PRIVATE EMPLOYER DEFINED BENEFIT PENSION PLANS

HEARING

BEFORE THE

SUBCOMMITTEE ON SELECT REVENUE MEASURES

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

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PRIVATE EMPLOYER DEFINED BENEFIT PENSION PLANS

WEDNESDAY, SEPTEMBER 17, 2014

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SELECT REVENUE MEASURES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:19 a.m., in Room 1100, Longworth House Office Building, the Honorable Patrick Tiberi [Chairman of the Subcommittee] presiding.

[The advisory of the hearing follows:]

HEARING ADVISORY

Chairman Tiberi Announces Hearing on Private Employer Defined Benefit Pension Plans

1100 Longworth House Office Building at 10:15 AM
Washington, September 10, 2014

Congressman Pat Tiberi (R–OH), Chairman of the Subcommittee on Select Revenue Measures, today announced that the Subcommittee will hold a hearing on defined benefit pension plans offered by private sector employers, including both multiemployer plans and single employer plans. **The hearing will take place on Wednesday, September 17, 2014, in 1100 Longworth House Office Building, beginning at 10:15 A.M.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Subcommittee and for inclusion in the printed record of the hearing. A list of invited witnesses will follow.

BACKGROUND:

Multiemployer ("ME") pension plans collectively are less than 50-percent funded, with underfunding exceeding $400 billion. The Congressional Budget Office estimates that the Pension Benefit Guarantee Corporation's ("PBGC") ME insurance program, financed by premiums from ME plans and not backed by taxpayers, will run out of cash in 2021 and requires $9 billion over the next decade to pay statutory benefits. PBGC's projected ME deficit for 2023 is $50 billion. With respect to ME plans that become insolvent: (1) retirees will receive a maximum annuity of $12,870 from PBGC until PBGC runs out of cash, and (2) employers will be subject to substantial withdrawal liability that can exceed the value of the employer.

The current investment environment and low interest rates combined with increasing life expectancies also present challenges to single employer (SE) plans, although they generally are better funded than multiemployer plans. (PBGC projects a deficit in its SE program of $8 billion for 2023.) Still, workers participating in, and employers sponsoring, such plans face a variety of challenges. For instance, employees whose employer is transitioning new employees into a defined contribution plan (e.g., a 401(k) plan) face the prospect of their employer being forced to freeze the defined benefit plan for all employees to avoid violating the non-discrimination rules. H.R. 5381, introduced July 31, 2014, by Chairman Tiberi, and H.R. 2117, introduced May 22, 2013, by Ranking Member Richard Neal (D–MA), are designed to protect longer-service participants in defined benefit plans that are closed to new entrants by allowing cross-testing between defined benefit and defined contribution plans. Other issues affecting single employer plans include the impact of the in-service distribution rules on employees' retirement schedules and the effect of mortality tables on funding requirements.

In announcing this hearing, Chairman Tiberi said, **"I have heard for years now from hundreds of businesses and nonprofits about the need for pension reforms, especially for defined benefit plans. Increasing pension costs have hampered both the job growth and capital investment needed to grow the economy and have threatened retirement security for American workers. The cost of doing nothing is too high a price to pay. This hearing will give us the opportunity to examine challenges facing, and opportunities to strengthen, the defined benefit pension system."**

FOCUS OF THE HEARING:

The hearing will focus on some of the challenges facing employers, employees, and retirees who rely on defined benefit pension plans to help provide retirement security. It will examine the funding rules governing multiemployer plans, as well as selected issues that affect single employer plans.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "Hearings." Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, October 1, 2014.** Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–3625 or (202) 225–2610.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://www.waysandmeans.house.gov/*.

Chairman TIBERI. Thank you for joining us today. This hearing will come to order. Good morning, thank you for joining us for our subcommittee hearing on Private Employer Defined Benefit Pension Plans. Today we examine the challenges facing employers, employees, and retirees who rely on both single and multi-employer defined benefit pension plans to help provide retirement security. These challenges pose serious threats to American workers and employers.

I know what it means personally for a family to lose the pension they were relying on. When I was in high school my father lost his job. He lost his pension. We lost our health care. It was a volatile time, and I want families to avoid that type of situation.

First I have heard from a number of companies with concerns that treasury rules relating to non-discrimination testing for single-employer defined benefit plans may cause plans to freeze, and participants to lose their benefits. In response to this issue, Ranking Member Richard Neal and I have introduced legislation to offer non-discrimination testing to close pension plans. It would prevent companies from having to freeze their plans, and would prevent thousands of participants from losing their benefits.

There are a number of other issues currently affecting private defined benefit pensions, and it is my hope that this hearing will give us an opportunity to gain a different perspective or perspectives on these issues.

The funding challenges facing multi-plans are threatening both retirement security for American workers and the solvency of employers, whose ability to invest and create jobs is being hampered by these pension obligations. I have said it for years: The cost of doing nothing is too high of a price to pay.

I applaud Chairman Kline and the Education Workforce Committee on their work on the issue, as well. I look forward to gaining as much information as possible, as we determine an appropriate path forward to deal with these very important issues.

I thank our witnesses for being here, and now yield to Ranking Member Neal.

Mr. NEAL. Thank you, Mr. Chairman. Thanks for calling this timely hearing. A reminder to the audience that it is almost to the day—six years—since America witnessed the financial collapse and the near end of our economic system, as reminded at the time by the Secretary of the Treasury and the Chairman of the Federal Reserve Board. So I think that this issue continues to be timely.

For those of us who were members of the House at that time, to stand in the well of the House and to watch the stock market in one hour dip by 700 points is compelling evidence of what I think that this hearing is about today. So I do want to acknowledge—and, by the way, that personal perspective that you offered is telling, because one of the questions that is seldom is ever raised by the media is how do we come to our conclusions, and much of it is based on our own personal experience, as it is with the witnesses today.

So, I want to thank you for the hearing. It is an issue that deserves our much-needed attention. And it is my hope that we will have an opportunity to use the hearing as a catalyst for action.

It is also fitting that we are calling this hearing days before we celebrate the 40th anniversary of the passage of ERISA. Before ERISA there was little to no protection for American workers enrolled in pension plans. In fact, there were high-profile cases of Americans losing their retirement benefits.

Congress responded to this crisis by passing ERISA. Today ERISA serves as an example for us to follow, standing as a testament to how working together in a bipartisan way ensures Americans have access to financially secure retirement. Unfortunately, it took Americans losing their retirement benefits before Congress responded. Today we should not allow the same thing to happen before we act.

We are at the precipice of an impending retirement crisis in America that is seemingly twofold: Americans are not either saving enough, or, at retirement time, we are seeing changes to defined benefit plans. And, often times, those plans are considered to be underfunded. It astounds me in this day and age that half of the people that get up and go to work every day in America are not in a retirement plan.

We know the statistics. The United States has a retirement deficit of $6.6 trillion and PBGC estimates that, for the next decade, private sector employer defined benefit pension plans are going to carry a significant deficit. These staggering statistics demonstrates that we, as Americans, need to do more to prepare for our financial future. We must do all we can to encourage more individuals to save, whether through financial literacy programs, or through the Tax Code. Now is not the time to cut the hard-earned benefits of millions of Americans.

It has been put forward by some that the best way to address the private sector DB pension deficit is to cut benefits. I could not disagree more. Pension benefits have been earned through hard work, and these employees have relied on these guarantees to fund their retirement. Before looking to cut those earned benefits, we need to look at our current funding rules, along with the insurance guarantee through the PBGC to see if there are ways to reform the current system before looking to cut benefits. Remember that if PBGC is not strong, then the guarantees given to workers are eroded.

Many new entrants into the private sector workforce will never know the security of a defined pension plan, which provides the employee predictable and secure benefits for life. Under DB plans, workers are promised a specific benefit at retirement, a benefit they know in advance, and one that is not subjected to the vagaries of the markets.

We can only look to previous decades for example of the perils of investing solely in the stock market, whether the 401(k) tragedies of Enron, WorldCom, or the financial meltdown in 2008 comes to mind.

I commend the chairman for calling this hearing. It is extremely important for us to find a solution to the problems vexing the private sector defined benefit plans, and to hear solutions that will be put forward today, solutions that maintain the integrity of the defined benefit, and ensures that the promises made will be the promises kept.

And I thank the chairman. I am personally delighted that you used your personal example of what happened to your dad. In my case, one of the reasons I have been such a fervent supporter of Social Security, when my parents died, that is how we lived, survivor benefits. And again, it is the personal experience that one has as they come to this institution, and how they see the development of what ought to be happy years, retirement years.

Thanks, Mr. Chairman.

Chairman TIBERI. Thank you, Mr. Neal, for your leadership.

Before I introduce today's witnesses, I ask unanimous consent that all Members' written statements be included in the record.

[No response.]

Chairman TIBERI. Without objection, so ordered.

Let me get to the witnesses. Deborah Tully, director of compensation and benefits finance accounting analysis at Raytheon in Massachusetts, thank you for being here.

R. Dale Hall, managing director of research at the Society of Actuaries in Illinois. Thank you.

Scott Henderson, vice president of pension investment and strategy for the Kroger Company in the great state of Ohio. Thank you.

Jeremy Gold, Jeremy Gold Pensions in New York City. Thank you.

Last, but not least, Diane Oakley, executive director of the National Institute on Retirement Security here in Washington, D.C.

I will remind all of you that you have 5 minutes to present your oral testimony. Your full written testimony has been submitted for the record.

Ms. Tully, we will begin with you.

STATEMENT OF DEBORAH TULLY, DIRECTOR OF COMPENSATION AND BENEFITS FINANCE AND ACCOUNTING ANALYSIS, RAYTHEON

Ms. TULLY. Good morning, Chairman Tiberi, Ranking Member Neal, and committee members. I am Deborah Tully, director of compensation and benefits finance at Raytheon Company. I am a fellow of the Society of Actuaries, and an enrolled actuary responsible for reporting compliance and financial analysis for Raytheon's retirement benefit programs. Thank you for the opportunity to address the subcommittee on pension matters, specifically the non-discrimination testing regulations as they apply to closed plans.

Before I do so, let me give some background on Raytheon and our retirement programs. Raytheon is a technology and innovation leader, specializing in defense, security, and civil markets throughout the world. Founded in 1922, Raytheon is headquartered in Massachusetts, and has 61,000 employees. Our 2013 net sales were $24 billion.

Raytheon has maintained defined benefit plans, or DB plans, since 1950, and defined contribution, or DC retirement plans, since 1984. Closed to new employees hired after 2006, Raytheon's DB plans covered approximately 172,000 people. Raytheon's DC covers 92,000 people, and is made up of two components: a 401(k) plan with a company match, and a supplemental DC plan for employees hired after 2006.

Like many companies, we have been transitioning from a DB retirement model to a DC model, most notably by closing our DB plan to new employees, and offering them a DC plan, while continuing to provide the DB plan to employees hired before 2007. This gradual change minimizes the impact to existing employees, while providing the greatest opportunity for new employees who are enrolled in the DC plan to maximize their retirement benefit.

Under the Internal Revenue Code, DB plans must meet certain non-discrimination testing standards to ensure that they do not discriminate in favor of highly-compensated employees. IRS rules generally define highly-compensated employees as those earning more than $115,000 annually. To satisfy non-discrimination requirements, a DB plan must pass three types of tests, which often involve complex actuarial calculations to ensure that a plan is not discriminatory.

For a plan that is closed to new participants, each of these tests gets more difficult to pass over time, which ultimately could jeopardize the tax-qualified status of the plan, unless the employer makes changes. This occurs because the group of employees earning benefits under a closed plan will gradually have longer service, and will have earned compensation increases over their careers. Over time, those compensation increases will cause many employees to be treated as highly compensated, and, as a result, the plan will risk failure. Each year, more and more employers are facing this issue, as the demographic profile of their closed DB plan evolves.

Under current regulations, an employer has limited options to ensure compliance if its closed plan is at risk of failure. While some employers take interim steps to modify their plans, such as removing some highly-compensated employees from the plan, or changing certain features of the plan, these fixes are only temporary solutions. Ultimately, many employers choose to fully freeze their plans, since this is the only permanent solution to the problem.

A full plan freeze means that employees will no longer earn benefits in the DB plan. This negatively impacts mid- to late-career employees, who are about to earn the most significant portion of their retirement benefit, since the most valuable accruals under a DB plan occur towards the end of an employee's career.

Another option to avoid testing non-compliance is to reopen the pension plan to employees who are not in the plan. While every company has to evaluate their plan design, demographics, and financial situation based on their specific circumstances, this is an unlikely choice for most employers, given the trend away from DB plans and toward DC plans, and the fact that many competitors do not offer DB plans to new employees.

In response to the ongoing concern surrounding non-discrimination testing, the Treasury Department issued non-discrimination testing relief late last year for certain closed DB plans. Valid through 2015, the relief allows employers to combine their DB and their DC plans for non-discrimination testing, referred to as cross-testing, as long as the plan satisfied certain criteria before the end of 2013. This allows employers to take the DC benefits offered to all employees into consideration when evaluating the level of benefits being provided.

This temporary relief is very much appreciated, and reflects progress. However, it is not a complete solution. Since it does not address all of the testing requirements, many employers could still face testing failure.

In closing, employers who have chosen to maintain their DB plans for some employees as they transition to a DC plan for others, will face non-discrimination issues at one point or another under the current regulations. While employers may have near-term options to avoid failure, a long-term solution is needed in order to allow employees to continue to earn benefits under the DB plan.

We believe that H.R. 5381, introduced by Chairman Tiberi and Ranking Member Neal, is a bipartisan solution that addresses many of these non-discrimination testing concerns. Under current regulations, we are penalizing employers who have chosen to make a gradual transition from DB to DC retirement programs, rather than taking a more abrupt approach. Without a long-term solution, non-discrimination regulations will further drive employers to exit the DB system at the expense of the participants that the regulations were intended to protect.

Thank you for the opportunity to speak today, and I look forward to answering any questions you may have.

[The prepared statement of Ms. Tully follows:]

Testimony of Deborah Tully
Director, Compensation and Benefits and Accounting Analysis
Raytheon Company

Before the
House Committee on Ways and Means
Subcommittee on Select Revenue Measures

September 17, 2014

Good morning, Chairman Tiberi, Ranking Member Neal, and committee members. I am Deborah Tully, Director of Compensation, Benefits Finance and Accounting Analysis at Raytheon Company. I am responsible for reporting, compliance, and financial analysis for Raytheon's benefits programs, including our defined benefit and defined contribution retirement plans. I am also a Fellow of the Society of Actuaries and an Enrolled Actuary. Thank you for the opportunity to address the subcommittee on pension matters, specifically the nondiscrimination testing regulations as they apply to closed plans.

Before I do so, let me give some background on Raytheon and our retirement programs. Raytheon is a technology and innovation leader specializing in defense, security, and civil markets throughout the world. Founded in 1922, Raytheon is headquartered in Waltham, Massachusetts and has 61,000 employees. Our 2013 net sales were $24 billion. Raytheon has maintained defined benefit retirement plans since 1950 and defined contribution retirement plans since 1984. Raytheon's defined benefit plans cover approximately 172,000 people, including 44,000 active employees; 65,000 terminated vested employees entitled to future benefits; and 63,000 retirees and beneficiaries currently receiving benefits. Consistent with many other employers and market trends, Raytheon closed its defined benefit plan to employees hired on or after January 1, 2007. Raytheon's defined contribution plan covers approximately 92,000 current and former employees and is made up of two components: a 401(k) plan with a 4%

company match; and a supplemental defined contribution plan for employees hired on or after January 1, 2007 (to replace the defined benefit plan) where automatic company contributions ranging from 2.5% to 9% are made to individual accounts based on age and service.

Like many companies, we have been transitioning from a predominantly defined benefit retirement model to a defined contribution model, most notably by closing our defined benefit plan to new employees beginning in 2007, while continuing to provide a defined benefit plan to employees hired before 2007. This gradual change minimizes the impact to existing employees while providing the greatest opportunity for new employees who are enrolled in the defined contribution plan to maximize their retirement benefit since they will generally have a longer time to save and earn investment returns under the defined contribution plan.

Nondiscrimination Requirements for Defined Benefit Plans

Under the Internal Revenue Code, defined benefit pension plans must meet certain nondiscrimination testing standards to ensure that they do not discriminate in favor of highly compensated employees. IRS rules generally define highly compensated employees as employees earning more than $115,000 annually (indexed for inflation). To satisfy nondiscrimination testing requirements, a defined benefit plan must pass three types of tests. The first test compares the percentage of an employer's non-highly compensated employees covered by a defined benefit plan to the percentage of highly compensated employees covered. The second test compares the level of benefits provided by the defined benefit plan to non-highly compensated employees to the benefits provided to highly compensated employees. In most cases, to pass this test, employers must demonstrate that their defined benefit plan is nondiscriminatory by itself, without considering the benefits being provided in defined contribution plans through cross testing. The third test requires that each benefit, right, and feature of a plan is available to the nondiscriminatory group of employees. These three tests often involve complex actuarial calculations to ensure that a plan is not discriminatory.

Nondiscrimination Issues with Closed Defined Benefit Plans

For a plan that is closed to new participants, each of these tests gets more difficult to pass over time, which ultimately could jeopardize the tax-qualified status of the plan unless the employer makes changes. This occurs because the group of employees earning benefits under a closed plan will gradually have longer service and will have earned compensation increases over their careers due to promotions, seniority, or cost of living increases. Over time, those compensation increases will cause many employees to be treated as highly compensated for purposes of nondiscrimination testing. The result is that plans that have historically covered a nondiscriminatory group risk failing these tests simply because of the aging of the plan population. Each year, more and more employers are facing this issue as the demographic profile of their closed defined benefit plan evolves. In contrast, when a plan is open to new entrants, this does not usually present a problem as new employees continue to enter the defined benefit plan, often at lower compensation levels because they are at the beginning of their careers. These newer, non-highly compensated employees tend to balance out the demographics of the defined benefit plan for nondiscrimination testing purposes.

How Companies Fix the Problem Today

Under current regulations, an employer has limited practical options to ensure compliance if its closed plan is at risk of nondiscrimination testing failure. While some employers take interim steps to modify their plans to pass nondiscrimination testing in the near term, such as removing some highly compensated employees from the plan or changing certain features of the plan, these fixes are only temporary solutions to a long-term problem. Ultimately, many employers choose to fully freeze their plans, since this is the only permanent solution to the problem. A full plan freeze means that employees will no longer earn benefits in the defined benefit plan. This negatively impacts mid- to late-career employees who are about to earn the most significant portion of their retirement benefit, since the most valuable accruals under a defined benefit plan typically occur towards the end of an employee's career. These unintended consequences of the existing nondiscrimination rules are forcing many employers to make design and structural decisions to their plans that they would otherwise not make, often to the detriment of the very employees the employer was trying to protect.

Another potential, yet impractical option to avoid testing noncompliance is to re-open the pension plan to employees who are not in the plan. While every company has to evaluate their plan design, demographics, and financial situation based on their specific circumstances, this is an unlikely choice for most employers given the trend away from defined benefit plans and toward defined contribution plans. This trend is driven in part by the nature of today's workforce environment, where employees typically do not remain with one company for the majority of their career and tend to change jobs multiple times. Furthermore, it is unrealistic to expect an employer to re-open its plan in the current market environment, where many competitors do not offer a defined benefit plan to new employees.

Temporary Relief from U.S. Treasury Department

In December of 2013, the U.S. Treasury Department issued temporary nondiscrimination relief through 2015 for certain closed defined benefit plans, allowing employers to combine their defined benefit and their defined contribution plans for nondiscrimination testing (referred to as "cross testing") as long as the plan satisfied certain criteria before the end of 2013. This allows employers to take the defined contribution benefits offered to all employees into consideration when evaluating the level of benefits being provided. This temporary relief is very much appreciated and reflects progress; however, it is not a complete solution since it is short-term in nature and does not address all of the testing requirements. The relief does not address the nondiscrimination requirements for benefits, rights, and features and the inability to use the matching contribution component of the defined contribution plan for cross testing purpose. As a result, many employers could still face nondiscrimination testing failure, even with this temporary relief.

Recommended Solutions

Employers who have chosen to maintain their defined benefit plans for some employees as they transition to a defined contribution model for other employees will face nondiscrimination issues at one point or another under the current regulations. While employers may have near-term options to avoid failure, a long-term solution is needed in order to allow employees to continue to earn benefits under the defined benefit plan. A viable long- term solution would include changes that satisfy all of the testing requirements to avoid future unintended consequences for closed defined benefit plans. We believe that H.R. 5381, introduced by Chairman Tiberi and Ranking Member Neal, addresses many of these nondiscrimination testing concerns by liberalizing the rules under which employers use cross testing for their closed plans, and by allowing the benefits, rights and features that are available only to a closed group of employees to be considered nondiscriminatory if the group was nondiscriminatory at the time the plan was closed.

The current regulations penalize employers who have chosen to make a gradual transition from defined benefit to defined contribution retirement programs rather than taking a more abrupt approach. Without a long-term solution, the nondiscrimination regulations will further drive employers to exit the defined benefit system at the expense of the participants that the regulations were intended to protect.

Thank you for the opportunity to speak today and I look forward to answering any questions you may have.

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Chairman TIBERI. Thank you.
Mr. Hall, recognized for 5 minutes.

STATEMENT OF R. DALE HALL, MANAGING DIRECTOR OF RESEARCH, SOCIETY OF ACTUARIES

Mr. HALL. Thank you, Mr. Chairman, Mr. Ranking Member. Thank you for the opportunity to testify today. My name is Dale Hall; I am managing director of research at the Society of Actuaries. SOA is an educational, research, and professional organization of more than 24,000 actuaries worldwide. We conduct a wide range of research to provide technical resources to advance the knowledge and capabilities of our profession, and to inform public policy development. One thing the SOA does not do is take positions on specific policy proposals; we are not an advocacy organization.

As we begin this discussion, I think it would be helpful to understand that our retirement plan mortality studies generally include two parts. The first is a mortality table, which contains data on the actual death rates of a given population, including any relevant subgroups. And the second part is an improvement scale, which is an experience-based estimate on expected rates of improvement in longevity of a population over time.

The SOA has long been the primary source for mortality and mortality improvement studies on U.S. private-sector defined benefit plans. SOA studies on retirement mortality date back to the early 1950s.

The Secretary of the Treasury establishes the mortality assumptions to be used to calculate certain liabilities for pension plans. The SOA conducted a study in the 1990s of uninsured pension plan mortality to ensure that the Treasury Department would have current and thorough information available for this process. The result of that study was the release in 2000 of the SOA's RP 2000 Mortality Tables, and a reaffirmation of our Mortality Improvement Scale AA.

As part of its periodic review of retirement plan mortality assumptions, the SOA's retirement plans experience committee initiated a new pension study in 2009. A request for data was sent out to retirement plans, and plan experience was ultimately collected from calendar years 2004 to 2008. And the result of that study was the draft release of our RP 2014 mortality tables this past February. The draft table is based on a large set of data that represents about 10.5 million life-years of experience, and over 220,000 deaths.

That committee also focused on providing an updated model for mortality improvement on retirement programs. That study culminated with the draft release of the MP 2014 Mortality Improvement Scale this past February. The MP 2014 report provides a model for mortality improvement rates that would be applied to the RP 2014 mortality table for use in future calendar years.

Both RP 2014 and MP 2014 were exposed for a 120-day comment period from February to May. The SOA is now working to review and respond to those comments. We are working towards publishing final tables and reports by a target completion date of October 31, 2014.

The exposure draft for RP 2014 does estimate the financial impact on transitioning from currently-used mortality tables and improvement scales to the new RP 2014/MP 2014 basis. When comparing the change from the 2000 mortality study to the 2014 mortality study, the SOA estimates the general change in a plan liability calculation would be an increase of 4 to 8 percent, depending upon the plan's demographics.

My written testimony has a detailed discussion of the regulatory uses of mortality tables, I will just summarize them briefly here.

The Pension Protection Act of 2006 amends the minimum funding requirements for single-employer plans. It also requires the Treasury Department to review mortality rates every 10 years. In setting these funding requirements, the Treasury Department has frequently referenced our RP 2000 Mortality Table and Improvement Scale AA. We anticipate the Treasury Department will carefully review our upcoming RP 2014 and MP 2014 studies and utilize them as they see fit.

In conclusion, the effort to develop this new mortality study has been a five-year undertaking that has involved many, many highly qualified actuaries. Key decisions have been validated by independent committees, and the work has been peer-reviewed at multiple points in the process. The SOA process for experienced studies is open and transparent, and we seek input and objective analysis from a broad range of experts.

We have approached this project with a great deal of rigor, because of the very important uses of these mortality tables and mortality improvement scales. We believe it is critically important for professional actuaries to have access to reliable and well-supported data so they, in turn, can provide meaningful projections to the broad range of stakeholders responsible for governing private pension plans.

I appreciate this opportunity to testify on behalf of the Society of Actuaries, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Hall follows:]

SOCIETY OF ACTUARIES

Testimony of R. Dale Hall, FSA, MAAA, CERA
Managing Director of Research, Society of Actuaries
Before the Select Revenue Measures Subcommittee of the House Ways and Means Committee
"Private Employer Defined Benefit Pension Plans"
September 17, 2014

Mr. Chairman, Mr. Ranking Member, thank you for the opportunity to testify today. My name is Dale Hall. I am the Managing Director of Research for the Society of Actuaries.

Introduction to the Society of Actuaries:

The Society of Actuaries ("SOA") is the world's largest professional society serving the actuarial profession. We are an educational, research and professional organization of more than 24,000 actuaries, dedicated to serving our members, students, the profession and the public. We conduct a wide range of research to provide technical information resources for the profession, to advance the capabilities of the profession, to inform public policy development, and to promote public understanding and the public interest. This research includes many studies of historical experience and techniques for projections into the future. Experience studies have been at the core of SOA research activities since its formation in 1949, and were additionally a main activity of our predecessor organizations for many decades prior to that date. Core principles for all SOA research projects are objectivity, quality, relevance and quantification. The SOA does not take advocacy positions on specific policy proposals.

The SOA additionally offers a wide range of educational opportunities, including basic education in the fundamental principles of actuarial science, advanced education, professional development and continuing education for practicing actuaries. Our Fellow of the Society of Actuaries ("FSA") designation is recognized around the world as one of the premiere designation in the actuarial profession. Through a rigorous education and examination process, an FSA has demonstrated a knowledge of the business environments within which financial decisions concerning pensions, life insurance, health insurance, and investments are made, including the application of mathematical concepts and other techniques to the various areas of actuarial practice. FSAs further demonstrate an in–depth knowledge of the application of appropriate techniques to a specific area of actuarial practice by choosing an education specialty track. Many FSAs who work in the defined benefit pension practice area choose the SOA's Retirement Benefits Track and receive specific education on the funding, regulation, accounting, investment and risk management of retirement plans.

The Evolution of Mortality Tables:

As we begin this discussion, it would be helpful to understand that retirement plan mortality studies generally include two parts. The first is a "mortality table," which contains data on the actual death rates of a given population, broken down into subgroups. The second part of a mortality study is an "improvement scale," which is an experience-based estimate on the expected improvements in longevity of the population in question over time.

The SOA has long been the primary source for mortality and mortality improvement studies on United States voluntarily-established, private-sector defined benefit plans. The SOA Retirement Plans Experience Committee is an appointed group of actuaries with broad knowledge of retirement plan mortality and mortality improvement, and is responsible for the ongoing reporting of mortality and other experience of pension benefits provided directly by employers with services provided by actuarial consulting firms.

SOA studies on retirement mortality and mortality improvement date back to the early 1950's, and continued through the late 20th century when the SOA's Retirement Plans Experience Committee released the SOA's 1994 Uninsured Pensioner Mortality Table, commonly referred to as "UP-94". The phrase "uninsured" in this context means that the plan benefits are not guaranteed by an insurance company. Similarly, the SOA's Projection Scale AA was also developed and released shortly thereafter to allow the UP-94 mortality table to be projected into the future to provide for expected mortality improvement. These tables and improvement scales assisted the actuarial profession with up to date studies to consider for valuation of retirement plan liabilities.

When the Retirement Protection Act of 1994 ("RPA") was enacted, it included the authority for the Secretary of the Treasury to establish, the mortality assumptions to be used when calculating the Current Liability for pension plans. The SOA, through its Retirement Plans Experience Committee, conducted a study of uninsured pension plan mortality in response to the RPA in order to ensure that the Treasury Department would have current and thorough information available when it considered updating a mandatory mortality table. The result of this study was the publishing of the SOA's RP-2000 Mortality Tables in 2000. Mortality improvement was also studied at that time and reaffirmed the continued use of Scale AA.

The Current Development of a New Mortality Study:

As part of its periodic review of retirement plan mortality assumptions, the SOA's Retirement Plans Experience Committee initiated a pension mortality study in 2009, with a primary focus being a comprehensive review of recent mortality experience of uninsured private retirement plans in the United States. A request was sent out to retirement plans and their administrators in 2009, and plan experience was collected for study from calendar years 2004-2008. The result of the study was the draft release of the RP-2014 Mortality Tables in February 2014. The draft table is based on data that represents approximately 10.5 million life-years and 220,000 deaths. It can be found at:

https://www.soa.org/Research/Experience-Study/Pension/research-2014-mort-tables.aspx

The RP-2014 Mortality Tables consist of aggregate tables of mortality rates for males and females, with categories of Active Employees (Ages 18-80), Healthy Annuitants (Ages 50-120), and Disabled Retirees (Ages 18 – 120). Subtables are also included in the report for a breakdown of mortality by Blue Collar occupations, White Collar occupations, Bottom Quartile income, Top Quartile income, and an extension for juvenile ages 0 -17. Income amounts are based on salary for Active Employees and benefit amounts for Healthy Annuitants.

Mortality improvement was also a focus of the recent study, in order to provide a mortality improvement model for mortality assumptions for retirement programs in the United States. As data was reviewed during the study, the rates of mortality improvement in the US were seen to differ from those originally predicted by Scale AA. In response, the SOA released an interim Mortality Improvement Scale BB in 2012 to help plans respond to the evolving trends while the new mortality study was being developed. The study culminated with the draft release of the MP-2014 Mortality Improvement Scale in February 2014, which can be found at:

https://www.soa.org/Research/Experience-Study/Pension/research-2014-mort-imp-scale.aspx

The MP-2014 report provides a model for mortality improvement rates that would be applied to RP-2014 for future years. The report includes two-dimensional rate tables for males and females that vary by attained age and calendar year. Ultimate rates extend forward in the tables for calendar years 2030 and beyond.

Both RP-2014 and MP-2014 were exposed for a 120 day comment period from February 2014 through May 2014. Currently, the SOA is working through a review and response to comments. Final tables and reports have not yet been published, however the SOA is working towards a target completion date of October 31, 2014.

The exposure draft for RP-2014 includes a section on estimating the financial impact on transitioning from currently used mortality tables and mortality improvement scales to the RP-2014 / MP-2014 basis. Table 1.1 of the exposure draft includes calculations of annuity values, under a constant interest rate assumption, at a variety of attained ages for males and females under four valuation bases that are commonly used, as well as the RP-2014 / MP-2014 basis. When comparing the change from the RP-2000 / Scale AA basis to the RP-2014 / MP-2014 basis, increases in the annuity values range from 2.5% to 17.4% in the table. As these sample annuity factors have been applied to a wide variety of plans, the SOA estimates the general increase in a plan liability calculation would increase 4 – 8% depending on the plan demographics.

Regulatory Uses of Mortality Tables:

The Internal Revenue Service has continually looked to SOA tables as a basis for the updating of mortality tables to be used under § 430(h)(3)(A) of the Internal Revenue Code. Section 430, which was added by the Pension Protection Act of 2006, specifies the minimum funding requirements that apply to defined benefit plans that are not multiemployer plans. In addition, these mortality tables are used for determining minimum present values for lump sum distributions under § 417(e)(3) of the Code.

In recent years, the IRS has issued Notice 2008-85 to prescribe updated mortality tables for use in 2009 through 2013, and Notice 2013-49 to prescribe updated mortality tables for use in 2014 and 2015. Both

Notices provide tables that are based on the tables contained in the SOA's RP-2000 Mortality Tables Report, adjusted for mortality improvement using Projection Scale AA as recommended in that report.

Additionally, an important motivation for the current RP-2014 study is the requirement in IRC Section 430(h)(3) for the Secretary of the Treasury to review at least every 10 years "applicable mortality rates" for various plan funding requirements. Since the RP-2014 mortality tables are based on the mortality experience of uninsured private pension plans in the United States, they may be considered as potential replacements for the current mortality basis that is mandated for a number of Treasury Department and Pension Benefit Guaranty Corporation applications. The use of these tables therefore has important impact on the contributions that employers are required to make to plans and the actual benefits received by participants to the extent they are paid as lump sum distributions.

Conclusion:

The effort to develop this new mortality study has been a five-year undertaking that has involved many highly qualified actuaries. As mentioned earlier, the new tables will be based on data that represents about 10.5 million life-years of actual experience. Key decisions have been validated by independent committees, and the work has been peer-reviewed at multiple points in the process. The SOA has made a concerted effort to make this process open and transparent, and we have sought input and objective analysis from a broad range or experts. We have approached this project with a great deal of rigor because of the very important uses of these mortality tables and mortality improvement scales. We believe that it is critically important for professional actuaries to have access to reliable and well-supported data so that they can provide meaningful projections to the broad range of stakeholders responsible for governing private pension plans.

I appreciate this opportunity to testify on behalf of the Society of Actuaries. I look forward to answering any questions you may have.

Chairman TIBERI. Thank you, Mr. Hall.

Mr. Henderson, you are recognized for 5 minutes.

STATEMENT OF SCOTT HENDERSON, VICE PRESIDENT OF PENSION INVESTMENT AND STRATEGY, THE KROGER COMPANY

Mr. HENDERSON. Thank you, Chairman Tiberi, Ranking Member Neal, and Members of the Subcommittee. Thank you for this opportunity to testify on the state of the multi-employer pension system. My name is Scott Henderson, I am vice president of pension investments and strategy for The Kroger Company. I am also an employer trustee on two of the largest multi-employer pension plans in the food industry.

Kroger is one of the largest retailers in the world. We operate in more than 2,600 stores and 34 states. We are also one of the largest unionized employers in the United States. We employ more than 375,000 associates, a majority of whom are represented by labor unions. In the past six years we have created 40,000 new jobs. We have hired more than 22,000 veterans, and we recently announced plans to hire 20,000 individuals for new, permanent positions. We also participate in 36 multi-employer pension plans.

Combined, these plans manage over $70 billion in assets, and have more than $100 billion in associated liabilities. Needless to say, this issue is very important to us.

The uncertain fate of the multi-employer system is a huge concern to our associates, our retirees, and our company. The system is at great risk, and it threatens the retirement security of millions of Americans.

I want to focus on five points: one, the multi-employer system is broken, and desperately needs reform; two, many plans are headed for insolvency; three, the PBGC's multi-employer insurance fund is also headed for insolvency; four, labor and management trustees, working together and with the PBGC, need new tools to adjust accrued benefits in the most severely funded plans; and, five, Congress must act now.

My first point is that the system needs reform. My written statement describes the fundamental problems with the multi-employer pension system. It was designed more than 65 years ago. Few would have predicted that today's contributing employers would become responsible for the risk of unfunded liabilities left by previous employers. Existing employers are leaving these plans to avoid this risk. New employers refuse to join because the plans are in trouble. And the remaining employers are unable to act because of the growing liabilities they face. It creates a spiral that is nearly impossible to reverse.

And that leads to my second point. Many plans are severely underfunded now, and will become insolvent within a decade. The PBGC estimates that nearly 1.5 million participants are at serious risk because their plans are severely underfunded. In Kroger's case, most of the plans we participate in are stable, yet a few large plans—Central States in particular—will fail without immediate reform. When these plans fail, many participants will experience dramatic benefit reductions.

The failure of these plans will threaten the viability of contributing employers and other plans, creating a domino effect, which leads to my third point. As more plans fail, the demands on the PBGC will compound. Congress created the multi-employer insurance fund as a backstop to assist funds in need. No one anticipated the profound impact of changes in demographics, the contraction in the trucking industry, stock market shocks, and other factors.

The unfortunate reality is that the insurance fund is headed for insolvency. Several government agencies have reached the same conclusion, including the PBGC itself, in its most recent projections reports. The Congressional Budget Office projects that the multiemployer fund will be exhausted by 2021. For contributing plans, it is like paying premiums to an insurance company that we know is going out of business. And when the PBGC becomes insolvent, the retirement benefit for millions of Americans may disappear, as well.

This leads to my fourth point. To save these plans, trustees need new tools. In extreme cases, we need the ability to adjust accrued benefits. Last year the NCCMP issued a report entitled, "Solutions, Not Bailouts." Among these recommendations was that labor and management trustees, working together, be permitted to adjust benefits and plans that will otherwise become insolvent. Importantly, this proposal will succeed in preserving benefits without relying on taxpayer dollars. Adopting this proposal will involve difficult decisions, but the alternatives are far worse.

I completely agree with Tom Nyhan of Central States when he testified last year—and I quote—"There is another fundamental rule that is going to trump the anti-cutback rule, and that is called arithmetic. It is not a question of if there are going to be benefit cuts. There are going to be benefit cuts. The question is when and how they are going to happen."

And that is my final point. Congress must act now. We cannot wait until 2021, or even 2016. Trustees need new tools to delay and minimize benefit cuts as much as possible, and save the retirement benefits of millions of Americans.

I am looking forward to working with this Subcommittee, and I thank you for the opportunity to appear today.

[The prepared statement of Mr. Henderson follows:]

Statement of Scott Henderson, Vice President of Pension Investments and Strategy

The Kroger Co.

On "Private Employer Defined Pension Plans"

U.S. House Ways and Means Committee,

Subcommittee on Select Revenue Measures

Wednesday, September 17, 2014

Chairman Tiberi, Ranking Member Neal, and members of the Subcommittee. My name is Scott Henderson. I am the Vice President of Pension Investments and Strategy for The Kroger Co. ("Kroger"). I have responsibility for Kroger's pension investments, and I serve as a Trustee for two of the largest multiemployer plans in the food industry. My testimony today focuses on the threat that the multiemployer pension crisis presents to Kroger, our employees and our retirees. I hope that my testimony will demonstrate the need for immediate Congressional action to adopt the measures suggested by the National Coordinating Committee for Multiemployer Plans ("NCCMP") in its report titled "Solutions not Bailouts."

I. ABOUT THE KROGER CO.

Kroger is one of the largest retailers in the world. We employ more than 375,000 associates who serve customers in 2,638 supermarkets and multi-department stores in 34 states and the District of Columbia under two dozen banners. The Company also operates 785 convenience stores, 324 fine jewelry stores, 1271 supermarket fuel centers and 37 food processing facilities. Kroger's net earnings margin is approximately 1.5%, reflecting the highly competitive nature of the retail food industry.

Kroger ranks 24th on the list of Fortune 100 companies and has been recognized by Forbes as the most generous company in America. We support more than 30,000 schools and grassroots organizations in the communities Kroger serves. Kroger contributes food and funds equal to 200 million meals each year through more than 100 Feeding America food bank partners.

In the past six years, Kroger has created 40,000 new jobs, and we have hired more than 22,000 veterans. We recently announced our need to fill an additional 20,000 permanent positions. Notwithstanding our positive story, the uncertain fate of the multiemployer system is a huge concern to our associates, our retirees, and our company.

II. MULTIEMPLOYER PLANS AND THEIR STRUCTURAL PROBLEMS

In order to understand the crisis facing the multiemployer pension system and assess potential solutions, it is critical to have some knowledge of the system's basic structure. There are many variations in multiemployer plan designs, asset allocations and actuarial assumptions. A comprehensive picture, however, of the status of the multiemployer system is not hard to see and the outlook is bleak. For the sake of brevity we have endeavored to mention only the essential highlights.

A. General Overview

A multiemployer defined benefit pension plan is a retirement plan to which more than one employer contributes. These plans are jointly managed by a board of trustees and funded pursuant to Collective Bargaining Agreements ("CBAs"). Multiemployer plans were designed to serve as retirement vehicles for smaller employers and industries with mobile workforces, where employment patterns prevented employees from accruing adequate retirement benefits under any one traditional pension plan. In other words, multiemployer plans were established so that workers' pensions could be portable as they moved from job-to-job within the same industry.

Multiemployer plans are subject to the Labor Management Relations Act of 1947, otherwise known as the Taft-Hartley Act. These plans are also subject to the Employee Retirement Income Security Act of 1974 ("ERISA") and the relevant provisions of the Internal Revenue Code of 1986. The plans are required to have equal employer and union representation on the governing board of trustees. In general, the bargaining parties (i.e., the employer and the union) negotiate the terms under which employer sponsors contribute to the multiemployer plan. The board of trustees determines the benefits to be provided by the plan, based on the level of plan contributions and actuarial assumptions. Although the trustees are selected by management and labor, they are required by law to act solely in the interests of plan participants.

There are two fundamental problems with the multiemployer plan system, namely, withdrawal liability and the last man standing rule.

B. Withdrawal Liability

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

MPPAA was designed to address problems with the multiemployer pension plan rules, including the possibility that an employer could terminate participation in a plan without having fully funded its benefits promises. MPPAA required contributing employers that terminated their participation in a plan to make payments to cover their share of any unfunded benefits. This is known as "withdrawal liability."

C. "Last-Man Standing" Rule

When a withdrawing employer fails to pay its portion of the plan's unfunded liabilities – as is commonly the case with employers that file for bankruptcy or simply go out of business –

responsibility for funding these unfunded liabilities is shifted to the remaining contributing employers. This is referred to as the "last-man standing" rule.

Even in those cases where an employer exits a plan and pays 100% of its withdrawal liability, the remaining employers remain obligated for ensuring there is adequate funding in the future to cover plan liabilities attributable to the exiting employer. Thus, if the plan has adverse investment experience, the remaining employers must ultimately fund the benefits of the workers and retirees of the withdrawn employer. For example, assume an employer leaves a plan and pays \$100 million in withdrawal liability (representing 100% of the amount it owes) but the plan suffers a 25% investment loss in the following year (as many plans did in 2008). Unless the plan experiences future "excess" investment returns that make up the loss, the "last-man standing" rule requires the remaining employers to make up the \$25 million shortfall. In other words, the remaining employers bear the investment (and mortality) risk for benefits attributable to the workers and retirees of the employer that exited the plan (notwithstanding the fact that the employer paid 100% of its withdrawal liability).

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

The "last man standing" rule effectively saddles the remaining employers in a multiemployer plan with potential liability for pension obligations of workers and retirees that never worked for the remaining employers, or who may have worked for a competitor of the employers, or who may have worked in a completely different industry than the employers. This shifting of risk to the remaining employers places an unfair burden on these employers, and depending on their financial condition, could threaten their continued viability.

Not surprisingly, the "last-man standing" rule has discouraged the entry of new employers into multiemployer plans. New employers do not want to join a plan that could expose them to future withdrawal liability on benefits earned by employees of other employers, including benefits earned long before the new employer joined the plan.

III. KROGER INVOLVEMENT IN MULTIEMPLOYER PLANS

The structural problems with the multiemployer system, coupled with the recent stock market shocks, have led a number of plans to the brink of insolvency. The potential insolvency of the pension funds our employees rely on is one of the biggest concern Kroger faces.

A. History and Background

Approximately two-thirds of our 375,000 associates are covered by roughly 300 CBAs, making Kroger one of the largest unionized employers in the United States. Kroger's primary union is the United Food and Commercial Workers International Union ("UFCW"). Kroger's other unions include the Bakery, Confectionary, Tobacco, Grain Millers International Union ("BCTGM"), the International Brotherhood of Teamsters ("IBT"), the International Union of Operating Engineers ("IUOE"), the International Association of Machinists ("IAM"), the Service Employees International Union ("SEIU"), the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW"), and the National Conference of Fireman & Oilers ("NCFO").

Kroger contributes to 36 multiemployer defined benefit pension plans. Combined, these plans manage over $70 billion in assets and $100 billion of associated liabilities. Kroger will contribute $250 million in 2014 to these plans. In addition to these annual contributions, Kroger could be required to contribute an additional $1.6 billion over the long-term to fund pension benefits earned under these plans. Kroger is not alone.

Like many retail food employers, Kroger began participating in multiemployer plans in the 1960s – in an era during which its exposure to these plans was limited to the contribution it was required to make during the term of its CBAs. Thus, its decision to participate in these plans was made well before the transformational changes made by ERISA and MPPAA.

By virtue of its distributions operations from warehouses and manufacturing plants to its retail store facilities, Kroger (like a number of food employers) became a contributing employer to trucking industry multiemployer plans decades ago – at a time when trucking companies dominated participation in these plans. Following the dramatic consolidation in the trucking industry since the 1980s, however, some of these plans evolved from trucking-only plans; food and beverage employers now represent the largest segment of contributing employers.

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

As described in our annual report, Kroger could be required to make future contributions of an estimated $1.6 billion (in addition to its normal contributions) to fund previously accrued pension benefits under the multiemployer plans in which it participates. Importantly, a large portion of the $1.6 billion that Kroger could have to contribute is attributable to workers and retirees who never worked for Kroger.

B. Self-Help Efforts

In response to the challenges described above, Kroger has been working with its union partners in an attempt to resolve many of these funding issues.

For the 11 multiemployer plans on which Kroger has a trustee, we constantly work with our union counterparts to improve the funded status of plans through a combination of contribution increases, benefit adjustments, investment decisions and administrative savings.

The best example of what can be achieved occurred in 2011. Over time, Kroger had effectively become the "last man standing" in four UFCW multiemployer plans. Kroger associates accounted for over 90% of the active participants in these plans. Together, these four plans had a combined total liability of about $3.5 billion, roughly $1 billion of which was attributable to workers and retirees who had never worked for Kroger (i.e., amounts that were shifted to Kroger as a result of the "last-man standing" rule). The combined funded ratio of these plans was 73% (with over $900 million of unfunded liabilities).

Working with the UFCW and PBGC, we agreed to merge these four plans into one, consolidated plan. As part of the merger, Kroger agreed to fund the liabilities attributable to workers and retirees of employers that previously exited the plans. Kroger also made a long-term commitment (until 2021) to a defined benefit plan that is designed to provide competitive and proportional retirement benefits for career associates covered under the new consolidated plan. In the following 12 months, Kroger contributed $900 million to the new plan to eliminate the underfunding of the consolidated plan. As a result of these contributions, the new consolidated plan's funded status increased from 73% to 100% by January 1, 2013.

More recently, Kroger acted to address the funding deficit of a multiemployer plan in Seattle, Washington, that covered 9,000 supermarket workers. The plan was in critical status under IRS funding standards and was likely to become insolvent. Kroger, the UFCW and the other contributing employers worked together to fashion a merger of this severely underfunded plan into a much larger Seattle-based plan covering 82,000 supermarket workers. The merger was made possible (in no small measure) by Kroger's willingness to remove its liabilities from the troubled plan, transfer them to a new consolidated plan and agree to fully fund these transferred liabilities over the next few years. The parties also agreed to adopt special withdrawal liability rules, and other employers agreed to make special contributions to fund their share of the pre-merger underfunding. The transaction was the subject of a recent press release by the PBGC, which is encouraging the creative use of plan mergers to address underfunding.

Plan consolidations have several immediate benefits. Combining assets in larger allocations among fewer managers produces significant asset management fee savings and potentially better returns. Merging plans also reduces the administrative expense burden of the combined plan compared to the individual plans.

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

The actions Kroger took in 2011 would be difficult to replicate for plans in which Kroger is not a dominant employer. Special contributions – such as the $900 million contribution Kroger made to the new consolidated plan – would improve the overall funding of the plan but would effectively benefit all contributing employers to the detriment of Kroger employees. Unless other contributing employers can be persuaded to make special contributions, there is little reason for Kroger to unilaterally fund these plans. To illustrate, if Kroger is an equal participant in a multiemployer plan with four other employers, 80 cents of every additional dollar Kroger contributes towards the current underfunding would serve to reduce the overall plan liability of other contributing employers, and would actually increase Kroger's share of the plan's remaining unfunded benefits if Kroger were to withdraw.

In the case of the new consolidated plan, Kroger took action only after concluding that because it was already the "last man standing," the advantages of plan consolidation outweighed the cost of the additional contribution dollars. While special withdrawal liability rules and contribution agreements (like the Seattle plan) may help some plans, they cannot adequately address the underfunding in most of the plans facing insolvency.

IV. A NUMBER OF PLANS ARE HEADED TOWARDS INSOLVENCY

The sad reality is that many multiemployer funds will become insolvent unless Congress acts to avoid this crisis. According to the PBGC, the pensions of almost 1.5 million participants are at risk as these plans are severely underfunded.[1] These deeply-troubled plans have exhausted the remedies available under current law, and without additional options will become insolvent in the near future.

It is important to note that the failure of these plans will have a much greater impact than the 1.5 million participants covered by these plans. The contributing employers to these plans also contribute to many other multiemployer plans. While Kroger may be able to survive the failure of these plans, many other employers cannot. If these plans fail, the resulting liability that those employers face may force many of them out of business. In turn, this will endanger the other multiemployer plans to which these employers previously contributed. This "domino effect" means that the multiemployer crisis is placing at risk the jobs and retirement benefits of millions of Americans.

V. PBGC INSOLVENCY

In the past, participants in an insolvent plan could count on aid from the PBGC to provide at least a portion of their earned benefits. Without immediate Congressional action, however, this reliance on the PBGC will no longer be possible.

As previously discussed, the remaining employers in a multiemployer pension plan effectively guarantee plan benefits. The PBGC plays a secondary role. Thus, unlike troubled single-employer pension plans (where the PBGC receives the plan's assets, assumes the pension liabilities and pays out benefits in the case of a distressed plan), the PBGC assists multiemployer plans by instead loaning money to the plan to pay benefits once the plan becomes insolvent. When this occurs, the pension payments are immediately reduced to the extent they exceed the PBGC statutory limit (currently $12,870 for a retiree with 30 years of service at normal retirement age).

In effect, the PBGC multiemployer insurance fund acts as a "backstop" to those multiemployer funds that need some financial assistance. Because the remaining employers effectively guarantee plan benefits, the PBGC multiemployer insurance fund was not expected to be relied on to a significant extent. This explains why premiums and the guarantee levels are lower than for the single-employer fund. Although admirable in theory, due to profound changes in demographics and other market factors, the PBGC's multiemployer fund is no longer financially sound. For employers such as Kroger, it is like paying insurance premiums to an insurance company that is projected to go out of business before it pays its claims.

[1] PBGC FY 2013 Projections Report at p. 3.

The PBGC recently confirmed this stark assessment in its "FY 2013 Projections Report" released this past June. The 2013 Projections Report projects the PBGC's deficit for its multiemployer program to equal $8.3 billion and will widen to (on average) $49.6 billion by FY 2023. The Projections Report further states-

> "[b]ased on recent reports it is now clear that, despite the improving economy, [multiemployer plans] will not be able to raise contributions or reduce benefits sufficiently to avoid insolvency. Plan insolvencies -- possibly affecting more than a million of the ten million people in multiemployer plans -- are now both more likely and more imminent than in our last report. When plans fail, many participants experience significant benefit reductions because PBGC's statutory multiemployer benefit guarantees are quite low. Furthermore, even that level of benefits is at risk because PBGC's multiemployer program itself is highly likely to be insolvent within a decade, sooner than previously projected. If and when the program becomes insolvent, the only funds available to support benefits would be the premiums that continue to be paid by remaining plans; this would result in benefits being cut much more deeply, to a small fraction of current guarantees."[2]

If Congress does not act quickly, the question will not be *if* the PBGC becomes insolvent, but *when*. The various government agencies that have reviewed the PBGC's financial information agree that under current circumstances, bankruptcy of the PBGC is inevitable. The PBGC itself has concluded that the average date of most likely insolvency occurs in 2021.[3] The Congressional Budget Office, in its 2014 baseline, concurs with the 2021 date.[4] The U.S. General Accountability Office agreed with the insolvency projections, but noted that "PBGC officials said that the insolvency of [either of two large multiemployer plans] would exhaust the insurance fund in 2 to 3 years."[5]

VI. NCCMP RECOMMENDATIONS AS A SOLUTION

In light of the problems discussed above, management, labor, and multiemployer plans from a variety of industries worked together for almost two years to develop a proposal that could save many of the deeply-troubled multiemployer plans – along with the PBGC and the entire multiemployer system. The final product was a comprehensive package, issued by the NCCMP in February 2013, titled "Solutions not Bailouts." The objectives of the package are simple: (1) Changes are needed to existing rules and must provide reliable retirement income security for participants, and (2) contributing employers must be encouraged to improve the solvency of plans they sponsor by reducing financial risks to the employers.

The "Solutions not Bailouts" recommendations fall into three categories: (i) proposals to strengthen and enhance the current multiemployer system, (ii) measures to assist deeply troubled

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[2] PBGC 2013 Projections Report at p. 1.
[3] Id. at p. 4.
[4] See CBO's April 2014 baseline for the PBGC. Link:
http://www.cbo.gov/sites/default/files/cbofiles/attachments/43887-2014-04-PBGC.pdf

[5] GAO: "Private Pensions: Timely Action Needed to Address Impending Multiemployer Plan Insolvencies", GAO-13-240 (March 2013) at p. 29.

plans, and (iii) new structures to foster innovative plan designs. Enactment of these proposals is critical to the goals of reliable retirement income security and improved plan solvency. For example, the recommendations regarding a new form of multiemployer plans will remove the barriers that discourage employers from joining multiemployer plans today.

To address the funding concerns of plans that are facing an immediate funding crisis, management and labor quickly realized that the only realistic and viable solution is to allow labor and management trustees, working together, to adjust accrued benefits of plan participants. Both sides endeavored to create a proposal that will save the maximum number of plans, retain the highest possible level of benefits, and protect the most vulnerable populations. Thus, the proposal would apply to plans projected to become insolvent within 20 years, or within 15 years if the ratio of retired to active participants is less than or equal to 2:1 (a "deeply troubled plan"). The demographics of some deeply troubled plans are such that even if the benefits of all of the active employees were completely eliminated, the plan would still go insolvent. For these deeply troubled plans, the only realistic way to avoid insolvency and preserve as much of the promised pension benefits as possible is to provide plan trustees the ability to suspend some of the accrued benefits of all plan participants, including retirees. The prospect of reducing retiree benefits is, recognizably bleak, but it is a necessary last resort. Importantly, suspending benefits is not a tool the trustees could wield recklessly.

Benefits could only be suspended if the suspension would allow the plan to avoid insolvency and if the plan sponsor had taken all other reasonable measures to forestall insolvency. The plan sponsor would have to obtain the approval of the PBGC before implementing the suspensions. Even after trustee action, benefits would have to be at least 10 percent above the PBGC guarantee level, and any benefit suspensions would have to be distributed equitably across all populations of participants. Further, the proposal also would limit the ability of the plan to make future benefits increases without first restoring the value of suspended retiree benefits.

In evaluating the NCCMP Recommendations, it is important to remember that it is not a question of benefit cuts versus no benefit cuts. When a deeply troubled plan becomes insolvent, participants' benefits *will unquestionably* be cut. Benefits for retirees would be reduced drastically (to $12,870 per year for a 30-year employee) even if the PBGC was still solvent enough to honor the current level of guarantee. Once the PBGC becomes insolvent, benefits would be eliminated almost entirely. This result is unacceptable. But it is inevitable if no action is taken.

The NCCMP Recommendations offer an alternative – modest changes now that, while still painful, will sustain the system for many years to come. This is the best outcome for all of the parties concerned – retirees, workers, employers and taxpayers.

VII. CONGRESSIONAL ACTION IS NECESSARY NOW

Congress MUST act now. With every passing day the risk increases that benefits will be cut. More importantly, failure to act will mean that some large plans cannot be saved, even if Congress later allows plans to cut benefits. Action now is essential to protect the pensions of hundreds of thousands of hard working Americans. To quote Tom Nyhan, Executive Director of the Central State Pension Fund, from congressional testimony he presented last year -- "it is not a question of if there are going to be benefit cuts. There are going to be benefit cuts. The question is when and how they are going to happen." The NCCMP Commission's proposal on deeply troubled plans, if adopted by Congress, will provide pension fund trustees and bargaining parties the tools necessary to avoid insolvency and thereby stave off the drastic cuts that will otherwise occur. We cannot wait until 2021, or even 2016. By then it will be too late. We need your help now.

VIII. CONCLUSION

Kroger is grateful for the opportunity to participate in today's hearing. We applaud this Subcommittee for its leadership in holding this hearing and addressing the structural problems facing the multiemployer system. We appreciate the opportunity to tell our story, and we look forward to working with you on solutions that will ensure the continued viability of the multiemployer system.

Chairman TIBERI. Thank you, Mr. Henderson
Mr. Gold, you are recognized for 5 minutes.

STATEMENT OF JEREMY GOLD, FSA, MAAA, JEREMY GOLD PENSIONS

Mr. GOLD. Chairman Tiberi, Ranking Member Neal, and Members of the Subcommittee, thank you for the opportunity to present my views with respect to private employer defined benefit pension plans. My views are my own, and do not represent any other persons or organizations.

I am an independent consulting actuary and economist, specializing in the financial aspects of pension plans. I will address the measurement of liabilities and costs of multi-employer pension plans. My central message is that liabilities are understated by as much as 50 percent, and annual costs are underestimated by as much as 100 percent. Good policies cannot be based on bad numbers.

Actuaries performing valuations for multi-employer plans have always been challenged by employers wanting lower costs and employees wanting larger benefits. Circa 1980, with Treasury bond yields in double digits, naturally conservative actuaries were discounting benefit promises at interest rates below seven percent. By 2000, with equity markets soaring, and Treasury rates in the neighborhood of 6 percent, actuaries were discounting at about 8 percent. Since 2000, although Treasury rates have fallen to about 3 percent, indicating a widespread decrease in interest rates, and a commensurate share increase in liabilities, actuarial discount rates have, for the most part, held steady.

The desires of employers and employees make it all but impossible for consulting actuaries, with the best of intentions, to lower discount rates accordingly. The result is that liability values are severely understated, costs are underestimated, and actuarial assumptions have been too optimistic.

Once a deficit develops, once there is a hole in the ground, there are only two ways to fix the problem: smaller benefits for employees, larger costs for employers. The proposals being discussed are very reasonably some combination of these two approaches. I am agnostic as to how much benefits should be cut versus how much additional cost should be borne by employers.

My message is this: unless accurate estimates of future costs are on the table and open for all to see, the combination of benefit cuts and employer costs, increases, will not reduce the deficit, will not fill the hole. On the contrary, the hole will get bigger unless two necessary steps are taken: first, get the right price for all future benefit accruals, and make sure, at an absolute minimum, that these are paid; second, accurately measure the deficit and decide when, how, and who pays to fill the hole.

How can we get the right price—Actuaries trying to balance the needs of employees and employers cannot be expected to push valuations uphill when the interested parties want to go downhill. I believe that the concept of an independent consulting actuary putting a value on these benefits is irreparably flawed. The parties setting the price must have very significant skin in the game and capital at risk. The party that sets the price must also guarantee the benefits and hold sufficient capital to make good on its guarantee.

The need to have capital at risk guaranteeing benefit promises implies something like insurance companies with actuaries whose primary obligation is to the company that puts up the capital, guarantees the benefits, and employs the actuary. These institutions do not—the institutions I have in mind do not have to be insurance companies as we know them, but they must combine capital, benefit guarantees, and actuarial expertise.

In summary, we should measure accrued liabilities and future costs accurately. Accurate measurements will only be made by parties with skin in the game, combining capital, benefit guarantees, and actuarial expertise. To avoid making matters worse than they already are, plans must, at an absolute minimum, pay the full price for newly-earned benefits, or reduce accruing benefits to match available funding, and we must pay the interest on unfunded accrued liabilities.

Thank you.

[The prepared statement of Mr. Gold follows:]

Statement before the United States House of Representatives

Committee on Ways and Means

Subcommittee on Select Revenue Measures

Hearing on Private Employer Defined Benefit Pension Plans

Jeremy Gold, FSA, MAAA, CERA, PhD

Jeremy Gold Pensions

September 17, 2014

Chairman Tiberi, Ranking Member Neal, and Members of the Subcommittee. Thank you for the opportunity to present my views with respect to private employer defined benefit pension plans. My views are my own and do not represent any other persons or organizations.

I am an independent consulting actuary and economist specializing in the financial aspects of pension plans.

I will address the measurement of liabilities and costs of multiemployer pension plans. My central message is that liabilities are understated by as much as 50% and annual costs are underestimated by as much as 100%. Good policies cannot be based on bad numbers.

Actuaries performing valuations for multiemployer plans have always been challenged by employers wanting lower costs and employees wanting larger benefits. Circa 1980, with Treasury bond yields in double digits, naturally conservative actuaries were discounting benefit promises at interest rates below 7%. By 2000, with equity markets soaring and Treasury rates in the neighborhood of 6%, actuaries were discounting at about 8%. Since 2000, although Treasury rates have fallen to about 3%, indicating a widespread decrease in interest rates and a commensurate sharp increase in liabilities, actuarial discount rates have, for the most part, held steady. The desires of employers and employees make it all but impossible for consulting actuaries, with the best of intentions, to lower discount rates accordingly. The result is that liability values are grossly understated, costs are underestimated, and actuarial assumptions have been too optimistic.

Once the deficit develops, once there is a hole in the ground, there are only two ways to fix the problem: smaller benefits for employees, larger costs for employers. The proposals being discussed are, very reasonably, some combination of these two approaches.

I am agnostic as to how much benefits should be cut versus how much additional cost should be borne by employers.

My message is this: unless accurate estimates of future cost are on the table and open for all to see, the combination of benefit cuts and employer costs will not reduce the deficit, will not fill the hole. On the contrary, the hole will get bigger unless two necessary steps are taken:

- first, get the right price for all future benefit accruals and make sure at an absolute minimum that these are paid, and
- second, accurately measure the deficit and decide when, how and who pays to fill the hole.

How can we get the right price? Actuaries trying to balance the needs of the employees and the employers cannot be expected to push valuations uphill when the interested parties want to go downhill. I believe that the concept of an independent consulting actuary putting a value on these benefits is irreparably flawed. The party setting the price must have very significant skin in the game and capital at risk. The party that sets the price must also guarantee the benefits and hold sufficient capital to make good on its guaranty.

The need to have capital at risk guarantying benefit promises implies something like insurance companies with actuaries whose primary obligation is to the company that puts up the capital, guarantees the benefits and employs the actuary. These institutions do not have to be insurance companies as we know them but they must combine capital, benefit guarantees and actuarial expertise.[1]

Summary

- Measure accrued liabilities and future costs accurately.
- Accurate measurements will be made only by parties with skin in the game combining capital, benefit guarantees, and actuarial expertise.
- To avoid making matters worse than they already are, plans must, at an absolute minimum:
  - Pay the full price for newly earned benefits or reduce accruing benefits to match available funding.
  - Pay the interest on unfunded accrued liabilities.

[1] A less robust but still adequate approach might be to require consulting pension actuaries to mimic insurance company methods and assumptions.

Chairman TIBERI. Thank you, Mr. Gold.
Ms. Oakley, you are recognized for 5 minutes.

STATEMENT OF DIANE OAKLEY, EXECUTIVE DIRECTOR, NATIONAL INSTITUTE ON RETIREMENT SECURITY

Ms. OAKLEY. Thank you, Chairman Tiberi, Ranking Member Neal, Members of the subcommittee, for the opportunity to testify here today. I am Diane Oakley, the executive director of the National Institute on Retirement Security. We are a non-partisan research organization working in the retirement security space.

Defined benefit plans enable Americans to be self-sufficient. They provide businesses the workforce management tool, and they support the U.S. economy. Employees value the predictable income that lasts, giving them independence after a lifetime of work. Employers value the cost-effective tool for recruitment, retention, and managing their workforce.

Forty years ago, the Employee Retirement Income Security Act became law, bringing financial certainty to private-sector workers. Nobel economist Robert Merton recently summed up the primary question of concern for retirement savers: Will I have sufficient income in retirement to live comfortably—

Congress had the right focus in 1974, with ERISA: retirement income security. The typical 1970s American was identified as a 47-year-old housewife who lived with her mechanic/machinist husband in the chairman's state of Ohio, just outside of Dayton. His blue-collar job had a pension that, combined with Social Security, would provide $12,000 of income, a middle-class income in that time.

Typical American profile is quite different today. With less access to pensions, they are extremely worried about their retirement. Eighty-five percent of Americans are concerned about their retirement prospects, and fifty-five percent are very concerned. For Americans with DB pensions, it is easier to address Merton's question on retirement security. If someone works for 30 years, if they have a pension, perhaps they can replace 45 percent of their pre-retirement income.

Pension income helps older households keep them out of poverty. Retirees with pensions today rely less on public assistance, which saved governments $8 billion in 2010 alone. Yet, at the same time, 55 percent of older, middle-income households relied on pension income to stay middle class.

Unfortunately, pension income is declining for retirees. In 1998, 52 percent of older Americans had a pension income. By 2000 that had fallen to just 43 percent. Households today in the workforce near retirement represent the last generation of American workers with widespread pension coverage. Sixty percent of households between ages 55 and 64 have some type of DB plan, while those younger than 45 have pension coverage at half that level.

Today workers are more likely to rely on an individual or retirement account, like a 401(k), which can fluctuate dramatically with stock markets, and can be outlived. The shift from DB also is a loss for local economies. Pension steady income, regardless of stock market fluctuations, means that they are considered economic stabilizers during economic downturns.

In 2012, private-sector DB plans paid $167 billion to 13 million retirees from private-sector employers, giving them an annual benefit of about $14,000, on average. Spending from those benefits collectively supported 2.3 million jobs in America, and generated $347 billion in economic output, and provided $50 billion in federal, State, and local income taxes.

Fueled in part by changes in the nature of the private-sector workforce, as well as accounting and government regulations that created more volatility and less predictable balance sheets, many private employers offering pensions have chosen to freeze workers' DB plans. The Bureau of Labor Statistics indicates that 10 percent of all private employers offering new employees DB pensions today only covers about 18 percent of that workforce.

Reflecting this trend, 45 percent of workers with pensions are concerned that their employers will reduce their pension, and 37 percent are concerned that they will close their plan. The switch to DB plans carries counter-cyclical risks for employers, such as increased severance pay, higher benefit costs, and results in lower mobility within organizations.

Studies have found that employers with DC plans are finding older employees staying on in the workforce, and causing choke points in their talent pipelines. But we have also seen a recent trend with Kodak, for example, which announced that it will improve its DB plan, while foregoing its employer match in its 401(k).

With the disappearance of secure, predictable retirement income, and declines in overall workplace coverage, the American workers face a retirement savings burden that is heavier and more troubling than ever before. Recently, the Federal Reserve released a survey of American workers' well-being, and what they found is, even though workers today have more responsibility for their own retirement, most Americans give no, little, or just some thought to planning for retirement. For those who do plan, their plan is to keep on working and Social Security. In——

Chairman TIBERI [continuing]. If you can——

Ms. OAKLEY [continuing]. 1991, a researcher commented——

Chairman TIBERI. Ms. Oakley, if you can wrap it up, your time has expired.

Ms. OAKLEY. To reach the second hundred years of pensions, I think we need to make sure we keep the pensions we have today, find new ways to encourage pensions, and keep everyone's DB plan Social Security.

[The prepared statement of Ms. Oakley follows:]

Statement before the United States House of Representatives
Committee on Ways and Means
Subcommittee on Select Revenue Measures

For a Hearing on

"Private Employer Defined Benefit Pension Plans"

on

September 17, 2014

Diane Oakley
Executive Director

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Thank you Chairman Tiberi, Ranking Member Neal, and Members of the Committee for the opportunity to testify today. I am Diane Oakley, executive director of the National Institute on Retirement Security (NIRS). NIRS is a non-profit, non-partisan research and education organization committed to fostering a deep understanding of the value of retirement security to employees, employers and the economy. Defined Benefit (DB) pensions, the focus of today's hearing, enable Americans to be self-sufficient in retirement, provide an important workforce management tool for businesses, and support the U.S. economy.

Forty years ago this month, major consumer protection legislation impacting pension plans, the Employee Retirement Income Security Act of 1974 (ERISA), became law. Congress acted then to protect Americans' pensions and financial security. As we look to the future, Congress will continue to play a critical role in ensuring pensions remain an important tool for private sector businesses and Americans at a time when retirement readiness is in decline.

The first private sector defined benefit pension plan was created in 1875 by the American Express Company. Over pension's first century, numerous private sector employers have followed suit by offering DB pensions to their employees because pension are valued by employees and employers alike. Employees value that pensions provide a predictable income that lasts after a lifetime of work. Employers value that pensions provide companies with a powerful human resource tool for recruitment retention, and workforce management while offering cost effective retirement security.[1]

As we reflect on ERISA, the title of this 1974 law had the right focus: **retirement income security**. In fact, one of our nation's Nobel Prize winning economists wrote in a recent issue of the Harvard Business Review summing up the key issue working American families face in regard to retirement security. Robert C. Merton said that the primary concern of the saver remains the question "Will I have sufficient income in retirement to live comfortably?" He asserts, "the relevant risk is retirement income uncertainty."[2]

Americans are very worried about their retirement financial security. In *Pensions & Retirement Security 2013: A Roadmap for Policymakers*, NIRS found that Americans are very uncertain and worried about their retirement outlook despite recovery of the financial markets, declining unemployment and increased consumer confidence. An overwhelming majority of Americans (85 percent) report concern about their retirement prospects, with more than half (55 percent) very concerned.[3] This concern is well founded. Recently, the Federal Reserve Board, in its "Report on the Economic Well-Being of U.S. Households in 2013," found that "many households reported that they are not ready for retirement," with almost half of respondents

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[1] I. Boivie and C. Weller, 2012, "How DB plans influence labor relations in the wake of the Great Recession," in D.J.B. Mitchell, Ed., *Public Jobs and Political Agendas: The Public Sector in an Era of Economic Stress,* Labor and Employment Relations Association Research Volume, Cornell University Press, Ithaca, NY: B. Almeida and W. Fornia, 2008, "A Better Bang for the Buck: The Economic Efficiencies of Defined Benefit Pension Plans," National Institute on Retirement Security, Washington, DC.

[2] R. Merton, 2014 (July-Aug.). "The Crisis in Retirement Planning," *Harvard Business Review, pp.43-50.*

[3] D. Oakley and K. Kenneally, 2013 (Feb.), "Pensions and Retirement Security 2013: A Roadmap for Policymakers," National Institute on Retirement Security, Washington, DC.

saying that they had not planned financially for retirement, and 25 percent reporting that they had done no planning at all.[4] Americans want help; 86 percent of Americans believe that that leaders in Washington need to give retirement a higher priority, with 62 percent strongly agreeing.[5]

Unlike those with only individual savings plans, retirees and workers covered by DB pensions can respond to the question that Merton puts forth with a fairly simple and easy to understand answer, based on their pension plan's benefit formula. For example, assuming that they worked with their employer for 30 years with a benefit formula providing 1.5% percent of final average salary in a traditional DB pension, then the workers can figure on being able to replace 45 percent of their pre-retirement income. Together with Social Security's level of income replacement as published by the Trustees, a worker covered by that DB pension has a good base to achieve the "comfortable" retirement target they hope to reach.

I. DB Plans Provide Predictable Retirement Security to Middle Income Older Americans

The predictable monthly benefits provided by DB plans remain a source of security to these retired households, enabling millions of Americans to remain secure and independent in old age. Shortly after ERISA became law, benefit payments from private sector DB pensions totaled $15.2 billion, while plan assets amounted to $231 billion.[6] In 2012, private sector DB pension plans paid out some $175.6 billion in pension benefits to 12.7 million retired Americans and other beneficiaries.[7] These DB pension plans had plan assets of $3.0 trillion at year-end 2012.[8]

NIRS research, *The Pension Factor 2012,* finds that DB pension income continues to play a vital role in reducing the risk of poverty and material hardships among older Americans. Using U.S. Census Bureau's Survey of Income Program Participation (SIPP) panels, we calculated that rates of poverty among older households without DB pension income were approximately nine times greater than the rates among older households with DB pension income in 2010. When we did the same study before the Great Recession in 2006, we found the rate of keeping households out of poverty just six times greater. Additionally, DB pension recipient households were less reliant on means-tested cash and non- cash public assistance. DB pensions appear to have particularly improved the economic security of more vulnerable subpopulations of elder households,

[4] Board of Governors of Federal Reserve System, 2014(June), "Report on the Economic Well-Being of U.S. Households in 2013," Board of Governors, Washington, DC.

[5] D. Oakley and K. Kenneally, 2013 (Feb.).

[6] P. Seburn, 1991, "Evolution of employer–provided defined benefit pensions," Monthly Labor Review, U.S. Bureau of Labor Statistics (BLS), Washington, DC.

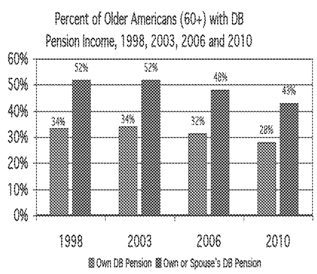
[7] U.S. Census Bureau and BLS, 2013, Current Population Survey Annual Social and Economic Supplement, "Source of Income in 2012-Number with Income and Mean Income of Specified Type in 2009 of People 15 Years Old and Over by Age, Race, and Hispanic Origin, and Sex," BLS, Washington, DC.

[8] Board of Governors of Federal Reserve System, 2014(June 5), "Z.1: Financial Accounts of the United States Floe of Funds, Balance Sheets, and Integrated Macroeconomic Accounts, First Quarter 2014," Board of Governors, Washington, DC, Table L.116.

diminishing common gender and racial disparities in rates of poverty, and dependence on public assistance.[9]

Moreover, NIRS estimates that in 2010, DB pension receipts among older American households was associated with 4.7 million fewer poor and near-poor households, which translated into 1.22 million fewer households receiving means-tested public assistance. In terms important to governments, that means spending about $7.9 billion dollars less on public assistance to older households because of DB pension income.[10]

Unfortunately, *The Pension Factor 2012* also revealed a declining rate of DB pension income receipt among older households. In 1998, more than half (52%) of older Americans had income from a DB pension from either their own or their spouses' pensions. By 2010, the percent of older Americans having income from either their own or from spouses' DB pensions fell to 43 percent.[11] The level of DB pension receipt falls significantly if only the DB pension from the retiree's retirement plan is considered, indicating the benefit of the change that Congress made to ERISA with the passage of the Retirement Equity Act, which clarified spouses right in pension benefits. DB pension income is especially important to middle income older Americans, as 55 percent of older households in both the 3rd and 4th household income quintiles had income from a DB pension in 2010.[12]



Source: Porell and Oakley, "The Pension Factor 2012"

According to data from the U.S. Bureau of Labor Statistics, which began keeping data on the level of DB pension converge among large and small private sector employers in 1990, 35 percent of all private sector employees were covered by DB pension in the early 1990s but such coverage stood at 18 percent in 2011.[13] With decades of declining DB plan participation rates

[9] F. Porell and D. Oakley, 2012 (Jul.), "The Pension Factor 2012: The Role of Defined Benefit Pensions in Reducing Elder Economic Hardships," National Institute on Retirement Security, Washington, DC.

[10] Porell and Oakley, 2012.

[11] Porell and Oakley, 2012.

[12] Porell and Oakley, 2012.

[13] W. Wiatrowski, 2012, "The last private industry pension plans: a visual essay," Monthly Labor Review, Washington, DC, BLS.

among active employees, we can anticipate further increases in the numbers of older American workers entering retirement without the security of a pension in the years ahead.

II. Role of DB Plans in Retirement Readiness of Near Retirees and Other Workers

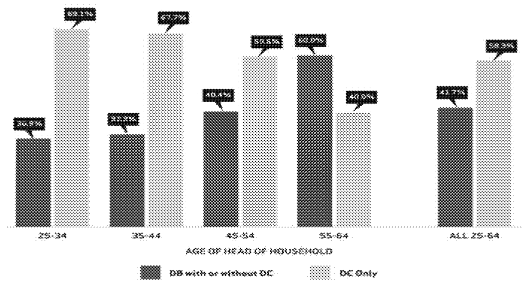
Employer-sponsored retirement plans remain the most important vehicle for ultimately providing retirement income among working households after Social Security. However, a large share of American workers lacks access to a retirement plan through their employer.

Historical retirement participation data indicate that gradual changes over past decades resulted in participation in retirement plans peaking around the year 2000 and then declining over the last decade. According to Current Populations Survey (CPS) data, by 2012, only 52 percent of private sector employees age 25-64 had access to a retirement plan on the job—the lowest rate since 1979.[14] The Survey of Consumer Finances (SCF) illustrates a similar trend on a household level. The share of working families in which neither the head of household nor the spouse participated in a retirement plan through their job increased from 42.7 percent in 2001 up to 48.7 percent in 2013.[15]

Those workers who do participate in a retirement plan will be much more likely to rely on assets from individual retirement accounts in a 401(k) or other defined contribution (DC) plan rather than on a predictable monthly income from a DB pension. Given that older households with DB pension income generally fared better during the recent economic turmoil relative to households without such income, this trend may have an impact on future workers retirement security, especially middle-income American households.[16]

DB and DC plan participation among households covered by an employer-sponsored retirement plan, by age of head of household, 2010

[14] N. Rhee, 2013 (June), "The Retirement Savings Crisis: Is It Worse Than We Think?," National Institute on Retirement Security, Washington, DC.
[15] NIRS analysis of microdata from Board of Governors Federal Reserve System, 2013 Survey of Consumer Finances, Board of Governors, Washington, DC.
[16] Porell and Oakley, 2012.



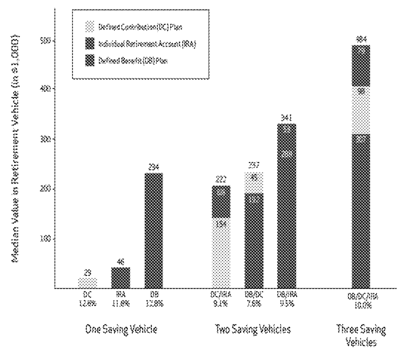
Source: Rhee, 2013 "The Retirement Crisis: Is It Worse than We Think? Households with negative earnings excluded.

Among working-age households in which the head or spouse participated in an employer sponsored retirement plan through a current job, the share that had a DB pension—whether alone or with a DC account—dropped precipitously from 73 percent in 1989 to 42 percent in 2010 with much of that decline occurring prior to 2001. Households currently near retirement represent the last generation of workers to enjoy widespread DB pension coverage. Among households covered by workplace retirement benefits, the chart above illustrates that while 60 percent of older households (age 55-64) are covered by a DB pension, younger households are half as likely to have a DB pension—31 percent for age 25-34 and 32 percent for age 35-44.[17]

Using the 2010 SCF data, James M. Poterba notes a "virtual absence of financial wealth and DB pension wealth for roughly half of the 'young elderly' household. He also breaks down the sources of dedicated retirement assets held by the 73.6 percent of households ages 55-64 in 2012 that had either a DC account, an IRA or a DB pension. He finds a pattern of heterogeneity in his tabulations of ownership of and median balances in retirement savings vehicles. While 37.4 percent have just one retirement plan, 26.3 have two types of plans and 10 percent have all three types of plans a DC, IRA and DB.[18]

[17] N. Rhee, 2013 (June).

[18] J.M. Poterba, 2014. "Retirement Security in an Aging Society" Working Paper 19930, National Bureau of Economic Research, Washington, DC.



Source: Authors calculation from Poterba, "Retirement Security in an Aging Society" Table 13.

The figure above uses his analysis to illustrate the ownership and value of accounts that will likely be sources of income for near retirees. In each of the three ownership categories, the value of the median balance of the DB pension is the most significant retirement asset. Poterba indicates that not all of the differences are income related, as wide variations in propensities to save exist across the income distribution.[19]

The shift away from DB pensions will leave most covered workers needing to rely only on assets accumulated in DC accounts to supplement their Social Security income. This trend has had profound consequences for American workers and families in terms of the risks and costs they now bear in saving and investing to fund their own retirement. Unfortunately, the typical household—even one near retirement—has only a few thousand dollars in retirement account assets, nowhere near the $100,000-plus median account for those who actually have such retirement savings.[20]

III. Income Certainty Helping Older Americans Also Helps Steady the Economy

Reliable pension income can be especially important not only in providing retirees with peace of mind, but also for stabilizing local economies during economic downturns. Retirees with DB pensions know they will receive a predictable income even during tough economic conditions. And can maintain their spending levels during such downturns. In contrast, retirees without DB pensions may be reluctant to spend out of their 401(k)-type accounts if their savings are negatively impacted by a sizeable market downturn.

[19] J.M. Poterba, 2014.
[20] N. Rhee, 2013 (June).

The Social Security system had been demonstrated to stabilize the economy because it provides steady support for consumer demand.[21] To the extent that DB pensions provide retirees with steady income available for spending regardless of fluctuations in the stock market, DB pensions may play a stabilizing role in the economy similar to Social Security.

NIRS analysis indicates that DB pension benefits not only provide a secure source of income for many retired Americans, they also contribute substantially to the national economy. The economic gains attributable to DB pension expenditures are considerable. NIRS finds that, in 2012, over $175 billion was paid out in pension benefits from private sector DB pension plans to 12.7 million retired Americans who were beneficiaries of these plans.[22]

The expenditures made from those payments to beneficiaries of private sector DB pensions collectively supported:

- 2.3 million American jobs that paid over $138 billion in labor income;
- $347 billion in total economic output nationwide;
- $204 billion in value added (GDP);
- $50 billion in federal, state, and local tax revenue.[23]

DB pensions play a vital role in sustaining consumer demand that, in turn, ultimately supports millions of jobs, and hundreds of billions of dollars in income, output, value added, and tax revenues. The pension expenditure multiplier for the United States was $1.98. Simply that means that for every dollar that private sector defined benefits paid to a retired American from a private sector DB pension in 2012 year the economy generated a $1.98 of total output in the national economy. [24]

For example, Howell's Grocery and Restaurant is one of the oldest businesses in Stuart Virginia, a town with more than half of its population of 1,400 over age 50. Leon Howell's family has owned the business since 1924. The restaurant is a favorite of locals for a good meal. Howell has about a dozen employees. Leon says, "I'm glad we have retirees and others spending at Howell's so we can provide jobs for hardworking folks.[25]

In supplying a stable source of income to retirees, DB pension plans support the national economy, as well as local economies throughout the country, with jobs, incomes, and tax revenue. Pension benefits play an important role in providing a stable, reliable source of income regardless of economic climate—not just for retired Americans, but also for the local economies in which their retirement checks are spent.

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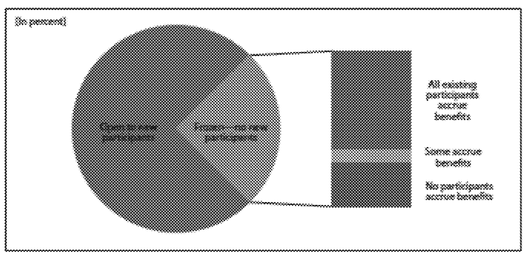
[21] T. Ghilarducci, J. Saad-Lessler, and E. Fisher, "The macroeconomic stabilisation effects of Social Security and 401(k) plans," Cambridge Journal of Economics, pp. 237-251.
[22] N. Rhee, 2014, "Pensionomics 2014: Measuring the Economic Impact of State & Local Pension Plans," National Institute on Retirement Security, Washington, DC.
[23]N. Rhee, 2014.
[24] N. Rhee, 2014.
[25] N. Rhee, 2014.

IV. Greater Uncertainty Pushes a Transition in Private Employer-Provided Pensions

Large firms generally offer more generous benefits, and a small but significant number continue to sponsor DB pensions.[26] However, small businesses—which account for approximately two-thirds of workers that lack access to a retirement plan—often find it too expensive and complicated to set up such a plan. BLS indicates that 10% of all private employers offered DB pensions covering 18% of workforce in 2011.[27] This shift has been fueled in part by changes in the nature of the private sector workforce, as well as accounting and government regulations that created more volatility and less predictable balance sheet representations of financial risk and funding cost. McFarland indicates that the switch to DC plans becoming the primary retirement vehicle carries other risk for employers "such as counter-cyclical workforce trends that may necessitate increased severance pay, raise benefit costs and result in less mobility within an organization." [28]

Percentage of defined benefit pension plan participants in open and frozen plans, private industry, 2011



Source: BLS, 2012

Among private industry offering DB pensions, workers have experienced a trend toward frozen plans, most often for new employees, with some plans also stopping the accrual of benefits for current employees. BLS is the source for the above figure that reflects that 1 in 4 participants in a DB pension is in a frozen plan but two-thirds of current employees covered by a frozen plan continue to accrue benefits.[29]

By year-end 2013, only 24 percent of Fortune 500 companies continued to offer DB plans, down from 60 percent in 1998 according to Towers Watson. While they also found that certain industries as well as employers with well-funded pensions continue to offer the plans to new

[26] Towers Watson, 2011 (Nov.), "Pension Freezes Among the Fortune 1000 in 2011," *Insider*, Towers Watson, Washington, DC.
[27] Wiatrowski, W. 2012.
[28] B. McFarland, 2014(Sept.), "Retirement in Transition for the Fortune 500: 1998-2013," *Insider*, Towers Watson, Washington, DC.
[29] Wiatrowski, W. 2012.

hires. Since 1998, 21 percent of the 2013 Fortune 500 employers have frozen their DB pensions, 15 percent have closed the DB pension to new employees and 2 percent have terminated their DB pension using annuities or lump sum payments. These employers have transitioned workers to DC plan coverage using various paths. Meanwhile, 38 percent of these very large employers maintained only DC plans through the period.[30] It should be noted that this trend has slowed with just 5 Fortune 500 companies moving from DB to DC plans for new hires in 2013 as compared to 50 such companies during 2007 to 2009.[31]

Because DB pensions are designed to provide employees the ability to maintain a predictable and reasonable standard of living into retirement, these plans encourage workers to remain with their employer as well as provide for orderly workforce management for the employer. Recent studies by Prudential and Mercer find that employers with DC plans and other accumulation type plans are now finding that older employees are not retiring causing "choke points" in talent pipelines that lead to increased turnover among younger workers.[32]

Research has found that this DB pension retention effect spans all ages, with 58 percent of employees under age 40, 68 percent of employees aged 40 to 49 and 76 percent of employees 50 and older reporting that their DB pension is an important reason they will stay with their employer.[33] Employee engagement and commitment to the employer have been somewhat eroded by the freezing of DB pensions as 45 percent of workers covered by DB pensions are concerned that their employer will reduce the value of their DB plan and 37 percent are concerned that the employer will close the DB plan.[34]

Conclusion

A researcher who looked at the evolution of DB pensions in 1991 made this observation:

> Changes in private sector pension plans that have occurred since 1875 have, in almost all cases, benefited workers. Changes have resulted from employer's initiatives, collective bargaining, and pension legislation."[35]

Significant retirement security challenges face baby boomers and the upcoming generations of working families. With many employees seeing the disappearance of secure retirement income from DB pensions and the trend since 2000 in declining workplace retirement plan coverage overall, Americans face a retirement savings burden that is heavier than ever. This shift places significant responsibility on individuals to plan for their own retirement, but a recent survey by the Federal Reserve, noted earlier, found that only one-fourth of us are doing so. Most

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[30] B. McFarland, 2014 (Sept.).

[31] B. McFarland, 2014 (Sept.).

[32] L. Weber, 2014 (June 17), "The Hidden Downside to 401(k) Plans" The Wall Street Journal, New York, NY: Plan Sponsor, 2011, "Meeting the Challenge of Building Better Outcomes" Plan Sponsor,

[33] J. Gardner, and S. Nyce, 2014(Aug.), "The Strategic Value of Retirement Benefits: A Global Focus" *Insider*, Towers Watson.

[34] J. Gardner, and S. Nyce, 2014(Aug.).

[35] P. Seburn, 1991, p. 22.

Americans report giving none, little or just some thought to planning for retirement and the top plan is to keep on working and rely on Social Security.[36]

Looking back in another 20, 30 or 40 years, will there be a researcher who will examine the changes since ERISA and be able to make the claim that almost all of the pension law changes benefited workers? That answer is uncertain and a sustained increase in retirement savings is needed to put all Americans on a path toward financial security. Indeed, after 40 years of ERISA, I fear we really haven't moved any further toward making sure every American can retire. I hope that this will not be the case 40 years from now.

Given the low level of readiness for retirement, strengthening the Social Security safety net, expanding access to low-cost, high quality retirement plans such as the Administration's recently-announced myRA proposal and other proposals designed to expand workplace retirement coverage both at state and federal levels, and expanding incentives like the Saver's credit that already helps over 6 million low-income families save for retirement are important policy considerations.

I am happy to respond to your questions on DB pensions and retirement income security.

[36] Board of Governors, 2014(June).

Chairman TIBERI. Thank you.

Ms. OAKLEY. Thank you.

Chairman TIBERI. Thank you all. Very good testimony.

Ms. Tully, begin with you. You mentioned that the Treasury Department has released temporary relief through 2015, which, I do agree, is a welcome progress. It is my understanding that they have also sought comments on some additional possible approaches that they may take. Can you comment on that—Would that be helpful—Would that be something that would solve the problem that you outlined in your testimony——

Ms. TULLY. Yes, thank you, Chairman. As you mentioned, Treasury did provide relief late last year. And, as a part of that relief, in their notice they actually did request comment on several possible proposals for potential solutions. And while those solutions may potentially help some employers, due to their complexity, and the limited nature of those solutions, we understand from industry organizations that a majority of employers will likely not be able to utilize those potential solutions, and even would have a challenge utilizing some combination of those.

And that is why we actually support a long-term solution, such as what is put forth in the Neal-Tiberi bill over what some of these potential complicated Treasury solutions are.

Chairman TIBERI. So you mentioned the long-term solution.

Ms. TULLY. Yes.

Chairman TIBERI. And without it, in your testimony, you mention that employers might be heading for the exits with respect to those important plans that Ms. Oakley just talked about.

Ms. TULLY. Yes.

Chairman TIBERI. Can you expand on that, from where you sit, as someone who has to deal with reality and not what we would hope would happen——

Ms. TULLY. Absolutely. So, as I mentioned in my testimony, as companies start to come across these non-discrimination testing issues, there are some potential near-term solutions that they can use to solve the problems, such as removing some highly-compensated employees from their plans, or tweaking their plan design. But, again, those become very temporary solutions.

So, from a practical standpoint, when an employer is actually evaluating their choices, and realizing that they need to operate this defined benefit plan, or their retirement programs in general to provide, hopefully, consistent benefits to their employees, they have to make choices for—based on their business circumstances, based on their competitiveness.

And, often times, we are seeing companies are making a choice simply to fix the non-discrimination testing issue permanently, and move directly to a plan freeze, when, in reality, these are exactly the companies that are—were initially trying to make a more gradual transition to that type of a program, and now they are faced with having to make it permanently through a plan freeze.

Chairman TIBERI. Thank you. Mr. Henderson, you correctly mentioned in your testimony—both your written and your oral testimony—that CBO projects that The PBGC multi-employer insurance fund will be exhausted by 2021.

My question is that even the plan that you and I support that you mentioned—solutions, not bail-outs—even if that were signed by the President—and that is an assumption at this point, because stakeholders aren't quite all there yet—but assuming that we ultimately get there, PBGC still estimates that it would need an additional $1.4 billion per year to have a 50 percent chance of avoiding insolvency.

You are an expert in this area, and not everybody is, on the multi-side, in particular. Any thoughts on how we solve the rest of the problem, once we have—we figure out the first part——

Mr. HENDERSON. Thank you, Chairman, yes, I do. The NCCMP proposal includes a number of recommendations. And in total, what I think the—those recommendations are designed to do are to keep today's liabilities inside the plans where they currently exist, and give trustees, both employer and union trustees, new tools with which to address the issues. And, in my experience, every single plan that I am on, and the other plans I have looked at, they are all different, and they all require unique solutions to solve the problems that they have.

So, I can't argue with the contention of some that the, you know, premiums may need to be adjusted by plans contributing to PBGC. But there are a number of other tools that we need. And, in fact, I think one of the main solutions is to keep liabilities inside the plans as long as we can, give trustees the ability to extend the solvency of those plans as long as possible, and thereby avoid, as long as possible, any benefit cuts.

Chairman TIBERI. Thank you. One final question before I turn it over to Mr. Larson. Mr. Hall, I am not an actuary; I don't think anybody up here is, other than maybe Mr. Young. Can you explain to in English what you said, and what it means——

[Laughter.]

Chairman TIBERI. And here is what I am getting at, because I think you made news. The bottom line, with respect to the new report that you are going to issue at the end of December, what does the new data show, in terms of life expectancy and longevity versus what Ms. Tully is going to have to deal with, or Mr. Henderson is going to have to deal with, with respect to their employees.

Mr. HALL. Sure.

Chairman TIBERI. Living longer, I think, is what you said.

Mr. HALL. Yes, thank you, Chairman. We will try to do that.

The RP 2014 tables, especially compared to The RP 2000 tables, the comparison, just to give you a flavor of some of the increasing life expectancies—I don't think it is brand new news that people are living longer, but a life expectancy, for example, for a male who reaches age 65, a retirement age, would be around 82.1 under the old tables. Under the new tables, it increases to 84-and-a-half, so about 2 to 2-and-a-half years of extension. The same for females, where we move from 84.6 years for those who reach age 65, extending out to about 86-and-a-half for females. That is a table comparison without any improvement, but those are the types of increases in longevity that we are seeing, as we move from one table to the next.

Chairman TIBERI. So if you were working for a company and you are in charge of pension plans, this is a big deal. Defined benefit plans.

Mr. HALL. Yes, the—you know, we will leave it to the employers to make those decisions, but longevity is certainly a risk that employers face.

Chairman TIBERI. Thank you, Mr. Hall. Speaking of longevity, I turn to Mr. Larson from Connecticut.

[Laughter.]

Chairman TIBERI. He has been here a long time.

Mr. LARSON. I thought he was going to say age before beauty. But I thank my——

Chairman TIBERI. You are recognized for six minutes because you have such a great——

Mr. LARSON. Well, I think The beauteous chairman for his comments, and also I want to thank him and Ranking Member Neal for both their legislation, and putting this panel together, and this compelling testimony as well.

It is clear, when it comes to multi-employer pension plans, that we are facing a dire and critical situation. I am also reminded, though, of the great wizard of Westwood—I think the actuary will know who that is—John Wooden, who said, "You must be quick, but don't hurry."

And so, we hear an awful lot of alarm from a number of constituents who would be impacted by a decision that needs to be quick, but that shouldn't be hurried. And I think, as Mr. Tiberi pointed out, not all of the stakeholders are completely on board yet, but that is what the—this process should be about, so that we can get to the point where we address this in a timely fashion.

The fundamental principle that we must all keep in mind is that these benefits that were earned by workers, and are counting on for their retirement security, is center and front. To me, this speaks to a broader conversation that we need to have about retirement security for all Americans.

While I support defined benefit plans, as Ms. Oakley points out, there has been precipitous decline in the number of workers that have access to them. Even more concern is that, while many Americans now have access now to defined contribution plans, there are still millions that do not, or have chosen not to participate.

Among those who do not choose to participate, they are not saving enough, as 72 percent of Americans participating in 401(k) plans are not on track to reach their retirement income goal by age 65. That is why I further agree with Ms. Oakley that what we need to do is strengthen Social Security. And I am going to ask you to address that, because I know you didn't quite get to in your statement, what I read in your document, "To improve access to low-cost, high-quality retirement plans and improve the incentives for savings."

So, Ms. Oakley, I would like to focus specifically on the aspect of Social Security in terms of the overall retirement security of Americans. Given all of the evidence that retirement security of millions of Americans is increasingly in jeopardy due to the decline of defined benefit plans and the low rate of saving and defined contributions, wouldn't cuts to Social Security that have been proposed through measures like chained CPI be particularly devastating.

And, as a follow-up, what do you think we can do to help strengthen Social Security benefits. And aren't there ways to make modest changes to make certain that the program is solvent long-term to bolster the obvious need that we hear before us today. Ms. Oakley.

Ms. OAKLEY. Thank you, Mr. Larson, for that challenge.

First of all, I think you are absolutely right. Social Security is the main source of retirement income. And as we look at the recent data just released by the Federal Reserve on the survey of consumer finances, and if you look at all working households, not just those households that have saved, when we look at people who are

10 years away from retirement, the median savings, that typical American, that woman in—outside of Dayton, that household today has just about $14,000 saved for retirement. And that is somebody who is between 55 and 64. If we look at all Americans between 65 and 25, it turns out that we actually lost ground from even just 3 years ago. The median savings is $2,500 in retirement accounts, be it an IRA, a 401(3)(b), 401(k) plan.

So we know—and we also know, at the same time, that there is scheduled cuts already to come in Social Security. So, you are absolutely right, the people can't afford any more cuts. And I think, as we look at what can be done, you know, Social Security, as Mr. Gold said, you have got a choice of benefit cuts or finding a way to prefund some of those benefits with increases in the contributions.

In survey, many surveys that have been done, including ones by my organization, there is strong public support for Social Security, because I think Americans know it is going to be a key part of their retirement, and they are willing to take a little bit more of a cost, either by having the cap raised, or by requiring greater contributions. And the sooner that is done, the quicker it happens.

And, with regard to just broader savings, your state, for example, in Connecticut recently adopted legislation asking the state to look at is there a way that they can provide those employees in Connecticut who currently don't have savings something that is low cost, and will actually get them through retirement.

So, I think there is a lot of new things going on that need some help out there, too.

Mr. LARSON. Well, I thank you. I know our time is up. And because of the longevity comment, I was given just——

Chairman TIBERI. I gave you an extra minute.

Mr. LARSON. Just 30 seconds. Just 30 seconds——

Chairman TIBERI. I will give you 30 seconds——

Mr. LARSON. By way of——

Chairman TIBERI. You are such a good sport.

Mr. LARSON. By way of anecdote, and—which I again commend you and Mr. Neal for—these things are personal. And when you talk to people in a wealthy state, like Connecticut, and you find that women are subsisting on a total of $9,000 a year from Social Security only, you begin to deeply appreciate what they are up against, and why all these measures are interconnected, necessary, and we have to be quick. But we can't hurry.

Chairman TIBERI. Thank you, Mr. Larson. That would be something like, I would think, Philosopher Pascrell would say. So——

Mr. LARSON. He is the poet Laureate of——

[Laughter.]

Chairman TIBERI. Thank you so much. A leader in retirement issues, Mr. Paulsen from Minnesota.

Mr. PAULSEN. Thank you, Mr. Chairman. You know, the irony is that I just learned my brother, who is an actuary, is actually in Connecticut, as we speak, at an industry roundtable, going through these same exact discussions, which is kind of interesting.

But, Mr. Hall, I just want to dive into a question here a little bit—greater detail, what you just touched on, this longevity issue with mortality rates and the tables you deal with, because, you know, the reality is that the longer beneficiaries are expected to live, the larger the plan's future obligations are.

So, if mortality is improving, you know, two-and-a-half years, and some of those numbers you mentioned, the plan-sponsored pension liabilities are going to be increasing significantly. So do you expect plan sponsors, then, to consider a variety of changes to avoid the substantial cash contributions, irrespective of interest rates and rates of return, that will be required with this improvement in mortality?

And, if so, what are some of the changes that plan sponsors would consider making to avoid that potentially significant increase? Because that kind of gets to the crux of the matter.

Mr. HALL. Yes, the Society of Actuaries wouldn't have any specific guidance for plan sponsors. I think that we would encourage actuaries working with those plans to take the data that we have done through our mortality studies, combine it with specific plan information, and then work and encourage plan sponsors to come up with decisions that are best for their particular plan.

Mr. PAULSEN. And maybe, Ms. Tully, you can kind of—but, you know, math, this is just numbers, this is arithmetic. I mean what are some of the options that you might have to look at, as an employer taking care of your employees, or Mr. Henderson, just to follow up on that.

Ms. TULLY. Well, generally, I think that each company has to evaluate their specific circumstances from a plan design, demographic, and financial standpoint. And they do that on a continual basis, as do we. I am aware of the mortality studies that are out by the Society of Actuaries and, you know, there is no doubt that people are indeed living longer, as they indicated. But at this point we don't have any current plans to change our plans at this time.

Mr. PAULSEN. Okay. Mr. Henderson.

Mr. HENDERSON. Thank you, yes. The question about increasing contributions, obviously, Kroger is committed to making the contributions that we need to make. In fact, we contribute over $250 million a year to multi-employer plans. In effect, that is 10 percent of our pre-tax earnings. So contributions is not really the issue, it is the demographics inside these plans that are causing the problems.

In fact, as much of the testimony here illustrates, for every dollar we contribute to multi-employer plan, a great percentage of that goes to fund orphan liabilities. So, justifying making voluntary contributions to plans is just very difficult for employers to do. And smaller employers, particularly, simply can't do it.

Mr. PAULSEN. Good, all right. Thank you, Mr. Chairman. I yield back.

Chairman TIBERI. Thank you, Mr. Paulsen. Mr. Marchant is recognized for 5 minutes.

Mr. MARCHANT. Thanks for your testimony today. Following up on what you stated—this is for Mr. Henderson—can you speak more on the process of the National Coordinating Committee for Multi-Employer Plans, and what process they went through in defining their plan. And, in your opinion, did these recommendations from The NCCMP adequate address the issue if imminent insolvency?

Mr. HENDERSON. I wasn't a member of the committee, I wish I had been.

The NCCMP was a broad collection of participants and employer sponsors and unions and actuaries. And, Mr. Chairman, I am not an actuary, either. I am surrounded by them today, I have great respect for them. And, quite frankly, we won't solve these problems without their help. But the coalition that created the proposal is a broadly diversified group that includes both union and employer sponsors. In fact, we have written at least two letters jointly with the president of the United Food and Commercial Workers Union in support of those proposals.

So, I think what it illustrates is that all the participants in these plans recognize how severe these problems are, and are proposing solutions that will help us.

Mr. MARCHANT. Can you speak to the importance and effects of the reform and inaction, and what kind of effect it would have on Kroger's business model, especially on job creation and company growth.

And then I would like for you to speak a little further on the orphan issue that you mentioned.

Mr. HENDERSON. Well, I will take the orphan question first, actually. It is—in many of the plans in which I am familiar, the total liability of these plans, up to a third or even 40 percent of that total liability has been created by the exit of previous employers. Some were—due to bankruptcy, were unable to pay any of their withdrawal liability.

Some withdrew for other reasons, and either—because the rules may or may not require them to pay all of the liability that they owe, that leaves orphan liability—in fact, several years ago we did something extremely unique. We—working with The UFCW, we combined four multi-employer plans into one multi-employer plan and achieved—there are a number of benefits associated with plan consolidation, which is a number of the proposals in the—to support plan consolidations and the benefits that you can enjoy.

But when we consolidated the liabilities of those four plans, the combined liability of those plans was $3.5 billion, and approximately 1 billion of it came from orphan liabilities. That is liabilities for people who didn't even work for Kroger, much less work in the industry, itself. Now, again, we were able to—for the benefits we achieved, and working with UFCW, we were able to consolidate the plans and fully fund that plan today. So I clearly would support the proposals in The NCCMP proposal that support consolidating multi-employer plans.

Mr. MARCHANT. Thank you, Mr. Chairman.

Chairman TIBERI. Ms. Schwartz is recognized for 5 minutes.

Ms. SCHWARTZ. Thank you. I was nervous about the introduction, so thank you for being quite straight-forward about it, and no adjectives.

So, appreciate the panel and the hearing today. Certainly is a serious issue before us. And I do think we need to put this in both the context of how difficult it is right now, given the potential insolvency, and—as well as the demographic shifts, and some of the rules for the multi-employer plans to work, and to be able to continue a defined benefit program for their employees. Obviously, that is what we are talking about.

I think it was very helpful to have Ms. Oakley in front of all of us to realize how important this is to real Americans out there, who have planned very carefully, some of them, for exactly what they expect to get from their own personal savings, from employer benefits, how many of them define benefits, and from Social Security. And any one of those three getting messed up has huge implications for those families.

I met a woman in my district who said she had figured very carefully about how to do this, but had not calculated that she would have to pay for cable, because nothing existed when she was planning it 20 years, to worry about that, or a cell phone or even a computer. And those were real costs that she had not counted on. So we haven't even discussed the fact that there are real—the realities for people out there, as well as the fact that we have just come through a very difficult recession. And the undermining of 401(k) plans has created tremendous uncertainty for Americans who have saved responsibly.

Now, we all have a responsibility to help young people figure out how to save, and we have—there are suggestions, obviously, legislatively, about how we can encourage that.

I don't think we want to change the demographic issues that—pointing out we don't—we are not likely—nor do we want to say that you should not live as long as you do, so we just have to accept the realities of that.

So, I think what—my question for all of you—and I particularly appreciate some of the reality check Mr. Henderson has been providing. I have been to Kroger. If you shop at all in the southeastern part of the United States it is hard to miss, so I have been to your stores. And thank you for the level of responsibility you have taken in providing these defined benefit plans.

So, just a couple questions, if I may, and I will start with Mr. Henderson, is you have referred to some actions we might take. But, given there is legislative proposals on the non-discrimination piece that Ms. Tully talked about, what else could Congress be doing to encourage potential responsible employers to take more responsibility in moving to prevent insolvency and, particularly in multi-employer plans, how do you make sure that the responsible employers are not left holding all the responsibility, which is happening. It is one question.

And, two, given that you seem to be committed to, thankfully, a defined benefits plan, and all of the comments have been that we are moving away from that, what else could we be doing legislatively to encourage defined benefit plans, given that there is almost an assumption that they are going to go away, when, in fact, so many Americans are going to rely on that.

So, those two questions, if I may.

Mr. HENDERSON. All right, thank you for the question. We will soon have almost 400,000 employees in the company, and we sponsor DB plans, both internal to the company—a single employer plan—and the 36 multi-employer plans that we are in. My company sponsors a defined contribution plan, a 401(k) plan that has over $7 billion of employee and money matching contributions invested in it.

I guess over—my experience tells me that, especially in DC plans, communication is critical with the participants. You—in a nutshell, you have to start early, you have to save, and you have to be diligent about that over your lifetime. And then, as your risk profile changes as you age, you need to be aware of that, and make the appropriate changes.

So—but back to your first question about the other actions that we can take. Again, back to the NCCMP proposal, and other comments that have been made by folks at the PBGC themselves, we need—we could certainly use help in promoting plan consolidations. We could certainly use help in incentivizing plans, both single employer and multi-employer, to overfund those plans, if they can.

When conditions are good and returns are good, if we could overfund those plans—in effect, save for a rainy day—the system as it is today really does not incentivize you. In fact, there is a disincentive to fund the plan to 100 percent. And I think, if we change the rules and incentivize plans to overfund their plans when they are good—and, again, I—you know, Mr. Gold's testimony is the situation is bleak on multi-employer plans, as I testified. And, if you listen to Mr. Gold, it is actually even worse.

So, I do think anything we can do to promote changes in the system, to consolidate plans, incentivize contributions to plans, keep the liabilities inside the plans, because, frankly, based on the expert's testimony, the PBGC will not be there to support those benefits.

Ms. SCHWARTZ. It is a very fair warning, given that we have had our own actions, and ones that many of us have questions about, the whole issue of smoothing—these are not particularly good ideas when we are looking at what happens in 10, 20 years. When we can, we should be making those investments. So thank you for your comments.

Chairman TIBERI. Thank you, Ms. Schwartz. Mr. Schock is recognized for 5 minutes.

Mr. SCHOCK. Thank you, Mr. Chairman. Thank you, first, Mr. Chairman, for holding this hearing. I think it is a very important topic, and I know you and I have worked together on some of your past legislative proposals, some more welcome and controversial than others.

First I would like to ask Mr. Henderson. Obviously, we are aware that there is a problem here. To put you up here on the dais, I would suggest to you that for us to be able to do much of what you are proposing and others requires not only the political will of Members of Congress, but also the desire of our constituents. And, as a frequent shopper of Kroger myself, I will tell you that I have not had a bagger or a cashier or someone in the bakery department talk to me about this issue.

So, my challenge to you would be what is your organization doing to inform, educate, and motivate the thousands of employees that you have that are voting constituents of our districts to, first, make them aware that there is a problem with their pension, and, second, to motivate them that if, in fact, nothing is done, as suggested, in a decade, it goes belly up, and their benefits are in question.

Because that is really, I think—you know, there is different levers that we can tweak, you have done a great job in outlining them. But help assure me that you are going to go back here today, not only leaving us with a list of things to do, but also a willingness and a desire to go back and help fire up the troops and educate the very constituents that we are all here today talking about trying to help.

Mr. HENDERSON. Thank you, Congressman, and I am, frankly, glad to say that the majority of Kroger's—the plans in which we participate, in fact, are what I would describe as certainly better funded, if not well funded.

In fact, if you look at our annual report, the disclosures which are now required by the accounting profession require us to disclose certain pieces of information about the significant plans in which we participate. In our annual report there are approximately 12 large plans in which we participate. Seven of those plans are described by the PPA as being "red zone" plans, and they have qualified rehabilitation plans in place. And for all but two of those plans, the funded status of that plan, the way we measure it today, is over 80 percent and improving.

My point is that the provisions of the Pension Protection Act—speaking, again, as an employer trustee who has had to make these kinds of decisions—the provisions of the Pension Protection Act are working and have improved the funded status of multi-employer plans, certainly within the group that Kroger participates in.

The example that I have to go back to, however, is Central States. Based on all of the projections, the demographics just simply overwhelm the finance in that condition.

Mr. SCHOCK. Do the Central States employees understand their plan is underfunded——

Mr. HENDERSON. You know, I am not sure that they do, because the communication—it gets confusing. It is a highly complicated subject.

Quite frankly, you know, we are kicking around numbers here, billions of this and billions of that, as if it is more or less Monopoly money. I try to put a more human face on this. There is someone my age who has been driving, you know, a truck for Kroger for decades safely and on time. And he is probably getting ready to retire, and he is looking at a retirement benefit out of the Central States plan of maybe—well, the average—and with respect to the actuaries on the panel——

Mr. SCHOCK. I am sorry, I am running out of time.

Mr. HENDERSON. Okay.

Mr. SCHOCK. The point is they need to know that it is underfunded. They need to know there is a problem. And we don't need to talk to them out in billions, we need to talk to them about their several thousand dollars a month they are thinking they are going to get isn't going to be there, because it makes it easier for us to then help you——

Mr. HENDERSON. But the rules——

Mr. SCHOCK [continuing]. Accomplish what we are trying to do.

Mr. HENDERSON. Yes, sir. With the rules in place today, their benefit——

Mr. SCHOCK. The other question I want to ask you, Mr. Henderson, and also Mr. Gold, perhaps, is these red zone plans that have been identified as basically—their liability being so great that if we actually made them pay in what they needed to pay into the multi-employer pension plans, they would fold, we say, "Well, gee, for the sake of keeping you in, we won't charge you." But, in fact, that only makes the problem worse.

So, I guess, as a member of the multi-employer pension plan, Mr. Gold, who studies this, I am just curious, what are we to do——

Mr. HENDERSON. You want to go first——

Mr. SCHOCK. Are we doing the right thing, allowing for red zone plans to basically get a freebie for the time being, but yet not fixing the unfunded liability that their employees have created? Or is there some other path that we should be looking at to help keep them in the multi-employer pension plan, but also not exacerbate the unfunded liability——

Mr. GOLD. Well, I don't have any magic to offer. It is—the one way to describe the way we are treating them today, it is palliative care. And that may be as much as we can do for those really, really troubled plans, which I think is the subject of your question. Much of my focus is on the healthier plans, and how to keep them healthy over an extended period—for generations, perhaps—and that is why I focus on the understatement.

I agree with Mr. Henderson that the—for these terribly troubled plans, the demographics overweigh the financial issues. And it is the financial issues for the healthier plans which also trouble me.

Mr. HENDERSON. Okay. And, first, I am reminded that, based on the funded status of the Central States plan, we—the plan is required on an annual basis to send a funding notice, if you will, to all participants of the plan about the condition of the plan. And so all of the members of the Central States plan—participants should have received a letter describing the status of that plan to them.

Mr. SCHOCK. Great. Thank you both, I appreciate it.

Chairman TIBERI. Thank you. The gentleman from Indiana, Mr. Young, is recognized.

Mr. YOUNG. Thank you, Mr. Chairman. I thank all our panelists here today. I just would like to begin by first acknowledging the concerted and affirmative efforts of Kroger—and I know Raytheon, because I visited your facilities—to hire veterans. I think that is very important during this period of time.

I am really pleased that the chairman has convened this hearing to discuss the integrity of private defined pension benefit plans. There is no doubt, based on some of the grim assessment that we have heard here today, that—and especially as it pertains to retirement savings more generally—that we need to act, and act boldly here in Congress.

I know there is one affirmative step that this Committee can take that will help improve that situation for hundreds of thousands of American workers. And this is a bit of a departure from what we have been talking about, but it bears mentioning, I think. I would hope we work together in coming months, and perhaps beyond, to support and protect from adverse DOL regulations ESOPs. This business formation results in employee-owner saving for a secure retirement by owning a piece of where they work.

Ms. Tully, back to the primary focus of this hearing—I appreciate your testimony today—and specifically your focus on non-discrimination rules, there is obviously a well-intentioned rationale behind the existence of these rules, and so forth. But our workforce has changed and will continue to change, and we clearly need to step back and analyze those rules anew.

With that in mind, I applaud Chairman Tiberi and Ranking Member Neal for their work together on this issue, and I hope the full committee at some point can fully consider H.R. 5381. We have to get this right, bottom line, for the benefit of both the companies and the beneficiary.

Ms. Tully, during your testimony you spoke to some length about the impact the non-discrimination rules have on employers, and also that the IRS granted certain non-discrimination relief through 2015. With that in mind, can you discuss a bit about how Raytheon currently operates their benefit plan in order to comply with the non-discrimination rule structure, and how that would change after the IRS relief expires——

Ms. TULLY. Sure, thank you. So our plans currently pass all of the testing requirements under the non-discrimination rules, and we do not actually need to utilize the testing relief at this point that the Treasury has offered. And if we were to run into testing issues, we would evaluate our situation then, and determine what our next steps would be with respect to our plan.

Mr. YOUNG. Mr. Henderson—you have thoughts on that question——

Mr. HENDERSON. Well, at Kroger, on the single-level employer plan we face the same issue with respect to the non-discrimination testing, and we support what the young lady from Raytheon is proposing, as well.

Mr. YOUNG. Thank you. Ms. Tully, in reference to other proposals that might help mitigate or, ideally, eliminate this current problem, what if we changed the definition of highly compensated employees—or are there other solutions that might work outside those proposed by my good colleagues Messrs. Tiberi and Neal——

Ms. TULLY. Yes. So one potential short-term option could be to change the definition, as you mentioned, of highly-compensated employees, or make some other fixes, I would say, around the edges of these rules. But any change such as that would be a temporary solution, and wouldn't actually fix the long-term problem.

And also, because of the nature of these complex actuarial ratio tests that are used in the rules, there is actually a chance that changing some of these provisions, such as the definition of "highly compensated employees" could cause some employees—employers to actually fail the test with such a change.

In terms of other possible solutions, there could be other possible solutions. I believe our perspective is that those solutions need to be focused on the long-term fix for employers, versus the short-term sort of Band-Aid solutions to this issue. And you know, one possible additional long-term fix may be to simply apply a general grandfathering rule that would allow for employers who had passed all of these testing provisions at the time that they were open, or at the point at which they were closed, to continue to be considered passing in the future. So that is just another possible solution.

Mr. YOUNG. Thank you for sharing your perspective. I yield back. Thank you.

Chairman TIBERI. Thank you. Mr. Kelly, welcome to the subcommittee. You are recognized for 5 minutes.

Mr. KELLY. Thank you, Chairman, and I appreciate it, and thank you all for showing up.

My concern, because I come from the private sector, is the private sector. And when you look at ERISA, their concerns are only with private-sector pension plans. Is that correct? So if there is the public sector—so if you were to say, well, the Federal, the state and local governments, churches, none of those are covered by this—and one of the problems—is that a wrong statement, Mr. Gold——

Mr. GOLD. The central provisions of ERISA apply almost exclusively to the private sector, as you say.

Mr. KELLY. Okay.

Mr. GOLD. There are some church plan rules and some other things. That is why you saw the look on my face.

Mr. KELLY. No, that is okay, because I am really concerned about this, because it seems to me it is kind of a two-sided coin, or a one-sided coin.

Let me just ask you this, because I have a great deal of—number of small employers in my district. I am going to read this to you, because I think it is important to get this point across. I have a company, Channellock, who—they make very high-precision tools, tools that almost every tech in the world uses. They have been in business since 1886. Mr. Diamond questions me about this all the time. Let me ask you this.

Private sponsor of traditional pension plans must fund their plans using an average, high-quality corporate bond rate, as modified as MAP–21, and they must also pay PBGC premiums to cover other employers who defaulted on their plans. These rules have caused almost every private employer to discontinue providing pension benefits.

In addition, the expense of these plans has increased dramatically. Low interest rate environment and high PBGC premiums, so job creation of our best employers has been hampered in recent years now.

There is little incentive for an employer to overfund their plans, due to significant excise tax on the return of excess funds in the plan when a plan is terminated. And, in addition to paying taxes on the reversion of excess funds, which is reasonable, there is a 20 percent excise tax, at best, and it could be as high as 50 percent.

For example, Channellock's pension plan. By government standards, which generally uses a long-term rate expected on trust fund assets of 7½ percent, is 100 percent funded. However, by private industry standards, they are significantly underfunded. Annual funding requirements are about $1 million per year. PBGC premiums are currently around 200,000, and are scheduled to increase to around $450,000 in the next two years.

Now, these are some solutions that they are offering. Eliminate the excise tax and reversions of plan assets from pension plans.

Without concerns of high penalties from overfunding, employers will be more likely to prefund their plans, knowing that they can recover the excess in the future without huge penalties, or change the funding requirements of The PBGC premiums to be computed using a long—using a reasonable long-term rate of return expected on a trust fund. So, for example, it would be seven percent.

The reason I bring it up—Every one of these things that we just talked about is a cost of doing business for them, and it adds to their burden of doing what it is that they do. And it just doesn't make sense to me that we put so much weight on the private sector and yet, on the public sector, if they are underfunded, the responsibility falls back on the taxpayers to make them whole.

Yet, in the private sector, we put this burden on them, the exact people we need to lift us out of this malaise that we are in right now. We are making it harder for them to do business, and we penalize them for salting away money in the good years so they can cover the bad years. And it doesn't make sense to me. And I have people ask me all the time, they say, "Well, I don't understand how some companies, who made huge profits last year, are paying no taxes, and yet I am paying taxes every year." And I said, "It is very simple; it is part of our Tax Code. You have carry-forward losses."

Do you have an opinion on any of these things, The PBGC specifically—Are those premiums excessive, and are those putting such a burden on our private-sector people that they are deciding to walk away from what they thought was an excellent benefit for the people that work with them——

This is a company that was founded in 1886, they are strong employers, they are strong members of the community, and yet those are the people that we always put the heaviest burden on. And I got to tell you, at some point, it is the old story, "Don't worry about the mule, just load the wagon." I think the mule is ready to unhitch himself and walk away from this burden.

Yes, you can—please, you said something and I thought it was great: Good policies cannot be based on bad numbers. And I think, if you start with bad numbers, you are going to end up with bad policy.

Mr. GOLD. Well, I may not give you that much satisfaction, because——

Mr. KELLY. I am not looking for satisfaction, I am looking for fairness.

Mr. GOLD. First, I am not a fan of those excise taxes. They began with Senator Metzenbaum in the eighties, and they were solving a problem we no longer have today.

But the cost of defined benefit pension plans, particularly in a low-interest-rate environment, is higher, by far, than it was in the 1980s or at any time when interest rates were higher. That is just the laws of finance.

But I am always troubled by the thought that we are in some way, by demanding contributions to pension plans, either injuring the economy or injuring job prospects, and here is the reason. That money does not go down a rat hole. The money contributed goes right into the capital markets, where it then becomes available for new investments. And the secret of the capital markets is they try to deliver that money to those companies with the best forward-looking prospects. And that means that, while individual companies may be strapped for pension costs, and perhaps considering lightening their workforce, the economy, as a whole, is actually stimulated by the collection of pension contributions, which are tax deductible, which lowers taxes and, therefore, is also stimulative.

So, I do not find—I understand for individual companies that pension contributions can be burdensome, but in the aggregate I don't find that to be true.

Mr. KELLY. Well, I agree, in the aggregate, I understand. And a lot of the projects we see are being funded now by pension funds. I talked to people who do those projects, and they really go to the pensions to find that money to be invested. But if you are Channellock, and you are facing this, it drives the cost of your finished product—I think there is a disconnection between the private sector and the public sector. They believe—"they," believe the public sector—that it doesn't matter what your costs are, just add it on to the purchase price. I got to tell you, when people have a choice, price point is very important.

So, if it costs you more to make a product and to put it on the shelf, and you have to charge more for it, there is—chances are you won't sell as many. If you don't sell as many, you don't need to make as many. If you don't need to make as many, you don't need to employ as many. I think we put a heck of a burden on the private sector and walked away from it. Because, in the public sector, the taxpayers will eventually make up the difference between what is underfunded and not, and it just doesn't work that way.

Mr. Hall, I appreciate your talk when you talk about mortality. I mean the longer we live, the greater access we have to these funds, and it does create a problem down the road. I want to live as long as I can. But, by the same token, I know that at some point we run out of the ability to fund all those things.

So, thank you all for being here. But it is a great concern, especially in the private sector. And it, to me, comes down to sustainability. Can we sustain these programs—And often times our hearts are willing, but our wallets are weak, and I think we are running out of time on this.

Thank you, Mr. Chairman.

Chairman TIBERI. Great way to close. Thank you, Mr. Kelly. Great hearing, great testimony, great questions.

This concludes today's hearing. Please be advised that Members may submit written questions to the witnesses. Those questions and the witnesses' answers will be made part of the record. I would like to thank all of you for appearing today, for your time. It has been super educational, and it also demonstrates, again, the challenges that both single-employer and multi-employer plans and pension plans face.

That is it for today. This hearing is adjourned.

[Whereupon, at 11:40 a.m., the subcommittee was adjourned.]

[Submissions for the Record follow:]

AARP

Real Possibilities

STATEMENT FOR THE RECORD

SUBMITTED TO THE

SUBCOMMITTEE ON SELECT REVENUE MEASURES
ON THE COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ON

"Private Employer Defined Benefit Pension Plans"

SEPTEMBER 17, 2013

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Introduction

On behalf of our more than 38 million members and all Americans age 50 and older, AARP appreciates the opportunity to submit a statement for the record on the importance of defined benefit pension plans to workers and retirees, and to specifically address one issue of critical importance to older individuals, proposals to dramatically change the legal rights and protections of retirees covered by multiemployer pension plans.

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

It must be recognized that some deeply troubled multiemployer plans face potential insolvency within the next two decades, or sooner. If this happens, only very low levels of insurance from the Pension Benefit Guaranty Corporation (PBGC) for multiemployer plans will be available – a *maximum* of $12,870 for a 30-year participant – and even that amount is not guaranteed due to the structure of the multiemployer insurance formula and because the PBGC's multiemployer insurance fund itself has far less than it needs to pay projected claims. In the event that the PBGC fund runs short, participants would receive less than the insured amount, or possibly even nothing at all. AARP agrees that "doing nothing" in the face of these threats is not a useful option.

The Committee has been asked to consider a proposal drafted by the National Coordinating Committee for Multiemployer Plans (NCCMP) called "Solutions, Not Bailouts" report.[1] The NCCMP proposal lays out in detail the forces, risks, and liabilities weighing on both employers and employees in multiemployer plans. It seeks to keep troubled plans from becoming insolvent so as to ensure that working-age active participants who are contributing to the plan and retirees who are already receiving their hard-earned pensions receive benefits that are above PBGC-insured levels. However, AARP has deep concerns about several aspects of the plan; chief among them is that it would grant plan trustees broad discretion to cut accrued benefits for participants – *including the unprecedented step of reducing the pension benefits of retirees in pay status* – to achieve solvency. Not surprisingly, AARP strongly objects to this element of the proposal. We are also troubled that such a fundamental diversion from pension law could move quickly through the Congress with a minimum of public attention. We urge this Committee to

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[1] R. DeFrehn & J. Shapiro, *Solutions not Bailouts: A Comprehensive Plan from Business and Labor to Safeguard Multiemployer Retirement Security, Protect Taxpayers and Spur Economic Growth* (National Coordinating Committee for Multiemployer Plans, Feb. 2013), *available at* http://webiva-downton.s3.amazonaws.com/71/59/b/39/1/Solutions_Not_Bailouts.pdf [hereinafter *NCCMP Proposal*].

more closely examine this proposal to avoid undermining one of the central protections for participants under ERISA and to instead consider many other available altern*atives*.

An Unprecedented Attack on Promises to Retirees

The centerpiece of the NCCMP plan is a proposal to give multiemployer plans the legal authority to drastically cut the pension benefits of *retirees*, people already receiving and living on their pensions. It is based on the contention that plans have already done everything else they can possibly do and that "[b]enefit suspensions that preserve benefits above the [very low] PBGC guarantees are preferable to plan insolvency.[2] It does this by offering a benefit floor that is no lower than 110% of the PBGC's insurance level.

Here is what this would mean. Because of the very different way the multiemployer formula is structured compared to single employer plans, even participants whose pensions are under the maximum insurance amount of $12,870 would face cuts. Under the NCCMP's 110% plan, an 80-year-old retiree with a modest $12,000/year pension after 30 years of service – $1,000/month – could instead receive as little as $10,984/year, a total cut of $1,016/year. That represents a loss of more than one month's worth of income every year. How does that retiree pay for food, medicine, housing, and utilities for that lost month? How, exactly, is that retiree expected to make up for that lost income? A retiree with a $24,000/year pension, or $2,000/month, could have her or his benefits cut a whopping 41%, down to $1,180/month, or $14,160/year. That is a recipe for drastically reducing the standard of living of a median income retiree to an income barely above the poverty level. Both of these examples are pensioners with 30 years of service – a lifetime of pension earnings that deserves better. Retirees with fewer years would receive even less. Presumably, surviving spouses would have their survivor pensions cut as well.

Proponents state that, if nothing is done, participants and retirees in an insolvent plan could receive the inadequate PBGC insured level of benefits, *without* the 10% premium. However, this is not a sufficient argument for cutting retiree benefits and upending ERISA protections. If ERISA stands for anything, it stands for the proposition that already accrued benefits cannot be reduced. The law provides that *future* benefits can be pared or frozen, but not benefits that have already been earned and vested. The "anti-cutback rule" is perhaps the most fundamental of ERISA's participant protections. As a result, we urge this committee to explore and institute alternatives, as well as focus on strategies that increase the PBGC's capacity to assist plans and its multiemployer plan insurance levels.

AARP understands that active employees have already shouldered reductions in the form of increased contributions and scaled-back future benefits. According to NCCMP, employers have also increased their contributions to the point of straining their competitive bidding for jobs. NCCMP is also concerned that the plans may reach a tipping point, prompting old employers to withdraw from the system and new employers to refrain from participating. In addition, NCCMP has expressed concerns that active workers may be prompted to abandon their participation for fear that they'll pay into plans but never see a retirement benefit themselves when they retire. All of these are legitimate concerns.

And AARP would be the first to agree we should take all reasonable steps to help preserve defined benefit plans for the sake of retirement security of the workers. The reason is simple –

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[2] *NCCMP Proposal, supra* n. 1, at 24

everyone recognizes the value of DB plans that offer *defined*, guaranteed, insured benefits – an income stream that can't be outlived or reduced.

But, the retirement security offered by DB plans would become illusory if, after having worked a lifetime and earned that pension – which is, after all, income in the form of deferred compensation – your benefits can be cut after you've already retired. If pension benefits can be taken away after one retires, the fundamental value of a DB plan is lost. NCCMP has expressed concern that active workers may lose confidence and be unwilling to pay into an insolvent plan. However, AARP can 4 imagine a similar if not greater loss of confidence for active employees who witness cuts to retirees' earned benefits. Some have also argued that cuts to retirees' benefits are a matter of internal equity between active workers, who have already seen benefit givebacks, and retirees, who have not. Far from creating a sense of equitable sacrifice, the broken promises to retirees may irreparably damage the trust active workers could have that they will collect their own earned pension benefit at retirement. It is also important to acknowledge that the proposal contemplates that the multiemployer community in the very near future will need to revisit these issues, either to create and substitute new plan designs or maintain the authority of these new plans to cut accrued benefits for active participants and retirees.

What is missing from the NCCMP proposal is an explicit recognition of the strong reasons against cutting accrued benefits for retirees or near-retirees. Historically, there has been a broad consensus that any plan modification that leads to benefit reductions should protect (hold harmless) retirees as well as near-retirees (e.g., those within 5-10 years of retirement age). For good reason: those in and near retirement are either already relying on that income, which is usually modest in amount, or have already made near-term plans in reliance on that income. In the case of retirees, most do not have any meaningful opportunity to return to the workforce or somehow generate new sources of income; in the case of near-retirees, they are deemed too close to retirement to be able to effectuate any significant change in career or retirement plans. It is widely viewed as simply unfair to change the rules of the game people have relied upon throughout their working careers.

Accordingly, other alternatives should be fully explored and deployed as an alternative to cutting *anyone's* accrued benefits. AARP believes that rather than considering abrogation of the anti-cutback rule, alternative measures must be considered and pursued.

Alternatives to Cutting Accrued Benefits

1. Require Steps Plans Can Take Now

AARP believes distressed plans should take all possible steps to rehabilitate themselves under current law. This has not always happened. For instance, according to a report earlier this year by an Independent Special Counsel for the Central States Pension Fund,[3] the fund's rehabilitation plan adopted two approaches available for employers and unions to adopt in their collective bargaining agreements to help improve plan funding. One permitted agreements to maintain benefits but required increased employer contributions. The other approach required the parties to agree to a less attractive menu of increased contributions (though not as high as the first option) and cutbacks in "adjustable" benefits such as early retirement provisions. Most

[3] Quarterly Report of Independent Special Counsel (from David H. Coar to US Dist. Judge Milton Shadur) 4-5 (April 29, 2013), *available at* https://www.tdu.org/sites/default/files/CSPFSpecialCounselReportYearEnd2012.pdf.

employers and unions in the plan chose the first alternative. During Central States' 2012 rehabilitation plan update process, the pension plan staff reportedly advised the trustees that further "reasonable measures," above and beyond the increased contribution rates, were needed to forestall "possible" insolvency. Based on the fact they had already substantially increased employer contribution rates, raised the minimum age of retirement to 57, and reduced future benefit accruals, the trustees decided not to impose any further benefit reductions or contribution increases.

The Pension Protection Act's (PPA) grant of authority to cut back accrued "adjustable benefits" was a troubling development for AARP. However, as long as the PPA already authorizes these additional steps, which if taken might materially improve the condition of troubled plans, all reasonable measures should be *required* to be taken before any other cuts to accrued benefits are ever considered. In this case, it would first be important for stakeholders and lawmakers to know exactly how much in savings and increased solvency could be gained by making these cuts.

2. Enhance the Ability of the PBGC to Assist Troubled Plans

When single employer plans undergo distress terminations, the PBGC receives any remaining plan assets, takes over the plan, and pays benefits directly to participants and beneficiaries. With multiemployer plans, generally, the PBGC can only step in once a plan becomes insolvent, in which case it has no assets. It makes "loans" to the plan, and the plan continues to pay benefits. If the PBGC could step in sooner, with more tools at its disposal, it might be able to stave off insolvency, minimize losses to participants, and mitigate its own liabilities. To better assist troubled plans, the PBGC needs the legal authority to act where it is lacking, and the financial resources to enable it to negotiate changes and restructure plans.

· **Mergers and Alliances** - AARP agrees with NCCMP that mergers and alliances with healthy plans should be encouraged, and not only for small plans. Yet, the NCCMP report states that although many smaller troubled plans could benefit from mergers with healthier plans, funding rules under the PPA and the PBGC's recently restrictive interpretation of its authority are barriers to allowing this to happen. To the extent that overly narrow interpretations of its authority are getting in the way of this potentially helpful strategy, AARP agrees that the PBGC's authority to facilitate mergers and alliances prior to insolvency should be affirmed. Lack of funds to intervene, however, would appear to be the larger obstacle. In any case, merging weaker plans into healthier plans is one promising approach.

In addition, it would be worth exploring whether multiemployer or single employer plans with overlapping sponsors might be able to combine participants or assets in a way to materially assist troubled plans and still protect participants. Normally, the exclusive benefit and fiduciary rules would and should prevent transfers of assets from one plan to another; however, under very narrow circumstances, limited transfers of assets between one employer's plans are permitted with the goal of helping preserve benefits for retirees.[4] If it could be effective and make a difference, the possibility of transferring one employer's participants from one plan to another should be considered in order to increase the base of contributing active participants or otherwise protect retirees. Similarly, some employers and unions participate in more than one plan, some of which may be healthy and one of which may be distressed. Where the same employers and unions jointly trustee both healthy plans and troubled plans, Congress should consider allowing the PBGC to be able to compel a related healthy plan to contribute funds to a

[4] *See e.g.*, I.R.C. § 420 (transfers of excess pension plan assets to retiree health accounts).

weaker plan, without violating ERISA. Certainly, healthy plans should not undertake steps that would put the better-funded plan at risk of underfunding. However, to the extent pooling assets and liabilities in this way might work to save a portion of at-risk participants from cuts in accrued benefits, this step should be considered.

· **Partition** - The PBGC has rarely used its authority to partition the benefit obligations of employers who failed to make contributions or went bankrupt. [5] Assuming that the PBGC had the funds needed to partition off and cover participants whose employers no longer contribute, this step could improve the solvency of the plan for remaining participants. In the case of deeply troubled plans, though, it is unclear whether this remedy would be sufficient to restore solvency, because other factors have also contributed to the distress of these plans. However, partition might help staunch concerns about *further* withdrawals from the plan. Unfortunately, this strategy doesn't avoid benefit cuts, at least for those partitioned into the PBGC-assisted plan. Thus, it is critical that increases in the insurance levels covering all multiemployer plans accompany any partitions, whether done within a plan or as part of a merger.

· **Additional Authority** - The PBGC has little leverage to compel plans to improve funding levels. Congress should consider giving the PBGC greater authority, consistent with legal constraints, to compel troubled plans to take steps that would shore up their funding status and to take steps to better protect plan participants.

3. Increase Funds for the PBGC - A *Shared* Responsibility

In addition to enhancing the PBGC's authority to act, AARP also recommends measures to improve the health of the PBGC's multiemployer plan insurance fund, to ensure it is capable of handling its projected liabilities and addressing problems before they become crises. There is no getting around the fact that the PBGC needs additional funds. Premiums were recently increased in the MAP-21 legislation by $3 per participant, but are set at the still-too-low level of $12/year per participant beginning in 2013 – about what it costs to go to a movie. These premiums are wholly inadequate to cover the PBGC's liabilities. They also yield insurance levels that are far too low to provide retirement security to participants.

Another roughly $120/year per participant would help finance multiemployer statutory insurance guarantees to at least double their current levels – to around $24,000/year. Given current low premium levels, there is room to improve PBGC financing. Restoring the PBGC's ability to handle its liabilities, intervene to assist plans, and provide greater insurance protection should be a shared responsibility.

· **Healthy Plans** - If healthy plans cannot absorb troubled ones, at a minimum increased PBGC premiums should be an option to help cover the PBGC's projected funding shortfall due to multiemployer plan insolvencies. Ideally, they should contribute an additional amount to help enable the PBGC to cover the costs of intermediate assistance measures and hopefully improved levels of PBGC insurance for multiemployer plan participants.

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

· **Employers** - The NCCMP plan implies that employers cannot bear additional costs such as large premium without triggering withdrawals and other severe consequences. Employers may not be able to afford substantial increases in their contributions to the plan, but employers' ability to contribute a more reasonable amount in premiums should be an option.

· **Participants** - Premiums at current levels also yield insurance levels that are too low to provide retirement security to participants. AARP objects to cuts in participants' accrued benefits, but some type of small assessment to participants could be considered as an option. In the past, some retiree health plans have started to charge premiums or other forms of cost-sharing of retirees, even though the plans were earlier offered as requiring no contributions from retirees. [6] This was possible because retiree health plans are not protected by an anti-cutback rule. Faced with the threat of being forced to accept benefit cuts of one-third or worse under the NCCMP proposal, it is possible that retirees and other participants might welcome the chance to better insure their pensions, especially if they would receive much higher levels of insurance protections. For example, if all of the more than 10 million participants in multiemployer plans were required to contribute $120 per year or $10/month, it would raise more than $12 billion dollars over the next 10 years, thereby helping to finance more adequate levels of insurance. However, any assessment on retirees would need to recognize that most retirees receive pensions that are, at best, modest.

· **Congress** - From the standpoint of national retirement policy, Congress should help support the preservation of defined benefit plans and ensure that no one's hard-earned pensions can be undercut. Since Congress currently sets the PBGC's premiums and limits its ability to manage its liabilities, Congress should share some role in shoring up the finances of the PBGC, especially if all other stakeholders are pitching in. The history of ERISA is based on the importance of protecting those who have worked and earned a pension, particularly for those who had the bad fortune of retiring from a struggling company or industry. Congress should consider additional financing to help close the PBGC's projected deficit and improve multi-employer insurance protection for retirees, which is currently much less than for retirees of single employer plans.

4. Increase Revenue for the Plans

The NCCMP report is called *Solutions, not Bailouts*. Pension plans, and the PBGC, are set up to be self-financing, without the need for federal funds. And for the most part, they have been. Some of the same plans that are so troubled now were adequately funded at the beginning of 2008, when the financial meltdown decimated business and jobs for many of the industries such as construction that sponsor multiemployer plans. The meltdown also led to steep losses in plan asset values and returns, and it produced the need for an extended, stimulative, low-interest rate environment, which is placing inflated funding obligations on employers.
Given that federal policy has played a role in many of the developments that have placed multiemployer plans at risk of insolvency (e.g., oversight and industry deregulation, pension policy changes, interest rate assumptions), combined with the fact that Congress has provided long-term loan assistance to some companies and industries decimated by the financial crisis, some similar federal assistance should be an option.

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

· **Low-interest loans** - Until jobs and higher interest rates return to levels that help troubled plans regain their financial footing, Congress should consider making low-interest loans available to the plans, such as by requiring the banks and investment houses that received TARP funds to make long-term, low-interest loans to the plans at the same Federal Reserve discount rate they use to loan each other funds.

· **Private financing with public guarantees** - The challenges facing distressed pension plans call for creative financing models and partnerships. For instance, without endorsing particular proposals, AARP notes that a 2011 Milken Institute report recommended some ways to involve private capital markets.[7] Previous hearings by this Committee have explored, for example, whether there might be a way to encourage investment banks or hedge funds to provide federally guaranteed loans to plans earlier so as to stave off insolvency due to cash flow issues, or even to establish a federal credit facility that would infuse funds to help offset the contributions that employers are having to make for orphans and others in the plan for whom an employer is not contributing. [8] The NCCMP proposal puts forward the idea of federally guaranteed bond offerings that companies could use to pay off their unfunded legacy costs. Options such as these should be fully considered before the hard-working employees and retirees who rely on these plans should be asked to accept cuts in already accrued benefits.

AARP would suggest that the PBGC – which has the institutional expertise, the data, and the actuaries to crunch the numbers – could be charged with fully developing and analyzing these ideas, with some numbers attached. Then, Congress could adopt such measures as part of any legislation to stabilize multiemployer plans and protect plan participants and beneficiaries.

Cutting Accrued Benefits

The proposed standards and process for making cuts to participants' accrued benefits are deeply flawed and unfair. Some have urged AARP and other participant advocates to propose safeguards that would make the NCCMP's benefit-cutting process more fair. However, AARP rejects the premise that cutting retiree benefits is an imperative, and advocates instead the adoption of the many alternative approaches that are available. The following critique of the "benefit suspension" proposal illustrates the significant shortcomings of the proposal that fails to be even minimally protective of participant rights.

1. Unbridled Discretion by Plan Trustees

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

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[7] P. Angkinand, B. Belt, *et al.*, *Protecting Private Pensions and the Public Interest: Solutions for the Shortfalls in Employer-Sponsored Defined-Benefit Plans* (Apr. 2011), *available at* http://www.milkeninstitute.org/pdf/FI_ProtectingPensions.pdf.

[8] 10 *See e.g.*, *Assessing The Challenges Facing Multiemployer Pension Plans* 39-40, 51, Hearing before the Health, Employment, Labor and Pensions Subcommittee of the House Committee on Education and the Workforce. (Transcript) (June 20, 2012), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg74621/pdf/CHRG-112hhrg74621.pdf.

determining that suspensions are necessary, including having taken all reasonable measures to improve the plan's funded position.[9]

First, for purposes of the drastic measure of "benefit suspension" authority, one would think that such an extreme measure would only be considered on the brink of imminent insolvency, for instance, less than 5-7 years. Supporters of the NCCMP proposal would argue that having to wait that long would mean that the retiree cuts would not be efficacious in staving off insolvency. However, as discussed earlier, it is not at all clear to AARP that any plan that can so drastically cut the accrued benefits of people already retired is still a "defined benefit" plan worth saving. Cutting the benefits of 80-year-old retirees today to a level that is not much higher than PBGC levels is not an appropriate step for addressing shortfalls that are two decades away. Plans that are operating at a deficit but have 15-20 years until they face insolvency may be able to obtain low-cost financing or take other steps that would significantly "bend the curve" away from insolvency, thereby lessening the need for more draconian measures.

Second, the plan as proposed grants too much discretion to plan trustees. Nothing is required. What constitutes "reasonable measures" is not specified, but would seem to be encompassed within the list of "illustrative" indicators of "due diligence," i.e., considering factors such as contribution levels, future accrual levels, the impact on ancillary benefits, etc. Yet, as noted earlier, nowhere is there a requirement *first* to have taken all rehabilitative measures permitted by law. Instead, having granted that plans should be required to exercise due diligence to be eligible to take drastic actions, the proposal then provides that "it is impractical to develop a precise and complete list of quantitative tests to measure the due diligence of the sponsors and trustees....[10] AARP understands that plan designs and terms can vary widely and that plan trustees may need to have some flexibility to fashion the measures that will work best for their stakeholders and participants. However, pension plans are not so different from one another that "all reasonable measures" cannot be anticipated and required, or that steps that constitute and are relevant to a finding of "due diligence" cannot be specified.
Third, the proposal does not clarify the trustees' fiduciary duties, or to whom they are owed. This is not the usual plan design or plan modification that generally fits within the "settlor" function. Any legislation should expressly make clear that the trustees are acting in their fiduciary capacity when they make any decisions related to remedying underfunding – and that they especially have a fiduciary duty to the participants and beneficiaries to safeguard their accrued benefits. Moreover, the proposal does not appear to recognize that the trustees may have possible conflicts of interest between protecting the active employees, who are contributing to the plan, paying union dues, and voting for union leadership; the deferred vested employees, who no longer contribute, pay dues, or vote; and the retirees, who no longer contribute or pay dues, and may not have a vote or representation among the plan trustees. In failing to differentiate among various groups of participants with competing interests, it also fails to provide any appropriate procedural and substantive protections against conflicts of interest.
Related to the conflict of interest problem is that retirees have no guarantees of effective representation in this process. There is no requirement for retirees to be represented among the plan trustees who make the decisions, no requirement that retirees receive sufficient advance notice of proposed changes, no process for retirees to be heard by the trustees (or later by the

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[9] 11 *NCCMP Proposal*, *supra* n. 1, at 24. AARP reads this last criterion as requiring plans to have already taken "all reasonable measures" *before* determining cuts are necessary; to the extent that it does not, it should be modified to do so. Every plan should consider other measures rather than consider cuts to accrued benefits.
[10] 1 *Id*.

PBGC), nor any duty by the plan to finance adequate legal and actuarial support for retirees to be able to prepare their own counterproposals or challenge the trustees' findings or decisions.

2. PBGC Approval Process

The inclusion of a review and approval process by the PBGC, as outlined, does not compensate for these problems, as that process is itself grossly inadequate.

First, there is a threshold issue of whether the PBGC is the appropriate entity to review a plan's proposed cuts to benefits. The entire scheme fails to acknowledge that the PBGC is *not* a disinterested watchdog in this context. If plans become insolvent, the agency is on the hook to pay benefits, and at present, it has insufficient funds to do so. As long as the PBGC is underfunded, it is in the interest of the PBGC to do all it can to prevent the plan from becoming insolvent; it has little financial incentive to not approve the trustees' plan. Further, even if the PBGC were not so incentivized, the PBGC Director is a political appointee, and politics vary; participants cannot count on the PBGC to be attuned to their interests. Nevertheless, because the PBGC has the institutional expertise and is best situated to question and oversee such proposed actions by plans, AARP believes that an adequately funded PBGC, constrained by much better procedural rules than proposed by NCCMP, should play a role in reviewing proposed benefit changes. The newly created Participant and Plan Sponsor Advocate at the PBGC, who is charged with advocating for "the full attainment of the rights of participants in plans trusteed by the corporation,[11] or in this case, plans at risk of being trusteed by the corporation, should be given a meaningful role in the review and approval process.

Second, the PBGC's assigned scope of review is limited to whether the plan trustees exercised due diligence. Yet, as stated above, "due diligence" is simply a list of considerations, not standards of fairness or a defined set of duties that provide a basis for any real measure of accountability. The NCCMP plan does call for PBGC approval of the distribution of suspensions, taking into account "equitable" distribution across populations and "protections" for "vulnerable populations.[12] However, these terms are vague and undefined.
The PBGC's scope of review should be broadened to include all relevant factors weighing in favor and against adoption of the plan, including but not limited to strengthened standards of due diligence. The PBGC should examine the actuarial justification for the proposal, with dissenting views adequately represented, and whether the plan trustees have first taken all available steps and met applicable standards. In that sense, its review should be "de novo" rather than requiring the PBGC to defer to the plan's decisions "absent clear and compelling evidence to contrary." Contrary to what NCCMP proposed, the trustees' plan should not simply be "deemed approved" and in accordance with fiduciary standards if the PBGC fails to approve the plan within six months, possibly preempting challenges, or at least creating a presumption of compliance. The entire process should be more than a rubberstamp of the trustees' decision. AARP agrees with NCCMP that the agency should be given a time limit for acting; the PBGC will need to weigh in on the question of whether six months is reasonable and appropriate. However, deemed approval by default does not rise to the level of appropriate review, especially when people's benefits are at stake. And as noted earlier, fiduciary standards should apply to the trustees' proposal and be subject to challenge for breach.

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[11] 13 Moving Ahead for Progress in the 21st Century (MAP-21), Pub. L. No. 112-141, 126 Stat. 405, 856, Sec. 40232 (2012).
[12] *NCCMP Proposal*, *supra* n. 1, at 24

Finally, any plan approved by the PBGC should have to be updated by the plan and reapproved by the PBGC, frequently, such as every two years. A plan's fortunes can improve as quickly as it deteriorates. A plan should be required to revise its solvency status and rejustify its remedial plan, and the PBGC should have to reevaluate and reapprove whether it is still necessary or could be revised to lessen any hardships or restore any lost benefits.

3. Inadequate Protections for Participants, Especially Retirees

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

In addition to omitting any consideration of retirees, the plan makes no differentiation in treatment between different groups of participants and beneficiaries. This is also a fatal flaw. There is nothing to prevent the trustees' plan from treating retirees or near-retirees more adversely than it treats newly vested participants, for example. The only allusion to differentiation in the proposal appears in the provision regarding the distribution of benefit suspensions. There, the proposal specifies that benefit cuts should be distributed "equitably" across the participant population, and that "vulnerable" populations, which are never defined, should receive protections which again are never specified.
These objections regarding lack of regard for retirees and near-retirees are not ones of the tail wagging the dog, or allowing concerns about the vulnerable to overwhelm the bigger proposal, as some have suggested. This is a huge problem *with* the bigger proposal. It is not very meaningful to cordon off a “vulnerable” group as if they are a small part of the population when the median multiemployer pension benefit received by retirees is so modest: only about $8,300/year in 2009.[13] If, in fact, most of the participant and beneficiary population in multiemployer plans are receiving relatively small pensions of well under $10,000/year, AARP would contend that most retirees would qualify as "vulnerable" and unable to bear any benefit cuts whatsoever.

Numerous alternatives were available to protect benefits and lessen the harshest effects of the NCCMP plan on retirees. For example, first and foremost, the plan should have required consideration of the status of retirees to be an explicit factor that is part of any evaluation of due diligence and fairness. Second, the plan should have differentiated among groups of participants. The plan fails to consider or establish any order of priority in how any proposed benefit suspensions would be handled in order to protect retirees in pay status, as well as near-retirees. This ranking should have been mandatory/statutory, and retirees and near-retirees should have been placed at the end of the line as an absolute last resort. Third, any benefit cuts should also have been expressly limited, perhaps according to a formula based on age or income, or limited on a sliding scale based on the size of the pension, e.g. no cuts should have been permitted for those with benefits of $12,000 or less, with higher limits on cuts for those at

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

higher ages. Certainly, benefit protections that are only 10% higher than the amount provided by the PBGC in the event of insolvency is not much protection. That floor could have been set at a much higher level, for instance at 150-175% of PBGC insurance levels.

If any cuts at all are considered, AARP agrees that cuts in optional, adjustable, or "ancillary" benefits such as 13th checks should be considered instead of cuts in core pension benefits earned and determined at retirement. However, AARP disagrees that benefits for surviving spouses (the 50% qualified joint and survivor annuity), or former spouses/surviving spouses who have received a court-ordered share of a participant's pension, are "ancillary" benefits. These benefits were part of deferred compensation, jointly earned and jointly owned by both partners in the couple. They are considered part of the core benefit, and respect for these beneficiaries' rights are a condition of the plan's tax-qualified status. The NCCMP proposal does not state exactly how it would affect the rights of beneficiaries, or how, for example, a qualified domestic relations order that orders payment of a particular dollar amount would be fulfilled. AARP would maintain that the benefits of beneficiaries should not be subject to worse treatment than the benefits of the participant. For instance, if the participant's benefits are reduced by 15%, the cuts to the beneficiary should not be larger. In addition, cost-of-living adjustments are part of the core benefit, and these adjustments, if available, should not be considered adjustable or ancillary just because they are issued after retirement.

If legislation moves forward, AARP agrees with the proposal's limitation that any suspension of benefits "must achieve, but not exceed," the amount needed to achieve solvency. However, should such a proposal be adopted, we would take issue with the framing of another stated limitation. The proposal specifies, presumably after the plan achieves solvency, that any future benefit improvements "must be accompanied by equitable restoration of suspensions, where the liability value of the improvement for actives cannot exceed the value of the restoration for retirees.[14] Of course, it would inappropriate and unacceptable for *any* participant's benefits to be improved unless and until all suspended benefits are restored. However, should retirees' benefits be reduced, it is insufficient to specify that improvements or restorations of benefits for active participants cannot exceed the value of restoring benefits to retirees. Under such a plan, it should be an absolute requirement that once solvency is achieved, the benefits of retirees are restored first, *before* there is *any* improvement or restoration of benefits to active participants.

Once all suspended accrued benefits have been restored in full to retirees, improvements to the benefits of active participants would be permitted.

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

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[14] *NCCMP Proposal*, *supra* n. 1, at 25.

There can be no doubt that the current proposal is contrary to one of the most central and fundamental tenets of ERISA, and would be a bad precedent for pension law generally. AARP also has no doubts that such a precedent could encourage other efforts to cut back accrued benefits. To prevent any further erosion of pension law, any proposal that advances should make clear that the measures permitted are emergency measures confined only to the unique and difficult circumstances currently faced by a minority of very distressed multiemployer plans.

Other Issues in the Proposal

The NCCMP proposal also proposes allowing plans to "harmonize" their normal retirement age with those of Social Security, as a way of "strengthening" the system.[15] Currently, private sector pensions may not raise their retirement age for full benefits past 65.[16]

AARP would caution against this proposal for several reasons. First, the types of jobs held by participants in many multiemployer plans are typically physically demanding and/or are performed under difficult working conditions. Many participants in these plans will not be able to work until age 65, let alone later. It is for this very reason that many unions have been among the most ardent opponents of raising the early retirement age in Social Security above 62 and of raising the full retirement age beyond the higher age 67 previously enacted in the 1983 changes.[17]
Second, most pension plans already provide for actuarially reduced benefits in the event of early retirement. Raising the full retirement age in pension plans would have the same effect as it has in Social Security: to further reduce the benefits the participant receives, for life. Third, this change likely would not be limited to multiemployer plans on the brink of insolvency. Finally, especially for those with physical disabilities or illness that prevents them from working longer, being able to collect a full pension at 65 enables the pensioner to make it until 66 or 67 when they can collect their full Social Security, in order to maximize what may be a small retirement income. AARP believes that retroactively increasing the retirement age for pensions, as is proposed, is again an unfair benefit cutback and would impose an undue hardship.

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

Finally, the NCCMP report puts forward some proposals for the redesign of pension plans in the future. AARP has not analyzed nor do we take a position on those plans here. However, AARP welcomes the efforts of NCCMP and many others who recognize the unique value of defined

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[15] *NCCMP Proposal*, *supra* n. 1, at 23.
[16] 29 U.S.C § 1056.
[17] *See e.g.*, International Brotherhood of Teamsters Resolution on Social Security/Medicare (July 1, 2011), *available at* http://www.teamster.org/content/social-securitymedicare; AFL-CIO, *What Is Social Security? available at* http://www.aflcio.org/Issues/Retirement-Security/What-Is-Social-Security

benefit plans for both employers and employees, and recognize the importance to retirement security of maintaining them.

Conclusion

The NCCMP proposal comes at a time when promises to retirees are under unprecedented stress, at all levels, public and private. Recent proposed changes have become more aggressive, with many proposals now designed even to reduce the benefits of people who are retired, in pay status, and living on fixed incomes – an option that previously was considered out of bounds. These cutbacks in promised and earned benefits are simply unfair and highly damaging to a retiree population whose typical annual income is only about $20,000.

AARP agrees that the NCCMP proposal attempts to address real problems faced by multiemployer plans, and appreciates its attempt to ensure everyone comes out better than they would under insolvency. However, we are not convinced that alternatives to cutting accrued benefits – a fundamental protection under ERISA – have been adequately considered. Nor are we convinced that an ill-conceived design will serve to make plan benefits any more secure. We are convinced, however, that should a package emerge, far greater protections for participants and beneficiaries must be required.

AARP thanks Chairman Tiberi and the Committee for the opportunity to share our views and those of our members on the need to preserve the retirement security promised to current and future generations of Americans. We look forward to working with you and the other members of the Committee.

Church Alliance

CHURCH ALLIANCE
Acting on Behalf of Church Benefits Programs

STATEMENT FOR THE RECORD
OF
THE CHURCH ALLIANCE

FOR THE HEARING
ON
"PRIVATE EMPLOYER DEFINED BENEFIT PENSION PLANS"

BEFORE
THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON SELECT REVENUE MEASURES

WEDNESDAY, SEPTEMBER 17, 2014

Chair: Ms. Barbara A. Boigegrain
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Chairman Tiberi, Ranking Member Neal, and members of the House Ways and Means Select Revenue Measures Subcommittee, thank you for the opportunity to submit this statement for the record on behalf of the Church Alliance.

The Church Alliance is a coalition of chief executive officers of thirty-eight (38) denominational benefit programs, covering mainline Protestant denominations, two branches of Judaism, and Catholic schools and institutions. These benefit programs, known as church plans, provide pensions and health benefits to more than one million clergy, lay workers, and their family members.

We applaud the Subcommittee's leadership on retirement security issues and its emphasis on the challenges facing employers, employees, and retirees who rely on defined benefit pension plans. We wanted to bring to your attention a set of issues facing church plans, many of which offer defined benefit pension plans. We commend Ranking Member Neal for his introduction of the "Church Plan Clarification Act," as Sec. 405 of H.R. 2117, to address these issues; similar stand-alone legislation has been introduced as S. 952 by Senators Cardin and Portman. We would like to urge enactment of this important legislation before the end of the 113th Congress.

CHURCH PLANS

Church benefit plans and programs have existed for many years; in fact, some were established as far back as the 1700s. Initially, many of these benefit programs were akin to benevolence programs in that they provided benefits to clergy in need. Over the years, however, the benefit programs expanded to more formally and systematically provide retirement and welfare benefits for clergy and church lay workers.

Church plans have developed structures and mechanisms that reflect the differing church polities (denominational organizational and governance structures) that they serve. In recognition of their unique status, most church retirement plans are exempt from the Employee Retirement Income Security Act of 1974 ("ERISA") and are instead subject to special laws and regulations that reflect the distinctive issues that these plans and churches confront. Church retirement plans are subject to stringent state and federal laws and regulations, including state fiduciary standards, state contract law, and Internal Revenue Code ("IRC" or "tax code") requirements. Church retirement plans ensure the stability of participants' investments by applying many of the same strong safeguards applied to corporate and public pension funds. Moreover, churches and synagogues have a strong lifelong relationship with employees and are motivated to provide for and serve the clergy and church lay workers who have dedicated their lives to working for religious institutions.

THE CHURCH PLAN CLARIFICATION ACT

Given the unique nature of church retirement plans, legislation and regulations oftentimes have unintended consequences when applied to them, which can result in uncertainty and/or compliance issues. The Church Plan Clarification Act contains critical corrections and clarifications to a series of issues impacting church retirement plans:

- **Controlled Group Rules**. Currently, the controlled group rules for tax-exempt employers may require certain church-affiliated employers to be included in one controlled group (i.e., treated as a single employer), even though they have little relation to one another. A modification is necessary to the controlled group rules to ensure that multiple church-affiliated entities – which may be related theologically, but have little or no relation to one another in terms of day-to-day operation – are not inappropriately treated as a single employer under the tax code.

- **Grandfathered Defined Benefit ("DB") Plans**. IRC § 403(b) church DB plans established before 1982 are called grandfathered DB plans and were intended to be treated and continue to operate as DB plans. However, recent rules subjecting such plans to both DB and defined contribution ("DC") annual benefit accrual limitations under IRC § 415 have resulted in clergy who are lower-paid and closest to retirement being harmed. A clarification is required to ensure that only the logically applicable DB limitations apply to these plans.

- **Automatic Enrollment**. Church employers often cross state lines. State wage withholding laws differ from state to state, presenting barriers to offering auto-enrollment into church retirement plans. Federal legislation is needed to preempt these laws so that church retirement plans can include auto-enrollment features in their retirement plans just as non-church corporate plans are allowed to do without the uncertainty arising under the laws of certain states.

- **Transfers Between 403(b) and 401(a) Plans**. Current rules do not allow transfers and mergers between an IRC § 403(b) church retirement plan and an IRC § 401(a) qualified church retirement plan. Legislation is needed to provide for such transfers and mergers, providing a better alternative to terminating or having to maintain separate legacy plans. Such legislation will also decrease complexity and administrative costs for church employers, as well as confusion for employees.

- **81-100 Trusts**. Church benefits boards are legally allowed to commingle plan and non-plan church-related assets for investment purposes to allow churches the benefit of the board's greater resources, investment skills, and market clout. A clarification is required to ensure that a widely used investment vehicle, 81-100 (2011-1) trusts, can accept such funds.

In short, the Church Plan Clarification Act is simple and straightforward clarifications and corrections legislation, that is non-controversial, has bipartisan support, and has not attracted any opposition. Moreover, although the policy issues addressed by the Church Plan Clarification Act may seem relatively "small," they are extremely critical to the functioning and operation of church plans. The issues addressed by the Church Plan Clarification Act are becoming increasingly urgent. The longer this legislation is pending, the greater the burden is to church plan participants, most of whom are of modest means and have devoted their lives, and sometimes the lives of their families, to serving religious institutions.

CONCLUSION

The Church Alliance strongly urges that the Church Plan Clarification Act be enacted as expeditiously as possible before the end of the year. It is vital that individuals who dedicate their lives to religious service are not inappropriately disadvantaged.

The Church Alliance greatly appreciates the opportunity to submit these comments. We are pleased to serve as a resource to the Congress, the Committee, and the Subcommittee on these and related matters. We look forward to our continued work together on these important issues. Thank you.

National Center for Policy Analysis

Statement of Brooks Hamilton
Senior Fellow, National Center for Policy Analysis
before the
Ways & Means Subcommittee on Select Revenue Measures
U.S. House of Representatives, Washington, DC
September 17th, 2014
* * *
"Strengthening Private Employer Pension Plans"

On February 4th, 2009, before another Committee in this House, John C. Bogle, founder and former chief executive of The Vanguard Group, testified:

> *"Our nation's system of retirement security is imperiled, headed for a serious train wreck. That wreck is not merely waiting to happen; we are running on a dangerous track that is leading directly to a serious crash that will disable major parts of our retirement system. Federal support—which, in today's world, is already being tapped at unprecedented levels—seems to be the only short-term remedy. But long-term reforms in our retirement funding system, if only we have the* ***wisdom*** *and* ***courage*** *to implement them, can move us to a better path toward retirement security for the nation's workers."*

In this context, wisdom means that we have made the investment necessary to unconditionally know-our-stuff! And courage means that our unalienable sense of ethics and morality empowers us to do the right thing.

In the 2,023 days since Bogle's testimony, has anything really changed? Has "retirement preparation" as undertaken by the average citizen improved, been unaffected, or worsened? And how can it be strengthened?

Background: For 30 years following the end of World War ll, a defined benefit ("DB") pension plan was the centerpiece of the retirement income strategy adopted by most employers. However, with the passage of the Employee Retirement Income Security Act ("ERISA") in 1974, followed four years later by paragraph "k" being added to ¶401 of the Internal Revenue Code, the past 40 years have seen a strategic transformation. Defined contribution ("DC") plans, especially the 401k, have rapidly increased to become the dominant employer retirement income strategy.

Now, various factors have combined to make the reexamination of DB retirement plans both timely and vital. These factors include (in no order) the Great Recession, recurring (and perplexing) economic bubbles, stubborn wage stagnation (exacerbating income and political disparity), a steep decline in union membership and collective bargaining, apparent rips in the fabric of our social contract, et cetera. Investigating this quintette is beyond the scope of this testimony, which has but one objective - to simplify the problem and thus illuminate a rational pathway to effective solutions.

Retirement Preparation Index: Recent generations have seen a shocking decline in the ratio of working years compared to retired years; from 45 years worked to 8 years retired some 85 years ago, to 35 worked and 20 retired today, with 30 years worked and 40 retired in view. Our parents saving enough in 45 years to then live financially secure another 8 years was one thing; our children saving enough in 30 years to finance living 40 years (or more) after retirement is quite another! Adding to the challenge, 19% of those approaching retirement (and 31% overall) report no retirement savings at all. Recent surveys indicate that half of all taxpayers are *on-their-own* regarding retirement; i.e., half don't participate in an employer sponsored retirement plan since none is offered by their employer. Finally, various factors (see above) ensnare the half who are offered a retirement plan (typically a 401k), as too many defer joining, contribute too little too late, mismanage the investment of their 401k nest-egg, retire too soon, spend too much, and live too long.

Pension Cost Formula: While chasing (and securing) a law degree at night in the fifties, three successive day jobs were with a local, then a regional, then a national actuarial firm. It was there that a simple formula used to determine the true cost of a pension plan was taught and learned. The formula:

Cost = benefits paid - investment earnings + administrative expenses

Assume in 2014 an employer promises a 25 year old new employee, earning $32,000 annually, a lifetime pension equal to 50% of his final 5 year average pay to begin in 2054 when he retires at age 65. An actuary could tell us the sum that should be contributed in 2014 to soundly fund this future retirement income liability. But *funding* and *cost* are not the same thing.

To illustrate, parents might save (i.e., fund) $300 this year in order to send a child to college, but what if the child doesn't go? Or earns a scholarship? You see, the cost will be the tuition actually paid, not the sums saved years earlier. Far too many believe that funding **is** the cost. And as actuarial methods and assumptions are stacked and accumulate, soon logic asks just how precise can an estimate of events decades away really be, anyway? Some even ask whether an "accurate estimate" isn't an oxymoron?

Apples to Apples: Making honest comparisons is tough. Distinguishing cause and effect is also hard; do wet streets cause rain!? A challenge in preparing this testimony has not only been to separate fact from fiction, but to also avoid common *givens*.

There has long been a 4:1 "golden ratio" in pension planning. That is, a future $4 annual benefit required a current $1 annual contribution. Thus, an 8% of pay current contribution would typically fund a future pension benefit equal to 32% of pay (i.e., 4 times the contribution). Add social security, averaging around 38% of pay, and a worker could retire in dignity on these two sources of income, plus personal savings - the old three legged stool that delivered retirement income security. This "golden ratio" was just a general rule, of course, and today soaring life expectancy, combined with low (and sticky) investment yields, suggest reappraisal.

In any case, a statutory confirmation of this 4:1 ratio was found decades ago in the "integration" regulations. In the mid-20th century, to "integrate" benefits in a qualified plan with Social Security, an employer could provide a plan benefit of 37.5% of pay in excess of the Social Security wage base. On the other hand, to "integrate" contributions in a qualified plan with Social Security, an employer could make a plan contribution of 9.375% of pay in excess of the Social Security wage base. A door prize to the first person noticing the 4:1 ratio between the 37.5% benefit and the 9.375% contribution!

KEY QUESTION: We have now arrived at the key question. How can pension plans be strengthened? ***Visualization:*** Imagine stuffing dollars into the south end of an empty pipeline until dollars ooze out of the north end. Now, assume that by defining the dollars we want to ooze out of the north end, we can calculate how many dollars we need to stuff into the south end. Or alternatively, by defining the dollars we intend to stuff into the south end, we can calculate the dollars that will ooze out of the north end. In other words, the internal "plumbing" of the pipeline works the same way, whether one prefers to define the north end output (i.e., benefits) or the south end input (i.e., contributions).

Remember the 4:1 "golden ratio"? Its proposition was that a $4,000 annual pension benefit will ooze out of the pipeline at retirement if annually we poke a $1,000 contribution in! Of course, by changing assumptions, results will change. So if we want $4,000 to ooze out, but only poke $400 in, we will be very disappointed. Likewise, if we want $4,000 to ooze out, but poke $8,000 in, we will be elated. Visualizing this pipeline, and the golden ratio, will help a person to better understand the challenge we face to retire citizens in dignity - not despair.

I admit it; Exhibit A on page 4 contains a lot of numbers! Nevertheless, it clearly reflects the value of a $1.00 annual pension in a matrix containing two variables - 10 investment yields and 11 life expectancies. There are several important things to note. For example, as life expectancy increases, lower investment yields trigger dramatic cost increases. To illustrate, if the yield/expectancy combination is a future 2% and 30 years, instead of a historic 7% and 10 years, pension costs will triple. Since the value of a $1.00 annual pension would increase from $7.52 to $22.84, so would the cost. As Exhibit A illustrates, this wicked combination (i.e., living longer combined with lower yields) has the clear potential to increase pension costs from 400% to 700%.

Three to four decades ago, when the average cost of pension plans might fall in the range of 6% - 8% of payroll, employers turned to the 401k plan. Why? Because it could cost as little as 2% - 3% of payroll. If a demographics tsunami is teaming up with monetary policies (like ZIRP) to double or triple pension costs, the 401k's popularity will increase. Can long term reforms resuscitate pension plans?

If so, what will it take? Bogle said (see beginning), wisdom and courage. As aforesaid, that prescription requires two things: **(1) reformers must know what they're talking about, and (2) do the right thing**. Ancients (Aphrodite, the Greek goddess of love and beauty) and moderns (Einstein) have believed that there is a close association between beauty and truth. Is there a beautiful opportunity to strengthen pensions in America?

Yes.

To illustrate, remedial legislation might consider the following ideas and/or concepts:

1. Bar the HCE group (i.e., "highly compensated employees" as defined by ERISA) from participating in a 401k plan unless the company has also established a modest DB pension plan; perhaps a "career average" pension plan with a benefit equal to 1% of pay each year.
2. Provide an annual business tax credit equal to $100.00 for each of the first 100 pension plan participants.
3. Make a modest DB pension plan mandatory; say a "career average" pension benefit equal to 1% of pay each year, applicable to any company that has not established an equivalent or better DB pension plan.
4. For any company with under 100 employees, double the company's tax deduction for its pension plan contribution.
5. Require that payment of pension benefits be made in the form of a life annuity contract.

But as Benjamin Franklin's friend, François-Marie Arouet, using his pen name Voltaire, said, *le mieux est l'ennemi du bien* - **best is the enemy of good**. Simplicity is often undiscovered because it is frequently obscured by complexity. Result?

Remedial legislation will require the long view, plus wisdom and courage

National Center for Policy Analysis.2

Present Value of $1.00 Annual Pension Based on Investment Yield and Life Expectancy

Yield	Life Expectancy at Retirement: 5	10	15	18	21	24	27	30	33	36	39	Expectancy Ratio **
0%	5.00	10.00	15.00	18.00	21.00	24.00	27.00	30.00	33.00	36.00	39.00	7.8
1%	4.90	9.57	14.00	16.56	19.05	21.46	23.80	26.07	28.27	30.41	32.48	6.6
2%	4.81	9.16	13.11	15.29	17.35	19.29	21.12	**22.84**	24.47	26.00	27.44	5.7
3%	4.72	8.79	12.30	14.17	15.88	17.44	18.88	20.19	21.39	22.49	23.49	5.0
4%	4.63	8.44	11.56	13.17	14.59	15.86	16.98	17.98	18.87	19.66	20.37	4.4
5%	4.55	8.11	10.90	12.27	13.46	14.49	15.38	16.14	16.80	17.37	17.87	3.9
6%	4.47	7.80	10.29	11.48	12.47	13.30	14.00	14.59	15.08	15.50	15.85	3.5
7%	4.39	**7.52**	9.75	10.76	11.59	12.27	12.83	13.28	13.65	13.95	14.19	3.2
8%	4.31	7.25	9.24	10.12	10.82	11.37	11.01	12.16	12.43	12.65	12.83	3.0
9%	4.24	7.00	8.79	9.54	10.13	10.58	10.93	11.20	11.41	11.57	11.69	2.8
Yield Ratio *	1.2	1.4	1.7	1.9	2.1	2.3	2.5	2.7	2.9	3.1	3.3	

* The Yield Ratio is derived by dividing the 0% factor by the 9% factor.
** The Expectancy Ratio is derived by dividing the 39yr. factor the 5yr. factor.

NOTE: as Life Expectance soars, lower Investment Yields will trigger dramatic cost increases.
To illustrate, if Yield/Expectance is 2%/30 instead of 7%/10, pension costs will triple.

This combination (i.e., living longer combined with lower yields) **has the potential to increase pension costs 400% to 700%**

National Education Association

NATIONAL EDUCATION ASSOCIATION
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Great Public Schools for Every Student

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September 17, 2014

Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

Dear Representative:

The National Education Association respectfully submits these comments for the record in conjunction with today's hearing on private employer defined benefit pension plans.

Traditionally, sources of retirement income for Americans have been compared to a three-legged stool supported by pensions, Social Security, and savings. For most Americans, however, the metaphor no longer reflects the reality:

- More than 30 percent have no retirement savings or pensions at all—including 19 percent of those ages 55 to 64. (Source: *Report on the Economic Well-Being of U.S. Households in 2013*, Board of Governors of the Federal Reserve, July 2014)
- The average working household has virtually no retirement savings—the median retirement account balance is just $3,000 for all working-age households and $12,000 for near-retirement households. (Source: *The Retirement Savings Crisis: Is It Worse Than We Think?* National Institute on Retirement Security, July 2013)

NEA is a leading advocate for financially stable, employment-based, defined benefit pension plans in both the public and private sectors of the economy. Our knowledge of such plans has been gained firsthand and through the experience of our affiliates, nearly all of whom maintain defined benefit pension plans—on both a single employer and multiemployer basis—for their own employees. Such plans are advantageous for both employees and employers.

For employees, the advantages include:

- **Knowing in advance what the benefit will be.** The amount of the benefit is usually based on factors such as age, earnings, and years of service.
- **Defined, guaranteed pension.** A retired participant receives a pension annuity, such as a monthly benefit, for life, as does the participant's surviving spouse, unless both the participant and spouse elect otherwise.
- **Comprehensive benefits.** Defined benefit plans can provide additional valuable benefits to participants, such as early retirement benefits, disability benefits, death benefits, benefits for past service, increased benefits, or cost-of-living adjustments.
- **Benefits are not subject to the fluctuations of the stock or bond markets.** The employer bears the investment risk and, normally, professional money managers make the investments.
- **Plan participants can earn service credit for earlier years of service**, even if they were not covered by a retirement plan earlier in their careers.

For employers, the advantages include:

- **Helping to ensure a high-performance workforce.** By providing a predictable, guaranteed benefit at retirement that is valued by employees, a defined benefit plan can promote employee loyalty and help retain valuable staff.
- **Flexibility.** While the employer bears the investment risks for the plan, favorable interest rates and economic conditions can reduce or eliminate an employer's contribution, or make it possible to increase benefits at reduced or nominal cost.
- **Can be designed to accomplish specific goals.** For example, a plan can offer enhanced early retirement benefits.
- **Less expensive.** Generally, it is less expensive to provide the same level of benefits via a defined benefit plan than a defined contribution plan due to better investment results, lower investment fees, longer time horizons, and more professional management.

For most Americans—especially racial and ethnic minorities, and those on the lower rungs of the economic ladder—Social Security is the foundation of retirement security. Among those 65 or older, Social Security provides:

- 85 percent of the income of those in the bottom quarter of the income distribution or about $6,000 per year. (Source: *When Thinking about Retirement, Beware the Averages*, Wall Street Journal, Jan. 23, 2014)
- 90 percent or more of income for 35 percent of elderly white beneficiaries, 42 percent of Asian Americans, 49 percent of blacks, and 55 percent of Hispanics. (Source: *Policy Basics: Top Ten Facts about Social Security*, Center on Budget and Policy Priorities, Nov. 6, 2012)

While almost all our members have public sector defined benefit pension plans, some educators face a different retirement security problem: they are being unfairly deprived of Social Security benefits they have earned. The Government Pension Offset (GPO) reduces public employees' Social Security spousal or survivor benefits by two-thirds of their public pension. It affects people who work as federal, state, or local government employees, including educators, police officers, and firefighters, if the job is not covered by Social Security. Nationwide, more than one-third of teachers and education employees, and more than one-fifth of other public employees, are not covered by Social Security, and are, therefore, subject to the GPO. An estimated 9 out of 10 public employees affected by the GPO lose their entire spousal benefit, even though their deceased spouse paid Social Security taxes for many years.

The Windfall Elimination Provision (WEP) reduces the earned Social Security benefits of an individual who also receives a public pension from a job not covered by Social Security. It affects people who worked in jobs not covered by Social Security and in jobs in which they earned Social Security benefits—such as educators who do not earn Social Security in the public schools, but who work part-time or during the summer in jobs covered by Social Security. The WEP penalizes individuals who move into teaching from private sector employment, or who seek to supplement their often insufficient public wages by working part-time or in the summer months in jobs covered by Social Security.

In summary, we urge you to provide the funding flexibility necessary for defined benefit pension plans to survive; maintain current Social Security benefit levels while eliminating GPO and WEP, which unfairly deprive hard-working Americans of benefits they have earned; and provide incentives to encourage personal savings, especially for those who are not covered by employment-based pension plans.

We thank you for the opportunity to submit these comments.

Sincerely,

Mary Kusler

Mary Kusler
Director of Government Relations

The ERISA Industry Committee

ERIC

The ERISA Industry Committee

September 17, 2014

Subcommittee on Select Revenue Measures
Committee on Ways and Means
United States House of Representatives
1101 Longworth House Office Building
Washington, DC 20515

RE: Hearing on Private Employer Defined Benefit Pension Plans

Ladies and Gentlemen:

The ERISA Industry Committee ("ERIC"), as the representative of America's major employers on retirement issues, appreciates the Committee's focus on private-sector defined benefit plans. Thank you for the opportunity to submit this statement for the record for the Committee's hearing on Private Employer Defined Benefit Pension Plans.

ERIC'S INTEREST IN RETIREMENT PLANS

The ERISA Industry Committee ("ERIC") is a nonprofit association committed to the advancement of the employee retirement benefit plans of America's largest employers. ERIC's members provide comprehensive retirement benefits to tens of millions of active and retired workers and their families. ERIC is committed to preserving and enhancing the voluntary employer-provided retirement system and the tax incentives that support it.

SUMMARY OF COMMENTS

ERIC recommends that Congress consider the following with respect to single-employer defined benefit plans.[1]

- The current system designed by Congress benefits workers by providing them with protections, while encouraging greater retirement benefits.
- The current retirement plan system provides companies with the flexibility they need to attract and retain workers.
- Congress should protect and encourage the maintenance of retirement plans.

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[1] The comments in this letter focus exclusively on retirement plans sponsored by single employers.

OVERVIEW

In 2011, there were more than 45,000 employer-sponsored defined benefit plans with over 40 million participants.[2] Ninety-nine percent of these workers participate in large plans (that have 100 or more participants). These plans provide valuable benefits and allow many workers to retire comfortably.

In total, companies sponsor over 680,000 retirement plans, including both defined benefit and defined contribution plans, which provide significant retirement benefits for nearly 130 million American workers and their families.

Although many companies are committed to providing their employees with generous benefits through defined benefit plans, the total number of these plans has been steadily declining. The total number of defined benefit plans has declined from over 100,000 in 1975 to only 45,000 in 2011.[3] As discussed in greater detail below, ERIC strongly encourages the Committee to pass legislation that enables companies to continue to maintain their defined benefit plans.

Congress has repeatedly recognized the importance of the retirement plan system and the benefits it provides Americans. Over 100 members of Congress introduced a resolution in 2012, recognizing the value of retirement plans and stating that the current tax incentives for retirement plans should be maintained.[4]

ERIC urges the Committee on Ways and Means to acknowledge the value of private-employer-sponsored retirement plans, pass legislation that supports the sponsoring of defined benefit plans, and recognize the valuable benefits retirement plans provide to millions of workers and their families.

DETAILED COMMENTS

I. The current system designed by Congress benefits workers by providing them with protections, while encouraging greater retirement benefits.

A. Companies and employees jointly work towards preparing workers for retirement under the current system.

Under the current system, workers are encouraged to save for retirement, while companies are provided with the means to attract and retain employees. Companies sponsor hundreds of thousands of retirement plans which provide millions of participants with retirement income. The vast majority of these plans include employer contributions and also allow workers to contribute towards their retirement savings. Companies have the ability to adopt defined benefit plans and/or hybrid plans, where the employer typically funds the benefit; as well as defined contribution plans, where both the plan sponsor and the employees can contribute. Congress has also established nondiscrimination

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[2] U.S. Dep't of Labor, *Private Pension Plan Bulletin: Abstract of 2011 Form 5500 Annual Reports* (Jun. 2013).
[3] *Id.*
[4] H.Con.Res.101, Expressing the sense of the Congress that our current tax incentives for retirement savings provide important benefits to Americans to help plan for a financially secure retirement, 112th Congress, 2d Session (Feb. 16, 2012).

rules, which ensure that employer contributions to plans are distributed among the vast majority of workers.

Under the current retirement plan system, workers are able to prepare for a comfortable retirement.

B. Flexibility in the current system has been a critical component to its success.

Workers are given the flexibility they need, when they need it, under the current retirement system. Employees can save more when they are able and contribute less when they are under financial constraints. For example, an individual may be able to save more when they are younger or once their children become adults, but have less money to contribute when paying for their children's college educations or caring for their elderly parents.

Flexibility also allows companies to design plans that work effectively and efficiently based on the needs of their workforces and the industries in which they operate. As a result of this flexibility, companies can offer generous benefits to their workers based on their particular situations. They can also modify future benefits to be more generous as circumstances allow.

ERIC urges Congress to recognize the value of flexibility in the current system that benefits both workers and the companies that elect to sponsor retirement plans.

C. Congress has put measures in place that balance the interests of employees and their employers.

Congress has developed a carefully balanced system that addresses the needs of participants and the companies that sponsor their retirement plans. The government agencies that oversee retirement plans, including the U.S. Department of Labor, Treasury Department, and Pension Benefit Guaranty Corporation, have interpreted the legislation passed by Congress to protect participants and their retirement savings. These agencies issue detailed regulations and guidance to ensure that participants' interests are well-protected. For example, there are rules regarding vesting, coverage, and the allocation of benefits in retirement plans. Congress also continues to evaluate, and revise, the rules for retirement plans.

Under the Employee Retirement Income Security Act of 1974 ("ERISA"), workers' interests are protected by fiduciaries who are required to ensure that retirement plans are operated properly. These fiduciaries are required to act solely in the interests of plan participants. They are also required to operate retirement plans in accordance with the highest standards known to the law and are held to the standard of a prudent person, acting in similar circumstances. Thus, the interests of participants are well protected.

Rules and regulations also require a high level of transparency so that employees receive information that indicates that their employers are administering their retirement plans prudently and in the best interests of the participants.

D. The interests of workers should be protected by maintaining the current employer-based retirement plan system.

Congress should protect retirement plans and the workers who participate in them by maintaining the current rules. Congress has enacted laws that maximize the benefits of the retirement plan system while minimizing potential concerns. As a result, companies and workers are encouraged to jointly help employees save for retirement. It is critical that Congress protect the valuable retirement plan system that it has created.

II. The current retirement plan system provides companies with the flexibility they need to attract and retain workers.

The current employer-based retirement plan system enables companies to use retirement plans as a means to compete for quality workers, to keep those workers, and to ensure that they can retire from their workplace with adequate retirement savings. The voluntary nature of this system is critical to its success. The diverse nature of employers necessitates a flexible retirement system. For example, some companies employ only a handful of workers, while others have over a million employees. Some employers are regionally based, while other companies have workers all over the globe. A "one-size-fits-all" approach to retirement plans often will not address the challenges of companies who want to offer retirement benefits to their workers. For example, defined benefit plans may be more suited to some workers, while others may benefit more from a 401(k) plan.

Furthermore, flexibility fosters creativity in plan design. It allows companies to adopt innovative approaches that promote participation, increase deferrals, and help participants with the investment of contributions. These ideas often lead to overall improvement in the retirement plan system.

Flexibility is also critical in times of uncertainty and can even help to save jobs. For example, some companies faced financial difficulties during the recent recession and had to stop making matching contributions to their 401(k) plans. Many plans made these decisions based on limited cash flow realities and decided to temporarily reduce retirement benefits while saving company jobs. When profitability returned, these plans were able to resume their contributions and the number of plans making matching contributions is back to pre-recession levels. If rules are too stringent and inflexible and do not allow for employers to respond to rapid economic changes in the best interest of their workforce, it will undoubtedly lead to decisions that undermine the U.S. economy and workforce. Anecdotal evidence reflects that many workers strongly supported their companies' decisions to provide a temporarily lower company 401(k) match in order to save jobs.

Flexibility has been particularly crucial regarding the funding of defined benefit plans. Companies may have varying levels of profitability over several years. These plan sponsors need to be able to contribute more to their retirement plans when they are financially able and obtain relief during the years when it is needed. It is critical that the funding rules associated with defined benefit plans be reasonable, consistent and provide appropriate flexibility while maintaining high fiduciary standards and responsible financial commitments. Common-sense funding rules are imperative to address the pressures of changing economic conditions and the growing competition by international companies.

ERIC strongly encourages Congress to continue to encourage companies to voluntarily sponsor retirement plans by including reasonable flexibility in any changes to the rules for retirement plans.

III. Congress should protect and encourage the maintenance of retirement plans.

A. Congress should minimize the rising costs of maintaining pension plans.

Congress has repeatedly increased the premiums that companies must pay to the Pension Benefit Guaranty Corporation ("PBGC") for their defined benefit plans over the past few years. In recent years, Congress increased premiums by almost $9 billion over 10 years in MAP-21 and by an additional $7.9 billion under the Bipartisan Budget Act of 2013.

The PBGC over the past few years has also repeatedly argued for higher premiums. The President's budget proposed to give the PBGC Board the authority to adjust variable premiums.[5] Allowing the PBGC to raise premiums, plus the two recent increases, would result in a cumulative $51.4 billion hit to the U.S. economy over 11 years.

ERIC, along with others, funded a study which showed the proposed increases would limit the ability of companies to invest, create jobs and grow the economy.[6] It found PBGC premiums would cost an average of 42,000 jobs per year, peaking at a loss of more than 67,000 jobs in 2017. Congress could save an average of 24,500 jobs per year by rejecting additional premium hikes.

The PBGC recently issued its FY 2013 Projections Report which states that there has been improvement in the funded status of the PBGC's single-employer program. It noted a significant decrease in underfunding in the single-employer system.

The recent increases in PBGC premiums has also forced employers to consider de-risking strategies that would mitigate the fixed costs of PBGC premiums, especially by plans that are well funded. If this trend continues, it will have a negative effect on the PBGC by leaving more underfunded plans in the system and less well funded plans. ERIC is particularly concerned that the discussion during the last two premium increases centered around revenue without full exploration of the policy implications.

ERIC strongly urges Congress to refrain from increasing PBGC premiums any further given the negative impact it would have on the economy and the defined benefit system as a whole and the lack of need as evidenced by the PBGC's own report.

B. Congress should help companies to maintain their frozen defined benefit plans.

Companies also need help to enable them to maintain their frozen defined benefit plans. Plan sponsors often grandfather some or all of the existing employees in a plan when it freezes its defined benefit plan for some existing or new employees. These grandfathered employees continue to accrue

[5] The White House, *The President's Budget for Fiscal Year 2015*, available at http://www.whitehouse.gov/omb/budget.
[6] The Pension Coalition, *Increasing Pension Premiums: The Impact on Jobs and Economic Growth* (May 2014), available at http://bit.ly/X9gzvX.

benefits under the plan and are very helpful to the older longer service employees who often have made retirement plans based on the benefit formula previously in effect.

These arrangements can cause nondiscrimination testing problems over time when workers in the plan often typically become higher earners and no new lower paid workers are included in the plan for testing purposes. The most workable solution to this problem in many cases is to (1) remove some or all of the longer service (and perhaps more highly compensated) employees from the defined benefit plan, or (2) more likely, completely freeze the defined benefit plan. This can result in participants losing the most beneficial years of pension plan participation. Although the Treasury Department has issued temporary relief for defined benefit plans that provide ongoing accruals, the relief will apply only to a limited number of plans.[7]

On July 31, 2014, Representative Tiberi (R-OH), introduced H.R. 5381, which would provide relief from ongoing nondiscrimination testing for frozen defined benefit plans, subject to certain conditions.[8] H.R. 5381 would protect older, longer-serving participants by providing an exception to nondiscrimination testing and allowing frozen defined benefit plans to apply the nondiscrimination rules to the closed class of participants as of the freeze date and beyond. Therefore, if the plan passed the nondiscrimination testing requirements as of the date of the freeze applicable to the closed class of participants, a plan would no longer be required to apply the nondiscrimination testing requirements to the closed class of participants (unless a plan amendment applied to and changed the benefits of the closed class of participants).

ERIC supports Congressman Tiberi's bill and encourages Congress to pass legislation that supports the maintenance of frozen defined benefit plans.

C. Congress should recognize the deferral nature of retirement plans as it contemplates tax reform.

The rules for retirement plans are unlike those for other types of tax benefits. Taxes are merely deferred for retirement plan contributions until the employee receives the funds, which is typically during retirement. As a result, tax revenue is not lost when workers contribute to their retirement accounts, it is merely *delayed* until the worker retires and begins taking distributions. This differs from tax expenditures where the tax is completely avoided (i.e., deductions).

It is critical that Congress recognize that the deferral nature of retirement savings is not properly reflected in the calculations performed by the Joint Committee on Taxation ("JCT") and the Treasury Department. Their calculations do not consider that there is only a deferral of taxation when they measure the cost of the tax deferrals into retirement plans. The majority of the taxes paid show up outside the 10-year time frame used by the JCT and Treasury Department because workers generally withdraw money from these plans only in retirement. As a result, the majority of the costs for deferrals are "scored" as lost revenue, instead of being reflected as deferred revenue. This approach significantly exaggerates the actual cost to the government for the tax incentives for

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[7] See, ERIC Comment Letter to IRS, *Notice 2014-5 - Nondiscrimination Relief for Closed Defined Benefit Plans* (Feb. 28, 2014), available at http://www.eric.org/uploads/doc/retirement/ERIC%20Comment%20Letter%20on%20Notice%202014-5.pdf.

[8] Representative Neal (D-MA) introduced The Retirement Simplification and Enhancement Act of 2013 in May 2013, which contained a similar provision as H.R. 5381.

retirement plans and ignores the real long term value of the plans to the country and working Americans.

The approach of the JCT and Treasury could also damage the long-term solvency of the government. If Congress acts upon these measurements, the amount of funds the government will receive when the money was scheduled to be received (i.e., when participants retire) could be significantly reduced. Congress should recognize that retirement plan contributions are deferrals, not deductions, when evaluating the tax provisions related to retirement plans.

D. Congress should also be wary of proposals to change the current retirement plan system as they would cause significant negative consequences.

It is critical that Congress recognize the negative results that could occur if it changes the employer-based retirement plan system. The U.S. retirement plan system is designed to carefully balance the interests of employers and employees and research indicates that changes to the system would likely have a negative impact on retirement savings. Several proposals have been suggested that claim to "improve" the current retirement system or reduce the federal budget deficit.[9] These proposals would generally limit the amount that could be contributed to a retirement plan, replace the current deferral of contributions with a credit, or limit the value of the retirement benefit.

Research reflects that these proposals would reduce retirement security for workers at all income levels, not just high-income workers.[10] For example, the study revealed that some employers would decide to no longer offer a plan to their workers and some participants would decrease their contributions under the proposals. The combined effect of these changes could result in reduced retirement savings of between 6 and 22 percent for workers currently age 26-35, with the greatest reductions for those in the lowest income quartile. Lowest-income participants in retirement plans with less than $10 million in assets could see reductions as high as 40 percent.

Furthermore, the President has repeatedly proposed changes to the system that would limit the amount American workers could save for retirement.[11] This proposal would negatively impact the amount Americans save for retirement. For example, there were significant negative consequences in the 1980s when Congress limited retirement contributions. When the eligibility requirements for individual retirement accounts ("IRAs") were complicated, deductible contributions declined from $37.8 billion in 1986 to only $14.1 billion in 1987 and continued to steadily decline thereafter.[12] Workers have shown that they will save less when there is increased complexity in retirement plans.

ERIC strongly encourages Congress to be wary of unintended consequences that could result from these proposals. Changes to the rules for retirement plans often result in a "chilling effect" on savings even by individuals who are *unaffected* by the rules change. Congress should take into account all the factors that contribute to a healthy and successful private sector retirement system. In the above IRA example, policymakers underestimated the role financial services companies played in

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[9] EBRI, *Modifying the Federal Tax Treatment of 401(k) Plan Contributions: Projected Impact on Participant Account Balances* (Mar. 2012), available at http://www.ebri.org/publications/notes/index.cfm?fa=notesDisp&content_id=5019.
[10] *Id.*
[11] The White House, *The President's Budget for Fiscal Year 2015*, available at http://www.whitehouse.gov/omb/budget.
[12] Sarah Holden, Kathy Ireland, Vicky Leonard- Chambers, and Michael Bogdan, *The Individual Retirement Account at Age 30: A Retrospective*, The Investment Company Institute, available at http://www.ici.org/pdf/per11-01.pdf.

encouraging IRA contributions. When everyone could make a deductible IRA contribution, banks and other institutions would take out full page ads in newspapers to remind and encourage individuals to make their annual IRA contribution. When the rules changed and became too complicated to explain, the advertisements disappeared and so did the IRA contributions.

Additionally, workers significantly value the ability to contribute to their 401(k) plans on a pre-tax basis.[13] Over 89 percent of people surveyed by EBRI indicated that the ability to contribute to a retirement plan on a tax-deferred basis was somewhat or very important to them.

ERIC urges Congress to recognize that any changes to retirement savings incentives must focus on long-term policies that could enhance retirement outcomes for Americans, rather than on short-term deficit reduction.

CONCLUSION

Congress should protect the retirement system to allow future generations to prepare for an adequate retirement. It is critical that Congress exercise substantial caution when considering any changes to the retirement system in order to avoid major unintended adverse consequences. The effects of significant changes for individuals, employers and the system as a whole are simply too harmful and must be avoided.

The current employer-based retirement system works well for both companies and workers by carefully balancing their needs. Retirement plan rules ensure that plans treat participants fairly and without discrimination (e.g., the vesting, coverage, and nondiscrimination rules) while encouraging employers to voluntarily sponsor the retirement plans that benefit their workers. Furthermore, both workers and plan sponsors are given the flexibility they need in order to maximize retirement plan benefits.

ERIC urges Congress to pass legislation that protects and encourages the maintenance of retirement plans, minimizes costs to maintain retirement plans, provides relief for frozen defined benefit plans, recognizes the deferral nature of retirement plans, and critically evaluates proposals to change the system.

ERIC appreciates the opportunity to provide comments with respect to the Committee's hearing on Private Employer Defined Benefit Plans. If you have any questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400.

Sincerely,

Kathryn Ricard

Kathryn Ricard
Senior Vice President, Retirement Policy

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[13] EBRI, *Tax Reform Options: Promoting Retirement Security* (Nov. 2011), available at http://www.ebri.org/publications/ib/index.cfm?fa=ibDisp&content_id=4934.

United Brotherhood of Carpenters and Joiners

Written Statement for The Record of Douglas J. McCarron General President,
United Brotherhood of Carpenters and Joiners of America
For the U.S. House Committee on the Ways & Means
Subcommittee on Select Revenue
Hearing on Private Employer Defined Benefit Pension Plans
Wednesday, September 17, 2014

Chairman Tiberi, thank you for the opportunity to submit this statement for the record on behalf of the 450,000 members of the UBC and for holding a hearing on Private Employer Defined Benefit Pension Plans.

The topic of retirement security, particularly for multiemployer plan participants, is particularly urgent.

In just the last year, as you know, we have seen multiemployer plans begin to fail, one in my union. Retirees in the plans have had their earned retirement benefits cut and the federal backstop – the Pension Benefit Guaranty Corporation (PBGC) – announced a projected funding shortfall that shines a bright light on need for immediate action to preserve the multiemployer pension system.

The PBGC's own estimates say it will run out of money in its multiemployer fund in less than a decade, and sooner if some of the bigger multiemployer plans fall on even harder times.

There are nearly 11 million multiemployer pension participants nationwide, creating an economic impact of over $38 billion.

The situation is urgent. The longer Congress waits to act, the more dire the stakes. The longer Congress waits, the greater the chance more employers leave their multiemployer plans, creating instability, jeopardizing retirement security and putting the entire system at risk.

The longer Congress waits to act, the more severe benefit cuts will become.

Plans nationwide have used every tool available to them to extend solvency. Active Workers have accepted reduced benefits and wages to support these important retirement instruments.

We aren't asking for a bailout, or for Congress to make any tough decisions about the future of individual plans.

Rather, what we propose is for Congress to give plans the tools to modernize and avoid insolvency. Our proposal is called Solutions Not Bailouts and it was formed after stakeholders from labor and business came together to address this problem before it is too late.

Our common sense plan helps those plans in trouble avoid losing everything and those that aren't better prepare for the future. It also protects taxpayers from footing the bill through a bailout that will cost billions.

We agree with you, Mr. Chairman: we cannot afford to do nothing to address the challenges facing multiemployer pensions. Too many employers, workers and retirees are counting on their multiemployer plans. If nothing is done, not only will the system collapse, but thousands of American businesses will fail, countless jobs will be lost, and retirees will lose almost everything.

I urge Congress to work together, as we have, to preserve multiemployer retirement security.

Workers deserve a secure retirement. Businesses large and small should be allowed to continue to compete in their markets and contribute to our economy. Retirees deserve the opportunity to preserve their benefits.

Congress can give us the tools to do just that by enacting the common sense Solutions Not Bailouts proposal

I thank the Subcommittee for holding this hearing and for bringing attention to the importance of reforming our multiemployer pension system.

U.S. Chamber of Commerce

Statement of the U.S. Chamber of Commerce

ON: Private Employer Defined Benefit Pension Plans

TO: Subcommittee on Select Revenue Measures of the House Ways and Means Committee

BY: U.S. Chamber of Commerce

DATE: September 17, 2014

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 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage 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 issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

Statement on
PRIVATE EMPLOYER DEFINED BENEFIT PENSION PLANS
Hearing before the
SUBCOMMITTEE ON SELECT REVENUE MEASURES
Of the
HOUSE WAYS AND MEANS COMMITTEE
on behalf of the
U.S. CHAMBER OF COMMERCE
September 17, 2014

The U.S. Chamber of Commerce would like to thank Chairman Tiberi, Ranking Member Neal, and members of the Subcommittee for the opportunity to provide a statement for the record. The topic of today's hearing – private employer defined benefit pension plans – is of significant concern to our membership. In particular, our membership is very concerned about multiemployer defined benefit plans and the application of nondiscrimination rules to frozen plans. The Chamber has been working with a number of interested parties and is pleased that the Subcommittee is taking the time to focus on these important issues.

Comprehensive Multiemployer Pension Reform

At the end of 2014, the multiemployer funding rules under the Pension Protection Act of 2006 (PPA) will expire. Consequently, parties that are interested in comprehensive multiemployer pension reform see this as an opportunity for legislative action. As sponsors of multiemployer defined benefit plans, a number of Chamber members have a substantial interest in the viability of the multiemployer plan system. Funding for multiemployer plans comes entirely from employers, who are at financial risk when a plan faces funding problems. Therefore, funding and accounting issues create substantial challenges not just in maintaining the plan but also for the employers' business.

There are several issues that the employer community would like to see addressed through multiemployer pension reform. While the PPA was a step in the right direction, additional tools are needed to ensure the proper funding of plans. In addition, there are significant concerns about "orphan" participants and escalating withdrawal liability estimates. As a result, it is critical that Congress comprehensively address the long-term funding issues of multiemployer plans.

In January 2013, the PBGC issued two reports on the multiemployer pension system. In one report, the PBGC stated that without changes to current law, the PBGC's multiemployer guarantee system will go bankrupt within 10 years.

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

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

In February 2013, the Retirement Security Review Commission[1] issued recommendations for change. The proposal endorses the funding rules under the PPA and includes two significant additions.[2] The first addition would allow severely distressed plans to suspend benefits for retirees. Any suspended benefit would have to be higher than the PBGC guaranteed levels and could be reinstated if the plan’s funding improves. The second addition would allow plans to freeze past benefit liabilities at current levels and then move forward with a new plan that would not have withdrawal liability. The Chamber supports the recommendations of the Retirement Security Review Commission. The proposals in the report go a long way in addressing certain serious issues in the multiemployer plan system.

In addition to the recommendations from the Retirement Security Review Commission, the Chamber believes that additional reforms are needed to address employer concerns. 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. Without comprehensive reform that addresses the problem of withdrawal liability, many employers – including many small, family-owned businesses – are in danger of bankruptcy.

As part of our statement we are submitting the Chamber’s Principles on Multiemployer Funding Reform for the record. We appreciate the opportunity to submit these Principles and look forward to working with Congress and other interested parties in seeking comprehensive funding reform for multiemployer plans.

Application of Non-discrimination Rules to Frozen Plans

Many companies designed their transition from a defined benefit structure to a defined contribution structure in a way that allowed older, long service employees who were close to retirement to maintain accruals under the defined benefit pension plan. However, more of these grandfathered employees are becoming highly-compensated employees. Since there are no new entrants to the plan, the number of non-highly compensated employees is becoming

[1] The Commission is a joint management and labor effort that was led by the National Coordinating Committee for Multiemployer Plans.
[2] As part of its endorsement of the current funding rules, the report includes a number of technical corrections to those rules.

smaller. This phenomenon is making it difficult for companies to pass the discrimination testing. In order to pass the tests, companies may be forced to change the retirement benefit structure (i.e., defined benefit to defined contribution) of employees who are closest to retirement with the least amount of time to make up the difference – the outcome they sought to avoid by implementing the transition period in the first place.

Earlier this year, Treasury and the IRS provided temporary guidance to address this issue. Notice 2014-5 permits certain employers that sponsor a closed DB plan and a DC plan to demonstrate that the aggregated plans comply with the nondiscrimination requirements of Code section 401(a)(4) on the basis of equivalent benefits, even if the aggregated plans do not satisfy the current conditions for testing on that basis. Under the temporary guidance, a combined defined benefit/defined contribution plan can demonstrate it has the nondiscrimination requirements for a plan year starting before January 1, 2016, if the plan was amended prior to December 13, 2013 to allow only employees participating in the defined benefit plan on a specific date to continue to accrue benefits. In addition, each defined benefit plan within a combined defined benefit/defined contribution plan must satisfy one of the two following conditions:

- For plan years beginning in 2013, the defined benefit plan was a component of a combined defined benefit/defined contribution plan that was either primarily defined benefit in character or consisted of broadly available separate plans; or

- The defined benefit plan was not part of a DB/DC plan for the plan year beginning in 2013 because the DB plan satisfied the coverage and nondiscrimination requirements without aggregation with any DC plan.

While the Chamber appreciates the temporary guidance, permanent relief is needed. The Chamber recommends revising the nondiscrimination rules so that if a group of employees is grandfathered (i.e., allowed to continue to accrue a benefit after a plan is otherwise frozen to new entrants) and that group of employees is a nondiscriminatory group when the plan is frozen, it would be treated as a nondiscriminatory group permanently unless the group or the benefit formula applicable to the group is modified by plan amendment.[3] This recommendation would prevent frozen plans from violating the rules prohibiting discrimination in favor of highly compensated employees and allow these long-serving employees to continue to accrue benefits under a defined benefit plan. Chairman Tiberi and Ranking Member Neal have introduced legislation that would provide this relief permanently in H.R. 5831.[4] We urge Congress to move forward with this legislation.

We understand that IRS and Treasury are concerned about this recommendation. Primarily, the concern is about preventing abuse of these provisions. We believe that this is not an issue for plans that have already terminated. If a plan has already closed, there is no chance the closure was done to take advantage of a rule that was not yet in existence. For future plan closures, there should be a facts and circumstances test. In this way, the agencies could ensure that closures are

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[3] Rep. Richard Neal (D-MA) included this proposal in legislation he introduced in the 112[th] Congress - H.R. 4050, *The Retirement Plan Simplification and Enhancement Act*.

[4] Senators Cardin (D-MD) and Portman (R-OH) have introduced a companion bill in the Senate, S. 2855, *The Retirement Security Preservation Act*.

not done to abuse the nondiscrimination rules and all plan sponsors would have an opportunity to maintain benefit promises made to longer-serving employees.[5]

Conclusion

Thank you for the opportunity to comment on these important issues in the defined benefit plan system. We look forward to working with Congress and all interested parties to ensure the continued viability of the private defined benefit plan system.

[5] We recommend that such facts and circumstances tests only need to be done once. After the Treasury and IRS determine that the closure had non-abusive purpose, the plan would be deemed to be non-discriminatory as long as there are no further amendments to the plan.

U.S. Chamber of Commerce
Principles on Multiemployer Funding Reform

Reform of the Multiemployer Plan Funding System is Necessary. The Chamber supports multiemployer funding reform. Without such reform, many employers – including many small, family-owned businesses – are in danger of bankruptcy. Without real reform to the multiemployer system and resolutions to the underlying problems, more employers will be forced into bankruptcy and more workers will be left without a secure retirement.

The Chamber Supports the Recommendations of the Retirement Security Review Commission. On February 19, the Retirement Security Review Commission of the National Coordinating Committee for Multiemployer Plans issued a report entitled *Solutions Not Bailouts.* Several members of the Chamber participated in the Commission and contributed to the findings of the report. The proposals in the report recommend that deeply troubled plans be given the authority to cut benefits, subject to certain guidelines and review, and the authority to offer alternative plans to attract new employers and retain existing employers that are crucial to the solvency of these plan. The proposals go a long way in addressing certain serious issues in the multiemployer plan system. As such, the Chamber fully supports the recommendations and believes that the recommendations can provide a critical foundation for reform of the multiemployer pension system.

Any Multiemployer Funding Reform MUST Address 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. Most people agree that withdrawal liability has been a failed experiment. Rather than encouraging participation in multiemployer plans, it has discouraged new employers from joining multiemployer plans. In addition, it has not been the financial salve it was expected to be. It is commonly acknowledged by funds and their representatives that multiemployer plans recover an estimated 10 cents on the dollar - if they are able to collect anything at all. Consequently, changing such a detrimental part of the system is critical to retaining existing employers and attracting new employers and essential if any reform efforts are going to be successful.

Comprehensive Funding Reform Should Focus on Making Plans Financially Solvent on an Ongoing Basis. While fixing immediate concerns in the multiemployer system is necessary, comprehensive reform must also include methods for ensuring the financial viability of the system. Without such reforms, the multiemployer system will be in a perpetual state of crisis and continue to pose risks for employers, workers, and retirees.

For further information, please contact Aliya Wong at 202-463-5458 or awong@uschamber.com