FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS IN H.R. 2830, THE "PENSION PROTECTION ACT OF 2005"

HEARING

BEFORE THE

SUBCOMMITTEE ON SELECT REVENUE MEASURES

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

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FUNDING RULES FOR MULTIEMPLOYER DIFINED BENEFIT PLANS IN H.R. 2830, THE "PENSION PROTECTION ACT OF 2005"

TUESDAY, JUNE 28, 2005

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:02 a.m., in room 1100, Longworth House Office Building, Hon. Dave Camp (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SELECT REVENUE MEASURES

FOR IMMEDIATE RELEASE
June 28, 2005
No. SRM–3

CONTACT: (202) 226–5911

Camp Announces Hearing on Funding Rules for Multiemployer Defined Benefit Plans in H.R. 2830, the "Pension Protection Act of 2005"

Congressman Dave Camp (R–MI), Chairman, Subcommittee on Select Revenue Measures of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the multiemployer pension provisions of H.R. 2830, the "Pension Protection Act of 2005." **The hearing will take place on Tuesday, June 28, 2005, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 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.

BACKGROUND:

More than 9.8 million workers participate in multiemployer defined benefit plans, which are collectively bargained pension arrangements involving unrelated employers, usually in a common industry. The Pension Benefits Guaranty Corporation (PBGC) estimates that multiemployer pension programs are underfunded by more than $150 billion; that is, these pension programs have promised $150 billion more in benefits than they have assets to pay according to current funding levels in the plans.

To address the current underfunding in these plans, Education and Workforce Chairman, John A. Boehner (R–OH), Chairman Bill Thomas (R–CA) and Rep. Sam Johnson (R–TX) introduced H.R. 2830 on June 9, 2005. Provisions included in this legislation create a structure for identifying multiemployer pension plans that may be facing funding problems and providing quantifiable benchmarks for measuring efforts to improve the plan's funding. Plans that are between 65 and 80 percent funded are classified as "yellow zone" plans that are in intermediate financial problems. Trustees of yellow zone plans would be required to adopt a program that will improve the health of the plan by one-third within 10 years. Trustees would be prohibited from increasing benefits that could cause the plan to fall below the 65 percent funded status. Plans that are less than 65 percent funded and face significant funding problems would be classified as "red zone" plans. Trustees would be required to develop a plan to exit the red zone funding status within 10 years, among other requirements. Additionally, H.R. 2830 requires increased reporting and disclosure requirements for all plans.

In announcing the hearing, Chairman Camp stated, "This bill seeks to address the shortfalls in the pension funding requirements that have led to the underfunding of many of our Nation's pensions programs. The changes will help increase the transparency of the funding status of multiemployer pension plans and provide new tools to enable troubled plans to regain their financial health."

FOCUS OF THE HEARING:

The hearing will focus on the funding rules for multiemployer defined benefit plans contained in H.R. 2830, the "Pension Protection Act of 2005."

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit 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 "*109th Congress*" from the menu entitled, "*Hearing Archives*" (*http://waysandmeans.house.gov/Hearings.asp?congress=17*). 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, completing all informational forms and clicking "submit" on the final page, an email will be sent to the address which you supply confirming your interest in providing a submission for the record. You ***MUST REPLY*** to the email and ***ATTACH*** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business Tuesday, July 12, 2005. **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) 225–1721.

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 or WordPerfect 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.

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

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.

Chairman CAMP. Good morning. The Committee on Ways and Means Subcommittee on Select Revenue Measures hearing on funding rules for multiemployer defined benefit plans will come to order. Today, we begin an examination of the multiemployer pension plan reforms included in H.R. 2830, the Pension Protection Act of 2005. Single-employer pension plans are facing serious chal-

lenges. Our goal is to ensure that multiemployer plans, which many Americans rely upon, do not face similar problems. This hearing will provide Members of the Subcommittee with information on proposed reforms intended to strengthen those multiemployer plans. Some 1,600 multiemployer plans cover nearly 9.8 million working people. These plans operate under distinct rules and are the subject of collective bargaining agreements. They allow workers to move between employers while accumulating retirement benefits. They also rely financially on the many employers involved in each plan to provide resources. These employers share responsibility for the plans' liabilities, placing companies and those they employ at risk if things go wrong. Most important is the obvious need for companies and workers to cooperate in keeping plans properly funded.

Those who fund and depend on multiemployer arrangements have for some time been discussing ways to improves plans' strength. It is promising to see mutual recognition of the need for change because multiemployer plans cannot be turned over to the Pension Benefit Guaranty Corp. (PBGC). Plan solvency and financing are of paramount concern. A weak plan can be so potentially burdensome that employers may be unable to survive, increasing the financial pressure on those who remain behind with the responsibility of funding the plans' promises. This kind of financial codependence means all stakeholders—retirees, workers, and employers—can face a potential loss. To obtain a sense of the scope and condition of multiemployer plans, our first witness will be Douglas Holtz-Eakin, Director of the Congressional Budget Office (CBO). Our panel from the private sector will discuss business and professional perspectives in how current law governing operation of multiemployer plans should be adjusted to ensure these plans can deliver what is promised. Those on the panel have been part of ongoing discussions about possible improvements to H.R. 2830 and will undoubtedly benefit from their insights as to how plans can be improved. I now yield to Mr. McNulty for any opening remarks he may wish to make.

Mr. MCNULTY. Thank you, Mr. Chairman, and I join you in welcoming all of our witnesses today, and I support the efforts of this Subcommittee to bring this important issue to the forefront of our legislative agenda. This is a time when many of our workers are feeling less secure about their financial future and retirement. They see their employers or employers of their friends and relatives renege on pension promises that were made to the workers. These employers are failing their workers in different ways, such as not adequately funding their pension promises or dumping the pension liabilities on the PBGC. These promises are being broken after employees have kept their end of the bargain and have given many years of faithful service. Recent developments in the retirement area make this hearing even more relevant. Today, we will focus on a set of funding reforms that are being advanced by the employers who sponsor these plans, union representatives who negotiate the workers' benefits under the plans, and the trustees who manage these plans. The level of cooperation among these groups is admirable. I applaud the representatives who keep working to reach common ground among the competing interests in the group.

I encourage you to continue this process. I would request that the interests of the workers and retirees are not shortchanged in the process.

Today, many of our workers believe that their retirement is under assault. Pension plans are being terminated without sufficient assets to pay the promised benefits. In these cases, the workers bear a significant portion of the loss. Social Security is under attack, and retirees can see their guaranteed benefit possibly being taken away under proposals supported by this administration. More than half our workforce currently have no work-related pension plan. Those who have this benefit are losing it. This gives us a strong incentive to work together to protect the benefits of those workers who have them, especially those workers who have a benefit under the defined benefit pension plan, such as a multiemployer plan. Multiemployer plans have been affected by what has been referred to as "the perfect storm": falling interest rates and a weak stock market. This has eroded funding levels in many plans, but there is good news. Losses in the multiemployer plans are not as large as the losses incurred by single-employer pension plans. According to the PBGC's Pension Insurance Data Book for fiscal year 2004, the multiemployer program was in surplus from 1982 to 2002. The program reported a deficit of $236 million in 2004 compared to a deficit of $23.3 billion for single-employer plans. I hope we can work together to solve this problem. As we continue, I hope we will remain committed to balancing all the competing interests in order to reach an acceptable resolution. Mr. Chairman, I thank you. I ask that all of the other Members of the Subcommittee be allowed to present statements for the record, and I yield my time.

Chairman CAMP. Without objection. Thank you. Now we will turn to our first witness, the Director of the CBO, who has appeared before this Committee many times, Mr. Douglas Holtz-Eakin. You have 5 minutes. We have your written testimony. If you could summarize your written testimony, your full statement will appear in the record, and you may now proceed. Thank you for being here.

STATEMENT OF DOUGLAS HOLTZ-EAKIN, DIRECTOR, CONGRESSIONAL BUDGET OFFICE

Dr. HOLTZ-EAKIN. Mr. Chairman, thank you for the opportunity for the CBO to be here, Congressman McNulty and Members of the Committee. You do have our written statement. I will use the 5 minutes to summarize three key points: Point number one, that multiemployer plans face significant underfunding that places both firms and workers at risk, firms at risk for higher contributions in the future, and works at risk for the failure to receive compensation that they have earned. Number two, that the much larger scale of the single-employer plans and the larger scale of their problems need not disguise the important policy problems that face the multiemployer plans; in particular, the much lower level of exposure of the PBGC in this area is not a good indicator of the underlying policy dilemma. Three, that probably the key policy issue that faces the Committee is how to enhance timely disclosure of funding status and to tighten funding rules. Multiemployer

plans have some key features with which the Committee is familiar. The first is their collective nature, a shared structure across both employers and the unions with which the negotiations are made, and the obligation to maintain funding in that setting. Contributions are collectively bargained, and this produces different dynamics than are present in the single-employer plans.

The other key feature is the low level of the PBGC guarantee. There is a very small guarantee, about $13,000, the top pension guarantee in this setting, as opposed to $46,000 for a single-employer plan. With that comes a much lower premium paid into the PBGC, and the flip side of that is that a greater fraction of the risks are shared by employers and workers, placing a much more important emphasis on funding of these plans to be able to get through economic distress. Another key feature of the multiemployer plans is their concentration in a relatively small number of industries. In particular, over 50 percent are present in the construction and trucking industries alone, and if one adds up a small list of areas of the economy, you quickly exhaust the location of the 1,600 plans and 10 million workers who are affected by multiemployer plans. Now, the second points have to do with the adequacy of funding overall and the PBGC exposure. As was mentioned by Mr. McNulty, the PBGC estimates that plans in the aggregate are underfunded by about $150 billion at present. In contrast, the single-employer plans are short by about $450 billion. This produces a broad exposure to underfunding among participants in the multiemployer plans. As this slide shows, a small fraction, 11 percent, are actually in plans that are adequately funded at present, and a significant number, over a quarter, are in plans that are funded at under 70 percent of the required rates.

However, very little of this underfunding would likely end up on the books of the PBGC. As has been true in the past, premiums into the PBGC have largely exceeded the loans going out. There is a 2004 deficit, a shortfall of assets versus liabilities of $236 million for the PBGC, contrasted to the $23 billion that was mentioned for the single-employer plans. In one expands the set to those plans that are not already insolvent but those which could possibly become solvent, the exposure of the PBGC is another $108 million. In contrast, if you do the same computation for single-employer plans, the PBGC's exposure is about $96 billion. So, the order of magnitude of exposure of the PBGC is much smaller. Instead, the exposure is at the firms and the workers, and there the key policy issues are to find a way to adequately fund these plans so as to be able to survive the economic circumstances that might shift through time. In particular, given the concentration in different industries and the funding across those industries, you must put funding in place sufficient to weather shifts in profitability and competitiveness of industries going forward, both for the known problems and for those which might transpire in the future. Step one in doing that is to more quickly identify underfunding, make available such information to all stakeholders involved—the trustees, the workers, the firms, and the PBGC. Greater transparency helps for monitoring on the part of all parties. It is also useful to have forward-looking measures, not those concentrated in the present but those which can anticipate funding problems going for-

ward and disclose future problems in a timely fashion as well. Then the second step is having identified these kinds of situations, have adequately tight rules so that funding is maintained and, where necessary, beefed up in order to have these plans survive into the future. As I said, I am pleased to have the chance to be here today Look forward to answering your questions.

[The prepared statement of Mr. Holtz-Eakin follows:]

Statement of Douglas Holtz-Eakin, Director, Congressional Budget Office

Mr. Chairman, Ranking Democratic Member McNulty, and Members of the Subcommittee, thank you for this opportunity to discuss the financial status of and government insurance for multiemployer defined-benefit pension plans. My presentation today will focus on three general points:

- Although multiemployer pension plans and single-employer pension plans are both designed to provide specified monthly benefits to workers at retirement, there are major differences between the two types of plans in how they are structured.
- The multiemployer plans, as a group, are significantly underfunded—by an amount estimated by the Pension Benefit Guaranty Corporation (PBGC) to total $150 billion. In contrast to its responsibility for single-employer plans, PBGC underwrites a relatively small portion of the benefits associated with any shortfall in multiemployer plans.
- Given the financial exposure that both workers and employers face in multiemployer plans, questions arise about whether current funding rules should be altered to better promote the long-term financial security of the plans and whether additional changes should be made to promote the availability of timely, accurate information about the financial condition of the plans.

Characteristics of Multiemployer Pension Plans

Given all of the recent attention on PBGC's single-employer insurance program, it is sometimes easy to overlook the smaller multiemployer program. According to PBGC's estimates, last year the agency provided insurance coverage to 9.8 million participants in about 1,600 multiemployer plans. Those participants constituted over 20 percent of all participants in a defined-benefit plan whose pension is protected under the Employee Retirement Income Security Act (ERISA).

A multiemployer plan is a pension arrangement between a labor union and a group of at least two unrelated employers, usually in a common industry. Like a single-employer pension plan, a multiemployer plan generally provides specified monthly benefits at retirement. But unlike participants in a single-employer plan, whose benefits generally are based on years of service and a measure of earnings, participants in a typical multiemployer plan receive benefits based on a flat dollar amount for each year of service in employment covered by the plan. For example, a worker in a plan that credits participants with $100 per month for each year of service who retires after 30 years of service in covered employment would be eligible for a monthly pension of $3,000 per month (or $36,000 per year).

Also unlike participants in a single-employer plan, participants in a multiemployer plan generally can continue to accrue credits toward their pension when they change employers, as long as the new employer is a part of the plan. That portability makes such plans particularly attractive in industries such as construction, in which workers move from work site to work site, sometimes employed by different companies.

Participation in multiemployer plans is heavily concentrated in certain sectors of the economy. Half of all participants are in just two industries: construction and trucking (see Table 1); and few workers in those industries are in single-employer plans. Those two industries account for less than one-tenth of all private-sector employment.

Table 1. Participation in PBGC–Insured Multiemployer Plans, by Industry, 2003

	Insured Participants	
	Number	Percent
Construction	3,542,568	37

Table 1. Participation in PBGC–Insured Multiemployer Plans, by Industry, 2003—Continued

	Insured Participants	
	Number	Percent
Manufacturing	1,483,441	15
Services	1,392,810	14
Retail Trade	1,380,438	14
Trucking	1,374,717	14
Other	524,966	5
Total	**29,698,940**	**100**

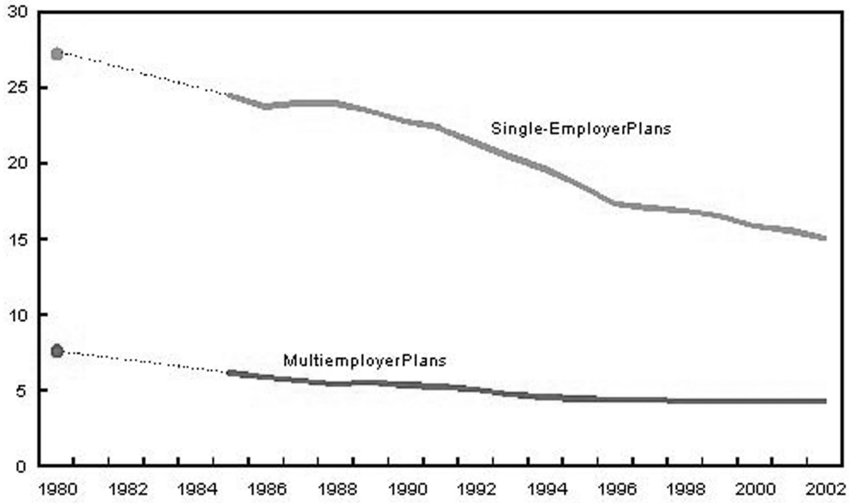
Source: Congressional Budget Office based on Pension Benefit Guaranty Corporation, *Pension Insurance Data Book 2004* (Spring 2005), p. 89.

As with single-employer plans, the percentage of the nation's private-sector wage and salary workers participating in multiemployer plans has been declining for over two decades (see Figure 1). In recent years, only about 4 percent of private-sector employees have been in multiemployer plans, down from almost 8 percent in 1980. (The comparable figures for the single-employer plans are 15 percent and 27 percent.)

Figure 1.

Share of Private-Sector Employees Who Participate in PBGC-Insured Pension Plans

(Percentage of private-sector wage and salary workers)



Source: Congressional Budget Office based on Pension Benefit Guaranty Corporation, *Pension Insurance Data Book 2004* (Spring 2005), p. 58.

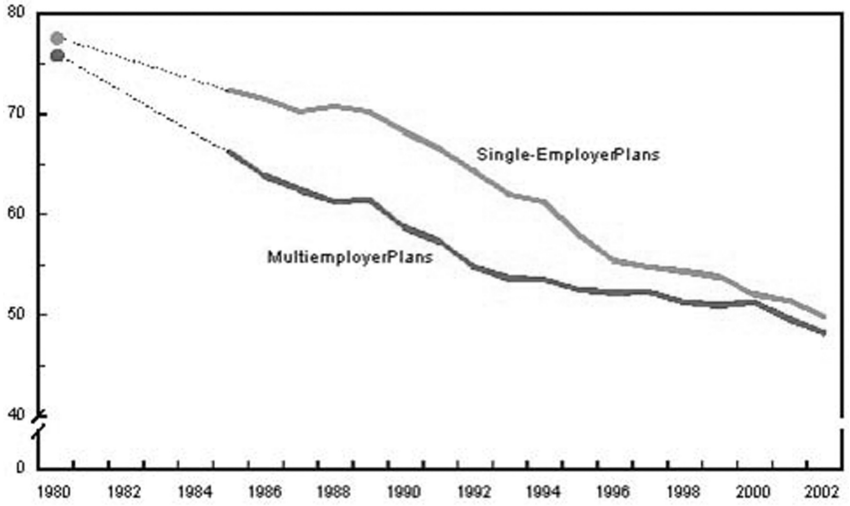
Note: Data for 1981 through 1984 were unavailable.

Moreover, in both types of plans, the percentage of participants still working has steadily declined, and the percentage who have retired or who are vested but have not yet begun receiving a pension has steadily risen. In recent years, about half of all participants are still working in a job covered by their plan, compared with three-quarters in 1980 (see Figure 2).

Figure 2.

Share of Participants in PBGC-Insured Pension Plans Working in a Job Covered by Their Plan

(Percentage of total participants)



Source: Congressional Budget Office based on Pension Benefit Guaranty Corporation, *Pension Insurance Data Book 2004* (Spring 2005), pp. 57 and 88.

Note: Data for 1981 through 1984 were unavailable.

Nearly three-quarters of participants in multiemployer plans and two-thirds of those in single-employer plans are in plans with more than 10,000 people. Participation in relatively small plans (those with fewer than 1,000 participants, for example) is more likely for people in single-employer plans; about 9 percent of participants in single-employer plans are in such plans, while just 3 percent of participants in multiemployer plans are (see Table 2).

Table 2. Participants in PBGC–Insured Multiemployer and Single-Employer Plans, by Size of Plan, 2004

Number of Participants in Plan	Multiemployer Plan Participants		Single-Employer Plan Participants	
	Number (Thousands)	Percent	Number (Thousands)	Percent
10,000 or More	7,248	74	22,425	65
15,000 to 9,999	898	9	3,619	10
1,000 to 4,999	1,364	14	5,526	16
Fewer Than 1,000	319	3	3,047	9
Total	**9,828**	**100**	**34,617**	**100**

Source: Congressional Budget Office based on Pension Benefit Guaranty Corporation, *Pension Insurance Data Book 2004* (Spring 2005), pp. 55 and 86.

Funding

The benefits paid by multiemployer plans are financed by participating employers through contributions generally specified in collective bargaining agreements. Those contributions are typically based on the number of hours worked by employees covered by the plan. Thus, if a plan is sponsored by employers that all have 100 cov-

ered full-time employees, each employer pays a comparable amount into that plan, while a firm with 200 such workers pays twice as much.

Like single-employer plans, multiemployer plans can become underfunded for a number of reasons. For example, underfunding may have resulted from plans' adopting a lower discount rate, which would increase the present value of their future liabilities, or from a drop in the value of their assets. Under those conditions, sponsors of both types of plans are allowed to amortize the underfunding over as many as 30 years.

A unique concern in the financing of multiemployer plans is the treatment of firms that leave them. If a plan is adequately funded—that is, it contains enough assets to pay the present and future vested claims that participants have already accrued—then a firm's departure would not affect the plan's financial status. But if the plan is underfunded, then the remaining employers would be left with the departing firm's share of the unfunded liabilities. To address that problem ERISA established a special set of rules for firms that wish to discontinue their cosponsorship of a multiemployer plan. Such a sponsor owes a "withdrawal liability," which represents the firm's pro rata share of the plan's unfunded liabilities, and must make payments periodically over a multiyear schedule specified in statute. However, those rules may not help if the firm leaves the plan because it has gone out of business.

According to forms filed by multiemployer plans in 2002, most participants are in plans that appear to be underfunded (see Table 3). In 2002, 26 percent of participants were in plans with assets sufficient to cover less than 70 percent of projected liabilities; 51 percent were in plans with assets to cover 70 percent to 89 percent; and 12 percent were in plans to cover 90 percent to 99 percent. Only 11 percent of participants were in plans that had at least enough assets to cover projected liabilities. The average funding ratio in that year was 77 percent, and underfunded plans existed in every major industry (see Table 4). (According to unpublished data from PBGC, the average funding ratio fell to 71 percent in 2003.)

Table 3. Participants in PBGC–Insured Multiemployer Plans, by Percentage of Plans' Liabilities Funded, 2002

Funding Ratio (Percent)	Multiemployer Plan Participants	
	Number (Thousands)	Percent
Less Than 70	2,511	26
70 to 89	4,880	51
90 to 99	1,190	12
100 or More	1,049	11
Total	**9,630**	**100**

Source: Congressional Budget Office based on Pension Benefit Guaranty Corporation, *Pension Insurance Data Book 2004* (Spring 2005), p. 94.

Table 4. Funding of PBGC–Insured Multiemployer Plans, by Industry, 2002

	Average Funding Ratio (Percent)
Construction	77
Manufacturing	83
Services	83
Retail Trade	78
Trucking	70
All PBGC–Insured Multiemployer Plans	77

Source: Congressional Budget Office based on Pension Benefit Guaranty Corporation, *Pension Insurance Data Book 2004* (Spring 2005), p. 95.

The Role of the PBGC

While single-employer and multiemployer pensions originally were treated similarly under ERISA, enactment of the Multiemployer Pension Plan Amendments Act of 1980 changed the treatment of multiemployer plans significantly. PBGC's multiemployer program is legally distinct from its single-employer program, and cross-subsidization between the two programs, including mixing assets and receipts from premiums, is not permitted.

The insured events under the two programs are very different. For single-employer plans, PBGC insures against the termination of an underfunded plan. If a single-employer plan is terminated without sufficient assets to pay all current and future promised benefits, PBGC takes over the plan's assets and liabilities and attempts to recover additional funds from the sponsor. PBGC then makes monthly benefit payments to beneficiaries, up to a limit set in law. For multiemployer plans, the insured event is the insolvency of a plan. A multiemployer plan is considered insolvent if, in a given year, it does not have sufficient funds on hand to pay promised benefits in that year. In that event, the plan's benefit payments are limited to an amount guaranteed by PBGC, and the agency provides loans to the plan on a quarterly basis to make up for any funding shortfall. PBGC does not take over the plan, and the plan remains in operation. The loans continue until the plan recovers or until all vested benefits have been paid. If the plan recovers from insolvency, it is required to repay all of the outstanding loans on a commercially reasonable schedule in accordance with regulations. In most cases to date, however, the plans have not recovered, and PBGC has had to write off the loans.

The guarantee limits on benefits in the two programs also differ substantially. In the single-employer program, the current limit on annual benefits for a worker retiring at age 65 with a single-life annuity is about $46,000. For the multiemployer program, the limit is lower and depends on a participant's promised benefits and number of years of service in the plan. For example, the maximum annual guarantee for a worker with 30 years of covered employment is about $13,000.

The multiemployer program is financed through a premium that is levied on plans according to the number of insured participants. Currently, that annual premium is $2.60 per participant, and in 2004, PBGC collected about $25 million in premium receipts. In contrast, the premium in the single-employer program is based on a per-participant charge (currently $19 per participant) plus an additional charge (of $9 per $1,000 of underfunding per participant) for plans that are underfunded. In 2004, PBGC collected a total of $1.5 billion in premiums in the single-employer program.

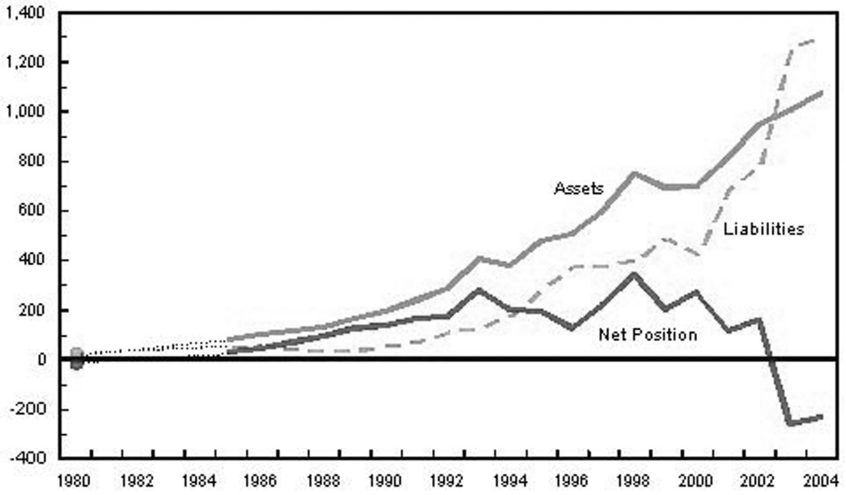
As with the single-employer program, the annual cashflows of the multiemployer program are recorded in the federal budget. Premium collections and repayments of loans are shown as offsetting receipts, while benefit payments, financial assistance (loans), and administrative expenses appear as outlays. Only rarely has the budget recorded an annual deficit for the multiemployer program.

In contrast to that of PBGC's single-employer program, the financial condition of the multiemployer program has been generally favorable. The program was in surplus from 1985 to 2002 and fell into deficit only recently, in 2003 and 2004 (see Figure 3). At the end of fiscal year 2004, PBGC's multiemployer account had assets (from premiums and investment returns) totaling about $1.1 billion. At the same time, it had liabilities totaling $1.3 billion. Nearly all of those liabilities represented the present value of nonrecoverable future financial assistance that PBGC expected to provide to insolvent multiemployer plans. The net position of the multiemployer program, the difference between assets and the present value of liabilities, was a deficit of $236 million. (At the same time, PBGC's single-employer program had a deficit of $23.3 billion.)

Figure 3.

Net Financial Position of PBGC's Multiemployer Program

(Millions of dollars)



Source: Congressional Budget Office based on Pension Benefit Guaranty Corporation, *Pension Insurance Data Book 2004* (Spring 2005), p. 82.

Note: Data for 1981 through 1984 were unavailable.

The difference between PBGC's exposure in the single-employer and multiemployer programs is illustrated by other financial information provided by PBGC. According to the agency's estimates, at the end of 2004, total pension underfunding was $150 billion in multiemployer pension plans and $450 billion in single-employer plans. Furthermore, by PBGC's estimates, it was "reasonably possible" that multiemployer plans would require future financial assistance of about $108 *million*; the comparable liability for single-employer plans was $96 *billion*.

The contrast between the financial condition of PBGC's multiemployer program and its single-employer program is partly a result of the quite different responsibilities that the agency has for each. In effect, employers and their workers bear much more of the risks associated with underfunding in multiemployer plans than they do in single-employer plans.

In a multiemployer plan that is underfunded, employers bear more of the risks because a firm must pay an exit fee when it withdraws. Moreover, to the extent that the plan remains underfunded, the remaining firms are required to increase their payments into the plan. Workers bear more of the risks because the level of the pension guaranteed by PBGC is much lower for multiemployer plans that are insolvent than it is for single-employer plans that the agency has taken over.

Issues

For the millions of workers who are employed in a company that participates in a multiemployer defined-benefit pension plan, the promised annuity is often an important part of their retirement income. Unlike most other forms of compensation, which workers receive when they provide their services, pension benefits may be paid long after they are earned. Therefore, the availability of benefits from multiemployer plans depends on the adequate funding of those benefits in advance.

Funding rules that are strict, along with strong enforcement, lessen the need for (and therefore the appropriate price of) pension insurance. Conversely, looser funding requirements increase the risks to the insurance provider (in this case, PBGC) and raise the appropriate price of the insurance.

PBGC's experience over the past 25 years might lead one to conclude that the existing structure of funding requirements and pension insurance has worked much better in the multiemployer program than in the single-employer program. The agency's financial reports show very little exposure, either historically or prospectively, resulting from multiemployer plans, whereas billions in claims have been

booked in the single-employer program, and tens of billions in claims are likely to be acquired over the next quarter century.

However, the level of claims should not be the sole measure by which policies addressing pension funding and insurance are assessed. The overall question to ask is, are the goals of the pension system being achieved in the most efficient manner and with the least impact on the economy in general?

Toward that end, one issue is whether current funding rules should be altered to better promote the long-term financial security of multiemployer plans and thereby lessen the chances that they will not be able to pay the promised pensions. For instance, some observers have raised concerns that limits on employers' contributions (designed to prevent firms from reducing their tax liabilities by overfunding pensions) have led to underfunding and limited flexibility. Similarly, some have suggested that tax rules (both the deductibility of contributions and the applicability of excise taxes to overfunding) have encouraged plans' trustees to increase benefits above the levels that could be safely maintained in the event of an industry downturn or a fall in the ratio of active to retired workers.

A second issue is whether additional changes should be made to promote the availability of timely, accurate information about the financial condition of the plans. For multiemployer plans, achieving transparency is more complicated than it is for single-employer plans, and it may be even more important to participants in multiemployer plans than to those in single-employer plans because of the difference in the guaranteed amounts in the two programs. Concerns have been raised, for example, that firms not represented on a plan's board of trustees are not receiving adequate information. Concerns have also been raised about whether disclosure rules are sufficient, although they were enhanced last year.

Chairman CAMP. Well, thank you very much. I guess my first question is: In your testimony you indicate that the multiemployer plans were in surplus until 2002 and that obviously the deficits are relatively recent. What happened that resulted in or led to this change in circumstance?

Dr. HOLTZ-EAKIN. That part of the dynamics are similar to the single-employer plans. The largest impact is the falling stock market and thus the decline in the value of the assets behind the plans. Also, to some extent, any change in actuarial assumptions to reflect lower interest rates would beef up the size of the liabilities. Those two effects would put the plans into the deficit.

Chairman CAMP. You also indicated that the PBGC has estimated underfunding in multiemployer plans could be as high as $150 billion. Is this concentrated in particular industries?

Dr. HOLTZ-EAKIN. It is concentrated in the industries that were on the slide. The PBGC's numbers indicate that about 45 percent of that is in construction; another nearly 30 percent is in the trucking industry. So, reflective of the concentration of the plans in those areas, the underfunding is there as well.

Chairman CAMP. I realize those are the largest number of multiemployer plans. Is it those particular industries that have concentrations, or is it just because they have the most multiemployer plans?

Dr. HOLTZ-EAKIN. It is a little bit of both. I think the dominant fact that comes out of looking at the numbers is that the multiemployer plans as a whole are underfunded. They look very similar in their overall funding to the list of single-employer plans that are declared underfunded by the PBGC. So, essentially the multiemployer universe is underfunded, and the level of underfunding is comparable.

Chairman CAMP. Are there any special considerations in those particular industries that would make funding for those plans particularly difficult to achieve?

Dr. HOLTZ-EAKIN. I think on a going-forward basis there are no special considerations that probably apply. There is the legacy of underfunding from the past and a set of transitions to any new rules that would have to be—you would have to take into consideration the financial condition of those industries. But I do not think that there is anything that looking forward singles out particular industries. Indeed, it would be desirable not to, to make sure that regardless of the industry in which the plan is located, there are adequate funding rules put in place so that workers will receive the compensation they have already earned, regardless of what happens in that industry over time.

Chairman CAMP. All right. Thank you very much. Mr. McNulty may inquire.

Mr. MCNULTY. Thank you, Mr. Chairman. Thank you, Mr. Director, for being here today and for your service to the country. In your testimony, you kind of pretty clearly stated what the problems are for us to look at, and toward the end of your oral testimony, you mentioned in general terms some of the solutions that we should be looking at. But could you be a little bit more specific in that regard about improving the system and where we go from here so that we could get more specific about what we might be able to do in the form of legislation?

Dr. HOLTZ-EAKIN. Let me start by what appear to be things to take off the table. In contrast to the single-employer plans where it appears that the insurance itself is underpriced, that does not appear to be the case here. This is not a PBGC issue. It is about the funding rules that apply within these plans. There——

Mr. MCNULTY. You mentioned tightening the rules. Can you expand on that?

Dr. HOLTZ-EAKIN. I think you want to focus on two things. First, there is a self-enforcement mechanism built into multiemployer plans because of the multiple stakeholders, allowing them to see more clearly the actual status of the plan at a point in time. So, quick disclosure using things that are close to market value so that you can see the status at any point in time provides automatic incentives for employers to not get stuck with the bill and for workers to make sure they are going to get their pension. So, there is an information component to this which augments the natural incentives of these kinds of plans. The second is rules. Make the funding tighter. There I think that singling out significantly underfunded plans and putting in place a mechanism to ensure that they become adequately funded, regardless of future collective bargaining agreements, making sure that that is a binding commitment is important.

Mr. MCNULTY. Thank you, Mr. Director. I yield back my time, Mr. Chairman.

Chairman CAMP. Thank you. The gentleman from Illinois, Mr. Weller, may inquire.

Mr. WELLER. Thank you, Mr. Chairman. This is an important hearing, and, Dr. Holtz-Eakin, I appreciate your participation this morning. When I think of the multiemployer pension funds in the

district I represent in the south suburbs and rural areas outside the city of Chicago, I think of a lot of building trades people, those that we see working on the roads, those we see working on the construction of commercial and residential projects in my area, which is growing rapidly. So, when we talk about pensions, multiemployer pensions, those are the people I think of because they are my neighbors and they all have concerns. It is my understanding there are about 16,000 multiemployer pension funds, there are about 65,000 employers that participate in these multiemployer pensions funds, and there are just less than 10 million workers that are directly affected. Are those numbers accurate, Dr. Holtz-Eakin?

Dr. HOLTZ-EAKIN. I think the plans are closer to 1,600, but the rest is on the mark.

Mr. WELLER. From the standpoint of the PBGC, can you talk about how the PBGC treats single-employer pension funds versus multiemployer funds, the difference between those two when it comes to PBGC?

Dr. HOLTZ-EAKIN. Probably the key difference is with a single-employer plan, the PBGC, ultimately the key act is termination of the plan and the PBGC taking over control of the plan and having to use the assets available to meet the benefit commitments. In the multiemployer context, the triggering issue is insolvency, the inability of the plan to meet this year's retirement payments with the resources on hand. At that point the PBGC does not take over ownership. Instead, it provides loans so as to be able to meet at least the minimum promised retirement benefit for that year and for subsequent periods as necessary. Ideally, one might imagine those loans would be repaid as the plan is restored to health, but in practice they typically are not. So, the PBGC services on an ongoing basis the benefit promises.

Mr. WELLER. You had noted in your statement that the PBGC estimates it may be required to provide $108 million in financial assistance to multiemployer pension plans while the potential PBGC exposure for single-employer plans could be nearly $100 billion. Think about that, $108 million versus $100 billion. Is the difference in PBGC exposure a sign that multiemployer pension funds are in better shape? Or does it reflect multiemployer plans placing funding burdens on every employer who participates? How do you differentiate that projected need for financial assistance?

Dr. HOLTZ-EAKIN. It is certainly not the case that it indicates they are in better shape. As I mentioned to the Chairman, if you look at the underfunded single-employer plans, the funding ratios are comparable to the typical funding ratio in the entire multiemployer plan universe. So, there is significant underfunding of the multiemployer plans as a whole. The PBGC is simply less exposed. It has a smaller benefit guarantee, and more of the risk is shifted as a result of the other stakeholders, firms in the form of making up the underfundings or workers in the form of lower pension benefits than they anticipated. So, the small exposure of the PBGC does not adequately measure the size of the policy problem, particularly if you are a participant in this particular system.

Mr. WELLER. One statistic there, you know, I said there were 1,600 multiemployer pension funds. How many single-employer pension plans are there?

Dr. HOLTZ-EAKIN. There are about 44 million workers covered, and we can get that number for you for the record. I do not know it off the top of my head.

Mr. WELLER. Thank you. Thank you, Mr. Chairman, for the opportunity to question.

Chairman CAMP. Thank you. The gentleman from California, Mr. Thompson, may inquire.

Mr. THOMPSON. Thank you, Mr. Chairman. Just to pick up on that last question, should we be more concerned—one underfunding problem, should that be of greater concern to us than the underfunding problem in the other plan?

Dr. HOLTZ-EAKIN. There are different kinds of concerns. I would say that for workers in either a single-employer or multiemployer plans, concerns are comparable. If you are underfunded, you are underfunded, and your pension promise is at risk. The threshold question in single-employer plans is whether the large exposure of the PBGC will be allowed to spill over into the budget as a whole and require more taxpayer resources to shore it up. At the moment, there is no statutory authority or requirement for the budget as a whole to cover any of the large PBGC exposures. There may, however, be obvious pressure to come up with some money. That is the real difference in this circumstance.

Mr. THOMPSON. Thank you. I think in your opening statement or maybe in response to somebody's question, you talked about how we got into this deficit problem. I apologize if I am causing you to explain something that I should already know. But do we have some means by which we can adjust this as problems happen? You talked about the downturn in the stock market. Is there an ongoing means where this kind of self-adjusts, or do we have to play catch-up once a problem occurs?

Dr. HOLTZ-EAKIN. In general, if one thinks of the way the funding schemes work, number one is you would like to have it be as forward-looking as possible so you can anticipate the future and the liabilities and assets that you will have available. I think that is a beneficial part of any reform, thinking about looking ahead instead of just focusing on this year's insolvency. Number two, it is useful to quickly revalue both assets Liabilities. The big action in the multiemployer plans will be on the asset side. The stock market goes down, it should be recognized right away that there are fewer resources available to meet pension commitments. At that point, a new plan should be put in place which brings the funding up to an adequate level. So, it doesn't mean you have to have dramatic shifts in the amount of payments that people make, but you should recognize dramatic shifts in the underlying funding status. Rules that smooth the underlying funding status disguise that and make it harder to recognize problems as they develop.

Mr. THOMPSON. Thank you. Mr. Chairman, I yield back.

Chairman CAMP. Thank you. The gentleman from Indiana, Mr. Chocola, may inquire.

Mr. CHOCOLA. Thank you, Mr. Chairman. Dr. Holtz-Eakin, thanks for being here today. Just quickly, I keep trying to figure

out why there is such a significant level of underfunding in multiemployer and single-employer, and you were asked that earlier, and I keep trying to figure out: Is it bad behavior by the employers? Are they not living up to their funding obligations? Is it bad formulas that drive the funding? One of the things that is offered is the stock market has declined. At 10,300, the stock market is at a historically high level. Is there a timing issue? Are we going to see that the funding levels are going to increase because the stock market recently has performed better? It is a lot different than at 9,000 to have it at 10,300.

Dr. HOLTZ-EAKIN. I think that there is no quicker way for me to get into trouble than to forecast the stock market.

Mr. CHOCOLA. No, I am not asking you——

Dr. HOLTZ-EAKIN. I will do that anyway.

Mr. CHOCOLA. I am just saying today, because the stock market is historically at pretty high levels.

Dr. HOLTZ-EAKIN. It will help if the market rises, but I do not think anyone would anticipate a return to the levels in the late nineties and thus solve the funding problem through that mechanism. Instead, I think at the core of the broad exposure is a fact that even though in following the rules—I mean, there is no evidence anyone did not follow the rules. The rules permit very slow recognition of the decline in the asset values. So, for years after the assets actually go down in value, there does not appear on the books to be any problem. There is no requirement to make above-average payments to increase funding, and that is at the root of the impact of the stock market decline on the funding status in both systems at the moment.

Mr. CHOCOLA. I think your third point was to enhance disclosure of the funding status and also to tighten the funding obligations. So, would that help if you—does the disclosure aspects and obligations fix some of the timing of the value of the underfunded levels?

Dr. HOLTZ-EAKIN. I think that you do three steps. Step one is quickly recognize that the plan has become underfunded, so you do that. Then step two, disclose it to workers, firms, and all the participants in a multiemployer plan. At that point you have clear incentives in a collective bargaining setting to get more funding in to honor the promise. Then step three, support that with a set of funding rules which require that to take place as well so as not to have this end up being a PBGC problem.

Mr. CHOCOLA. Isn't there a bit of a catch-22 in some of the proposed reforms with the yellow zone and red zone plans? If you require underfunded plans to accelerate their funding, aren't you placing a burden on some of the companies that are part of the plan that may ultimately result in their demise, and then putting more pressure on the other employers and actually making the health of the multiemployer plan in worse shape than in better shape? Do you see a catch-22 there, and is that a concern or not for you?

Dr. HOLTZ-EAKIN. It is a question of magnitude. I think that as a de novo starting strategy, it is a perfectly good one. Picking up some of these problems in midstream raises the concerns that you mentioned. However, because there is a look-ahead provision—

you are looking ahead over, you know, 7 years or so—you can anticipate problems and not have abrupt changes in the requirements for payments that would place these firms in a really tough position of coming up with the cash. So, I think by having it put in a forward-looking framework, it alleviates that concern to some extent.

Mr. CHOCOLA. Thank you. Thank you, Mr. Chairman. I yield back.

Chairman CAMP. Dr. Holtz-Eakin, just to follow up the disclosure point that you made that employers would then be able to address that in collective bargaining agreements, those often are multiyear contracts. So, are you suggesting they would go in and open those up again and make those changes immediately?

Dr. HOLTZ-EAKIN. No. My point was concentrated on the sort of economic incentives that that would embed in the system. By recognizing this as quickly as possible at the next available moment, both firms and workers would have an incentive to come to terms with this.

Chairman CAMP. All right. The gentlewoman from Ohio, Ms. Tubbs Jones, is recognized for 5 minutes.

Ms. TUBBS JONES. Mr. Chairman, thank you very much for the recognition. Dr. Holtz-Eakin, it is nice to see you again. I am going to pass on questioning this morning. I know you all do not believe it, but I am. Thanks.

Chairman CAMP. The gentlewoman from Pennsylvania, Ms. Hart, is recognized for 5 minutes.

Ms. HART. Thank you, Mr. Chairman. My colleague from Indiana asked as part of his question about the cause for underfunding, and I did not hear you answer that. So, aside from the fact that it might be the performance of the markets, is there something else?

Dr. HOLTZ-EAKIN. Well, the performance of the markets took place within a set of rules that, A, allows the decline in asset values to be masked to some extent, and, B, may not provide sufficiently strong funding requirements. So, the markets is a mechanism explanation after the fact. Where did the asset values go? You can see that. There is the different issue, which is how should a system recognize that assets are going to change in value, that that is inevitable, and make sure that there are incentives to fully fund pensions regardless of that.

Ms. HART. So, then would you support some changes to the rules that would actually be more—I did not read through all your testimony. Do you actually suggest certain changes in your testimony?

Dr. HOLTZ-EAKIN. We really focused on the broad areas that I mentioned. We do not have specific legislative recommendations. However, the folks who will be on the panel after this are part of groups that have worked very hard and are focused in those areas, recognition of plans that have moderate or even extreme degrees of underfunding and forward-looking attempts to address that as part of new funding rules. So, I think that would be a good place for that discussion.

Ms. HART. One of your slides broke down the sections of industry that actually have multiemployer plans, and I am wondering if

in that analysis you discovered if a higher percent of, for example, the constructions ones are underfunded versus maybe the ones that are retail trade. Did you notice that the underfunding is focused more toward a certain particular industry?

Dr. HOLTZ-EAKIN. One of the slides—the last one I showed—shows the typical funding ratio by industry, so construction about 77 percent, manufacturing 83, service 83, retail trades 78, and trucking 70 percent. That is not a fraction of plans that are underfunded, but that is the overall funding ratios. We can get more detail to you if you are interested in those questions.

Ms. HART. Yes, I am. I am trying to determine if maybe there is some problem, for example, with the downturn in manufacturing, but it does not look like that is the problem. I am trying to figure out maybe if there is some issue with our economy in those particular industries that might have been contributing to the problem.

Dr. HOLTZ-EAKIN. I think the presence of the plans fits the labor markets of those industries, and those labor market incentives are very important. The portability of this pension across work sites and across employers explains the concentration in those industries. The adequacy of the funding rules is the central issue in making sure that those pensions would survive any industry booms or busts, as the case may be. The economy will ultimately always change its structure over time, and the key is to make sure that the pension plan promises are honored regardless of that. So, I do not think it is an industry problem.

Ms. HART. Okay.

Dr. HOLTZ-EAKIN. I think the plans are in those industries because those are the right incentives for those industries, and then the funding rules are meant to make sure it survives any industry dynamics.

Ms. HART. Okay. Just one final musing, and I am not sure how much time you spent on some of the State pension plans for State teachers organizations and those kinds of organizations, but a lot of them have been over the last 10 years or so well overfunded because they have these pretty high requirements and that sort of thing. I am worried about us going to the point with our requirements that we end up significantly overfunding these plans, because you don't to have all that tie-up, you know, you want to have people to have control over more of their money if you can, that sort of thing. Do you think we are in danger of that if we make significant changes to the funding rules?

Dr. HOLTZ-EAKIN. There are really two instruments that would be available to address that concern. The simplest is, you know, just raise the amount that one could overfund the plan and still have tax deductibility. That is a clear consideration here, particularly given the collective bargaining agreements. I think that is important to think about. The second way to address that is to more closely match the risks on the assets and the liabilities, and in this case, since the liabilities do not shift much through time, you have to have fairly safe assets to match up in the same way. If they are all moving up and down at the same time, you will stay properly funded even without overfunding them in the aggregate. Those are two different strategies for dealing with that issue.

Ms. HART. Thank you. I yield back, Mr. Chairman.

Chairman CAMP. Thank you. Dr. Holtz-Eakin, in response to Ms. Hart's question, though, there is joint and several liability in the multiemployer plans, which, to the extent industries have had financial difficulties, there is going to be a cascading burden of pension liability, and I think that is the point that she was sort of getting at. Did you see that in any of your research?

Dr. HOLTZ-EAKIN. Well, certainly the history has been that while the rules allow for this withdrawal of liability and the idea is to keep the plan funded, if there is an economic shift and downturn in that industry and there is large withdrawals, that is not a mechanism that will be adequate to take care of that. You will have to go to something else in that case.

Chairman CAMP. All right. Thank you. The gentleman from Texas, Mr. Doggett, may inquire.

Mr. DOGGETT. Thank you, Mr. Chairman. Thank you for your testimony. The last issue that you address in your written testimony concerns transparency and the availability of accurate information to participants, an issue that I have been concerned with and have had legislation with Congressman George Miller and a number of our colleagues the last two sessions. Our language has basically been included within Congressman Boehner's measure. Have you done any evaluation—you have indicated in your written testimony the importance of getting information to participants, but have you attempted any kind of evaluation of the adequacy of that language in accomplishing that task?

Dr. HOLTZ-EAKIN. We have not yet done a specific evaluation of Mr. Boehner's bill, but it does, upon reading, appear to be concentrated in the areas that we highlighted in the testimony. In that respect, it is certainly on track, and we can work with you further in looking at the details about the magnitudes.

Mr. DOGGETT. I believe the data indicates that while multiemployer plans have done better the single-employer plans, still about one in four participants is in a plan that is funded only to about the 70-percent level.

Dr. HOLTZ-EAKIN. I think you have to be careful in saying that one has done better than the other. I think that most multiemployer plans are underfunded; only 11 percent are fully funded. Given that they are underfunded and given that single-employer plans are underfunded, they look about the same. So, I do not think in terms of funding either has a large advantage over the other. It is the case that there are a significant number of workers who are in plans that show substantial underfunding. It is a pervasive phenomenon.

Mr. DOGGETT. As to those significant number of workers in underfunded plans, it would be likely that a significant number of them are not aware of whether their plan is underfunded or how underfunded it is under current conditions.

Dr. HOLTZ-EAKIN. It is certainly the case that it would improve their ability or their representative's ability to take appropriate steps if they knew quickly the pension status.

Mr. DOGGETT. As you are well aware, on a different aspect of this, there is considerable concern that if too many changes are made, employers will drop plans. Again, do you have any observa-

tions as relates to the Boehner bill, particularly with reference to those companies that are in the endangered or yellow zone, as to what the likelihood is that employers will drop plans if those changes are made?

Dr. HOLTZ-EAKIN. We do not have that, and it is something that we would be happy to work with you on. I think it is an important issue. It has come up in both the multiemployer and the single-employer context, and the instruments are different, premiums on the single employers, and here funding rules, but the same issues arise.

Mr. DOGGETT. Have there been any attempts in previous Congresses to mandate that certain types of employers have pension plans?

Dr. HOLTZ-EAKIN. I am sorry?

Mr. DOGGETT. Have there been any attempts in previous Congresses to mandate that certain types of employers have pension plans in contrast with the voluntary system that has been our tradition?

Dr. HOLTZ-EAKIN. Not to my knowledge, but we should go check. That is not my area of expertise.

Mr. DOGGETT. Thank you for your testimony.

Chairman CAMP. Thank you. Thank you, Dr. Holtz-Eakin. We very much appreciate your testimony Look forward to working with you in the weeks and months ahead. Thank you.

Dr. HOLTZ-EAKIN. Thank you.

Chairman CAMP. And now our panel, please come to the dais: Charles Clark, President of Clark Construction Co. from the great State of Michigan; Timothy P. Lynch, President and chief executive officer of the Motor Freight Carriers Association; James Morgan, Vice President of the Collectively-Bargained Benefits, Safeway, from Pleasanton, California; and Judith F. Mazo, Senior Vice President and Director of Research, The Segal Company. I want to welcome our panel. Thank you all for coming and testifying. We will start with Mr. Clark. We do have your written statement. You have 5 minutes to summarize your testimony. Thank you for being here, and you may proceed.

STATEMENT OF CHARLES CLARK, PRESIDENT, CLARK CONSTRUCTION COMPANY, LANSING, MICHIGAN

Mr. CLARK. Thank you, Mr. Chairman. I am very happy to be here. This is a unique experience for me, and I am sitting in a place I don't think I really imagined myself being. So, it is a great treat. We and the organizations that I represent are supportive of this proposed legislation. I represent the Associated General Contractors of America, its 32,000 members, especially its 7,000 general contractors and 12,000 specialty trade contractors. The AGC represents both union and open-shop contractors, and more than 50 percent of our 98 chapters across the country have members that participate in the collective bargaining process, and they are represented on Taft-Hartley pension funds. Forty percent of the multiemployer funds across the country are construction related. I also represent Clark Construction Company. We are based in Michigan. We have annual revenues of about $250 million. We were founded 60 years ago by my father, and we have been run by myself and

my brother, John, since 1981. Both John and I hope that one or more of our three active children will take on the responsibility of running this company at some time.

Since Clark Construction's beginning, we have participated in the collective bargaining process and have been a member of the fund since their inceptions. I have also ben actively involved in the collective bargaining process. Last year, we contributed over $225,000 to multiemployer pension funds, including $95,000 to the Michigan Carpenters Fund, of which I am a trustee and was appointed by the Michigan Chapter of the AGC. We also contribute to the Laborers and the Teamster Funds. In the nineties, the Michigan Carpenters Fund approached 100 percent funding. According to the IRS Code, funding in excess of 100 percent is no longer a deductible expense for the contributing company. As a trustee, it is our fiduciary responsibility to prevent overfunding. So, an increase in benefits to the participants was required since a reduction of contributions was prohibited by the collective bargaining process. In other words, the trustees really had no choice; since they could not reduce funding, they had to increase—they could not reduce contributions. They had to increase funding.

Later, in 2001, the markets went wrong, and those funds became underfunded. But since ERISA disallows a reduction of benefits to the current beneficiaries, to correct the situation contributions to the fund then had to be increased or accruals to the active participants reduced. Fortunately, the Michigan Carpenters acted timely, and events played out favorably. Things could have been much worse, very much worse. Raising the deductible rates, as this legislation proposes, would have let us build a buffer in the nineties that would have helped us account for severe market fluctuations, would have added stability to our fund, confidence to our members, and predictability to the process. The changes proposed seemed minor, but they are essential to the long-term health of these funds. The Michigan Laborers also went through similar pressures and solutions. These scenarios are very typical to many Michigan funds and point to our necessary support of this legislation. Thank you.

[The prepared statement of Mr. Clark follows:]

Statement of Charles Clark, President, Clark Construction Company, Lansing, Michigan

Thank you for this opportunity to testify on multiemployer pension plans. I am testifying on behalf of the Associated General Contractors of America (AGC), a national trade association representing more than 32,000 companies, including 6,800 of America's leading general contractors and 12,000 specialty contractors. AGC is the voice of the construction industry.

AGC represents both union and open-shop contractors in a network of 98 chapters across the country, including at least one chapter in every state and Puerto Rico. Over half of those chapters represent contractors that contribute to Taft-Hartley multiemployer pension plans. Over half of AGC chapters serve as the collective bargaining representative of one or more multiemployer bargaining units that negotiate collective bargaining agreements with a construction trade union, such as local affiliates of the International Union of Operating Engineers, the Laborers' International Union of North America, the United Carpenters and Joiners of America, the International Association of Bridge, Structural, and Ornamental Reinforcing Iron Workers, the International Union of Bricklayers and Allied Craftworkers, the International Brotherhood of Teamsters, and the Operative Plasterers' and Cement Masons' International Association. Those chapters typically sponsor multiemployer

pension plans with each union that they bargain with and have responsibility for appointing management trustees to the jointly-trusteed plans.

The construction industry provides for more than 40% of multiemployer plans nationwide, predominantly due to their portability for workers. As employees move from job site to job site and between employers, multiemployer pension plans are the best way for union contractors to voluntarily provide a decent retirement benefit. We believe that the legislation you are considering today will improve and strengthen these plans for current and future retirees, while allowing collective bargaining parties and trustees flexibility in meeting the needs of the plans. Multiemployer pension plans need to be treated differently from single-employer plans, as I will explain.

I am Chuck Clark, president and CEO of Clark Construction in Lansing, Michigan, and a member of the Michigan Chapter AGC. While we are not the Clark Construction seen on signs around the Capital, we are one of the Top 100 companies on ENR's Construction Management list, and one of the Top 350 General Contractors nationwide. We are also proud to be one of the Top 10 largest construction employers in the State of Michigan. Clark Construction employs 150 full-time employees and finished $250 million worth of construction projects last year, mostly in Michigan. We are a family-run, closely-held operation; my father began the business in 1968 and remained active until my brother, John, and I began running it in 1981. Both John's children as well as my own are active in the business.

Clark Construction makes substantial contributions to the Michigan Carpenters Pension Fund (the Carpenters Fund) and to the Michigan Laborers Pension Fund (the Laborers Fund), which cover all of Michigan except for Detroit and its vicinity. In 2004 alone, my company contributed $95,752.84 to the Carpenters Fund and $110,828.61 to the Laborers Fund. We also contribute to the Central States Teamsters Fund.1

In the past, I have served on the committees that negotiate on behalf of the Michigan Chapter AGC for collective bargaining agreements with the Carpenters and with the Laborers. Currently, I am one of six management trustees on the Carpenters Fund. I will spend most of my testimony describing this plan, but I will also mention the Laborers Fund for comparison.

There are 9,665 beneficiaries in the Carpenters Fund: 2,796 retirees, 4,036 actives, and 2,883 who are entitled to future benefits but not currently working. Fewer than 600 employers contribute to this plan. On average, we employ 50 carpenters per year.

In the late 1990s, the Carpenters Fund, like most plans in Michigan, was fully funded and close to hitting the maximum deductibility level as detailed in Section 404(a)(1) of the Internal Revenue Code, which was then set by Congress at 100% fully funded,. If the fund had hit the maximum level, the employer contributions no longer would have been tax deductible, which would have been a financial penalty on contributing employers. It is a contractual and fiduciary duty of trustees to ensure that this never happens, so we were forced to grant benefit increases.

In terms of the maximum deductibility level, multiemployer pension plans function quite differently from single-employer plans. Multiemployer pension plans are Taft-Hartley Plans, with an equal number of trustees from management and from labor. The contributions made by employers to the funds are negotiated as part of a collective bargaining agreement, during which time management and unions decide on a wage and fringe package. In our case, the Carpenters agreement and the Laborers agreement are negotiated by the Michigan Chapter AGC and the local council for the respective unions. Our agreements typically last for three years, after which the parties go back to the bargaining table. In other cases, the parties negotiate every two years, four years, or alternative, yet regular, intervals.

The collective bargaining agreement dictates the hourly rate for contributions to the plan that an employer will make on behalf of covered employees. Traditionally in Michigan plans, labor and management have negotiated an overall increase in the wage and fringe package for employees. It is then up to the union to decide how to allocate the overall increase among wages, pension fund contributions, health-and-welfare fund contributions, training fund contributions, and any other agreed-upon benefits. Some AGC chapters negotiate specific increases to be allocated in specific ways. In either case, the amount of the employer's pension fund contribution is determined by the collective bargaining process.

Therefore, in the late 1990s, when plans approached the fully-funded ceiling, at which time contributions would no longer be tax deductible, the option of discontinuing contributions to the plan was NOT available to contributing employers. Employers are legally bound to the negotiated levels set under the collective bargaining agreement. Instead, trustees needed to make benefit improvements in order to ensure plans stayed under the "magic level" and contributing employers did not

face additional taxes. While Congress might have intended that contributing employers reduce contribution levels to stay under the maximum deductibility level, this is, in effect, impossible.

Interestingly, Clark Construction employs two teamsters and has for many years. While we do not plan to withdraw from this plan, we have been informed that it would cost in excess of $123,000 to withdraw.

In the case of the Carpenters Fund, contributing employers like Clark Construction pay $3 per hour per worker for pension benefits. In 1997, we were approaching full funding and decided to give a 12% "kicker" for 1997 and previous plan years. This involves multiplying the accrual value by 12%. This backward-looking benefit improvement kept us from hitting the maximum deductibility level and was a benefit increase that the fund could afford.

The unforeseeable stock market losses and economic downturn in 2001–2002 hit the plan soon after these benefits were made. Because of the maximum deductibility level, there was no way for the plan to save for the rainy day that was upon us; we had been forced to spend the excess money the plan had accrued. In 2003, the market did not improve and the fund was not making its investment assumptions. Under the ERISA rules, once benefit increases are given, they cannot be taken away; they can only be modified for the future. For the first time in the history of the plan, we were facing employer withdrawal liability and a future funding deficiency (although several years off).

On September 1, 2003, the trustees of the Carpenters Fund decided to reduce the formula for future benefit accruals from 4.3% to 1.0%, and to put the resulting money into the plan. After receiving the 2004 valuation from the plan actuaries, we looked back and realized that the 2003 plan year had not been as bad as expected, so we increased the accruals for2003 to 3% and left future years at the 1% level.

The bargaining parties also agreed to put an additional $.10 per year into the plan, uncredited. Uncredited simply means that there is no resulting benefit increase for the employee. In essence, the employee has taken what could have been a $.10 wage improvement out of his pocket and agreed to put it into the pension plan, with no benefit other than a healthier plan. This $.10 will be increased by $.10 each year until it reaches $.50. The actuaries have determined that the plan will be back at the fully funded level after five years, as long as hours worked and market assumptions are met. At this point, employer contributions will be $3.50 per worker, of which $.50 will be uncredited.

In comparison, the Laborers Fund made different choices. This plan is slightly larger than the Carpenters Fund, with 23,815 beneficiaries, including 12,237 active workers, 3,151 retirees receiving benefits, and 8,427 individuals who are eligible but not working. Approximately 1,000 employers contribute to this plan.

The Laborers Fund was also approaching the maximum deductibility level in the late 1990s. Trustees decided to increase survivor benefits for spouses and enhance benefits for early retirees. As you can imagine, the retirement age for construction workers is on average much younger than the age at which Social Security benefits kick in.

Facing a funding problem, in 2001, the Laborers Fund increased contributions by $.50 per worker per hour. This will increase every year for two more years. While the fund reported employer withdrawal liability for the first time ever on September 1, 2004, our actuary reports that the plan will be fully funded again in five years and the future funding deficiency avoided for now.

The two plans I have described are typical of the rest of the plans in Michigan, and we believe that they are representative of most of the plans to which AGC members contribute or serve as trustees. The biggest fixable problem that these plans have faced over the last ten years is the maximum deductibility level. If Congress would raise that level to 140%, as is laid out in this legislative proposal, many of the immediate funding problems we faced in 2002 could be avoided in the future. Plans could save money and provide a cushion from bargaining cycle to bargaining cycle, rather than fund benefits, in order to avoid a ceiling.

In addition, AGC has been working on a legislative proposal with a broad coalition of employer, union, and multiemployer plan representatives known as the Multiemployer Pension Plan Coalition. I expect that you will hear more about this from other witnesses. Nevertheless, I would echo their comments on the importance of making changes for those plans that are approaching bankruptcy. The incredible benefit of multiemployer pension plans is that, if an employer leaves the plan, the other employers employ the workers and cover the costs. This plan structure has served the construction industry well for over 40 years, and we do not want to see it changed.

Nevertheless, when pension plans approach bankruptcy, it threatens the financial well-being of all contributing employers—in some cases, many thousands—and could

result in a string of bankruptcies and massive unemployment. The proposal developed by the coalition would help pension plans approaching bankruptcy by offering additional tools to achieve financial solvency. Currently, the only tool employed by the IRS is the minimum funding hammer, which begins as a fine of 5% and rises quickly to 100% of employer contributions. Worst of all, this fine goes to the general treasury, not to the retirees whose plan may soon be bankrupt. The coalition proposal would, in effect, turn this fine into a mandatory employer surcharge paid directly to the fund (outside the collective bargaining agreement). At the same time, trustees would have the ability, just like the PBGC, to disregard the last five years of benefit changes and disallow lump-sum payments, which are like a run on the bank. These two changes would offer funds greater financial footing, giving trustees additional time, and bargaining parties the stimulus, to make the necessary difficult choices. We hope to see these two changes as an amendment to this legislation.

Again, thank you for the opportunity to testify today on behalf of AGC. I look forward to your questions.

Chairman CAMP. Thank you very much. Mr. Lynch, again, your statement is part of the record, and you have 5 minutes. Thank you for being here.

STATEMENT OF TIMOTHY P. LYNCH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MOTOR FREIGHT CARRIERS ASSOCIATION

Mr. LYNCH. Thank you. Good morning. My name is Tim Lynch, and I am the President and chief executive officer of the Motor Freight Carriers Association. I want to begin by thanking Subcommittee Chairman Camp and Ranking Member McNulty for holding this hearing on H.R. 2830, the Pension Protection Act of 2005. While I cannot speak to all of the provisions of H.R. 2830, I can say that with respect to Title II, the sponsors of H.R. 2830 have done something very important. They have addressed a problem before it becomes a crisis. They have done that by providing the tools for labor, management, and plan trustees to deal with the problem without resorting to additional government regulation. Most importantly, they are providing the framework for dealing with the problem before it grows so large that the only recourse is government intervention through the PBGC. In our view, that is no small accomplishment, and we pledge to work with the members of the Committee on Ways and Means to ensure enactment into law.

I am here today as a representative of an association of trucking industry employers who, by virtue of their collective bargaining agreement, are major participants in a number of multiemployer pension plans. In addition, I was a participant in discussions that began last October with other industry Labor representatives that ultimately resulted in a coalition, the Multiemployer Pension Plan Coalition, that developed a legislative proposal addressing many of the problems facing multiemployer pension plans. Because H.R. 2830 contains many of the recommendations of the coalition, I believe it represents an excellent opportunity for legislative action. The coalition proposal is the only proposal that has the full support of contributing employers, organized labor, and those responsible for the governance and administration of multiemployer plans—in other words, all of the parties most directly affected by the MPPAA statute. I would like to focus my comments this morning on two provisions of the legislation: funding rules for multiemployer plans

in endangered status and those in the critical status. Both of these provisions are similar to recommendations that the coalition proposed, but they contain significant differences that I would like to discuss. The coalition proposal envisioned an early warning system for plans that were at risk but not necessarily heading for severe financial difficulties. Plans in this category would be required to develop a benefit security plan to improve the funding ratio. That approach can be described as a flexible benchmark that takes into account plan differences and encourages plan trustees to prudently balance plan assets Liabilities.

In contrast, H.R. 2830 establishes a hard benchmark with very stringent and time-definite standards as part of the funding improvement plan. This approach forces all plans in the endangered category to meet the same funding ratio target regardless of what the funding ratio is on enactment. Plans at the higher end of the endangered category, for example, those with a funding ratio of between 75 and 79 percent, undoubtedly will be able to meet the one-third improvement benchmark. Unfortunately, plans at the lower end, for example, those with a funding ratio of between 66 and 69 percent, will have a virtually impossible task. The level of benefit modifications coupled with additional employer contributions needed to meet that benchmark over the 10-year timeframe will be very detrimental to both contributing employers and plan participants. We would request then that consideration be given to alternative approaches, certainly maintaining benchmarks but not ones that create an insurmountable and unreasonable financial burden on contributing employers. Multiemployer plans in the trucking industry cannot afford to lose the base of small-company contributing employers who in turn cannot afford the additional contributions potentially required under these benchmarks. With respect to the funding rules in the critical status, this provision is similar to the approach suggested by the coalition's category for plans with severe funding problems or what was referred to as the red zone. Under the coalition proposal, the most difficult and controversial remedies—additional employer contributions above what was contractually obligated to pay in the form of a mandatory surcharge, and benefit modifications—are reserved for those plans that face the severest funding problem. This is in part designed as a strong incentive to plan trustees to do all they can to solve the plan's problems before entering the red zone category.

I believe it is to the credit of those in the coalition and the interests that they represent that they recognize the risk and concern attendant to both additional contributions and benefit modifications. Any significant increases in employer contributions run the very real risk of jeopardizing the large pool of small employers typically involved in multiemployer plans. Conversely, any significant modifications in the benefit plan raise important issues of labor-management relations, employee trust, and fundamental issues of fairness with retirees. I would respectfully suggest and assure the members of this Subcommittee that you will have no more spirited debate over these two issues than we had in the coalition. But we understand that you cannot solve the problems facing a severely underfunded plan without both components. I would urge the committee to include both concepts as tools available to address the

funding problems for plans in the critical status. Mr. Chairman, I would be happy to answer any questions.

[The prepared statement of Mr. Lynch follows:]

Statement of Timothy P. Lynch, President and Chief Executive Officer, Motor Freight Carriers Association

Mr. Chairman and Members of the Select Revenue Measures Subcommittee.

Good morning. My name is Timothy Lynch and I am the President and CEO of the Motor Freight Carriers Association (MFCA). I want to begin by thanking Chairman Dave Camp for holding this hearing on H.R. 2830, the Pension Protection Act of 2005.

I am here today as a representative of an association of trucking industry employers who by virtue of their collective bargaining agreement are major participants in a number of multiemployer pension plans. In addition, I was a participant in discussions that began last October with other industry and labor representatives that ultimately resulted in a coalition—the Multiemployer Pension Plan Coalition—that developed a legislative proposal addressing many of the problems facing multiemployer pension plans.

MFCA member companies are key stakeholders in multiemployer pension funds. They are concerned about the current framework for multiemployer pension plans and strongly believe that if not properly addressed, the problems will increase and possibly jeopardize the ability of contributing employers to finance the pension plans. The end result could put at risk the pension benefits of their employees and retirees.

In my testimony today, I will discuss the coalition's recommendations and the corresponding provisions of H.R. 2830. It is important that the coalition's recommendations be viewed in the context in which they were negotiated: both labor and management understanding that changes are needed. Additionally, these recommendations represent a unique opportunity in that they are the only reform proposal having the full support of contributing employers, organized labor, and those responsible for the governance and administration of multiemployer plans. In short, those most directly affected by the MPPAA statute.

MOTOR FREIGHT CARRIERS ASSOCIATION

MFCA is a national trade association representing the interests of unionized, general freight truck companies. MFCA member companies employ approximately 60,000 Teamsters in three basic work functions: local pick-up and delivery drivers, over-the-road drivers and dockworkers. All MFCA member companies operate under the terms and conditions of the Teamsters' National Master Freight Agreement (NMFA), one of three national Teamster contracts in the transportation industry.

Through its TMI Division, MFCA was the bargaining agent for its member companies in contract negotiations with the Teamsters for the current National Master Freight Agreement (April 1, 2003—March 31, 2008). Under that agreement, MFCA member companies will make contributions on behalf of their Teamster-represented employees to 90 different health & welfare and pension funds. At the conclusion of the agreement, MFCA companies will be contributing $12.39 per hour per employee for combined health and pension benefits, or a 33% increase in benefit contributions from the previous contract. This is in addition to an annual wage increase.

DESCRIPTION OF PLANS

MFCA member companies, along with UPS, car-haul companies and food-related companies are typically the largest contributing employers into most Teamster/trucking industry-sponsored pension plans. The Teamster/trucking industry benefit plans vary widely in size, geographic scope and number of covered employees. The two largest plans—the Central States Pension Fund and the Western Conference of Teamsters Pension Fund—have reported assets of $18 and $24 billion respectively and cover over 1 million active and retired employees in multiple states.

As Taft-Hartley plans, these pension funds are jointly-trusteed (an equal number of labor and management trustees) and provide a defined benefit (although some plans offer a hybrid defined benefit/defined contribution program). MFCA member companies are represented as management trustees on most of the plans to which they make contributions. In an effort to help improve the management of the plans, MFCA member companies have made a concerted effort to nominate as management trustees individuals with backgrounds in finance, human resources, and employee benefits.

RELATIONSHIP BETWEEN COLLECTIVE BARGAINING AND THE PENSION PLANS

In a report to Congress last year, the General Accounting Office (GAO) stated that multiemployer plans "contribution levels are usually negotiated through the collective bargaining agreement" and that "[b]enefit levels are generally also fixed by the contract or by the plan trustees." In our case, that is only partially correct: the NMFA only establishes a contribution rate. It does not set a pension benefit level. It is worth reviewing for the Subcommittee the relationship between collective bargaining and the multiemployer pension plans.

Like most multiemployer plans, our plans are maintained and funded pursuant to collective bargaining agreements. During each round of bargaining, the industry and union bargain and agree on the per-hour contribution rate required to be paid by employers to the plans for pension and health benefits. Once the rate is established, however, the role of the collective bargaining process and of the collective bargaining parties with respect to the plans—in terms of the level of benefits, the administration of delivering those benefits, management of plan assets, etc.—is over. For employers, the only continuing role in the plans is to make the required contractual contributions. That is, unless the plan, over which the employers have no control, runs into financial crisis. I will talk more about that in a moment.

Each multiemployer pension plan is a separate legal entity managed by an independent board of trustees. It is not a union fund controlled by the union. Nor is it an employer fund, over which the employer has control. Rather, by law, the plans are managed independently by their trustees under a complex set of statutory and regulatory requirements. Although the trustees are appointed—half by the union and half by the employer—each trustee has a legal obligation to act not in the interest of the union or employer that appointed them, but rather with a singular focus on the best interests of the plans participants. Trustees who do not act in the best interest of participants may be held personally liable for breach of their fiduciary duty.

As noted earlier, employers' role with respect to multiemployer pension plans is limited to making contributions unless the plan runs into financial difficulty. Under current law, employers are ultimately responsible for any funding deficiency that the multiemployer plan may encounter. Specifically, if a multiemployer plan hits a certain actuarially-calculated minimum funding level, employers in the fund are assessed a five percent excise tax and their pro-rata share of the funding shortfall or face a 100% excise tax on the deficiency.

HOW WE GOT TO WHERE WE ARE

1980 was a watershed year in the history of the trucking industry. In that year Congress passed two major legislative initiatives—the Motor Carrier Act (MCA) and the Multiemployer Pension Plan Amendments Act (MPPAA)—that radically altered the profile of the industry and the landscape for industry-sponsored pension plans. The first brought about deregulation of the trucking industry and ushered in an era of unprecedented market competition. The second, while perhaps not recognized at the time, upset the essential balance between exiting and entering employers that is key to maintaining a viable multiemployer pension program.

To put this in some perspective, I have included in my statement (Appendix A), a list of the top 50 general freight, LTL carriers who were operating in 1979, the year just prior to enactment of MCA and MPPAA. Of those 50, only 7 are still in operation and of those 7 only 5 are unionized. Virtually all of the 43 truck companies no longer in business had unionized operations, and consequently were contributing employers to industry-sponsored pension plans. There have been no subsequent new contributing employers of similar size to replace these departed companies. And beyond the top 50 there were literally hundreds, perhaps thousands, of smaller unionized truck operators who also have fallen by the wayside. The simple fact is that since 1980 there has not been a single trucking company of any significant size to replace any of the departed companies on the Top 50 list.

And what happens when these companies leave the plans? Their employees and retirees become the responsibility—not of the PBGC—but of the plans and their remaining contributing employers. In short, the remaining contributing employers function as a quasi-PBGC ensuring the full pension benefit.

One of the key elements of the MPPAA statute was the ability to recover assets from withdrawing employers or withdrawal liability. Unfortunately, that has not been the case. One of the largest trucking industry plans reports that bankrupt (withdrawing) employers ultimately pay less than 15% of their unfunded liability. And what happens when these liabilities are not fully recovered? They become the responsibility of the remaining contributing employers. This represents one of major

differences between the treatment of liabilities of single versus multiemployer pension plans.

Nothing highlights the inequity of this situation more than the bankruptcies of two contributing employers: Consolidated Freightways (CF) and Fleming Companies. Both companies were in the top 10 category of contributing employers to the Central States plan. They also sponsored their own company, single-employer plan for their non-collective bargaining covered employees. The PBGC has assumed responsibility for the CF plan with a potential liability in excess of $250 million and the Fleming plan with a projected liability in excess of $350 million or a combined liability for PBGC of over $600 million.

Conversely, the Fleming and CF employees/retirees covered under multiemployer pension plans like Central States will now be the responsibility of the remaining contributing employers (less whatever these plans can recover in withdrawal liability payments). These beneficiaries will be entitled to a guaranteed full pension benefit. This will only add further cost to what is already one very stark financial fact of life for the Central States fund: half of its annual benefit payments now go to beneficiaries who no longer have a current contributing employer.

MPPAA delineates a very different role for PBGC with respect to single employer versus multiemployer plans. The GAO report identifies four: monitoring, providing technical assistance, facilitating activities such as plan mergers, and financing in the form of loans for insolvent plans. In contrast to PBGC's more aggressive role with single employer plans, these are relatively passive activities. It was not until the recent Congressional debate over whether to provide limited relief to multiemployer plans that attention was focused on the need to have a better understanding of the true financial condition of these plans. And underlying that need was a concern whether the relief would provide assistance for a truly short-term issue or mask a more fundamental, long-term problem.

Furthermore, the remedies available to multiemployer plans in the form of amortization relief, short-fall methodology or waivers are often viewed as "last resort" solutions. There are no intermediate steps that can assist a plan well before it reaches this point.

DEVELOPMENT OF COALITION PROPOSAL

Last October, we began participating in a small working group of trucking company and union representatives to try to develop recommendations that would be acceptable to multiemployer plans, unions and contributing employers. The objective was to develop a legislative proposal that would alleviate the short-term consequences of funding deficits and promote long-term funding reform for multiemployer plans. As a representative of contributing employers, I entered those discussions with a clear mission to protect the economic interests of my membership. My union counterparts entered with a similar mission to protect the interests of their membership.

Early on in those discussions, we agreed on several fundamental issues that ultimately formed the basis for our recommendations.

- Because of the diversity of multiemployer plans, a one-size-fits-all approach would not be productive. Instead remedial programs would be targeted to those plans facing the greatest financial problems.
- Multiemployer plans function as a quasi-PBGC, with contributing employers assuming plan liabilities and shielding the federal agency from that responsibility until plan bankruptcy. Unfortunately, plan trustees don't have all the tools available to the PBGC to address funding problems.
- Furthermore, most of the tools available to address funding problems become available too late in the process and are often viewed as "last-resort" remedies by federal agencies.
- All parties to the plans deserve more timely and meaningful disclosure of information about the status of the plans.
- The need to establish an early warning system for "at risk" plans and a separate category for "severely underfunded" plans.
- The burden to fix the problem of severely underfunded plans should not be borne disproportionately by any one party to the plans. To do otherwise would, in fact, jeopardize the continued viability of the plan and its defined benefits.

This process ultimately was expanded to include employer and union representatives from other industries. The result was a coalition proposal that has the support of a wide range of business and labor organization interests.

RECOMMENDATIONS FOR LEGISLATIVE ACTION

From the perspective of the contributing employers, the key elements of the coalition proposal are as follows.

FUNDING RULES

Multiemployer plans would be required to have strong funding discipline by accelerating the amortization periods, implementing funding targets for severely underfunded plans and involving the bargaining parties in establishing funding that will improve plan performance over a fixed period of time. In addition, the proposal would limit the ability for plan benefit enhancements unless the plan reaches certain funding levels.

FUNDING VOLATILITY

By virtue of their collective bargaining agreements, contributing employers must make consistent payments regardless what gains are achieved in the financial markets. (This is in contrast to single employer plans that may avoid contribution payments in lieu of above-average market returns.) However, the volatility of these plans occurs in the form of funding deficiencies. The coalition proposal would address this situation by allowing the plans to use existing extension and deferral methods to permit time for the bargaining process to address the underfunding over a rational period of time.

EARLIER WARNING SYSTEM

The coalition proposal suggested a "yellow zone" or early warning system. The goal of the yellow zone concept was to make sure plans would be cautious in their approach to balancing plan assets and liabilities. Plans in the yellow zone would have to improve their funded status in a responsible manner, one that does not put extreme pressure on the benefits provided or eliminate the ability for employers to operate in a highly competitive marketplace. The coalition proposal was designed to strike a reasonable balance through creation of a bright line standard for an improving funded status but not one that imposes an insurmountable and unreasonable financial burden on contributing employers. While it is important that yellow zone plans develop a program for funding improvement, the burden to do so should be commensurate with the ability to recover over a rational period of time.

PLANS WITH SEVERE FUNDING PROBLEMS

Under the coalition proposal, plans facing severe funding problems would find themselves in a "red zone" or essentially reorganization status. When a plan is in reorganization status, extraordinary measures would be necessary to address the funding difficulties. It is here that the concept of shared responsibility for balancing plan assets and liabilities fully comes into play. Reorganization contemplates a combination of contribution increases—above those required under the collective bargaining agreement—and benefit reductions—though benefits at normal retirement age are fully protected—to achieve balance.

TRANSPARENCY AND DISCLOSURE

The Pension Funding Stability Act of 2004 greatly improved the transparency of multiemployer plans. The coalition proposal would expand those disclosures and place additional disclosure requirements for plans that are severely underfunded in the red zone.

WITHDRAWAL LIABILITY

The coalition proposal would strengthen and clarify withdrawal liability rules to protect the remaining contributing employers from assuming a disproportionate and unfair burden from non-sponsored participants.

PENSION PROTECTION ACT OF 2005—TITLE II MULTIEMPLOYER PLANS

How then do we view Title II of H.R. 2830? We believe that H.R. 2830 addresses, in part, all of the issues that we suggested were in need of reform. Several provisions of the legislation represent a significant—and innovative—approach to solving the funding problems facing multiemployer pension plans. We believe that H.R. 2830 meets the overall objective of alleviating the short-term consequences of funding deficits while promoting long-term funding reform for multiemployer pension plans.

Early Warning System

H.R. 2830 contains the suggested early warning system for plans viewed as "at risk" through the establishment of a category called, "endangered plans." While we are in agreement with this approach toward financially ailing plans, we have one very important—and critical—issue that needs to be addressed in order to gain our full support.

The coalition proposal contained what could be described as flexible benchmarks for plans in the endangered category while H.R. 2830 establishes very stringent and time-definite standards. H.R. 2830 contemplates a one-size-fits-all approach and consequently, does not adequately take into consideration the multiemployer bargaining environment in which these plans operate. Additionally, depending upon the actual date of enactment and the effective dates for compliance, plans—and their underlying collective bargaining agreements—could be facing very different circumstances and hence their ability to meet the targets.

For example, plans that only enter the yellow zone some time after the date of enactment undoubtedly will be able to meet the 33 1/3% improvement benchmark. It also possible that plans at the higher end of the yellow zone (e.g., 75–79% funded) could meet the benchmark. But as the percentage of underfunding increases through the yellow zone category, plans will have a very difficult, if not impossible, task of meeting the benchmarks with plans at the lowest end (e.g., 66–70%) facing an insurmountable hurdle. The level of benefit modifications coupled with additional employer contributions needed to meet this benchmark will be detrimental to both contributing employers and plan participants.

We would request that the Committee give consideration to alternative approaches to the treatment of plans in the endangered category. Specifically, we suggest that plans have more flexibility to meet appropriate benchmarks and consideration be given to some form of a proportional approach to the benchmarks. In other words, take into account that plans at the lower end of the zone cannot be held to the same standard of improvement as plans in the upper range. Additionally, the timing for the 10-year improvement plan needs to recognize the timing of the plan sponsors' collective bargaining agreements.

Plans With Severe Funding Problems

H.R. 2830 establishes a second category of plans—"critical"—that is designed to address plans with the severest funding problems. Unfortunately, the tools necessary to address these problems are not included in H.R. 2830. Under the coalition proposal, the most difficult and controversial remedies—additional employer contributions and benefit modifications—are reserved for those plans that face the most difficulties. The members of the coalition recognize—and don't take lightly—the impact of additional employer contributions and benefit modifications. Any significant increases in employer contributions run the very real risk of jeopardizing the large pool of small employers typically involved in multiemployer plans. Conversely, any significant modifications in the benefit plan raise important issues of labor/management relations, employee trust and fundamental fairness with retirees.

However, all members of the coalition recognize that we cannot solve the problems facing "critical" plans without those two tools. Consequently, I would urge in the strongest terms possible that the Committee give consideration to including language that puts meaningful remedies back into the "critical" category of plans.

Funding Rules

H.R. 2830 will require plans to have strong funding discipline by accelerating the amortization periods, implementing funding targets for severely under funded plans and involving the bargaining parties in establishing funding that will improve plan performance over a fixed period of time. In addition, H.R. 2830 will limit the ability for plan benefit enhancements unless the plan reaches certain funding levels. While the legislation proposes a 15 year amortization schedule for increases and decreases, we would ask that further consideration be given to a 10 year schedule. We believe a 10 year schedule will provide stronger funding discipline.

Funding Volatility

H.R. 2830 attempts to provide additional tools to plan trustees to address the problems of a short-term funding deficiency and funding volatility. The coalition proposal addressed this issue by allowing the plans to use existing extension and deferral methods to permit time for the bargaining process to address the under funding over a rational period of time. We would urge the Committee to consider a more expansive list of tools for plan trustees to utilize in addressing funding volatility.

Additionally, one of the objectives of the coalition was to preclude funding deficiencies—and the attendant penalties—from occurring during the collective bargaining agreement cycle. In the case of the excise tax penalty, this provides no benefit to plan funding and represents a punitive assessment against contributing employers.

Transparency and Disclosure

H.R. 2830, coupled with the earlier requirements under the Pension Funding Stability Act, provide additional information to plan participants, contributing employ-

ers, and employee organizations that should improve the dissemination of important plan information.

Withdrawal Liability

H.R. 2830 strengthens and clarifies the withdrawal liability rules to protect contributing employers from assuming a disproportionate and unfair burden from non-sponsored participants.

Mr. Chairman, thank you for giving me the opportunity to present the views of the Motor Freight Carriers Association. I look forward to working with the members and staff of this Subcommittee on the Pension Protection Act of 2005. I would be happy to answer any questions you may have.

TOP 50 LTL CARRIERS IN 1979

1. **Roadway Express**
2. Consolidated Freightways
3. **Yellow Freight System (Yellow Transpertation)**
4. Ryder Truck Lines
5. McLean Trucking
6. PIE
7. Spector Freight System
8. Smith's Transfer
9. Transcon Lines
10. East Texas Motor Freight
11. Interstate Motor Freight
12. **Overnite Transportation**
13. **Arkansas Best Freight (ABF Freight System)**
14. American Freight System
15. Carolina Freight Carriers
16. Hall's Motor Transit
17. Mason & Dixon Lines
18. Lee Way Motor Freight
19. TIME–DC Inc.
20. Wilson Freight Co.
21. Preston Trucking Co.
22. IML Freight
23. Associated Truck Lines
24. **Central Freight Lines**
25. Jones Motor-Alleghany
26. Gateway Transportation
27. Bowman Transportation
28. Delta Lines
29. Garrett Freightlines
30. Branch Motor Express
31. Red Ball Motor Freight
32. Pilot Freight Carriers
33. Illinois-California Exp.
34. Pacific Motor Trucking
35. **Central Transport**
36. Brown Transport
37. St. Johnsbury Trucking
38. Commercial Lovelace
39. Gordons Transports
40. CW Transport
41. Johnson Motor Lines
42. System 99
43. Thurston Motor Lines
44. **Walkins Motor Lines**
45. Santa Fe Trail Transportation
46. Jones Truck Lines
47. Merchants Fast Motor Lines
48. Murphy Motor Freight
49. Maislin Transport
50. Motor Freight Express

Bold = Still Operating on 06/27/05

Chairman CAMP. Thank you very much for your testimony. Mr. Morgan, you have 5 minutes, and your written statement is part of the record.

STATEMENT OF JAMES V. MORGAN, VICE PRESIDENT, COLLECTIVELY-BARGAINED COMPENSATION AND BENEFITS, SAFEWAY INC., PLEASANTON, CALIFORNIA

Mr. MORGAN. Thank you. Chairman Camp, Congressman McNulty, and members of the Committee, my name is Jim Morgan, and I am Vice President of Collectively-Bargained Compensation and Benefits at Safeway. I am testifying on behalf of Safeway and also the Food Marketing Institute. Safeway is one of the largest U.S. food and drug retailers; FMI represents 26,000 supermarkets. I have been involved with jointly trusteed, labor and management benefit funds for over 30 years, and for most of that time I have served as an employer trustee on numerous retail industry funds. My job puts me in contact with many funds, and I am currently a trustee on several funds. A few facts about Safeway and its pension funds. Safeway has 190,000 employees; 77 percent of its employees are covered by over 400 collective bargaining agreements; and most of our unionized employees and many of those in the industry participate in multiemployer pension plans. Labor and management pension funds are funded by employer contributions and by investment earnings. Contributions are bargained by employers and unions in collective bargaining negotiations. Benefit levels generally are set by the trustees of the funds, and by law, the employer and the union trustees of such funds have an equal vote.

When the stock market suffered huge losses in 2000–2003 at the same time interest rates declined, the funding status of many multiemployer plans suffered greatly. In many of our funds, the trustees have taken significant actions to avoid funding deficiencies while the bargaining parties have negotiated collective bargaining agreement changes to aid funding recovery. We believe the actions of fund trustees, employers, and unions have been and will continue to be responsible and judicious and that their responses to a very unusual series of events have been prudent. Some funds have worse problems and need substantial help to recover; others, more modest assistance. We believe the legislative changes represented by H.R. 2830 provide a reasonable and rational framework for multiemployer plans to work through their funding problems without putting additional financial pressure on the PBGC. We think several features of proposed law changes are particularly important. First, funds need specific guidelines to assist trustees in making longer-term funding decisions. trustees need to know when to act to prevent funding deficiencies and to adopt a plan with achievable benchmarks to avoid such deficiencies. We believe trustees need to take action when a funding deficiency is projected within 7 years.

Second, we believe there is a need for greater transparency with respect to information about multiemployer pension funds and not just with respect to participants, but also many contributing employers do not have access to such information because they do not appoint trustees to a particular fund. Third, funds at times need

access to short-term funding relief, extending the time they have to avoid a funding deficiency. This additional time allows trustees and bargaining parties enough time to develop and implement a recovery plan. There are laws on the books today, such as IRC section 412(e), which allow for such relief. We believe these rules need modifications to be effective. Fourth, the funding ceiling for tax deductibility of employer contributions is too low. Funds should be able to receive tax-deductible contributions to provide funding cushion in difficult times. The FMI has been working for the past year to develop recommendations for comprehensive pension reform. FMI has worked extensively with many other groups to develop a common ground on many issues, and in many cases we have succeeded. We applaud the sponsors of H.R. 2830 for recognizing Congress must address multiemployer plans as part of comprehensive pension reform. H.R. 2830 provides a reasonable, rational framework for multiemployer plans to work through their problems. The proposed legislation will provide tools which will allow these plans to solve their funding problems without direct government intervention and without putting additional pressure on the PBGC. We believe if Congress acts now, multiemployer plans can solve their own problems so they do not become a burden to the Federal Government or the taxpayers. Again, Chairman Camp and members of this Committee, I thank you for the opportunity to testify on this important topic I would be glad to answer any of your questions.

[The prepared statement of Mr. Morgan follows:]

Statement of Jim Morgan, Vice President, Collectively-Bargained Benefits, Safeway Inc., Pleasanton, CA Chairman Camp, Congressman McNulty and Members of the Committee:

I am Jim Morgan, Vice President of Collectively-Bargained Compensation and Benefits, Safeway Inc., Pleasanton, CA. I am testifying on behalf of Safeway and the Food Marketing Institute (FMI), which represents 26,000 retail supermarkets and food wholesalers.

I've been involved with jointly trusteed, labor and management Taft-Hartley benefit funds for over 30 years, and for most of that time have served as an Employer Trustee on numerous retail industry funds. My job puts me in contact with many funds, and I am a trustee on several funds.

Let me spend a minute on a few facts about the scope of the industry and the funds you should know, which include:

- Safeway has 190,000 employees in the U.S. and Canada.
- 77% of these employees are covered by over 400 collective bargaining agreements.
- Supermarkets employ 3.5 million Americans, 1.3 million of whom are covered by collective bargaining agreements.
- Most of Safeway's unionized employees, and many of those in the industry that are covered by collective bargaining agreements, participate in multi-employer pension plans, which in total cover about 9.7 million people.

Safeway is one of the largest food and drug retailers in North America, with over 1,800 stores. These include 325 Vons stores in Southern California and Nevada, 113 Dominick's stores in the Chicago metropolitan area, 137 Randalls and Tom Thumb stores in Texas, 38 Genuardi's stores in the Philadelphia area, as well as 17 Carrs stores in Alaska. Safeway has an extensive network of manufacturing, distribution and food processing facilities in support of its stores.

Multi-employer labor and management pension trust funds are funded by the contributions of contributing employers and by investment earnings on those contributions. Contributions are bargained by employers and unions in collective bargaining negotiations, and benefit levels generally are set by the trustees of the funds. By law, the employer and the union trustees of such funds have an equal vote.

When the stock market suffered huge losses in 2000–2003 at the same time interest rates declined, the funding status of many multi-employer plans suffered greatly to the point where many funds faced a funding deficiency which required action by the trustees and in many cases by the bargaining parties. In many of our funds, the trustees have taken drastic actions to avoid funding deficiencies, while the bargaining parties have negotiated collective bargaining agreement changes to aid funding recovery.

We believe the actions of fund trustees and of employers and unions have been and will continue to be responsible and judicious, and that their responses to a very unusual series of events have been prudent. Some funds have worse problems and need help to recover, others need more modest assistance.

Several features of the proposed law changes are particularly important:

The funding ceiling for the tax-deductibility of employer contributions is too low, particularly during periods of strong investment returns. Funds should be able to receive tax-deductible contributions to provide a funding cushion in difficult times without being forced to raise benefit levels to avoid tax deductibility problems. It is important to be able to "save for a rainy day."

Funds need specific guidelines to assist Trustees in making longer-term funding decisions which require them to look out over a number of years to detect potential funding deficiencies, and to adopt a plan with achievable benchmarks to avoid these deficiencies.

Funds at times need access to short-term funding relief extending the time they have to avoid a funding deficiency. This additional time allows trustees and bargaining parties enough time to develop and implement a recovery plan. There are laws on the books today, such as IRC Section 412(e), which allow for such relief. Unfortunately, such relief has proved unobtainable and there are not clear guidelines for trustees and bargaining parties to determine when such relief will be granted by Treasury.

Some funds are concerned about hitting underfunding levels which could trigger an excise tax. The implications of a funding deficiency for contributing employers, the plans and their participants can trigger payments outside of the collective bargaining process. Contributing employers are assessed by the plan trustees for additional contributions in an amount equal to their proportionate share of the amount necessary for the plan to meet its minimum funding requirements. If the excise tax is triggered it can be equal to 5% of that assessment. In the event that all contributing employers fail to make up the shortfall in a timely fashion, the excise tax may be increased to 100% of the shortage.

In addition, we agree with Congress there is a need for greater transparency with respect to information about multi-employer pension funds. Many contributing employers do not have access to such information because they do not appoint trustees.

Need for Change

FMI has been working for the past year to develop recommendations for comprehensive pension reform. In addition, our industry has worked with the trucking industry, other employer groups, and other union representatives to address multi-employer pensions funding reform.

We applaud the sponsors of H.R. 2830 for recognizing that Congress must address multiemployer pensions as part of comprehensive pension reform legislation.

We believe that legislative changes represented by H.R. 2830, the Pension Protection Act, provide a reasonable and rational framework for multi-employer pension plans to work through their funding problems without putting additional financial pressure on the Pension Benefit Guaranty Corporation.

H.R. 2830—The Pension Protection Act

The multiemployer pension provisions in H.R. 2830 incorporate four fundamental principles which FMI and its member companies believe are essential to accomplishing fundamental reform:

- Greater transparency and greater flexibility for all plans;
- An early warning system for what the proposed legislation terms "endangered" and "critical" plans;
- Immediate steps to stabilize these plans; and
- Perhaps most importantly, objective, quantifiable benchmarks that measure the plan's funding improvement and provides reasonable targets for the Trustees and the bargaining parties.

We believe that the mechanisms created by H.R. 2830 will accurately address the unique nature of multiemployer plans. As a result, all parties (contributing employers, unions, and Trustees) will have the ability to act responsibly on behalf of em-

ployees by providing an accurate measure of expected liabilities over a longer time frame and by providing a schedule to correct any funding problems on the horizon before they reach a crisis stage.

We further believe that H.R. 2830 provides these solutions in a manner that will also maintain the collective bargaining rights of all the parties.

In summary, we in the retail food industry strongly support efforts to reform our nation's pension funding laws. Those of us who contribute to and participate in multiemployer pension plans are asking Congress to recognize the ways in which these plans differ from single-employer pension plans, and to enact changes to existing laws that will give us the tools to manage these plans more effectively, so that we can continue to provide great retirement benefits for our millions of employees and retirees well into the future without ever becoming a burden on the federal government.

Again, Chairman Camp and members of this Subcommittee, I thank you for the opportunity to testify on this important topic. I am glad to answer any of your questions.

Food Marketing Institute (FMI) conducts programs in research, education, industry relations and public affairs on behalf of its 1,500 member companies—food retailers and wholesalers—in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of $340 billion—three-quarters of all food retail store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 50 countries.

Chairman CAMP. Thank you very much, Mr. Morgan. Ms. Mazo, thank you for being here. I also want to acknowledge and welcome your father to the committee room today. I understand he has an upcoming birthday. You still have 5 minutes, and I would ask that you summarize your testimony in that time. But thank you for being here.

STATEMENT OF JUDITH F. MAZO, SENIOR VICE PRESIDENT AND DIRECTOR OF RESEARCH, THE SEGAL COMPANY

Ms. MAZO. Thank you. I thought I would bring along a pensioner just so that we keep it real. Mr. Chairman and Mr. McNulty, it is a pleasure to be here. The last time that I was working closely with your Committee was much happier times. It was when we were working on what became EGTRRA, and we were increasing the ability of multiemployer plans to share the wealth that they were accumulating during the 1990s with the participants by relieving some of the pressure of the limits on benefits. Today, unfortunately, we are looking at a reversal of problems. I would like to put a few things in context. You have had a very good outline of where things stand and what the multiemployer universe looks like. All of my colleagues to my right have pointed out one thing which is one of the answers to the questions you put to Dr. Holtz-Eakin: What caused the problem? One of the things that did cause the problem was the deduction limits, and that caused—as Mr. Clark described, it forced many multiemployer plans to increase benefits under situations where the trustees might not otherwise have believed that that was prudent and appropriate to do so in order to protect the employers not only from losing tax deductions but from actually being punished for putting in more than—for living up to their bargaining agreements. None of these employers throws money in to shelter their own taxes. They have bargaining agreements. They live by their agreements. They put in what they

are required. They were told in the 1990s, "You won't be able to deduct this, and you are going to get punished with an excise tax unless the plans increase benefits." In something like 75 percent of our client plans—by the way, I work with the Segal Company, which is the actuarial consultant to roughly 30 percent of the multiemployer plans in the country, covering about half of the participants in these plans. So, when I talk about our experience, it is a very broad range of plans in different industries.

That situation was very typical, and it dug a much deeper hole, we think, than would have been necessary, but it was necessary to protect the employers. One of the good things about H.R. 2830 is that it lifts the lid on that. In addition, in the meantime the IRS has come around to some more what we believe appropriate interpretations of the deduction rules, so that we are hopeful this problem will be at least mitigated in the future. Another question that a number of you asked and a very appropriate one is: Are these industry-specific problems? Is this caused by particular problems in given industries? I think as you can see from the distribution of where the underfunding is, it is not necessarily an industry-specific problem. I want to tell you a tale of two industries that shows how different ways can be handled. Right after ERISA, there were a series of multiemployer plans that terminated at a time when the benefits were not guaranteed by PBGC unless the agency agreed to do so, and they were the pension plans covering milk drivers, the home delivery of milk, an industry that has disappeared. Those pension plans were disappearing along with the industry. They were severely underfunded, and the PBGC stepped in, and part of that experience led to the development and passage of the Multiemployer Pension Plan amendments Act.

Another industry that had multiemployer plans, in fact, the original prototype multiemployer plans, was in garment manufacturing. Both the ladies' garment and the men's garment industries, their plans started in the thirties. Those plans, upon the enactment of the Multiemployer Pension Act in 1980, were significantly underfunded. They have not become PBGC wards of the State. They have put the clamps down on any benefit increases. They gritted their teeth and got contribution increases. They pursued all of their measures. It has not been a happy ride for them, but the plans along with the industries are largely being put to bed, the industries in this country, without turning to the PBGC for big infusions of money. Those are industries that have gone away because of the shifts in the economy, but given tools that were appropriate at the time that they were running into trouble, they solved their problems. What we are looking for today is updating and modernization of the tools so that industries facing turmoil or facing maybe not long-term turmoil but volatility in the market for their goods, volatility in the investment markets, will have the opportunity to take the deep breath, to take the measures necessary, and to resolve their problems the way earlier plans were able to do so without turning to the government for relief. Thank you.

[The prepared statement of Ms. Mazo follows:]

Statement of Judith F. Mazo, Senior Vice President and Director of Research, The Segal Company

I am pleased to be here today to discuss the provisions of H.R. 2830 that are aimed at reforming and strengthening the funding rules that govern multiemployer defined benefit pension plans. The Segal Company is an international employee benefits, compensation and human resources consulting firm that serves close to 30% of the nation's multiemployer pension plans. Our clients provide a secure retirement income for more than half of the workers covered by multiemployer plans.

I appear here on behalf of a broad coalition of plans, employers, employer associations and labor organizations that sponsor multiemployer plans. The Coalition has put forth a carefully negotiated, balanced proposal for multiemployer pension plan reform, which has evolved through the efforts of many of the system's largest stakeholders. I am pleased to see that you will also be hearing today from representatives of the Motor Freight Carriers Association and the Associated General Contractors, both of which are part of our Coalition.

In fact, the Coalition represents the overwhelming majority of employers and virtually all of the unions in the construction, trucking, entertainment, service and food industries, as well as the membership of the National Coordinating Committee for Multiemployer Plans (NCCMP), which directly represents over 600 jointly-managed multiemployer pension, health, training and other trust funds and their sponsoring organizations across the economy.

The NCCMP is a non-profit, non-partisan advocacy organization formed in 1974 to protect the interests of plans and their participants following the passage of ERISA and the increasingly complex legislative and regulatory environment that has evolved since then. The Segal Company has been the technical advisor to the NCCMP since its formation; I have been a member of its Working Committee for 25 years.

Initially, I want to congratulate Chairman Camp and the members of the Subcommittee for the care that you are taking to address the special issues facing multiemployer plans as distinct from the single-employer issues and problems. We appreciate the considerable effort on your part and by your staff to understand the special characteristics of multiemployer plans, the industries that support them and the labor-relations contexts in which they function, and to shape legislation appropriate for the multiemployer community rather than attempting to shoehorn multiemployer plans into the very-different single-employer requirements. We look forward to working together to refine the multiemployer provisions to be sure they achieve your goal and ours—stronger plans that do an even better job of meeting the needs of their participants, their employers and the industries that foster and sustain them.

Background

There are nearly 1600 multiemployer defined benefit pension plans in the country today. They provide benefits to active and retired workers and their dependents and survivors in virtually every area of the economy. Because of their attractive portability features, multiemployer plans are most prevalent in industries, like construction, which are characterized by mobile workforces. According to the latest information from the Pension Benefit Guaranty Corporation, multiemployer plans cover approximately 9.7 million participants, or almost one in every four Americans working in the private sector who still have the protection of a guaranteed income provided by a defined benefit plan. With few exceptions, these are mature plans that were created through the collective bargaining process 40, 50 or even 60 years ago and have provided secure retirement income to many times the current number of participants since their inception. Although some mistakenly refer to them as "union plans," the law has required that these plans be jointly managed with equal representation by labor and management on their governing boards since the passage of the Labor Management Relations (Taft-Hartley) Act in 1947.

This active participation by both management and labor representatives (many of whom are also participants in the plans) provides a clear distinction between single employer and multiemployer plans. Multiemployer plans are regulated not only under the tax and employee benefits laws and regulations and the watchful eyes of the Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation, with which all private-sector benefit plans must comply. In addition, they are subject to a second overlay of regulation, the federal labor-relations laws. Most important among these laws and regulations, the Taft-Hartley Act requires that the union and management fiduciaries who serve on these joint boards operate these plans for the "sole and exclusive benefit" of plan participants. This, of course, echoes and reinforces the capstone of ERISA, which imposes fiduciary ob-

ligations on plan fiduciaries that put at risk the personal assets of those who fail to meet their obligations.

It is estimated that over 65,000 employers contribute to multiemployer pension plans. The vast majority of these are small employers. For example, in the construction industry, which makes up more than 50% of all multiemployer plans (but just over one-third of the participants), it is estimated that as many as 90% of all such employers employ fewer than 20 employees. By sponsoring these industry plans, employers are able to ensure that their employees have access to comprehensive health and pension benefits and, through the jointly managed training and apprenticeship plans, the employers have access to a readily available pool of highly skilled labor, none of which would be feasible for individual employers to provide.

Funding for multiemployer plans comes from the negotiated wage package agreed to in collective bargaining. For example, if the parties agree to an increase in the wage package of $1.00 per hour over three years, the $1.00 may be allocated as 40θ to the health benefit plan, 20θ to pensions, 5θ to the training fund and the remaining 35θ taken in increased wages. Although for tax purposes the contributions that employers make to employee benefit plans are considered to be employer contributions, the funding comes from monies that would otherwise be paid to the employees as wages, health coverage or the like. Through collective bargaining the employees explicitly agree to take less in pay in order to fund the pension, so many of them feel as though they are making the contributions.

For the overwhelming majority of contributing employers, their regular involvement with the plans is limited to remitting their monthly payments to the trust funds as required pursuant to their collective bargaining agreements. For these small companies, the funds are the perfect substitute for making a large financial commitment to human resources functions, providing administrative services and meeting today's complex compliance requirements while providing economies of scale that would otherwise make such benefit plans unaffordable for small business. In effect, the employers have outsourced their employee benefits operations to the multiemployer plans and their labor-management boards of trustees.

Since the passage of the Multiemployer Pension Plans Amendments Act of 1980, participants of multiemployer plans have been covered by the benefit guarantee provisions of the PBGC. Unlike single employer plans, however, the PBGC is more like a reinsurer of last resort for multiemployer plans. Instead of having PBGC pick up the pieces when an employer goes out of business, all of the employers who contribute to these plans self-insure against the risk of failure by one another. Under the multiemployer rules, employers who no longer contribute, or cease to have an obligation to contribute to the plan, must pay their proportionate share of any unfunded vested benefits that exist at the time of their departure. This obligation, known as withdrawal liability, recognizes the shared obligations of employers in maintaining an industry-wide skilled labor pool in which employees may move among contributing employers dozens of times during their careers.

This system of shared risk has protected both the participants and the PBGC, as evidenced by the fact that it has had to intervene in around 36 multiemployer cases over the past 25 years. The reduced risk to the PBGC is also reflected in a much lower premium for multiemployer plans—$2.60 per participant per year, versus $19 per participant per year plus a variable premium for single employer plans. The PBGC guarantees a much lower benefit for multiemployer plans. The guarantee formula is expressed as an accrual rate, with the maximum at $35.75 per month per year of service. This works out to $12,870 per year for a participant with 30 years of service, compared with a maximum guaranteed annual benefit for single employer plans of roughly $45,000, for someone who retires at age 65. As of the last fiscal year, PBGC's multiemployer guaranty program showed a small deficit—about $236 million—which was in fact an improvement over the prior year. So the multiemployer program, which covers more than 20% of the people with PBGC-guaranteed pensions, has a projected deficit equal to about 1% of that projected for the single employer program.

The multiemployer system of pooled risk and mutual employer financial guarantees has been both one of the greatest strengths and major weaknesses of the multiemployer system. In the early 1980s, the presence, or even the threat of withdrawal liability produced a chilling effect on the growth of multiemployer plans that has persisted in several industries despite the fact that most have had no unfunded benefits for most of that time. On the other hand, for many, the threat of unfunded liabilities provided an incentive to plan fiduciaries to adopt and follow conservative funding and investment policies that, in combination with a robust economy, led the plans to become fully funded.

Nevertheless, rather than being able to build a buffer against future economic downturns, this success led plans to experience problems at the top of the funding

spectrum. In the late 1980s and throughout the 1990s, plans began to hit the full funding limits of the tax code. Under these provisions, employers that contribute to plans in excess of these limits were precluded from receiving current deductions for their contributions to the plans. Compounding the situation, employers who continued to make their contributions also faced an excise tax for doing so, despite the fact that the collective bargaining agreements to which they were signatory obligated them to continue to make them. Although in rare instances the bargaining parties negotiated "contribution holidays," timing considerations and the fact that in most cases the plan fiduciaries and bargaining parties were different people meant that plan trustees had no choice other than to increase plan costs by improving benefits to bring plan costs up to the level of plan income to protect the deductibility of employer contributions. Further, once adopted, the actions taken to improve the plan of benefits in order to protect the employers cannot be rescinded under the anti-cutback provisions of ERISA. We estimate that over 75% of multiemployer defined benefit pension plans were forced to make benefit improvements as a result of the maximum deductible limits, even when the trustees were skeptical about being able to cover the costs in the long term. Overall, multiemployer plans were very well funded as the plans approached the end of the millennium, with the average funded position for all multiemployer plans at 97% (see *The Segal Company Survey of the Funded Position of Multiemployer Plans—2000*).

In the three years that followed, however, these same plans, like all investors, suffered significant losses as the markets plunged into a deep and prolonged contraction. For the first time since the ERISA funding rules were adopted in 1974—in fact, for the first time since before the beginning of World War II—the markets experienced three consecutive year of negative performance. Not only were plans unable to meet their long term assumed rates of return on their investments, like just about all investors the plans saw their principal decline. For many of these mature multiemployer plans that depend on investment income for as much as 80% of their total income, the loss of significant portions of the assets caused a rapid depletion of what for most had been significant credit balances in their funding standard accounts. The most recent Segal Company multiemployer funding report shows a significant decline from the 97% in 2000, although the average funded position is still relatively healthy at 83%. Nevertheless, these investment losses have left a number of plans at all levels of funding facing credit balances approaching zero, meaning these plans face a funding deficiency in the near future (see *The Segal Company Survey of the Funded Position of Multiemployer Plans—2004)*. According to the most recent estimates, as many as 15% of all plans are projected to have a funding deficiency by the year 2008 and an additional 13% face the same fate by 2012 (assuming benefit levels and contribution rates remain unchanged).

The implications of a funding deficiency for contributing employers, the plans and their participants are potentially devastating. Once a plan's credit balance drops below zero, contributing employers may have to be charged additional amounts to make up the shortage so that the plan can meet its minimum funding requirements. This is above the amounts they have promised to pay in their collective bargaining agreements. In addition, they are required to pay an excise tax by the IRS equal to 5% of that assessment. It the full shortfall is not made up in a timely fashion, the excise tax may be increased to 100% of the shortage.

For many of the contributing employers, especially those in industries like construction that operate through competitive bidding and traditionally have small profit margins, they have bid their work throughout the year based on their fixed labor costs (including the negotiated pension contributions). For them, receiving an assessment for what could be multiples of the total contributed for the year, could be enough to drive them into bankruptcy. In this instance, the concept of pooled risk among contributing employers means that the shortage amounts as well as the excise taxes owed by the bankrupt employers would be redistributed among the remaining employers, invariably pulling some at the next tier into a similar fate. As more and more employers fail, those companies that are more financially secure begin to worry about being the "last man standing." The result is that they will also seek ways to abandon the plan before all of their assets are at risk. When all of the employers withdraw, the assets of the plan will be distributed in the form of benefit payments until the assets on hand are sufficiently depleted to qualify for assistance from the PBGC. At that point, participants' benefits will be reduced to the maximum guaranteed levels, as noted above, which are likely to represent only a fraction of the amount to which they would otherwise be entitled.

A Balanced, Negoitated Industry-Wide Response

Trustees of most plans faced with the prospects of an impending funding deficiency have already taken action to address the problem to the extent possible. For

the most part, that has involved reducing future accrual rates or ancillary benefits that have not yet been earned, as the current anti-cutback rules prohibit reducing benefits that have already accrued, including all associated features such as early retirement subsidies and the like. In many cases, this has involved substantial reductions (e.g. 40% by the Western Conference of Teamsters, 50% by the Sheet Metal Workers National Pension Plan and the Central States Teamsters Pension Plan, and 75% in the case of the Plumbers and Pipefitters National Pension Plan). But financial impact of adjusting only future benefits is limited, especially for mature plans that have relatively small numbers of active workers earning new benefits. These actions on their own may be insufficient to avoid a funding deficiency. Moreover, it can be counterproductive to take too much away from the active workers, because they are the ones who must agree to increase funding for the pension plan.

Additionally, the modest recovery of the investment markets experienced in 2004 is only marginally helpful. For example, a $1 billion fund in 2000 that suffered a 20% decline in assets through 2003 would have to realize an annualized rated of return of 15% every year for the remainder of the decade to get to the financial position by 2010 it would have had it achieved a steady rate of 7.5% for the full ten year period. Other relief, including funding amortization extensions under IRC Section 412(e) or the use of the Shortfall Funding Method, have been effectively precluded as options by the IRS. Consequently, the only alternative available requires a legislative solution.

When the Pension Funding Equity Act of 2004 failed to give multiemployer plans short-term relief to help them over the current crisis, various groups began to evaluate alternatives. The objective was to find ways to strengthen plan funding to avoid or minimize risks that the trustees and the parties can control, and to provide additional tools to the plan fiduciaries and bargaining parties for plans that face imminent funding crises so that they can bring their liabilities and resources into balance. A broad cross section of groups that deal with many varieties of multiemployer plans from many different perspectives entered into extensive negotiations to develop a set of specifications for reform that all could agree on. The resulting specifications for reform reflect a carefully conceived compromise between employer and labor groups, undoubtedly quite different from what either group would have designed independently, but reflective of a desire by all parties to preserve the plans as valuable sources of retirement income security on a cost-effective basis. The result was the current coalition proposal, a copy of which is attached as an addendum to this testimony. Here is a summary of that proposal:

Summary of Coalition Proposal

The proposed specifications for multiemployer reform include three major components, supplemented with several clarifying and remedial changes intended to make the system work more effectively for plans, their participants and their contributing employers.

The first component is applicable to all multiemployer plans and has two major provisions geared to strengthening funding requirements for plan amendments that increase or decrease plan costs (specifically unfunded actuarial accrued liabilities) related to past service and to require that new benefits designed to be paid out over a short period, like 13th checks, be amortized over that payout period.

The other major provision would allow plans to build a "cushion" against future contractions in investments, and to save for the lean years when times are good, by increasing the maximum deductible limit to 140% of the current limits and repealing the combined limit on deductions for multiemployer defined benefit and defined contribution plans.

The second component of the Coalition proposal applies to plans that have potential funding problems, defined as those with a funded ratio of less than 80%, using the market value of assets compared to the actuarial value (as used for minimum funding) of its actuarial accrued liability. Such plans would be required to develop and adopt a "benefit security plan" that would improve the plan's funded status. Plans in this category would not be able to adopt amendments to improve benefits unless the additional contributions related to such amendment more than offset the additional costs to the plan. Amendments that violate that restriction would be void, the participants would be notified and the benefit increase would be cancelled.

To provide additional tools to help multiemployer plans deal with looming funding problems, they would have "fast track" access to five-year amortization extensions and the Shortfall Funding Method if certain criteria were met. IRS authorization could be withheld only in certain circumstances and applications would need to be acted upon within 90 days or the approval would be automatic. Additional restrictions that currently apply to plans with amortization extensions would also apply, although it would be clarified that plans could increase benefits if the result would

be to improve the plan's funding because the increase generates contributions above and beyond the amounts needed to pay for the benefit increases.

The third and most critical component involves plans that have severe funding problems or will be unable to pay promised benefits in the near future. The intent is to prevent a funding deficiency that could trigger a downward spiral of the plan and its contributing employers and ultimately thrust the funding of the benefits onto the PBGC. This would be accomplished by providing the bargaining parties and plan fiduciaries with additional tools beyond those currently available to bring the plan's liabilities and resources back into balance.

The Coalition proposal modifies the current multiemployer-plan reorganization rules to provide a useful mechanism for plan sponsors, much like a Chapter 11 bankruptcy reorganization. ERISA currently has reorganization rules governing plans that are nearing insolvency, but those rules were adopted at a time when the major concern was a plan's ability to meet its payment obligations to current pensioners. Today, even those plans with the most severe funding problems have sufficient assets to meet their obligations to current pensioners. The Coalition proposal suggests several new triggers to reorganization that reflect the problems of mature plans, recognizing that funding ratios below 65%, a plan's short term solvency and a plan's demographic characteristics (i.e. the relationship between the present value of benefits earned by inactive vested and retired participants to that of currently active participants) can play an important role in a plan's ability to meet its obligations to all participants, current and future.

Once a plan is in reorganization, notice would be given to all stakeholders and the government agencies with jurisdiction over the plans that the plan is in reorganization and describing the possible consequences. Once in reorganization, plans would be prohibited from paying out full or partial lump sums, social security level income options for people not already in pay status, or other 417(e) benefits (except for the $5,000 small annuity cashouts). Within thirty days, contributing employers would be required to begin paying a surcharge of 5% above their negotiated contribution rates. If the bargaining agreement covering such contributions expires more than one year from the date of reorganization, the surcharge would increase to 10% above the negotiated rate and remain there until next round of bargaining. Once in reorganization, the normal funding standard account continues to run, but no excise taxes or supplemental contributions will be imposed if the plan encounters a funding deficiency.

Not later than seventy-five days before the end of the first year of reorganization, the plan fiduciaries must develop a rehabilitation plan to take the plan out of reorganization within ten years. The plan would set forth the combination of contribution increases, expense reductions (including possible mergers), benefit reductions and funding relief measures (including amortization extensions) that would need to be adopted by the plan or bargaining parties to achieve that objective. Annual updates to the plan of rehabilitation would need to be adopted and reported to the affected stakeholders. Although the proposal anticipates the loosening of the current anti-cutback rules with respect to ancillary benefits (such as subsidized early retirement benefits, subsidized joint and survivor benefits, and disability benefits not yet in pay status), a participant's core retirement benefit at normal retirement age would not be reduced. Additionally, with one minor exception which follows current law regarding benefit increases in effect less than 60 months, no benefit for pensioners already in pay status would be affected. Finally benefit accruals for active employees could not be reduced below a specified "floor" as a means of ensuring that the active employees whose contributions support all plan funding, remain committed to the plan.

The proposal anticipates that these ancillary benefits become available as part of a menu of benefits that can modified to protect plans from collapsing under the weight of previously adopted plan improvements that are no longer sustainable, but that cannot be modified under the current anti-cutback restrictions. Without such relief participants would receive lower overall benefits on plan termination and the plan would be eliminated for future generations of workers. Within seventy-five days of the end of the first year a plan is in reorganization, the plan trustees must provide the bargaining parties with a schedule of benefit modifications and other measures required to bring the plan out of reorganization under the current contribution structure (excluding applicable surcharges). If benefit reductions alone are insufficient to bring the plan out of reorganization, the trustees shall include the amount of contribution increases necessary to bring the plan out of reorganization (notwithstanding the floor on benefit accruals noted above). The trustees shall also provide any other reasonable schedule requested by the bargaining parties they deem appropriate.

The bargaining parties will then negotiate over the appropriate combination from among the options provided by the trustees. Under this proposal, benefits for inactive vested participants are subject to reduction to harmonize the impact on future benefits for this group as well as for active participants.

The proposal includes suggestions for: bringing the current rules on insolvency in line with the proposed reorganization rules; strengthening withdrawal liability provisions; and providing construction industry funds with additional flexibility currently available to other industries to encourage additional employer participation. It also includes provisions that address recent court rulings. One suggested change would allow trustees to adjust the rules under which retirees can return to work and still receive their pension benefits and another would confirm that plans can rescind gratuitous benefit improvements for current retirees adopted after the date they retired and stopped generating employer contributions.

The Challenge

For more than half a century, multiemployer plans have provided benefits for tens of millions of employees who, using standard corporate rules of eligibility and vesting, would never have become eligible. They offer full portability as workers move from one employer to another, in a system that should be held out as a model for all defined benefit plans. More importantly, the system of collective bargaining and the checks and balances offered by joint employer—employee management has enabled the private sector to take care of its own without the need for government support.

Yet the current funding rules, previously untested under the unprecedented unfavorable investment climate experienced in recent years, have the potential not only to undermine the retirement income security of millions of current and future workers and their dependents, but to force large numbers of small businesses out of business and eliminating participants' jobs.

Congress now has an ideal opportunity to enact meaningful reform supported by both the employer and employee communities, who have coalesced behind a responsible proposal that will enhance plan funding and provide safeguards to plans, participants, sponsoring employers and the PBGC, without adding to the already burgeoning debt. We know that our proposal is unlikely to be the last word, of course, and we embrace the opportunity to work with the Subcommittee and with others, including others in the private sector with a stake in multiemployer plans, to strengthen and polish the ultimate result. Along those lines, there are a few points regarding the way H.R. 2830 adapts the ideas that have been put forth that we believe deserve mention at this stage.

Section 202 of the Bill contains new funding and other requirements for multiemployer plans that are in "endangered" status that go well beyond what the Coalition has recommended for plans facing potential funding problems (colloquially referred to as the "Yellow Zone"). While we think there may be some merit in further tightening the reins on plans that may be heading for serious trouble, it is important that the standards not be so stringent that they could create insupportable costs for employers and thereby harm rather than help with plan funding.

Section 202 also creates a new category—multiemployer plans in "critical" status—which is set up to address the special problems of plans that are near the brink of failure. As noted, the Coalition agrees that a program like this is needed (in our proposal, it takes the form of a redesigned approach to plan reorganization). However, the role of plan trustees at this point is vital to plan survival and, we believe, they need additional authority to restructure and revitalize seriously troubled plans substantially beyond what is proposed in H.R. 2830. Again, we anticipate working with you and your staff to come up with a suitable solution to these important policy questions, as well as to deal with the inevitable technical issues that arise in any legislative effort in this extraordinarily complex area.

Conclusion

The Coalition understands that whatever legislation is ultimately passed will include some provisions that are distasteful to the employers, the employees or both, because it will of necessity be a compromise. Our aim is to make sure that, in the end, the environment for multiemployer plans will be improved, so that they, their contributing employers and their participants are all well-served. The alternative is not the continuation of the status quo, but a much worse fate that includes: the loss not only of accrued ancillary benefits, but a substantial portion of a participant's normal retirement benefit as plans are assumed by the PBGC; the demise of potentially large numbers of small businesses, the accumulation of unbearable cost burdens for the surviving companies in multiemployer plans and the loss, not only of

pension benefits, but the jobs from which such benefits stem; and an increase in taxpayer exposure at the PBGC, an agency that is already overburdened.

In closing, I would like to thank you for taking the time to engage in this important discussion and for the opportunity to be with you here today.

Chairman CAMP. Thank you very much. You referred to the deduction ceiling, Ms. Mazo, and H.R. 2830 increases that, I believe, to 140 percent.

Ms. MAZO. Yes.

Chairman CAMP. In your opinion, how do you think the employers that you deal with will react to that raise in the deduction ceiling?

Ms. MAZO. Well, typically, it is not really a matter of the employers wanting to put in more money to take greater tax deductions. The parties negotiate contributions that they believe will be a fair amount that will fund the plan, and at the time they do so, they do not necessarily know what is going to be needed to fund the plan. It is based on estimates that we think maybe there will be—each person in the plan will work 1,500 hours and we are going to need $15,000 to fund the plan this year, so we need $10 a person per year. I have to make up numbers that even I can decide in my head, but just multiply adding zeros. If, as happened in the 1990s, there is a whole lot of work and people work much more than was anticipated, more money is going to come in. If the markets are very good so that, in fact, the plan does not need as much for the employers to meet the cost of the plan from year to year, then, again, the contribution levels that were fixed in the bargaining agreement may be greater than are needed at a given time. What raising the deduction level will do is it will enable the plan trustees to save that money that came in in the good years and have it there as a buffer for the periods when times are going to be bad. They will be bad and hopefully they will be better again, but we do not want—the whole point of it is to smooth it out over time so that they do not have shocks to the negotiating systems and shocks to the employers.

Chairman CAMP. Thank you. Mr. Clark, I wanted your reaction or comment to how employers would see the deduction ceiling at 140 percent in H.R. 2830.

Mr. CLARK. Simply I would just say "Amen" to the previous comments. I know that in 1997 when we reached the funding limits, we would have welcomed the opportunity to take a balanced approach to what the market and our collective bargaining agreement was handing us, and given some increase in funding but certainly to build a war chest. Many of the funds—I know it is definitely the case with the Michigan Carpenters—have trustees from the management side who have been there forever, and they have seen what happens in life. The market goes up and down. We get overfunded, we get underfunded. No question our counsel would have been let's put some away for a rainy day. We would not have run into the problem in 2001 that we did face.

Chairman CAMP. All right. Thank you. Mr. Lynch, in your statement you mentioned the non-sponsored participants, and you noted that plans for your industry have recovered less than 15 percent

of the assets needed to cover the liabilities of companies which withdraw. What effect does H.R. 28thirties new withdrawal requirements have on the plans in your industry, if you could comment on that?

Mr. LYNCH. I think the provisions in H.R. 2830 relating to tightening up on withdrawal liability rules are very important in helping to address part of that problem. I mentioned in my written statement that there is one large Teamster trucking industry fund where it is estimated that they recover less than 15 percent of the withdrawal liability that is actually owed. So, to the extent the other 85 percent is not captured, that then becomes the burden on the remaining contributing employers. So, we believe those withdrawal liability rules and tightening those up will be helpful.

Chairman CAMP. All right. Thank you. The gentleman from New York, Mr. McNulty, may inquire.

Mr. MCNULTY. Thank you, Mr. Chairman, and I thank all of the panelists for their testimony. Mr. Morgan, do the union representatives who are trustees of the plans of which your employers are a part support your proposal? If not, what is your perception as to why they do not?

Mr. MORGAN. Congressman, it is difficult for me to say whether the union trustees of our various funds would support this or not. We think they would support some parts of it. I am not sure about other parts.

Mr. MCNULTY. You do not know the positions of any of them?

Mr. MORGAN. Well, we have been dealing with the coalition, which includes Teamsters and the UFCW, and they have been concerned, as was mentioned earlier, about the effect of what we have been calling the yellow zone, the endangered group, rules on getting to full funding on contribution levels and benefit accrual rates. We do not see it quite the same way, but I think if there was an area of difference, that might be it.

Mr. MCNULTY. Okay. Well, I think that would be it because I have that concern myself with this proposal, Ms. Mazo, this multiemployer plan coalition has put forward. In your opinion, how large would the benefit cuts be that would be permitted under this proposal to the average worker or the average retiree?

Ms. MAZO. Are you talking about the coalition proposal?

Mr. MCNULTY. Yes.

Ms. MAZO. Under the coalition proposal, the benefit cuts would not come until the plan is in very severe trouble, that is, what we call reorganization. Our proposal would protect retirees unless they retired after it was already known the plan was in trouble. We do not want people racing for the door knowing that benefit cuts are coming. But we would propose not to cut the benefits of retirees who had been retired before the plan ran into trouble. So, the cuts would really be—and also we are talking about not cutting accrued benefits that are payable at normal retirement age. The cuts would come in the form of taking away some of the subsidies for early retirement, some of the added special death benefit provisions that are available after retirement, the opportunity to double dip, if you will, to retire, draw your benefit, and come back to work. Our proposal would allow plans to change the rules and say if you are going to come back to work, we are going to withhold your pension.

I cannot give you an estimate about how large the reductions would be because I do not think the reductions would be huge. I think much more important, actually, based on the experience that we have had in the early days of plan reorganization, there would be a huge spur to the parties to moderate what the benefit promises are for the future and to focus on getting better funded because of the tremendous pain that benefit cuts would entail. So, it is kind of like a sword of Damocles hanging over their head.

Mr. MCNULTY. Thank you very much, and I thank everyone on the panel for being here and for their testimony.

Chairman CAMP. Thank you. The gentleman from Illinois, Mr. Weller, may inquire.

Mr. WELLER. Thank you, Mr. Chairman. Ms. Mazo, in your testimony, of course, you have indicated you are part of the Multiemployer Plan Coalition. Can you share with us who is all part of that coalition?

Ms. MAZO. I cannot give you a complete list, but the National Coordinating Committee for Multiemployer Plans itself represents a large number of plans and employers and unions, including the United Food and Commercial Workers, the Teamsters, I think all or just about all of the building trades, the Mine Workers, et cetera. In addition, the trucking—Mr. Lynch's organization, the Motor Transport Organization, the AGC, UPS, Yellow Roadway, major employers, all of the specialty construction groups, the sheet metal contractors, electrical contractors, and so forth.

Mr. WELLER. Well, you know, so business, labor, employers, workers are all part of this coalition.

Ms. MAZO. That is right.

Mr. WELLER. Essentially three of the four panelists represent different segments of that coalition today, so perhaps it might be best if I direct my question and ask if any of the three of you would like to answer that. But, you know, one of the biggest concerns that has been raised with me on multiemployer pension plans is they have the responsibility the PBGC has for single-employer plans in insuring benefits for bankrupt employers, yet they do not have all the tools required to manage the plans when a crisis threatens that plan's survival. How does the proposal of the coalition rectify this and at the same time protect the core retirement benefit levels for all the participants? Also, are your recommendations included in H.R. 2830?

Ms. MAZO. Some of our recommendations are included. As things stand now, many of them are not. But I think that is under consideration at this point by the Education and the Work force Committee. The philosophy behind our proposal was first to try to forestall the problems that were under the bargaining parties' and the trustees' control by making it—having higher standards for—tighter funding standards for benefit increases to not enable trustees to improve benefits unless they are pretty sure they can afford them, and that feature of our proposal, a variation of it, which was also in the Food Marketing Institute's proposal, is in H.R. 2830. Another part was, as you have heard, to increase the deduction limits, and that is in 2830. A third part was to give plans ready access to some of the already existing tools in the law which have been difficult for the IRS to deal with, and particularly given the

funding crisis they have been dealing with in the single-employer plans. Part of that is in H.R. 2830. It is not in there 100 percent.

Mr. WELLER. Mr. Lynch or Mr. Clark, do you have something you would like——

Mr. LYNCH. When we first began these discussions within the coalition, I think there was a general feeling that under current law many of the tools to address some of these problems occur far too late in the process. They really come into play when plans are facing very severe funding problems. So, what we have suggested is that some of those things—amortization relief, waiver relief—get moved up in the process so the trustees can address some of these things sooner rather than later where they are really dealing with a very, very difficult problem. Much of that is incorporated in H.R. 2830.

Mr. WELLER. Mr. Clark?

Mr. CLARK. I agree. I differ from most of the panelists. I am not an expert on this. But I do have skin in the game. I am an actual contributor to these plans. On top of that, I know the beneficiaries personally, and I am a trustee. Anything that would allow us to act more quickly to assure those benefits get to those that they were intended for is essential.

Mr. WELLER. Just as a quick follow-up—and I see my time is running out here—the provisions that were in the coalition proposal that were put forward but were not included in H.R. 2830, what is the most important provision you feel that needs to be added to this piece of legislation to improve it?

Mr. LYNCH. I think the tools in the red zone. Right now, plans falling in the red zone, the most severely underfunded plans, there is a big gap in the tools available to the trustees and the bargaining parties, and that is a very, very important point here. What we tried to do is balance what the responsibilities are for the trustees and as well as the bargaining parties. So, I would say the red zone is the most important component that needs to get back into the legislation.

Mr. WELLER. Well, thank you, and I see my time has expired. Thank you, Mr. Chairman. Thank you, panelists.

Chairman CAMP. Thank you. The gentleman from Texas, Mr. Doggett, may inquire.

Mr. DOGGETT. Thank you, Mr. Chairman. Do each of you and the groups that you represent support the disclosure and transparency provisions that are in 2830?

Mr. CLARK. We do.

Mr. LYNCH. Yes, we do.

Mr. MORGAN. Yes.

Ms. MAZO. We support them in principle. I am sorry to have to demur, but there are technical aspects of the disclosure rules that we do need to address. One of the particular features of multiemployer plans is that they are independent entities that operate as trust funds to which many employers contribute and that cover many people, as has been noted, who move among employers and from job to job. Accordingly, the plans do not necessarily always have all of the information about all of the individuals that might be captured within a given employer's own personnel data system, but that is not there at the plan level. Similarly, the plans are—

operations are funded out of the same pool of assets that funds the benefits, and so it is not very——

Mr. DOGGETT. Will you submit to the Subcommittee any changes that you think are necessary?

Ms. MAZO. We will.

Mr. DOGGETT. That would be useful.

Ms. MAZO. We definitely support them in principle. It is just a question of making sure they are not overwhelming.

Mr. DOGGETT. Thank you. Mr. Clark, is it your position that we need to pass the Boehner bill or 2830 as soon as possible?

Mr. CLARK. Yes.

Mr. DOGGETT. Is that your position also, Mr. Morgan?

Mr. MORGAN. Yes.

Mr. DOGGETT. Mr. Lynch, while you believe that there need to be some changes, particularly in the yellow zone provisions, do you also feel that Congress needs to act on perhaps a revised Boehner bill this year?

Mr. LYNCH. Absolutely.

Mr. DOGGETT. Mr. Clark, has anyone in the groups that you represent suggested that we need to attach the Boehner bill or any portions of it to some variant of the President's plan to privatize Social Security to kind of help boot-strap it forward?

Mr. CLARK. Mr. Congressman, I do not have any knowledge someone is for or——

Mr. DOGGETT. It is not a recommendation that you have made?

Mr. CLARK. No.

Mr. DOGGETT. And, Mr. Morgan, has your institute recommended that the best way to get the Boehner bill and reform of our pension system is to attach it to this faltering plan to privatize Social Security?

Mr. MORGAN. No.

Mr. DOGGETT. And, Mr. Lynch, has your organization recommended that we need to pair up pension reform with privatization of Social Security?

Mr. LYNCH. We have been so singularly focused on trying to pass multiemployer pension reform. That has been our singular focus.

Mr. DOGGETT. Do you feel that any step the Congress would take to slow down the reform of our pension system would be a mistake?

Mr. LYNCH. I got a feeling I know where you are heading with that. We would support any avenues to make it happen.

Mr. DOGGETT. Ms. Mazo, there clearly has been a good bit of debate, as some of the other witnesses indicated, amongst you about the best way to solve these problems. What is your feeling as to why the Food Marketing Institute's approach, particularly as it relates to yellow zone companies, won out over what the coalition had proposed, since the coalition seems to represent a larger number of employees and industries?

Ms. MAZO. I would hesitate to speculate what might have been in the minds of Chairman Boehner and others as to why it won out. I can see the appeal of saying we want hard benchmarks to measure the process and to measure the progress. We appreciate the idea of imposing more discipline in the so-called yellow zone

plans than we had proposed. Our concern is that the benchmarks are so hard that they could cause some employers to collapse under the weight and the plans to collapse under the weight of the employers.

Mr. DOGGETT. Mr. Morgan, I understand that if we change the deductibility provisions, that will remove a disincentive to your members to contribute in good times. What incentive is there to increase contributions during good times in a highly competitive industry?

Mr. MORGAN. Well, during good times, meaning investment returns are high? Is that what you are referring to?

Mr. DOGGETT. Yes, sir.

Mr. MORGAN. Well, then there wouldn't be any particular incentive to do that, but it is subject to collective bargaining. So, both sides have a say in how the available funds are divided among wages and——

Mr. DOGGETT. Your feeling is then through the collective bargaining process, during periods of prosperity there would be increases made in contributions?

Mr. MORGAN. Not necessarily, sir. If there is no need for increases there, the moneys would probably be allocated to wages or health care.

Mr. DOGGETT. But in yellow zone companies, in yellow zone plans, you think there would be increases.

Mr. MORGAN. I think there would be, yes.

Mr. DOGGETT. Thank you, Mr. Chairman.

Chairman CAMP. Thank you. The gentlewoman from Pennsylvania, Ms. Hart, may inquire.

Ms. HART. Thank you, Mr. Chairman. I have a whole lot of questions, but I am going to go, I think, to Ms. Mazo because the coalition seems to include the folks who have contacted me the most.

Ms. MAZO. Maybe we should have contacted Mr. Boehner more and we would have been in the bill.

[Laughter.]

Ms. HART. You explained that, as we are all familiar, the multiemployer plans include a number of different employers, and some would think that when you have that mix, that would imply that there is going to be more stability. I think if you look at the figures that we saw in that first panel, that is the case. But it is not enough, according to a lot of folks, and especially some of my constituents who have contacted me. I guess my question is—there are some things you do not like in the Boehner bill, and one of the things was the 10-year benchmark. I guess my question for you is: What would you propose as an alternative to that benchmark?

Ms. MAZO. We are concerned about a benchmark that is a fixed number that cannot be adapted to the needs and the situations of varying plans. We have been looking at benchmarks that would, for example, have the plans achieve a certain level of funding not based on fixed ratios, but covering all of the benefits that are being earned in any given year, which is called the normal cost, plus paying interest on the existing liabilities. We have been looking at giving plans the opportunity to reach that kind of benchmark within the collective bargaining regime. One of the things that we are con-

cerned about in the Boehner bill is that it sets benchmarks and sets requirements for achieving certain benchmarks before the parties have had the chance to bargain over the situation. It appears to potentially in underfunded plans require benefit reductions for active workers as an interim step before there is any collective bargaining over how to deal with the plan's problems. We believe that there should be benchmarks, but they should be timed to be achieved within a sustainable period that allows for collective bargaining to absorb the cost increases and to integrate them into the overall compensation package so that the employers are not hit with very high contribution increases early on or, conversely, very dramatic benefit cuts early on.

Ms. HART. So, it sounds to me like you want to go more in the direction of sort of a re-analysis more often. Is that correct?

Ms. MAZO. I think that is right. Looking at the plan every year, achieving progress but progress in a way that fits the bargaining cycles, because we think it is very important not to take control of the plans out of the hands of the employers and the unions who give it life, who are the source of the funds to make it go. The bargaining parties have to have the opportunity to decide how much to put in and the rate at which they can afford to put it in. I am not saying they should have a free hand, we only want to put in a dollar, but they should have benchmarks that would be absorbable for them under the cycles of when their bargaining agreements open and are negotiated.

Ms. HART. Are you looking for something that would result more in a steady funding stream more than swings?

Ms. MAZO. Absolutely. That is right. We have some data that our company has just done looking at the benchmarks in the Boehner bill. This looks at about 30-some plans of ours that my company works with that would be in the yellow zone. The contribution increases that would be required to meet those benchmarks range from 7 percent, which is certainly doable, to 135 percent, which is very, very difficult, to 356 percent down to 20 percent. Some of the plans, if it was 20 percent over a period of years, they could do that. Where it is 171 percent starting right away to get to that point, that would be too much for the employers and too much for the employees.

Ms. HART. Okay. Thanks. I appreciate that. I yield back.

Chairman CAMP. Thank you very much. The gentlewoman from Ohio, Mrs. Tubbs Jones, may inquire.

Ms. TUBBS JONES. Thank you, Mr. Chairman. I would like to continue with that line of questioning, Ms. Mazo. How would you express what you are asking in an agreement, or suggesting should happen in a multiemployer plan?

Ms. MAZO. In the——

Ms. TUBBS JONES. Or in the law.

Ms. MAZO. In the law. I think the law should set tough standards. I think that the parties should not be led into temptation about, well, let's just relax. They don't. They practically never do, and Mr. Clark and the gentleman here from Safeway as trustees can certainly attest to the fact that they pay very close attention to the costs. But I think there should be standards that when a plan is headed to trouble and it is appropriately identified, our sug-

gestion would be perhaps identifying them as facing a funding deficiency within 7 years or something along those lines. When they are headed to trouble, not there, they should be required to look forward—as Dr. Holtz-Eakin has suggested and FMI has suggested, they should be required to do projections to see what things are going to look like down the road and not just say, well, today we have got plenty of money so we are going to just sit on our hands. Nobody obviously can predict what the market will do, and what happened the earlier part of this century, which pulled the rug out from everyone, was a catastrophe that could not have been planned for and probably should not have been planned for. I know, Ms. Hart, you have suggested you do not want to force the plans to be overfunded. That is a misallocation of resources on everybody's behalf. So, I would suggest some kind of standard that sets a reasonable timetable and a timetable that can be readjusted as events develop for, for example, the plans to aim to reach a responsible funding amortization period. Let's say if they start today, within 10 years from now they should have their liabilities in shape and their assets in shape so that by amortizing the benefits over a reasonable period, they are amortizing the costs over a reasonable period thereafter, they could be fully funded. Along——

Ms. TUBBS JONES. Hold on a second. Let me slow you down.

Ms. MAZO. Okay.

Ms. TUBBS JONES. You are heading down a road I was not asking about.

Ms. MAZO. Oh, I am sorry.

Ms. TUBBS JONES. How would you express in the law the ability to factor in labor negotiations when you set a 240-day timetable?

Ms. MAZO. Right, that is a problem. I think the timetables have to be based on the later of a fixed date—or maybe an earlier date, you know, but a reasonable date, or the year after the majority of bargaining agreements expire.

Ms. TUBBS JONES. Okay.

Ms. MAZO. You have to time it to the bargaining cycle.

Ms. TUBBS JONES. Mr. Lynch, are you trying to answer my question?

Mr. LYNCH. If I could add one point, one of the challenges that the trustees have in these plans is in a multiemployer bargaining scenario, you have multiple contracts that come up at various times. Now, in some plans you have maybe three or four contracts that represent the bulk of the participants in the plan. But you have to try and fix this timeframe so that you get the bulk of those plans. We had suggested something along the lines of when 75 percent of the participants' contracts had been bargained, that is when the clock would start.

Ms. TUBBS JONES. Okay. Mr. Clark, would you like to respond to that question?

Mr. CLARK. Mr. Lynch makes a very good point, and we could certainly use that as trustees. It is very much more reasonable than the proposed timetable.

Ms. TUBBS JONES. Mr. Morgan?

Mr. MORGAN. Well, we think that the current proposed law is workable. We do not quite see it the same way as the folks who have just spoken to you, but——

Ms. TUBBS JONES. Well, tell me how you see it.

Mr. MORGAN. Well, we are employers, too. We obviously don't want to be saddled with huge increases in contributions. We don't want employers withdrawing from funds because they cannot afford it. On the other hand, we think there have to be some standards applied to when you do certain things. We think, for example, there has to be a trigger. We have suggested 7 years to a funding deficiency as one. We think there has to be a time limit on how long trustees and bargaining parties have to craft a solution. We also think there needs to be a time period set for restoring the fund to where it should be, and there should be an interim look at where you are, which we think in the Boehner bill is a reasonable timeframe. I would add one other thing. We have run some of our own actuarial studies to try to determine what the impact would be here of the endangered zone on large plans that we contribute to and some smaller plans, and we have not seen the same results Ms. Mazo referred to. But I would suggest that perhaps as funds approach the critical zone, there might be some different issues there.

Ms. TUBBS JONES. Thank you. Mr. Chairman, I seek unanimous consent to ask just one more short question.

Chairman CAMP. One brief question.

Ms. TUBBS JONES. Thank you, Mr. Chairman. Ms. Mazo—and I do not know whether somebody asked this question before—what is your position about the 140-percent deduction of current pension liabilities? Did someone ask that question and I missed it? They did? Well, then if they asked, I will ask that——

Chairman CAMP. You can respond briefly, if you would.

Ms. MAZO. We would strongly support increasing the deduction limit so that plans are not forced to make benefit increases that they are afraid they will not be able to afford in the future.

Ms. TUBBS JONES. Okay. So, you think it should be 150, 160?

Ms. MAZO. Well, we would love to see it—for collectively bargained plans, we would like to see it repealed because the plans are not—no employer puts money into a collectively bargained plan as a tax shelter. But being realistic, we are perfectly willing to live with the 140 or whatever number is put in there.

Ms. TUBBS JONES. Thank you, Mr. Chairman.

Chairman CAMP. Thank you. The gentleman from Indiana, Mr. Chocola, may inquire.

Mr. CHOCOLA. Thank you, Mr. Chairman. Thank you all for being here. I guess I am still trying to figure out how we got here. The numbers are astounding when you consider that I think it is 26 percent of all multiemployer funds have less than 70 percent funding obligation met, only 11 percent are fully funded. I keep hearing, well, nobody broke the rules, employers are doing what they are supposed to do. I hear the stock market has gone down. Mr. Clark, I think you said the markets went wrong. But the markets have gone right over the last year or so. How did we get here, in your opinion? What rules are wrong that have resulted in this massive underfunding of these multiemployer pension plans?

Mr. CLARK. Well, my personal experience with this indicates that in the 1990s our fund would have handled things differently had we had a higher deductibility option. Second, it is compounded by the collective bargaining agreements. The trustees are handed a bargaining result that says this year the contribution is going to be raised to $5 an hour. There is nothing we can do about it. We have got to take the $5, and all of a sudden that adds again to the overfunding. So, we do not have any solutions because we cannot cut the benefit. The ERISA will not let us do that. So, when we get underfunded, we cannot cut the benefits. So, we are in this little box that we have got to rattle around inside and keep trying to balance this very difficult process. I am not a stupid man, but this is a hard thing to balance and keep it within the law, pretty close to 100 percent, because that is where we all want to be. But if we go over it, we are penalized. The only thing—and we cannot cut benefits, and we cannot cut contributions. Our only tools are to cut accruals when we can—not particularly popular, not very popular. So, we really don't have enough tools in the toolbox to handle the situation.

Mr. CHOCOLA. The solvency measurement, as I understand it, you measure solvency by the current year plus the next 3 years. Is that correct? Is that too short a time frame to plan or to reflect the true solvency of the plan?

Mr. CLARK. Well, I think one of the three other panelists have more expertise in this regard than I do.

Mr. LYNCH. On that point, one very large trucking industry plan reduced the accrual rate from 2 percent down to 1 percent. That was a very big move, and it is a large fund, so it potentially has a pretty dramatic impact. Unfortunately, that change gets amortized over 30 years, so the plan does not see an immediate benefit to the pain that was endured in that change. So, one of the things we suggested—and it is in the bill—is to—well, we had suggested that the amortization of that, both benefit increases as well as changes down, would be amortized over 10 years. The bill is 15. It is those kinds of things that—there is no one single—there is no one single answer. In Central States, like every other fund out there, I mean, they all face the same market downturn, but in Central States they faced two fairly large bankruptcies of top-ten contributing employers, virtually within 6 months of each other. So, we are having to grapple with that. None of the contributing employers can control whether Consolidated Freightways went out of business or did not go out of business, but there are 6,000 CF employees that contributions are no longer being made on their behalf to contribute into that fund. Consolidated Freightways was just one, but they were contributing to virtually every single plan in the country.

Mr. CHOCOLA. I am running out of time, but just on that point, if a member company cannot meet their funding obligations, what are their options as part of the multiemployer plan? Can they opt out and pay something? What other options——

Mr. LYNCH. They can opt out and pay what is referred to as withdrawal liability. They also have to bargain out as well. It is not like they just simply write the check and say, you know, we are gone.

Mr. CHOCOLA. I see I have run out of time. Thank you, Mr. Chairman. I yield back.

Chairman CAMP. Thank you. The gentleman from Connecticut, Mr. Larson, may inquire.

Mr. LARSON. Thank you very much, Mr. Chairman. I want to thank all of our panelists and the chairman and ranking member for holding this hearing this morning. I would like just to ask a very simple question. I like to call it the Augie and Rays test. For you panelists who are not familiar with the culinary establishment of Augie and Rays in East Hartford, it is where the working class goes from breakfast, coffee, lunch, and so forth, and it is there that I face my constituents who ask pretty straightforward questions. Under the plan for reorganization, my question is, for someone who has been approaching age 55 and has worked for 30 years and is now looking at his retirement, what can he expect to get under your plan?

Mr. LYNCH. Hopefully, if we do this right, they can expect exactly the same benefit that has been essentially promised to them. It is if we do not act and we allow the plans to deteriorate further that there is some risk there.

Mr. LARSON. Would anyone else care to respond? Or are you pretty much in agreement? So, that basically I would say to them, look, there is not a problem here, the only thing that is required is that Congress act. However, if Congress does not act and they do not follow this plan, all hell is going to break loose.

Ms. MAZO. Well, the one thing that I think you all are to be commended, as is the Education and the Work force Committee, for specifically looking at multiemployer plan situations. The one thing that you are trying to avoid by looking at that is not creating funding requirements that are going to take his job away before he reaches age 55 by having contribution imposed on his employer, on their employers that are too heavy for them to meet or that could force the employers to have to cut the health insurance because they have got to channel so much of whatever is available into the pension plan. We are talking about having it be fed in to build the plans in a digestible format, I think.

Mr. LARSON. Yes, go ahead.

Mr. CLARK. I would like to add that I think one of the things I would tell my constituents if I were a Congressman would be that enacting this plan probably does not change—may not change much for somebody that is 55 or 60, but certainly for their son or their daughter who is going to be covered by a pension plan. It is essential. I know in our industry looking 20 years down the line, I think this is a very important, the single most important element of the legislation.

Mr. LARSON. We know that there are provisions in the reform package being promoted by the Multiemployer Plan Coalition that are not currently included in H.R. 2830. But the coalition has made it clear that it is very important that these provisions be included in any final package in order to have meaningful reform for the plans that are most in need of reform. Many of these provisions would result in benefit cuts to older workers, and in some instances the cuts would be substantial. Do you agree with that?

Mr. LYNCH. I would say in reiterating something that Judy said earlier, under the coalition's proposal an individual in pay status there would be no change there. Individuals who are working to normal retirement age, depending on how that is defined on an individual plan, also would not see any change there. You would probably see—and, frankly, right now under existing law there can be changes in the accrual rate that would have an impact on the dollar amount or year in which an employee might retire. This is admittedly taking it another step, but I would say that ultimately under the proposal, those decisions are also going to be made in the collective bargaining process. So, this is not just a unilateral decision to say we are cutting your benefit, but that we are involving as much as possible the parties, both the management and the union representatives, in the decisionmaking.

Mr. LARSON. What would the effect of the reorganization of the plan within the Central States system for a participant who is a truckdriver who has worked for 29 years be?

Mr. LYNCH. That worked for 29 years? I suspect they would probably have to work some additional period of time, but I do not think it—I mean, I am not an actuary, so I am probably the absolutely worst person to ask the question of. But it probably would mean they would work longer but not considerably longer to get the same benefit.

Ms. MAZO. What we are trying to do is prevent that truckdriver and everybody else who is covered by Central States from seeing no future benefit accruals for their continued work. But a lot more money taken out of their wage package because their employers would have to come up with—or their employers go out of business to come up with the money to support the plan, to fund it up in a big hurry with the ongoing workers getting nothing. So, in a sense, it might be a certain amount of spreading the sacrifice.

Mr. LARSON. With the chairman's indulgence, to what extent do you think the rank-and-file workforce is aware of that, those choices, those options?

Ms. MAZO. In the Central States fund, they did, as Tim—and I don't work with them, so I can only tell you from public information. But they cut benefits in half last year, and it was a very—future benefits, and it was a very painful process, and every newspaper throughout the Midwest, and there were member meetings all over the place, and there still are. They are very aware of the options that are available now, and if there were additional options, you can be sure that the pain that was suffered by every party involved would involve very, very careful weighing of how further to do. The union trustees on these funds are typically appointed by—they either are union officers themselves, or they are appointed by them, and they run for office. Like you, the last thing they want to do is turn around to their constituents who give them their jobs and say, "We just took something away from you." They will look at every opportunity they can to preserve it. The employers need workers who are productive and happy in their jobs or at least comfortable in their jobs and who trust their employers. The last thing the employers want to do is say, "Well, we just took something away from you." So, benefit cuts would be approached very, very gingerly and only used when necessary, and that would

be made crystal clear to the workers because the one thing that anybody who has to do that would want to be sure to do is explain in as clear a way as possible to the people who are harmed why it would be happening to them.

Mr. LARSON. I thank the panel, and I thank the chairman for his indulgence.

Chairman CAMP. Thank you. I want to note that a member of the Full Committee, Mr. Pomeroy, has joined the Subcommittee and has had a long-standing interest in pension issues. Mr. Pomeroy, you may inquire for 5 minutes.

Mr. POMEROY. Mr. Chairman, thank you for that consideration. I commend you for having this hearing. I really do believe it is important for Ways and Means to exercise its jurisdiction over pension matters, and this hearing is an extremely important launch, I think, of a greater effort out of Ways and Means. Because we have not had much of an effort to date, we are kind of playing catch-up with trying to get our hands around understanding the Ed/Labor proposal. Ms. Mazo, if I might, let me just try and put out how I am understanding this, and you can correct me. It seems as though the coalition representing a number of large and mid-sized, small-size multiemployer groups has advanced a proposal. The Food Marketing Institute has advanced another proposal. The Ed/Labor provision has followed the Labor Department's guidelines somewhat and veers perhaps more toward the FMI proposal than the coalition's proposal. Is this correct?

Ms. MAZO. Yes, the Labor Department, the administration has not yet taken a position on multiemployer issues. The Ed/Labor proposal is a lot closer to the FMI proposal. In a number of——

Mr. POMEROY. Can you help me then distinguish—I have looked at your testimony, but can you tee up the critical distinctions between FMI and the coalition and tell me why they are important?

Ms. MAZO. I think the principal distinction, the core issue is what the bill calls plans in the endangered zone, and it has been colloquially referred to as the yellow zone. The primary difference is that the FMI proposal would set what are called hard benchmarks or hard targets of funding improvements that the plans would have to come up with a program to achieve within a very specified time frame, and the philosophy being that we want to catch every potential problem before it matures into a crisis. We share the philosophy. Our concern is that the benchmarks and the hard targets are too stiff, are too rigid for many plans to achieve, and could have the perverse result of actually precipitating a crisis by——

Mr. POMEROY. In the regular pension world, not the multiemployer, we note that the downside danger of too stringent a regulatory framework is that you basically force the freezing of plans and you drive people out of the defined benefit business. While that is a loss for the participants, I believe a significant public policy detriment is resulted by that sort of response. On the other hand, with multiemployer too stringent a response can drive the weakest into bankruptcy and thereby imperil the insolvency. So, unlike the single pension, in a multiemployer circumstance where you are all, for better or worse, tied together, it seems like if you overshoot on

the requirements, you might actually damage the financial standing of the multiemployer plan that ostensibly you were trying to help at the beginning. Is that correct?

Ms. MAZO. That is precisely what our concern is. I don't think you were here, but Dr. Holtz-Eakin pointed out that a major difference between multiemployer plans and single-employer plays from the PBGC point of view is that in a multi, all the employers together underwrite the financing of the plan. So, if you press them to come up quickly with additional contributions, you are really pressing too hard on that net of employers that holds the plan up.

Mr. POMEROY. Mr. Morgan, what led the FMI to another conclusion on this matter?

Mr. MORGAN. Well, we have had experience in various trust funds and negotiations where we have evolved what we think is a good process. But also, our actuarial studies to date have not shown the same thing that Ms. Mazo is referring to. I suspect that as you approach the red zone, a plan approaches the red zone, or the most severe situation, there need to be some transition rules, there need to be some adjustments made to make sure you do not have the consequence that she is talking about. But we think for the vast number of plans, it is a workable set of benchmarks, and we just think there have to be some specific benchmarks.

Mr. POMEROY. Mr. Lynch, do you believe, is there something unique about the food industry or is this just a professional disagreement between the actuarial support of your association versus FMI? What is accounting for this difference?

Mr. LYNCH. Obviously I cannot speak for FMI. I think there is a sense that it is an honest disagreement over the degree to which these plans can meet those benchmarks. I would suggest respectfully that because of the breadth of the coalition membership who have looked at the broadest array of these plans have come to one conclusion. I think there is probably—well, I believe there is some merit to that argument.

Mr. POMEROY. I know my time is up, Mr. Chairman, but just to sum up then, of the waterfront of views here, most would be reflected in the coalition's view and the minority view being reflected in the FMI/Ed/Labor bill view? Mr. Lynch?

Mr. LYNCH. Yes.

Mr. POMEROY. Mr. Mazo?

Ms. MAZO. Ms. Mazo.

Mr. POMEROY. I am sorry.

[Laughter.]

Ms. MAZO. That is right, and one thing that is important about the coalition proposal and about the numbers that we are talking about is we are talking about a large number of plans that, unlike the food industry, are supported by quite a number of very small employers. The construction industry plans that Mr. Clark is representing often are small privately held, even sole proprietorship kinds of employers for whom these increases are not just a significant increase in one part of their business. It is their life. So, that is where some of our numbers come from that have not been present perhaps in what the food industry employers have looked at.

Mr. POMEROY. Thank you, and I thank the chairman.

Chairman CAMP. Thank you. Just one last question before we conclude. I understand that the bill as written is something Mr. Morgan supports, but my question is: Are there more definitive changes or definitive tools, Mr. Lynch or Mr. Clark or Ms. Mazo, that you would support, more defined tools that still could be used to make sure that we do not get to the worst case, which I think Ms. Hart was talking about, where benefits have to be frozen or reduced because other employers have had financial difficulty and, therefore, you have got a situation where another firm is still left standing and making larger contributions and yet the employees are not receiving any benefit from that? What more defined tools could you tell the Committee at this time that might satisfy you in terms of this legislation that is before Education and the Work force?

Mr. LYNCH. Clearly, if my organization had written this proposal in a vacuum all by ourselves, there are certainly other tools that we would have suggested. But the fact of the matter is we understand that if we are going to get something done on this, we have to get all of the stakeholders in agreement. I am sure the same holds for the union representatives. They would have written it vastly different than I would have written it. So, I cannot honestly say that there is anything else that we would suggest other than what we have already talked about in the yellow zone and the red zone, because our ultimate goal is to get something passed to address the issue.

Chairman CAMP. All right. Thank you. Thank you all very much. Thank you for your testimony, and without objection, the Subcommittee on Select Revenue Measures is hereby adjourned.

[Whereupon, at 11:52 a.m., the hearing was adjourned.]

[Submission for the record follows:]

Valley Stream, New York 11581
June 23, 2005

Dear Sir or Madam:

I worked for JPMorgan Chase for 32½ years. After a 2001 layoff, I received a small pension sum for the years of service I was there. A Cash Balance Plan conversion that took place in 1988 from a Traditional Pension Plan, formerly known as Chemical Bank, was responsible. I also worked on staff for them again part time in April 2003. I know that in your heart and moral fiber if the government took away your pension or made it smaller than was originally promised, you would be furious and would use all your influence to fix it. This is clearly and unmistakably age discrimination. Please do not let broken promises loose our right and fairness to claim the Traditional Pension Plan. Thank you.

Sincerely,

Joanne Pignatelli-O'Neill

Please review the following letter:

On July 31, 2003, a federal court ruled that IBM's cash balance pension plan violates federal anti-age discrimination law. This ruling was a welcome outcome for the 130,000 IBM employees who were represented in the case—and for the millions of other Americans whose employers have already converted to one of these age discriminatory plans or might in the future.

Late last year, the Treasury Department issued proposed regulations that would green-light cash balance plans. However, the decision of the federal district court in the Southern District of Illinois raises serious questions about the legality of those proposed regulations. As you are well aware, an administrative agency cannot change statutory requirements through regulations. Only Congress has that authority.

Given this, we are renewing our request that your Administration immediately withdraw the proposed Treasury Department regulations regarding cash balance pension plans. (Federal Register December 11, 2002, Internal Revenue Service, 26 CFR Part 1, REG–209500–86, REG–164464–02, RIN 1545–BA10,1545–BB79).

In January, we sent you a letter—signed by a total of 217 Members of the U.S. House and Senate—urging the withdrawal of these same proposed Treasury regulations governing cash balance plans. We have included a copy of that letter for your further review.

As we stated in that latter we believe the regulations "would create an incentive for thousands of companies to convert to cash balance plans by providing legal protection against claims of age bias by older employees. The regulations would result in millions of older employees losing a significant portion of the annual pension they had been promised by their employer and had come to rely upon as part of their retirement planning. . . . Re-opening the floodgates for cash balance conversions will destroy what is left of our private pension retirement system. This is a devastating step that your Administration need not and should not allow."

We believe that the policy arguments set forth in our January letter alone justify the withdrawal of the Treasury regulations at issue. However, the likely illegality of the regulations removes any question of whether they should go forward. They should not.

We deeply appreciate your attention to this matter. We trust that you will heed the concerns of the millions of Americans potentially benefited by this ruling and that you will see to it that the Treasury Department does not proceed with regulations in violation of federal law. We look forward to working with you to protect the pension security of America's workers.