that you get a real rate of return every year without the collapse.

And so what if you are trying to maximize the rate of return, it's looking great for 19 out of 20 years. But when it collapses, here we are. Let me ask another question. And that is, is there a problem—instead of a pooled fund, is there a problem—what is the problem with having everyone with their individual account?

That is, as a worker goes from place to place the employer would contribute to his fund; insurance products or whatever else you are buying. That way, there would be essentially no long-time liability. Once you have made your payment, bought your insurance product, you are done. There is no last man standing problem. And the fund would be free from bankruptcy of the company, it would be free from future liabilities and free from last man standing problems.

Mr. DEFREHN. I think you have described what we are envisioning in the new composite model. Remember, multiemployer plans are the one part of the economy where the—one of the promises of ERISA that has actually come to bear. And that is allowing portability from moving from one employer to another.

And so what we are suggesting is something not unlike what you are saying. And there are a number of multiemployer defined contribution plans out there who do what you are suggesting. They have an individual account, and that moves with the individual.

Mr. SCOTT. My time is almost up. Is your proposal totally prospective? What does it do for the mess we are presently in?

Mr. DEFREHN. Pardon me? I didn't—

Mr. SCOTT. What does it do for the mess that we are already in? Is it prospective totally, or does it help get us out of the mess we are in?

Mr. DEFREHN. Well, for the plans that choose to go this direction there would be the ability to do a one-time fresh start of their current liabilities. So, in essence, they are remortgaging a 15-year mortgage over 30 years; lowering those costs, allowing the plan to then be able to pay the additional costs of having a higher funding requirement for the new service under the new plan. We are suggesting a 20 percent buffer be built in to effectively provide a buffer against market volatility there.

But the 20-year—or excuse me, the 30-year—reamortization would be for the legacy plan, and the contributions coming into the plan would have to pay off that legacy before any dollars flow through to the new accruals. So we are paying off those old liabilities over a 30-year time frame. That is the target.

Chairman ROE. Okay, thank you, Mr. Scott.

Mr. Walberg, you are recognized.

Mr. WALBERG. Thank you, Mr. Chairman, and thanks to the panel.

Mr. Sandherr, I want to ask you the question about since the passage of the *Multiemployer Pension Reform Act* in December, whether the overall situation for employers and employees who participate in the multiemployer pension plans is better today than it was before.

But before you go into that, if you would expand a bit on your testimony, you mentioned in your testimony that legacy costs from the accrued liability of unfunded vested benefits may continue to be a problem for employees. Expand on that a bit, and then tell me what is the outcome of the Act.

Mr. SANDHERR. To the second part of your question, the legacy costs are expanding because of a number of factors. You know, up until recently we have had the downturn in the industry so you have less hours worked. You have retirees living longer; you have fewer contributions into the plans. So that is the challenge on the legacy costs.

And then the first part of your question with regards to whether we are seeing improvements based upon what was enacted in December. I would say that, one, we are aware of plans that have already gone to the Department of Treasury to seek the relief that is offered under the Act that was enacted in December.

The day that the bill was signed into law, I am told there were people banging on Treasury's door looking for guidance on how they can incorporate the reforms that were enacted.

Secondly, I think it gives plans, multiemployer plans, in our industry some additional breathing room, that they know that there are tools that they can go to, the threat of insolvency is not as great or as high as it was prior to the enactment of that. But the missing component in all of this is the composite plan; the ability to be able to reform the existing plans to ensure that there is an ongoing guaranteed benefit to the retirees; and, also reducing the liability for the employers.

I can tell you, in my travels to our chapters it is not the guys that are my age that are asking the questions about this issue. It is the sons and daughters of the fathers of the companies that are in their 30s and early 40s that are wondering if there is going to be a company for them to take over when their father retires. And they are well aware of this composite plan option and they are eager for its enactment.

Mr. WALBERG. Anything with composite plan that we miss?

Mr. SANDHERR. Anything that you have missed?

Mr. WALBERG. That we miss in dealing with some of these concerns, say, for the younger generation, for the employees themselves.

Mr. SANDHERR. Well, I mean, we don't have the legislative approval yet for the composite plans.

Mr. WALBERG. Right.

Mr. SANDHERR. So, you know, if you start drafting that language, I know Randy is here to help you, to make it right so that we don't miss anything. And I think what we have offered in Solutions, Not Bailouts is a general design for how you attack that.

Mr. WALBERG. Okay, okay.

Mr. Scoggin, Albertsons participates in a number of multiemployer plans, as you have indicated. Can you discuss some of the challenges facing those plans and how they have affected your company in a little broader detail? And then in particular how have concerns about underfunded legacy liabilities that we mentioned here affected the company's transactions and growth?

Mr. SCOGGIN. The questions are excellent. They are questions that we deal with extensively as an entity. With respect to how underfunded pension plans impact us, I would say they impact us in a number of ways that both deal with us internally as a company and also at the bargaining tables as we deal with the unions that represent employees of ours across the table.

We are not able to generally, you know, direct the monies we might like to other areas for those employees, such as wage increases that those who aren't burdened by these legacy problems and future accruing problems have to deal with.

Because we see with rehabilitation plans and with just the trajectory that these plans are going in that more and more money is being focused on plans that are in trouble. They are going to have a very difficult problem coming out of that trouble without having something along the lines of these composite type options, as the tools in our toolbox, to bring them out.

So now money is not going to health care, money is not going to wages, money is not going to build more stores. We look at companies that we think would be a nice fit with our company and those that are for sale, basically, that are, you know, struggling with a number of operational issues. That would be a great fit for us, and we think we could, you know, help them, help the economy they are in, and also help our company.

But we look at these companies and say that company now has half a billion dollars worth of withdrawal liability. Do we want to take that on, even if every other piece of that company's a great fit for us—and we know other strong players within the industry look at these things the same—and therefore I think it slows down economic decisions, and certainly it hurts us as we try to expand workforces, try to add hours, and try to add employees.

So right now, I would say with respect to all of the areas that we look at—wages, health and welfare, pensions, training, development, hiring—pension right now is under that big glaring—

Mr. WALBERG. Blockage.

Mr. SCOGGIN. Yes, just a big concern that—

Chairman ROE. Mr. Scoggin, I am going to ask you to wrap up. We have votes going on so we will need to—

Mr. WALBERG. Thank you, Mr. Chairman.

I yield back.

Chairman ROE. Mr. Polis, you are recognized.

Mr. POLIS. Thank you. And we will have other members who will likely submit their comments, written, to you. And we do have votes again so I will be brief. But I did want to go to Mr. Scoggin. I understand that variable annuity plans are a form of defined benefit plans under existing law. What are the barriers to adoption, and why do you think employers and plan trustees are hesitant to adopt these kinds of plans where they are currently available?

Mr. SCOGGIN. Variable annuity plans in particular?

Mr. POLIS. Yes, what stands in the way of broader adoption under the current rules?

Mr. SCOGGIN. I would probably begin with the fact that, you know, we have—this isn't simply an employer issue. So I don't know, I can't speak specifically for the unions. But we have almost never—in fact, I can say never—in, you know, almost 30 years of bargaining with UFCW, with Teamsters, with others had them be willing to consider variable annuity plans, as well. So I can't really address the details of them.

What I can say is that what we have run into, and Mr. DeFrehn spoke of this with respect to annuities as they exist today, is that when you want them they are too expensive and when you don't need them then you are not going to buy them.

Mr. POLIS. Let me go to Mr. McManus and Mr. Sandherr, for either one or both of you, regarding composite plan designs. My understanding is that one idea is that plans could voluntarily transition from defined benefit to a new composite plan. Does the concept of composite plan design appeal to both labor and management is my question, and that is briefly my question for McManus and Sandherr.

Mr. SANDHERR. Yes.

Mr. DEFREHN. Absolutely, yes.

Mr. POLIS. Okay. And finally, Mr. DeFrehn, I wanted to ask what current plans—are there a lot of current plans that are likely to use the new option, and would it be for deeply troubled or declining number status plans or critical status plans or even green plans?

Mr. DEFREHN. I think there is great interest in this, as you heard, from the labor and employer side of the table. Particularly on the employer side they, as you have heard, there is extreme interest.

There are some industries that have said, well, you know, it sounds like an interesting concept, but we are—we are happy with the defined benefit plan. And I think that will be an industry-specific question. As far as the second—the second part of your question—would you repeat that again, sir?

Mr. POLIS. I was just going to—where was I? I was asking do you see this as something mostly for deeply troubled or plans that are declining in status?

Mr. DEFREHN. If the plan is too far gone it would be difficult to be able to negotiate the payoff of the plan over the 30-year period on the legacy cost. So chances are this will be for plans that are recovering and that are green zone plans or yellow zone plans headed to the green. Eventually, you will get to the point where that will be something that, most of those plans, will want to consider anyways.

Mr. POLIS. Thank you.

And I yield back the balance of my time.

Chairman ROE. I thank the gentleman for yielding. Do you have any closing remarks?

Mr. POLIS. Yes. Briefly, Mr. Chair, I feel we have learned a lot from this terrific panel, a panel that has members that are often

on opposite sides of other issues. But on this specific issue there does seem to be a lot of agreement.

Our entire panel knows that we need to take action. Doing nothing to preserve the multiemployer pension system is simply not a viable alternative, whether you are a Republican or a Democrat. And I look forward to working with Dr. Roe and many on both sides of the aisle to continue gathering the facts and create a proposal that protects retirees and allows flexible plans that will not bankrupt the system.

I want to thank you all for your time, and I yield back the balance of my time.

Chairman ROE. I thank the gentleman for yielding. And as I said before we started we weren't going to have votes, but we are having votes. That is the way this place works.

You all have very clearly laid out the problem, as you did last year—and the previous three years—about the problems that multiemployer pension plans face. And now you need another tool in your toolbox, and that is what you are at Congress asking for. It is a very reasonable ask. I think that we are going to work to make that happen, to come to fruition. I think we can see that.

It probably won't be the last time. It won't cure every ill. We will be here again for some other changes. But this is just another tool that the plan administrators and employers and union members have to secure a future retirement. So I appreciate very much, again, the expert panel that we have.

And with no further remarks, our meeting is adjourned.

[Additional submissions by Dr. Roe follow:]

100 Years Standing Up for American Enterprise

U.S. CHAMBER OF COMMERCE

Statement of the *U.S. Chamber of Commerce*

ON: EXAMINING REFORMS TO MODERNIZE THE MULTIEMPLOYER PENSION SYSTEM

TO: THE SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS OF THE HOUSE EDUCATION AND THE WORKFORCE COMMITTEE

DATE: May 5, 2015

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – numbers more than 10,000 members. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 101 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. Currently, some 1,800 business people participate in this process.

Statement on
Examining Reforms to Modernize the Multiemployer Pension System
Hearing before
The Subcommittee on Health, Employment, Labor, and Pensions
of the
House Education and the Workforce Committee
on behalf of the
U.S. CHAMBER OF COMMERCE
APRIL 29, 2015

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

Chamber members include sponsors of multiemployer pension plans. Consequently, the Chamber has been engaged in multiemployer pension reform including the reforms in the Pension Protection Act of 2006, Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, and most recently the Multiemployer Pension Reform Act of 2014 (MPRA) contained in the Consolidated and Further Continuing Appropriations Act of 2015.

Introduction

In 2005, organized labor and the business community joined together to create a coalition to address the issues concerning multiemployer pension plans. The coalition created a proposal which was included in the Pension Protection Act of 2006 (PPA). As part of a compromise, the PPA multiemployer provisions were set to expire at the end of 2014. Again labor and the business community came together to lobby for comprehensive multiemployer pension reform. MPRA is a significant first step in comprehensive reform. MPRA makes permanent the multiemployer provisions under the PPA; gives PBGC authority to promote and facilitate plan mergers; allows plan sponsors to apply to the PBGC to partition a plan; increases the PBGC premium for multiemployer plans to $26/person and bases future increases on the wage index; and allows for benefit suspensions in certain plans in critical status.

The enactment of the MPRA was welcomed by the Chamber and its employer members that contribute to multiemployer plans. The precarious state of underfunding by many multiemployer plans threatens insolvency for such plans and for the Pension Benefit Guaranty Corporation (PBGC) and is a serious threat to participating employers. A bold approach was necessary to permit the survival of plans in critical and declining status and the solutions offered by MPRA (partition by the PBGC and benefit suspensions by the underfunded plans) should be recognized as essential components of an overall approach to restoring financial stability to troubled plans. Nonetheless, while MPRA is a strong first step in multiemployer pension reform, the Chamber believes that further attention to the problem will be necessary.

Discussion

The Chamber Supports New Plan Options for Multiemployer Pension Plans. 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. Several parts of the report were included in MPRA- including much-needed technical corrections and the benefit suspensions. However, a vital piece of that report, the new plan option, was omitted from the legislation that passed. We understand that MPRA was a first step. As such, we urge the Committee and Congress to continue the progress they have made and continue to reform the multiemployer pension system by implementing the new plan design option.

Multiemployer Pension Reform Should Include Limitations on Withdrawal Liability. 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. Consequently, the Chamber believes that additional reforms are needed to address these employer concerns. For example, we recommend that limitations be placed on the amount of withdrawal liability that an employer can assume and that withdrawal liabilities be allowed to be amortized over time.[1]

Conclusion

We applaud the action of the Subcommittee and the Committee in getting MPRA passed and starting the path toward multiemployer pension reform. We encourage the Subcommittee and Committee to continue this vital work and stand ready to work with you and other interested parties to modernize the multiemployer pension system. Thank you for your consideration of this statement.

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[1] Before the passage of MPRA, our members recommended specific reforms for withdrawal liability. These ideas have not been revisited with our membership since the legislation, but we offer them as examples of reforms that could be considered.

- Reduce an employer's withdrawal liability by a certain amount under the 20-year cap for each full plan year the employer participates in the plan going forward. As such, an employer's withdrawal liability would be reduced to 0 after 10 years. After the 10 year period, employers would be responsible for
- Make the assumptions used to determine withdrawal liability consistent with those used to determine contribution requirements. They should not be more conservative, forcing the withdrawing employer to subsidize active employers.

STATEMENT FOR THE RECORD
For the Subcommittee on Health, Employment, Labor, and Pensions Hearing on "Examining Reforms to Modernize the Multiemployer Pension System"
April 29, 2015

On Behalf of Certain Members of
The National Automobile Dealers of America (NADA)

Mr. Chairman and Members of the Subcommittee, we appreciate the opportunity to provide a written submission for the record for your hearing on efforts to modernize the multiemployer pension system. The NADA represents roughly 16,000 new-car and -truck dealers, with 32,500 franchises, both domestic and international. We are submitting this statement to convey a concern on behalf of a number of our members who have unionized mechanics, while many of our other dealer members do not. Even within dealerships with unionized workers, a greater proportion of the business' workers are not unionized. Thus, auto dealers are not 'traditional' employers as compared to other employers in these plans, nor those who have often participated in the management of the multiemployer plans.

While the Multiemployer Pension Reform Act of 2014 (MPRA) made substantial changes to the current system, the pressing issue of withdrawal liability relief, particularly that for small and non-traditional employers, was not adequately addressed. In fact, the MPRA provides that in order for withdrawal liability relief to apply, employers must continue to contribute for at least 10 years after a suspension of benefits has been implemented. For some of our small family-owned auto dealers, waiting another decade for relief is not feasible.

We welcome your efforts to provide additional legislation addressing this concern for small businesses and would appreciate any opportunity to meet and explain our concerns in greater detail.

SMALL EMPLOYER MULTIEMPLOYER PLAN WITHDRAWAL ISSUE

Background on multiemployer plans

There are approximately 1,500 multiemployer defined benefit pension plans covering large and small employers with 104 million participants. However, 76% of all participants and beneficiaries are concentrated in 168 plans each with more than 10,000 employees (with an average of 786 contributing employers per plan). Very large employers contribute more than 50% of all plan contributions to 80% of the critical status (underfunded) plans. The smallest 610 plans (i.e., plans covering less than 1,000 participants) only cover 3% of all participants.

In March 2013, the PBGC testified that it believed that most plans "appear to be recovering from the 2008 financial crisis." Much of the underfunding relates to investment losses.

Employers can voluntarily leave multiemployer plans but must pay a withdrawal liability upon leaving. Withdrawal liability can be substantial because as other employers terminate plan participation through bankruptcy or liquidation, the remaining employers are left with the financial burden to continue funding benefits for their own employees as well as the employees or retirees of the former employer who terminated plan participation ("orphans"). Total withdrawal liability is generally capped: (a) per year at an employer's recent annual contribution amount; and (b) limiting overall payments to no more than 20 years. Many other countries with multiemployer plans do not have such significant withdrawal liability requirements as a large withdrawal penalty can act as a barrier for attracting new employers to join plans.

Small employer issue

Small employers in multiemployer plans may get locked into these plans with a significant withdrawal liability and their only way out may be to file for bankruptcy or liquidate the business. This liability can preclude a sale of the business as the liability amount can sometimes exceed the entire value of the business. In addition, over the past few years, many small employers' weekly contribution per participant has increased as much as 70% in order to keep these plans solvent. Small employers in non-traditional multiemployer industries (such as, auto dealers) are at a larger disadvantage as they generally have no representation in the management of the pension trust and even access to information can be difficult to obtain.[1]

Solution

Legislation is needed to help small employers who have these excessive withdrawal liabilities. Such withdrawals by small employers in non-traditional multiemployer covered industries will not harm to any degree a plan's financial situation. Small businesses seeking relief should be required to contribute to such plans upon their withdrawal, while the plans get more financially secure. Thus, an excessive and lengthy withdrawal liability is not needed by the plans from their smallest contributors.

A solution should:

- lessen an employer's withdrawal liability if such employer continues to stay in the plan for a future number of years; and

[1] An auto dealership might be a good example of a non-traditional employer in a multiemployer plan, with their union mechanics being their participating employees. Thus, dealers would have few employees in the plan and as an industry group represents a small fraction of the total participants in most plans, yet would still have withdrawal liability per dealership in the millions. Recently, this withdrawal liability issue has been cited as a major factor for being unable to sell or transfer dealerships.

- permit an employer to make a lump sum payment to withdraw from the plan based upon the average withdrawal liability the plan has historically collected from other employers.

Current ERISA law provides some help to small employers but only if the business is sold to an unrelated third party. Similar relief is available to those in the carpentry trades. These special rules wipe away all withdrawal liability if such small employers close down or move their business.

However, nothing exists in current law to help those family-owned small businesses that want to keep their businesses within their families but cannot in good conscience pass along previously unknown huge withdrawal liabilities to their children. It does not makes sense that our pension laws would discourage the continuation of family-owned businesses and instead incent businesses to close or sell to owners with no connection to the local community.

Conclusion

Congress must find a solution that does not harm the long-term health of the plans by providing these plans a few additional years to shore up their investments, while relieving the small businesses that wish to exit from a crushing withdrawal liability.

[Whereupon, at 3:32 p.m., the subcommittee was adjourned.]

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