NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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United States Senate

Committee on Health, Education, Labor and Pensions

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Pensions in Peril – Helping Workers Preserve Retirement Security Through a Recession"

Testimony of:

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Introduction:

Mr. Chairman and Members of the Committee, it is an honor to speak with you today on this important topic. My name is Randy DeFrehn. I am the Executive Director of the National Coordinating Committee for Multiemployer Plans (the "NCCMP")[1]. The NCCMP is a non-partisan, non-profit advocacy corporation created under Section 501(c)(4) of the Internal Revenue Code in 1974, and is the only such organization created for the exclusive purpose of representing the interests of multiemployer plans, their participants and sponsoring organizations. I am testifying today on behalf of the NCCMP and the Multiemployer Pension Plans Coalition ("Coalition")[2], a broad group comprised of employers, employer associations, labor unions, multiemployer pension funds, and trade and advocacy groups from across the country, representing the full spectrum of the multiemployer community.

My remarks will be directed to the longstanding shared commitment to retirement security for American workers evidenced by multiemployer plans and the impact of the recent financial crisis on their long-term viability.

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[1] The NCCMP is the premier advocacy organization for multiemployer plans, representing their interests and explaining their issues to policy makers in Washington since enactment of ERISA in1974. It has more than 200 affiliates which directly sponsor over 700 pension, health and welfare and training trust funds, as well as employers and labor unions whose workers and members participate in multiemployer plans.

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

Executive Summary:

Multiemployer plans have provided retirement security to tens of millions of American workers for more than 60 years. They currently account for nearly one of every four participants in all defined benefit plans. This system has survived and thrived as a result of a joint commitment by labor and management (reinforced by the statutory and regulatory structure) to responsibly balance the needs of all of the stakeholders. Through the collective bargaining process the parties have negotiated competitive wages and excellent pension and health benefits while enabling employers to remain competitive. Multiemployer plans enable employees in mobile industries to receive reliable benefits through a system that pools assets, administration and liabilities.

Multiemployer plans have been conservatively managed and well funded as evidenced by the fact that in the 29 year history of PBGC's multiemployer guaranty fund only 57 funds covering 122,000 participants have received any financial assistance from the agency totaling just $417 million dollars[3]. Despite suffering losses between 15% and 25% in the early part of this decade, over 75% of plans were more than 80% funded as recently as 2007. Nevertheless, the investment losses suffered in the current global financial collapse have threatened the financial viability of multiemployer defined benefit plans as they have virtually all other financial institutions. Coming in the first year of the new, more aggressive funding rules required under the PPA, the recent losses have pushed compliance with those rules out of reach for many plans without crippling additional contribution increases, deep benefit cuts, or both; making contributing employers less competitive, jeopardizing jobs and further reducing hours on which contributions to the plans are based.

As a result, the multiemployer community has coalesced behind a comprehensive set of proposals that are designed to mitigate the immediate effects of the current financial crisis. These proposals are generally enumerated in the "Preserve Benefits and Jobs Act of 2009" introduced October 27 in the House by Congressmen Pomeroy and Tiberi. The timely enactment of these measures will preserve the retirement security of hundreds of thousands of multiemployer plan participants and prevent further economic deterioration in the industries in which such plans are the prevailing model.

Background:

Multiemployer defined benefit pension plans have provided retirement income security to tens of millions of retired American workers for more than 60 years. A product of the collective bargaining process, they provide a model through which small employers, especially those in industries characterized by mobile workforces, can provide reliable benefits on a scale

[3] To place these numbers in context, the PBGC's single employer guaranty fund currently insures approximately 27,900 plans covering 33.8 million participants. To date the agency has assumed responsibility for 3,860 plans covering 1.2 million participants at a cumulative cost of $39.4 billion since its inception in 1974.

comparable with much larger firms, by taking advantage of economies of scale and centralized administration provided by the multiemployer plan model. According to the latest PBGC *Databook*, there are currently 1,510 multiemployer defined benefit plans covering some 10.1 million participants (approximately 23% of all participants in defined benefit plans). They are prevalent in virtually every area of the economy where employment patterns require frequent movement within an industry, including: construction; trucking; retail; communications; hospitality; aerospace; health care; longshore; maritime; entertainment; food production, sales and distribution; mining; manufacturing; textiles; and building services.

The overwhelming majority (over 90%) of contributing employers to multiemployer plans in many industries are small businesses, employing fewer than 20 employees, with more than half employing fewer than 10. Any specific multiemployer plan may have only a few contributing employers, or as many as several thousand, depending on the industry and the scope of the plan (local, regional or national).

Statutory and Regulatory Environment:

Multiemployer plans have had separate and distinct statutory and regulatory structures dating back to the 1940s, with the passage of the Labor Management Relations Act of 1947 (more commonly referred to as the Taft-Hartley Act). Among its sweeping labor law provisions, that law prohibited employer contributions directly to unions or union funds (as had become the practice). Instead it requires that any contributions to support employee benefits must be made to a trust established and maintained for the "sole and exclusive benefit" of the participants, rather than furthering the interests of either labor or management. Furthermore, while the misnomer of "union funds" is still often incorrectly applied, the Act requires equal representation by employers and labor and in the management of these collectively bargained employee benefit plans – a model and a requirement which continues today.

The differences between single employer and multiemployer plans and the obligations of the plan trustees were further codified with the passage of two laws in the 1970s and 80s. The first, the *Employee Retirement Income Security Act of 1974* (ERISA), expanded on the common law fiduciary responsibilities of plan trustees, introduced the concept of non-forfeitable (vested) benefits and required the pre-funding of benefits. The second was the *Multiemployer Pension Plan Amendments Act of 1980* (MPPAA) which created the multiemployer guaranty fund of the Pension Benefit Guaranty Corporation[4] and imposed the concept of "withdrawal liability" that required sponsoring employers who depart from plans pay their proportionate share of any

[4] It is important to note that, unlike the single employer guaranty program which acts as the insurer of first resort when a sponsoring employer fails, the multiemployer program functions as the insurer of last resort which never assumes liability for providing financial assistance to troubled plans until all of the contributing employers have ceased making contributions or paying withdrawal liability and the collective pool of assets is depleted to the point of insolvency (e.g. when the plan no longer has sufficient assets to pay its benefit obligations).

unfunded vested benefit obligations. These assessments were deemed necessary to prevent such obligations from being unfairly shifted either to the taxpayer or to the remaining employers; thereby providing a double competitive advantage to the departing employers (first, by no longer having any obligation to make contributions to the plan, and second, by sticking those same remaining employers with the liabilities for service earned with the departing employers). Although both laws were the subject of significant legal challenges, by and large they and the multitude of ensuing regulations have been subsequently upheld and reinforced by numerous court decisions.

This notion of shared responsibility has proven to be an effective means of delivering quality pension and health care benefits to workers. All such benefits are funded by contributions that are required to be made to independent trust funds pursuant to collective bargaining (or other written) agreements between more than one employer and at least one union. Benefit levels have traditionally been quite modest. At the initiation of ERISA's pre-funding requirements, employer contributions were the only source of revenue for payment of benefits, the costs of administration and for the accumulation of assets to pre-fund benefits owed to future retirees as they become due. Over time, however, investment earnings from the monies set aside for such future benefits provided an additional source of revenue. These earnings became an increasingly important source of income to the funds, quickly equaling and then surpassing contribution income as the primary source of income. Today, most mature funds derive as much as 70% or 80% of the fund's income from their investments.

These pools of worker capital have a history of conservative, professional management. Most boards of trustees utilize "Qualified Professional Asset Managers" to manage their investments as permitted under the law, and retain outside investment consulting firms to monitor the performance of the managers selected. This approach, coupled with the exceedingly favorable economic conditions generally during the 1980s and 1990s, proved particularly successful in helping to fully fund the plans' obligations. Unfortunately, rather than providing a comfortable cushion against adverse markets, conflicting tax policies helped set the stage for the two consecutive funding crises plans have experienced since 2000. Specifically, two converging developments combined to contribute to this phenomenon: the increasing leveraging of plans; and the tax code limitations on accumulation of reserves through contributions to plans that were "fully funded".

What is meant by "leveraging" of the plans?

Unlike other economic references in which leveraging relates to the practice of using assets as collateral, the term "leveraging" in this context applies to the growing reliance on investment returns rather than contributions to fund future benefits. Based on historical rates of return when ERISA was enacted in 1974, most actuaries set assumed rates of return on such investments between 4.5% and 5.0%. Actual returns that consistently exceeded assumed rates during the 1980s and 1990s, and a strong economy that produced high hours of contributions which built larger and larger fund balances, eliminated the threat of unfunded vested benefits (and the corresponding withdrawal liability) for all but a few plans. More importantly, the market performance led actuaries to gradually increase their assumed rates of return to their present levels that range between 7.0% and 8.0%[5]. Consistent with the plan fiduciaries' "sole and exclusive" statutory obligation to manage multiemployer funds in the best interests of plan participants, each time the rates of return were increased, plan trustees were advised that the plan had the ability to prudently increase benefits for both active workers (through higher rates of accrual) and retirees, to improve the monthly benefits for pensioners who had retired when benefit levels were necessarily modest. Therefore, based on the recommendations of the fund professional advisors, trustees gradually improved benefits. Even with such increases, a recent survey by the NCCMP found that the majority of multiemployer plans pay average monthly benefits that range between $500 and $1,500, providing modest income replacement by anyone's standards for workers who have been paid good middle-class wages throughout their careers.

Theoretically, taking a long-term view of pension funding, this approach was reasonable; however, such a long-term approach recognized that the years in which the actual rate of return exceeded the assumed rate would provide for the accumulation of assets to offset those other years in which actual investment performance would lag the assumption. In practice, this theoretical model was constrained by a federal tax policy that had been intended to prevent employers from sheltering income in retirement plans by discouraging plan sponsors from accumulating assets in excess of the plan's full funding limits.

How did the tax code contribute to the problem?

Acting as the other side of the same coin that required minimum contributions to plans to ensure that adequate funds be accumulated to pay benefits as they come due, the tax code prevented plan sponsors from building reserves during the good years to offset losses suffered during years of poor market performance. Employers who made contributions above the "maximum deductible" limit, even those who were required to do so by the terms of their collective bargaining agreements, ran the risk of incurring penalties including the loss of a current deduction for those contributions and the assessment of an excise tax on such contributions. As plans approached this limit (as some 70% or more of all plans did during the late 1980s and 1990s), trustees were advised that rather than accumulate additional "rainy day" reserves, they would need to make additional benefit improvements to increase the cost of the plan sufficiently to protect the deductibility of their legally required contributions under their collective bargaining agreements.

[5] According to a recent funding survey of nearly 400 of the 1,510 multiemployer defined benefit pension plans conducted by the NCCMP, 95% of plans assumed rate of return fell within that range with more than half at 7.5%

The Day[s] of Reckoning

Questions of the sustainability of these benefit improvements were raised by plan trustees even before the first stock market declines early this decade began to be felt. Although some modest relief was granted in EGTRRA, when the tech bubble burst and the markets suffered a crisis of confidence fueled by the collapse of companies like ENRON and WorldCom, the plans were unable to absorb market losses of 15% to 25%. Instead of being concerned with the maximum deductible limits, for the first time since the passage of ERISA and MEPPA, plans faced projections of near-term funding deficiencies as they were told of the likelihood of failing to meet their minimum funding requirements. Under ERISA's funding rules, the consequences of such failures included a requirement for employers to pay their proportionate share of the shortfall and pay an excise tax on top of those additional contributions. The reliance on investment income by mature plans meant that such additional contributions could total several times the amounts contributed under their bargained rates, and for industries like construction which typically have narrow profit margins, significant numbers of contributing employers faced the very real possibility of bankruptcy. Were this to occur, the remaining employers would then have the shortfall amounts that were not paid by the bankrupt companies redistributed among those that remained, causing additional bankruptcies and, with a contracting contribution base, eventual plan failure.

For unions and participants, the prospect of plan failure would mean that future generations would have no reliable source of retirement income. Even more troublesome was the prospect of the loss of significant benefits for current pensioners and beneficiaries whose benefits would be reduced, at best, to the maximum PBGC levels (a maximum annual benefit of $12,870 for participants who retired with 30 years of service, with corresponding reductions for those with less service). The convergence of interests by the stakeholders resulted in a coordinated effort by labor and management (through the Multiemployer Pension Plans Coalition) to devise a proposal for funding reform that would prevent the destruction of the plans. This set of proposals formed the nucleus of the multiemployer provisions of the PPA.

This set of proposals contained tough medicine for all of the stakeholders. Once again, recognizing the problem was one in which all stakeholders were affected, the parties agreed to a package which included a notion of "shared pain" rather than having either group shoulder the full costs. For plans facing long-term funding difficulties (referred to as "Endangered status" or so-called "yellow zone" plans), the law required the bargaining parties to negotiate over the terms of a "Funding Improvement Plan" to reverse eroding funding levels. For plans with more serious funding problems ("Critical status" or so-called "red zone" plans), a "Rehabilitation Plan" is required to reverse the declining funding trend. For the first time since the early 1980s, plans could reduce certain classes of subsidized early retirement or subsidized surviving spouse benefits in addition to reducing future accruals, as well as imposing employer surcharges and, in limited circumstances, requiring contribution increases. Furthermore, the PPA raised the maximum deductible limit for multiemployer plans to 140% of the previous limits. If the plans had sufficient time with “normal” market performance, even a market contraction of the magnitude experienced from 2000 to 2002 could have been absorbed.

Following the enactment of the PPA, but before it became effective in 2008, plan fiduciaries began to take corrective action by increasing contributions and adjusting benefits to avoid falling into one of the “zones”. Once the Act became effective in January of 2008 (for calendar year plans), plans began to adopt funding improvement and rehabilitation plans based on recent experience and then current rates of return. The parties adopted what were frequently quite aggressive additional contributions that strained the wage package and the contributing employers’ ability to compete. They were willing to do so because they now knew the rules going forward and wanted to address any potential funding difficulty as early as possible.

However, as the year progressed, the sudden and precipitous drop in investment markets that decimated financial institutions of all types around the world also wreaked havoc on multiemployer plans. Plans that had formulated their Funding Improvement or Rehabilitation Plans were now facing even deeper reductions in accumulated assets than had been experienced from 2000 to 2002. Unfortunately, those groups which had taken some of the most aggressive preventive measures were now faced with filling an even deeper hole to meet their PPA funding targets, but having previously exhausted their ability to increase contributions and remain competitive, plan trustees and the bargaining parties are faced with even more difficult choices. Above all, the magnitude of the recent losses pointed out some of the shortcomings of the PPA to respond to such drastic market fluctuations.

The Magnitude of the Problem:

In order to determine the extent of the losses and the effects of the market contraction on the funded position of multiemployer plans and assess the relative effectiveness of possible recommended corrective measures, the NCCMP conducted a detailed survey of multiemployer plans funded position over the period from 2007 through May 31, 2009. With input from Committee staff in both the Senate and the House in formulating the questionnaire, the NCCMP sought to determine the funded position prior to the PPA’s effective date; the number of covered participants; assets and liabilities (both on a market value and actuarial basis); changes in funding levels subsequent to the market contraction; contribution rates per hour and as a percentage of compensation; asset allocation to determine the level of risk inherent in the composition of the plans’ investment portfolio and actions taken to address funding difficulties. The following section will present summary findings from that study.

Breadth of Survey Sample:

Responses were received from 385 of the universe of 1,510 multiemployer defined benefit plans as reported in the PBGC’s September 2008 *Databook* published in September 2009. Although the timing of the plan year and the availability of certain data elements resulted in fewer responses to a number of specific questions, comparative results were compiled using data from plans that provided answers to each of the relevant questions. As shown in figure 1, responses were received from plans covering 5.8 million of the 10.1 million participants in all multiemployer plans.

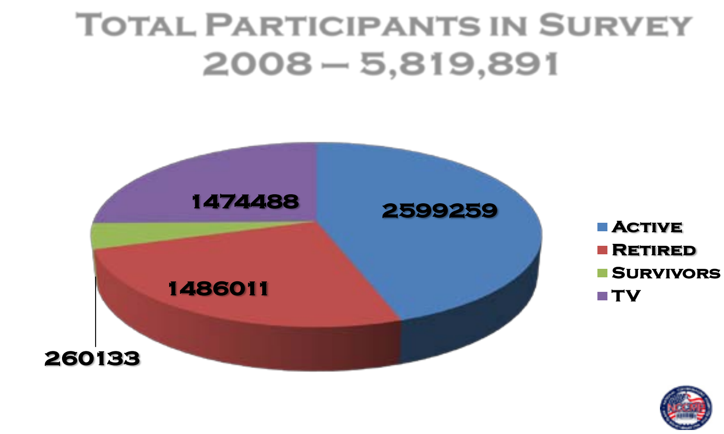


Figure 1 -

The 2008 Annual Report, the PBGC reported that there were approximately 10.1 million participants in multiemployer plans. The NCCMP survey includes plans that cover more than 5.8 million of them or nearly 60% of the total. Similarly, the 44.6% of participants who are Active is consistent with the PBGC's latest distribution for all plans of 45%.

The distribution of responding plans by number of participants reflects a slightly greater number of larger plans than reported by the PBGC.

In figure 2, roughly 40% of plans responding had between 1,000 and 5,000 participants and a similar percentage (44.6%) were in plans with more than 5,000 participants.

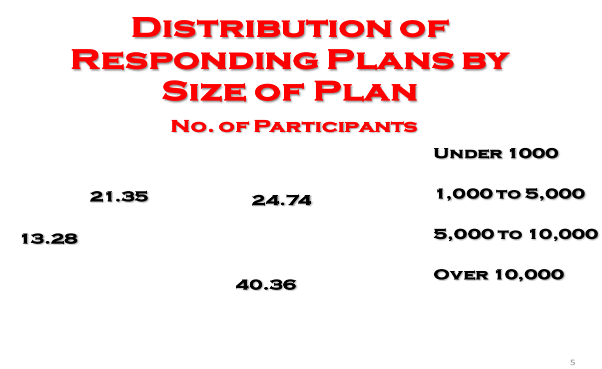
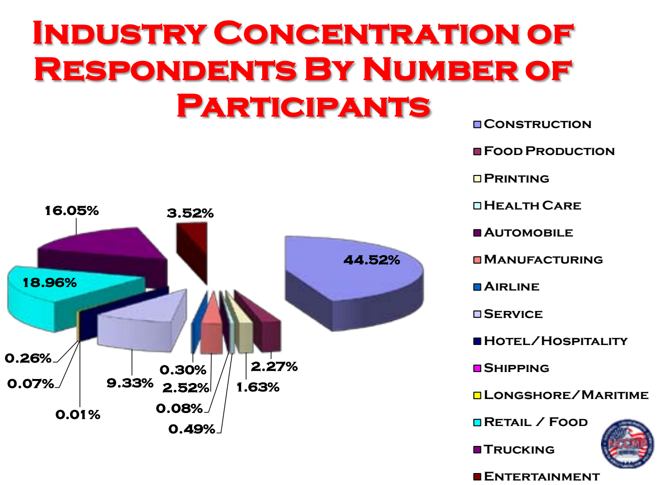


Figure 2

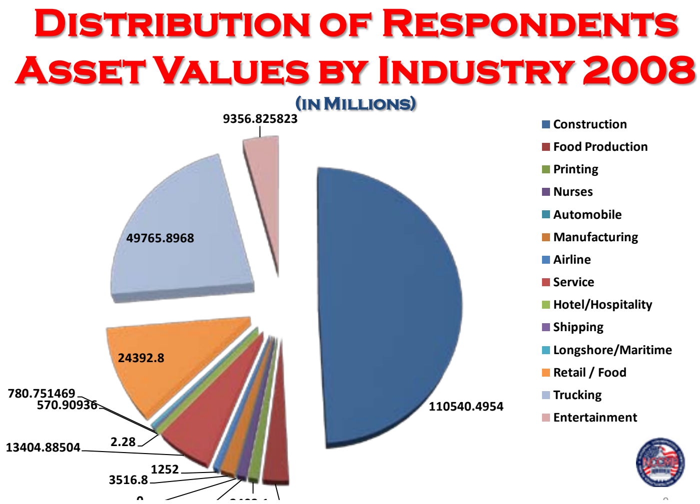
Figure 3 shows the distribution of respondent plans distributed by numbers of participants by industry association.



This figure shows the largest industry concentration of participants in respondent plans is in construction at 44.52%, followed by retail trades at 18.96%, trucking at 16.05% and [Building] Services at 9.33%. The comparable statistics from PBGC show construction participants at approximately 36% with trucking at 9.5%, building services at 14.5% and retail trades at 13.7 %

Figure 3

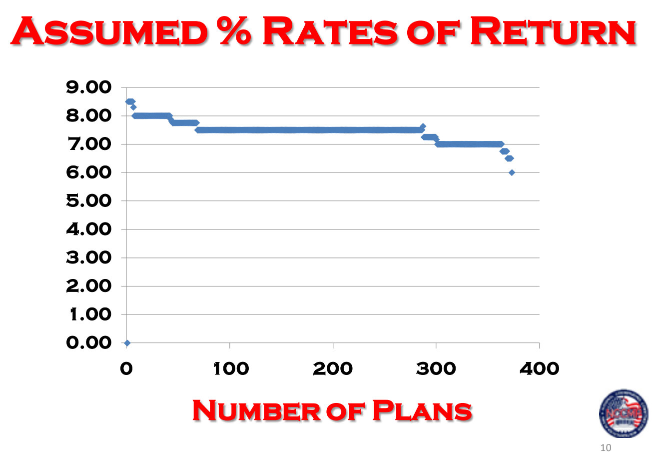
Plans that responded to the survey reported total assets in 2008 at over a quarter trillion dollars ($237,569 million). Figure 4 shows the distribution of assets for those respondents that reported an industry affiliation:



Construction plans were the largest concentration of assets at more than $110 billion followed by trucking at $49 billion and the retail industry at $24.3 billion.

Figure 4

The assumed rate of return is a key determinant in assessing whether benefits are sustainable in the long run. Figure 5 shows that the rates of return for multiemployer plans fall within a relatively tight range between 7% and 8% with the majority of plans at 7.5%.



As this chart clearly demonstrates, while seven plans had assumed rates of return in excess of 8% and twelve more fell below 7%, 354 plans or 94.9% of all plans had assumed rates between 7.0 and 8.0% with the greatest concentration (over half) at 7.5%, a conservative assumption based on historical rates of return.

Figure 5

Asset allocation is perhaps the single most important determining factor in the success of a plan's investment program. Multiemployer plans have been guided by Department of Labor rules that plans be invested in diversified portfolios. Although one school of thought encourages a lower risk profile with greater exposure to alternative investments, most multiemployer plans have a traditional asset mix. Looking at the performance from 2007 through 2009, for plans reporting their asset allocation, equities comprised about 50% of the average portfolio, with fixed income at about 30%, real estate 8% and "other", hedge funds, cash and private equity all comprising less than 5% on average each. The reduction in equity exposure from 2007 to early 2009 is primarily due to the reduction in value of the underlying asset rather than a deliberate decision to reduce equity exposure.

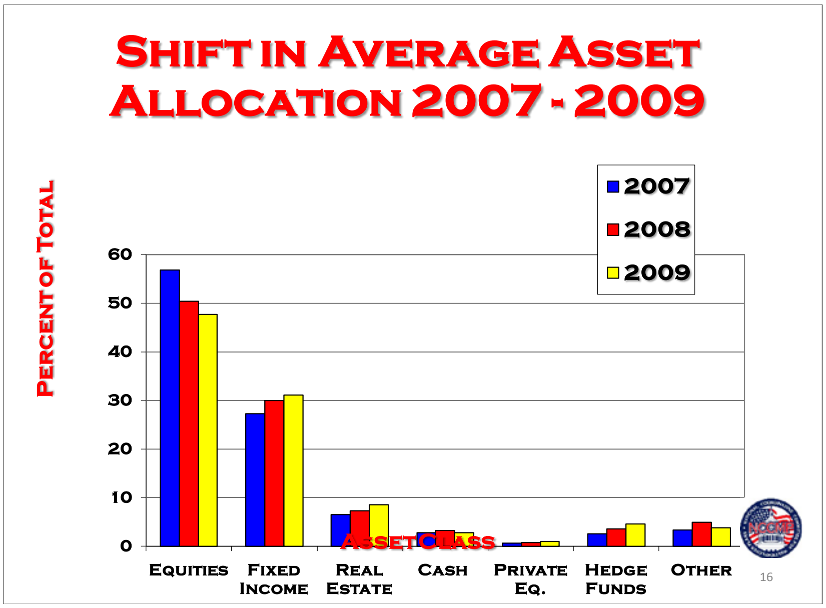


Figure 7 shows the actual median rates of return for all plans reporting performance for the periods from 2007 and 2008. In 2007 the median rate of return slightly exceeded the assumed rate at 7.97%, whereas the performance for 2008 was consistent with that of the broad markets at a negative 21%.

Figure 8 clearly shows how pension fund assets invested in a traditional portfolio were directly affected by the collapse of the broad markets.

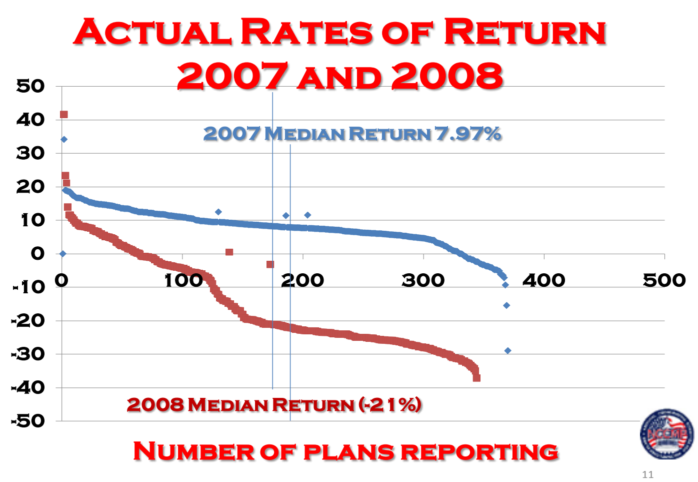
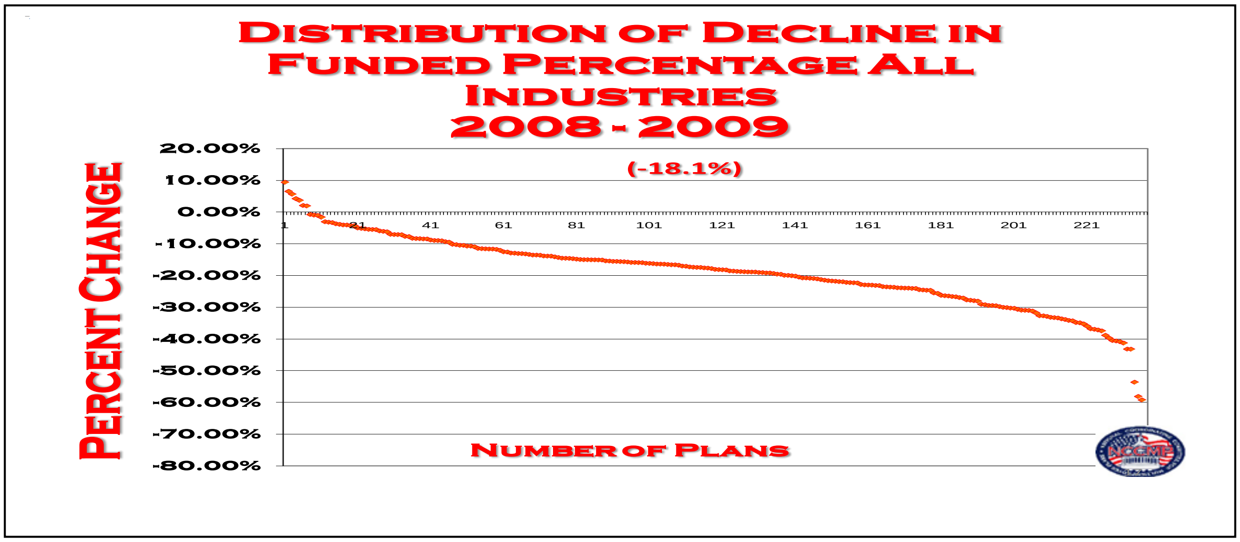


Figure 8

These investment losses directly translated into a decline in the plans' funded percentage. As shown in Figure 9, the reduction in funded percentage was consistent across all industries generally ranging from negative 10% to negative 40%, with the median loss at negative 18.1% for plans that reported their funded percentage in both years.



The net effect of the decline in funded percentage is shown in figure 10 (below) which shows a clear shift in the funding status of plans from 2007 through 2009 with more than 75% of funds reporting market value of assets ***greater than*** 80% of actuarial liabilities in 2007, dropping to more than 75% of funds reporting market value of assets at ***less than*** 80% funded by 2009. Although the number of plans reporting results at the beginning of 2009 was lower because of the timing of the survey and the start of the plan year, the pattern is as clear as the precipitating event.

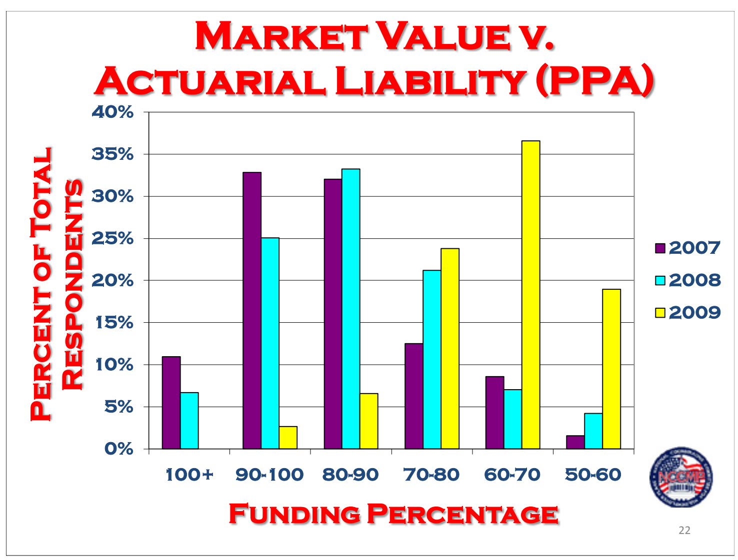


Figure 10

The reduction in funded status is reflected in the change in reported "zone" status disregarding any election to freeze under the WRERA. As shown in Figure 11, the number of plans reporting green zone status in 2008 (the first year this concept became effective) was 77%, with 14% in yellow and 9% in red. By 2009, those numbers had reversed. Green zone plans had fallen to 20%, while those in the yellow zone increased to 38% and red zone plans to 42%.

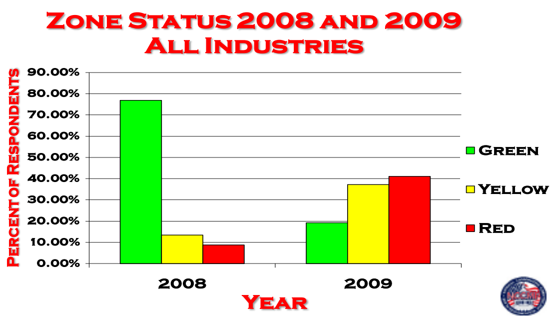
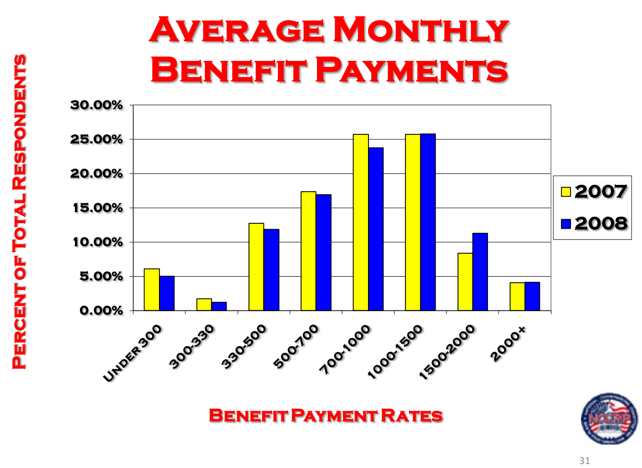


Figure 11

Average benefit payments for all reported multiemployer plan participants in pay status are shown in Figure 12. The concentration of monthly benefit payments between $500 and $1,500 reflects the large number of pensions and survivors benefits based on pensions which became effective when benefit levels were necessarily low.

Figure 12



New benefit awards are shown in Figure 13. The point where the current PBGC benefit guarantee level is maximized is $1,320. Of the 275 plans which reported this data, 46.9% of all awards exceeded that amount, meaning that participants in failed plans would suffer even greater reductions than the formula provides to provide a disincentive for plan sponsors to abandon their plans.

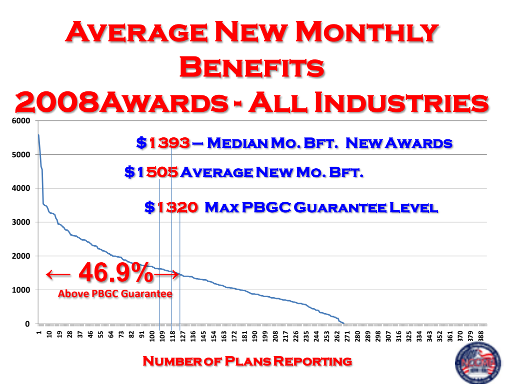


Figure 13

Figures 14 through 16 demonstrate that plan sponsors have been proactive in addressing funding concerns. Figure 14 shows the reported median contribution rates for 2007, 2008 and 2009. Median rates increased by approximately 5% from $3.84 to $4.04 from 2007 to 2008, and by an additional 68.5% to $6.81 in 2009. The total increase in median contributions from 2007 to 2009 exceeded 77%.

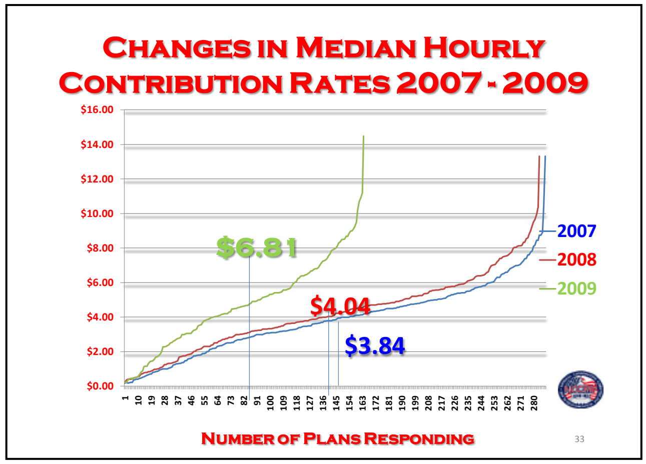


Figure 14

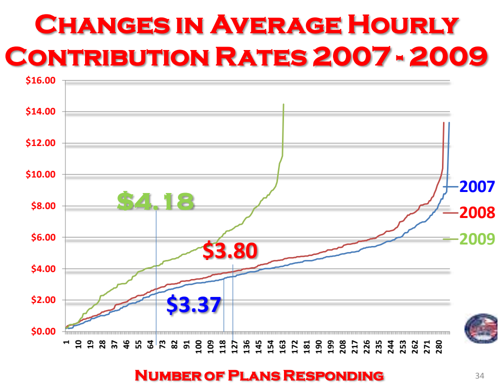


Figure 15 shows the average (mean) contribution increase for the same periods. Hourly contributions rose by 43¢ (12.7%) between 2007 and 2008 from $3.37 to $3.80 and an additional 38¢ (10%) to $4.18 per hour from 2008 to 2009. The total increase from 2007 to 2009 was 81¢ per hour or 21%.

Figure 15

Finally, Figure 16 shows the percentage of total compensation for plans that reported this information for the years 2007, 2008 and 2009. While the majority of plans report rates between 10% and 20% for all three years, the slope of the increase for plans reporting in 2009 appears to be increasing. It should be noted that the 2009 numbers ***<u>are not likely to</u>*** reflect changes in Funding Improvement or Rehabilitation Plans pursuant to the 2008 losses.

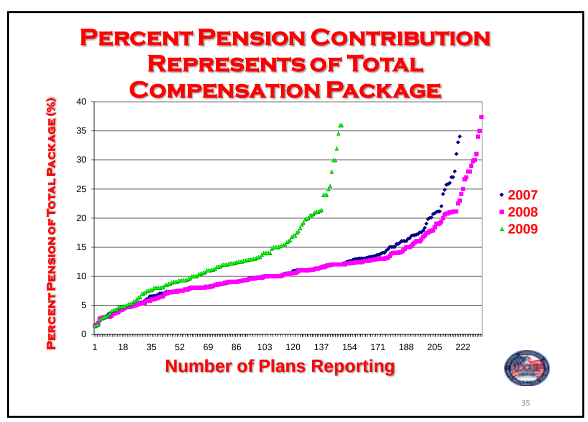


Figure 16

Implications and Proposals for Legislative Relief:

The data clearly show that the reason the funded position of multiemployer plans has deteriorated in the last three years is the financial crisis which has negatively impacted all financial institutions – not overly generous plan designs, mismanagement or risky investments as has been alleged by the uninformed. Given the collective assets of these plans, it is also undeniable that these plans are an integral part of the nation's financial infrastructure, not only because of their value in delivering reliable monthly benefits to plan participants, but as a source of capital for private equity and as a economic generator for the local economies where pensioners and beneficiaries reside. It is also clear that plan fiduciaries and settlers have taken prudent action to address projected funding difficulties without waiting for the government to mandate such actions.

Nevertheless, this system is not without limits. Unrelenting statutory pressure to increase contributions above the very substantial increases already implemented will place greater numbers of contributing employers at an competitive disadvantage, further threatening the long-term viability of plans that are dependent on such contributions to meet their short- and long-term funding targets.

Proposed Relief Measures:

The Multiemployer Pension Plan Coalition has evaluated and recommended numerous legislative relief measures to provide statutory flexibility to address the recent market volatility. Unfortunately, there appears to be no "one-size-fits-all" solution. As a result, the proposal identifies several reform options that are designed to provide the greatest relief to the largest number of plans. With two exceptions, these proposals have been incorporated into the House "*Preserve Benefits and Jobs Act of 2009"* bill introduced on October 27 by Congressmen Pomeroy and Tiberi.

The specifics of the proposals are attached to this submission and will not be repeated here. However, it is important to underscore that these proposals can be considered as following two tracks: one that extends the time frames to meet the plans' long-term obligations for those plans that, with such assistance, will remain solvent; the second addresses relief for plans that are unlikely to survive without direct intervention.

For plans in the first category, the Coalition proposal suggests that granting 30 years to either: 1 consolidate and "fresh-start" the plans' existing amortization bases (Funding Standard Account) over that period; or 2,isolating and amortizing only the losses suffered by plans in 2008 and 2009 over 30 years are reasonable and beneficial to helping contributing employers fulfill these long-term obligations. The proposal includes related provisions that would allow plans to use 10 year smoothing of the portion of the plan's losses that would be recognized in the 2008 and 2009 years and would expand the relevant market to actuarial value of assets corridor from 20 to 30 percent.

For plans in the second category, the proposal advocates for the expansion of the PBGC's ability to facilitate mergers or "alliances" of weaker plans into stronger plans that could be a "win-win" proposition for participants (by not having the weaker plan fail with corresponding benefit reductions if the plan were the require PBGC funding assistance); contributing employers (by increasing the number of contributing employers that support the larger plan. Thereby lessening the probability of plan failure); and the PBGC, whose timely intervention could reduce the agency and taxpayers' liability exposure.

The second element of relief for vulnerable plans in certain industries is the expansion of the current ERISA provisions governing partition of plans projected to become insolvent. Such partitioning could allow the plan to survive by segregating liabilities associated with participants' service with employers that have ceased plan participation and left without paying their full withdrawal liability. Such segregation would be analogous to the amputation of a limb to save the life of the patient, and would also reduce the likely liability exposure of the PBGC. More importantly, prompt action on this issue could protect thousands of jobs in industries that will be adversely affected by the adoption of Funding Improvement or Rehabilitation plans in the absence of such relief.

Finally, while each element of the coalition proposal is important and the inclusion, or specific mention of one rather than another is no indication of priority, it is important to note that the proposal also includes an increase in the PBGC guaranteed benefit levels by expanding the current formula which guarantees 100% of the first $11 of accrual, plus 75% of the next $33 of accrual times the number of years of service. The Coalition proposal would add a third layer – 50% of the next $40 of accrual. This proposal reflects the increases in benefit levels required by the tax laws cited above and, unlike the proposal for partition, would be funded by an increase in the PBGC premiums.

I welcome the opportunity to submit these comments for your consideration and look forward to reviewing certain aspects of them with you at Thursday's hearing.

Respectfully submitted,

Randy G. DeFrehn

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