DISCUSSION DRAFT TO MODERNIZE MULTIEMPLOYER PENSIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, SEPTEMBER 22, 2016

Serial No. 114–54

Printed for the use of the Committee on Education and the Workforce

Available via the World Wide Web:
www.gpo.gov/fdsys/browse/committee.action?chamber=house&committee=education
or
Committee address: *http://edworkforce.house.gov*

U.S. GOVERNMENT PUBLISHING OFFICE

21–539 PDF WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON EDUCATION AND THE WORKFORCE

JOHN KLINE, Minnesota, *Chairman*

Joe Wilson, South Carolina
Virginia Foxx, North Carolina
Duncan Hunter, California
David P. Roe, Tennessee
Glenn Thompson, Pennsylvania
Tim Walberg, Michigan
Matt Salmon, Arizona
Brett Guthrie, Kentucky
Todd Rokita, Indiana
Lou Barletta, Pennsylvania
Joseph J. Heck, Nevada
Luke Messer, Indiana
Bradley Byrne, Alabama
David Brat, Virginia
Buddy Carter, Georgia
Michael D. Bishop, Michigan
Glenn Grothman, Wisconsin
Steve Russell, Oklahoma
Carlos Curbelo, Florida
Elise Stefanik, New York
Rick Allen, Georgia

Robert C. "Bobby" Scott, Virginia
Ranking Member
Rubén Hinojosa, Texas
Susan A. Davis, California
Raúl M. Grijalva, Arizona
Joe Courtney, Connecticut
Marcia L. Fudge, Ohio
Jared Polis, Colorado
Gregorio Kilili Camacho Sablan, Northern Mariana Islands
Frederica S. Wilson, Florida
Suzanne Bonamici, Oregon
Mark Pocan, Wisconsin
Mark Takano, California
Hakeem S. Jeffries, New York
Katherine M. Clark, Massachusetts
Alma S. Adams, North Carolina
Mark DeSaulnier, California

Juliane Sullivan, *Staff Director*
Denise Forte, *Minority Staff Director*

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

DAVID P. ROE, Tennessee, *Chairman*

Joe Wilson, South Carolina
Virginia Foxx, North Carolina
Tim Walberg, Michigan
Matt Salmon, Arizona
Brett Guthrie, Kentucky
Lou Barletta, Pennsylvania
Joseph J. Heck, Nevada
Luke Messer, Indiana
Bradley Byrne, Alabama
Buddy Carter, Georgia
Glenn Grothman, Wisconsin
Rick Allen, Georgia

Jared Polis, Colorado,
Ranking Member
Joe Courtney, Connecticut
Mark Pocan, Wisconsin
Rubén Hinojosa, Texas
Gregorio Kilili Camacho Sablan, Northern Mariana Islands
Frederica S. Wilson, Florida
Suzanne Bonamici, Oregon
Mark Takano, California
Hakeem S. Jeffries, New York

C O N T E N T S

Page

DISCUSSION DRAFT TO MODERNIZE MULTIEMPLOYER PENSIONS

Thursday, September 22, 2016
U.S. House of Representatives,
Subcommittee on
Health, Employment, Labor, and Pensions,
Committee on Education and the Workforce,
Washington, D.C.

The Subcommittee met, pursuant to call, at 9:34 a.m., in Room 2175, Rayburn House Office Building, Hon. David P. Roe [chairman of the subcommittee] presiding.

Present: Representatives Roe, Foxx, Walberg, Guthrie, Heck, Messer, Carter, Grothman, Allen, Polis, Courtney, Pocan, Hinojosa, Wilson, Bonamici, Takano, and Jeffries.

Also Present: Representatives Kline and Scott.

Staff Present: Bethany Aronhalt, Press Secretary; Andrew Banducci, Workforce Policy Counsel; Janelle Gardner, Coalitions and Members Services Coordinator; Ed Gilroy, Director of Workforce Policy; Jessica Goodman, Legislative Assistant; Callie Harman, Legislative Assistant; Nancy Locke, Chief Clerk; Dominique McKay, Deputy Press Secretary; Michelle Neblett, Professional Staff Member; Brian Newell, Communications Director; Krisann Pearce, General Counsel; Alissa Strawcutter, Deputy Clerk; Juliane Sullivan, Staff Director; Olivia Voslow, Staff Assistant; Joseph Wheeler, Professional Staff Member; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Jamitress Bowden, Minority Press Assistant; Denise Forte, Minority Staff Director; Nicole Fries, Minority Labor Policy Associate; Christine Godinez, Minority Staff Assistant; Brian Kennedy, Minority General Counsel; Kevin McDermott, Minority Senior Labor Policy Advisor, Richard Miller, Minority Senior Labor Policy Advisor; and Elizabeth Watson, Minority Director of Labor Policy.

Chairman ROE. A quorum being present the Subcommittee on Health, Employment, Labor, and Pensions will come to order. Good morning. I'd like to begin by welcoming our guests and witnesses, and thank you all for joining us.

We're here to discuss an issue that is vitally important to Americans from all walks of life, retirement security. This is a leading priority for millions of hardworking men and women, and that's why it's a leading priority for Republicans and Democrats alike. Strengthening retirement security has always been a difficult challenge with no easy answers. It's one that demands thoughtful dialogue, bipartisan cooperation, and meaningful reforms. That's exactly what our committee has been engaged in for several years now.

Since 2012, the committee has focused on examining and advancing bipartisan reforms to the multiemployer pension system. Over 10 million Americans rely on the multiemployer pension plan. Unfortunately, many of the plans are severely underfunded due to an aging population, a weak economy, and fewer participating employers. To make matters worse, the Federal agency ensuring those plans, the Pension Benefit Guaranty Corporation, or PBGC, is also headed for insolvency; as a result, workers, retirees, businesses, and taxpayers are at risk.

Fortunately, Congress has already taken action to help address this crisis. With the support of employers and labor leaders, Congress passed and President Obama signed into law important reforms to improve PBGC's long-term stability, provide trustees with the tools they need to rescue failing plans and prevent retirees from losing everything. These reforms represent significant progress, and there's more work to be done.

Our focus now turns toward modernizing the employer pension system for today's workers and tomorrow's retirees. A lot has changed since the multiemployer pensions were developed decades ago. As union leaders, employers, and retired and taxpayer advocates have expressed for years, it's long past time to bring this system into the 21st century.

So what does a modern multiemployer pension system look like? I hope we can dive deeper into this important question today.

Before we begin, I'd like to explain a few guiding principles. First and foremost, our goal is to strengthen retirement security. America's workers deserve better than retirement plans based on empty promises and designed for yesterday's workforce. In the 21st century, workers should have more retirement plan options to meet their needs. While we take steps to modernize the system for the future, we must also protect workers and retirees in traditional multiemployer pension plans. We will continue to do everything possible to ensure those who have spent their lifetimes working hard and providing for their families can spend their retirement years with security and peace of mind. That means employers, even those who transition to modern retirement plans, should be required to sufficiently fund existing multiemployer pension commitments.

Second, a modern multiemployer pension system will improve the competitiveness of America's businesses. In the 21st century, employers shouldn't have to choose between growing their businesses or offering their employees a secure and stable benefit. More flexibility through alternative options will empower employers to expand their businesses and create good paying jobs, all the while contributing toward their employees' retirement.

Finally, we need to deliver greater protection for taxpayers. Unlike traditional defined benefit plans, these new multiemployer pension plans should not be covered by the PBGC. The last thing we need to do is to add more financial strain to an agency projected to go bankrupt in less than 10 years. The last thing taxpayers need is to foot the bill for a multibillion-dollar bailout.

These are the overarching principles behind the discussion draft Chairman Kline recently released. His proposal would provide workers and employers a new retirement plan known as composite plans, which combine the flexibility of 401(k)-style defined contribution plans with the lifetime income provided by defined benefit pension plans. The draft proposal reflects input from employers, labor leaders, retirees, and taxpayer advocates. Still, we need more feedback. And as its title suggests, this is a draft meant to spur a conversation. So we want to hear from all of you all and from the broader public. How can we make this proposal best serve the interests of workers and employers.

We also welcome your views and ideas on reforms to improve the PBGC's fiscal health. Although we took steps to address PBGC shortfalls in 2014, more work is desperately needed, including further premium increases. The stakes couldn't be higher. People's retirement benefits, their livelihoods, their futures are in jeopardy, and kicking the can down the road will only make the problem worse and unfairly threaten taxpayers with a bill they can't afford.

We don't always agree on everything, but I appreciate the bipartisan work this committee has done over the years to strengthen retirement security and tackle the challenges facing the multiemployer pension system. I hope we can continue what we started by advancing further reforms and modernizing the system for today's workers and future generations.

We have a lot of ground to cover, so with that I will yield to the Ranking Member Polis for his opening remarks.

[The statement of Chairman Roe follows:]

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

We are here to discuss an issue that is vitally important to Americans from all walks of life: retirement security. This is a leading priority for millions of hardworking men and women, and that is why it's a leading priority for Republicans and Democrats alike.

Strengthening retirement security has always been a difficult challenge with no easy answers. It's one that demands thoughtful dialogue, bipartisan cooperation, and meaningful reforms. That's exactly what our committee has been engaged in for several years now.

Since 2012, the committee has focused on examining and advancing bipartisan reforms to the multiemployer pension system. Over 10 million Americans rely on multiemployer pension plans. Unfortunately, many plans are severely underfunded due to an aging population, a weak economy, and fewer participating employers. To make matters worse, the federal agency insuring those plans—the Pension Benefit Guaranty Corporation or PBGC—is also headed for insolvency. As a result, workers, retirees, businesses, and taxpayers are at risk.

Fortunately, Congress has already taken action to help address this crisis. With the support of employers and labor leaders, Congress passed and President Obama signed into law important reforms to improve PBGC's long-term stability, provide trustees with the tools they need to rescue failing plans, and prevent retirees from losing everything. These reforms represent significant progress, but there's more work to be done.

Our focus now turns toward modernizing the multiemployer pension system for today's workers and tomorrow's retirees. A lot has changed since multiemployer pensions were developed decades ago. As union leaders, employers, and retiree and taxpayer advocates have expressed for years—it's long past time to bring the system into the 21st century.

So, what does a modern multiemployer pension system look like? I hope we can dive deeper into this important question today. Before we begin, I'd like to explain a few guiding principles.

First and foremost, our goal is to strengthen retirement security. America's workers deserve better than retirement plans based on empty promises and designed for yesterday's workforce. In the 21st century, workers should have more retirement plan options that meet their needs.

While we take steps to modernize the system for the future, we must also protect workers and retirees in traditional multiemployer pension plans. We will continue to do everything possible to ensure those who have spent their lifetimes working hard and providing for their families can spend their retirement years with security and peace of mind. That means employers—even those who transition to modern retirement plans—should be required to sufficiently fund existing multiemployer pension commitments.

Second, a modern multiemployer pension system will improve the competitiveness of America's businesses. In the 21st century, employers shouldn't have to choose between growing their businesses or offering their employees secure and stable benefits. More flexibility through alternative plan options will empower employers to expand their businesses and create good-paying jobs—all while contributing toward their employees' retirement.

Finally, we need to deliver greater protection for taxpayers. Unlike traditional defined benefit plans, these new multiemployer pension plans should not be covered by the PBGC. The last thing we need to do is to add more financial strain on an agency projected to go bankrupt in less than 10 years. And the last thing taxpayers need is to foot the bill for a multi-billion dollar bailout.

These are the overarching principles behind the discussion draft Chairman Kline recently released. His proposal would provide workers and employers a new retirement plan option known as "composite plans," which combine the flexibility of 401(k)-style defined contribution plans with the lifetime income provided by defined benefit pension plans.

The draft proposal reflects input from employers, labor leaders, and retiree and taxpayer advocates. Still, we need more feedback. As its title suggests, this is a draft meant to spur a conversation. So, we want to hear from all of you and the broader public. How can we make this proposal best serve the interests of workers and employers?

We also welcome your views and ideas on reforms to improve PBGC's fiscal health. Although we took steps to address PBGC's shortfalls in 2014, more work is desperately needed, including further premium increases. The stakes couldn't be higher: people's retirement benefits—their livelihoods, their futures—are in jeopardy, and kicking the can down the road will only make the problem worse and unfairly threaten taxpayers with a bill they can't afford.

We don't always agree on everything. But I appreciate the bipartisan work this committee has done over the years to strengthen retirement security and tackle the challenges facing the multiemployer pension system. I hope we can continue what we started by advancing further reforms and modernizing the system for today's workers and future generations.

Mr. POLIS. Good morning. I want to thank Chairman Roe for arranging this hearing and for his and Chairman Kline's continued efforts on behalf of multiemployer pensions and those who've worked hard. I appreciate their willingness to work through this hearing in a fair, open, and bipartisan way. And I thank our witnesses for joining us today.

I hope we can all agree that everyone who works hard and plays by the rules deserves to live out their golden years with the dignity that they've earned. Retirement security affects not only the retiring populations, but also younger generations who are caring for their aging parents.

Last April, the Subcommittee held a hearing on multiemployer pensions to explore new plan designs. Specifically several innovative legislative concepts like variable annuity plans and composite plans were discussed and presented as options that could help strengthen the multiemployer pension system and provide flexibility for employers and maintain appropriate benefits and protections for workers and retirees. Today's hearing is in many ways in that same vein; it is a continuation of our committee's important work in this area.

Chairman Kline put forward a discussion draft establishing composite plans, and these plans resemble traditional defined benefit pension plans in that assets will be pooled and professionally managed and participants' benefits would be paid out in the form of an annuity that they could not outlive. These composite plans also blend aspects of a 401(k)-style defined contribution plan, as employers would not incur the risks, costs, and liabilities associated with the defined benefit pension system.

So a diverse collection of groups, including representatives of both business and organized labor, have already come forward and expressed support for Chairman Kline's discussion draft. It's rare to see the Chamber of Commerce and the National Building Trades Union seeing eye-to-eye on the same issue, but they do on this one; but, of course, that agreement is certainly not unanimous. Several respected organizations that represent beneficiaries and retirees and administer plans have registered concern or opposition to composite plans as well. They expressed their fears to me that the composite plan concept could allow employers to transition to a new plan and escape their obligation to appropriately fund the existing, or legacy, plan. They also raised legitimate questions about whether composite plans include sufficient protections for workers and retirees.

So I know we'll be exploring a lot of those themes and questions today that many of our members have. That's why a fair and transparent process for considering this discussion draft is so important. This subcommittee hearing gives members the opportunity to learn more about composite plans and ask questions about Chairman Kline's discussion draft. I know Chairman Kline and his staff are also soliciting public and stakeholder feedback on the draft as well and have already incorporated at least two rounds of that into the current draft.

This legislation would make major changes to our multiemployer retirement system. That's why today's discussion is so important. This sort of change requires careful consideration and thoughtful debate among stakeholders and policymakers. The process of adopting sweeping changes to defined benefit retirement plans should be an open, transparent, fair, and most of all, thorough process.

After today's hearing, I hope the Committee is able to fully consider the witnesses' testimony and thoughtfully consider their recommendations to improve the discussion draft. Once the bill is introduced, I hope it can go through regular order, which would allow our committee to engage in a markup, where members on both sides of the aisle could offer amendments to improve the final bill.

There are currently about 1,400 multiemployer pension plans covering approximately 10 million Americans. Many of these plans are facing dire financial circumstances. If we're going to move forward on this composite plan discussion draft, it's very important that we get it right, but, Mr. Chairman, we shouldn't stop there. Another pensions-related priority demands Congress's immediate attention. As you know, tens of thousands of coal miners, including over 500 in my home State of Colorado, are at risk of losing healthcare and pension benefits. Unless Congress acts, about 20,000 retirees stand to lose their promised health benefits by the end of this year, hence the urgency.

Pension promises were made to these miners and their families, and these promises need to be kept. I'm a cosponsor of bipartisan legislation that would solve this problem and avoid a catastrophic scenario for hardworking miners and their families in my State and across the country, and I would encourage Congress before this year ends to pass that bill.

Again, I want to thank Chairman Roe for convening this hearing. I look forward to the witnesses' testimony. And I yield back the balance of my time.

[The statement of Mr. Polis follows:]

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

Good morning. I want to thank Dr. Roe for arranging this hearing and for his and Chairman Kline's continued interest in multiemployer pension reform. I appreciate their willingness to work in a fair, open, and bipartisan way on this critical issue.

We can all agree that everyone who works hard and plays by the rules deserves to live out their golden years with dignity. Retirement security affects not only the retiring population, but younger generations who are caring for their aging parents.

Last April, the Subcommittee held a hearing on multiemployer pensions to explore what we called "new plan designs." Specifically, several innovative legislative concepts – such as variable annuity plans and composite plans – were discussed as options to strengthen the multiemployer pension system, provide flexibility for employers, and maintain appropriate benefits and protections for workers and retirees.

Today's hearing represents a continuation of this important work.

Chairman Kline put forward discussion draft legislation establishing composite plans. These plans resemble a traditional defined-benefit pension plan in that assets would be pooled and professionally managed, and participants' benefits would be paid out in the form of an annuity that they could not outlive. These composite plans also blend aspects of a 401(k) style defined contribution plan, as employers would not incur the risks, costs, and liabilities associated with the defined-benefit pension system.

A diverse collection of groups – including those representing business and organized labor – have already come forward and expressed their support for Chairman Kline's discussion draft. And I truly mean diverse. It's not often you see the U.S. Chamber of Commerce and the National Building Trades Unions see eye to eye on the same issue, but on this one they do.

But by no means is this unanimous.

Several respected organizations have registered concern or opposition to composite plans. They fear that the composite plan concept will allow employers to transition to a new plan and escape their obligation to appropriately fund the existing – or legacy – plan. They also raise legitimate questions about whether composite plans include sufficient protections for workers and retirees. We have to take this point of view seriously.

That's why we must have a fair and transparent process for considering this discussion draft. This Subcommittee hearing gives Members the opportunity to learn more about composite plans and ask questions about Chairman Kline's discussion draft. I know that Chairman Kline and his staff are also soliciting public and stakeholder feedback on the draft as well – which is also incredibly important.

This legislation would make major changes to our multiemployer retirement system. This sort of change requires careful consideration and thoughtful debate among all stakeholders. The process of adopting such sweeping changes to defined benefit retirement plans should be open, transparent, fair, and most of all thorough. After today's hearing, I hope that the Committee is able to fully consider the witnesses' testimony and thoughtfully consider their recommendations to improve the discussion draft. Once a bill is introduced, I hope that it can go through regular order, which would include a full committee mark-up where Members can offer amendments and improve the final bill.

There are currently about 1,400 multiemployer pension plans, covering approximately 10 million Americans. Many of these plans are facing dire financial circumstances. If we are going to move forward on this composite plan discussion draft –then it's important we get it right.

But, Mr. Chairman, we shouldn't stop here. Another pensions-related priority demands Congress's immediate attention.

Tens of thousands of coal miners – including over 500 in Colorado – are at risk of losing health care and pension benefits. Unless Congress acts, about 20,000 retirees stand to lose their promised health benefits by the end of this year. Pension promises were made to these miners and their families, and these promises need to be kept.

I am a co-sponsor of bipartisan legislation that would solve this problem and avoid a catastrophic scenario for hard-working miners and their families in my state and across the country. Before Congress adjourns this year, we must pass this bill.

Again, I want to thank Dr. Roe for convening this hearing and look forward to the witnesses' testimony. I yield back the balance of my time.

Chairman ROE. I thank the gentleman for yielding.

Pursuant to Committee Rule 7(c), all subcommittee members will be permitted to submit written statements to be included in the permanent hearing record. And without objection, the hearing record will remain open for 14 days to allow statements, questions for the record, and other extraneous material referenced during the hearing to be submitted in the official hearing record.

Before I recognize our witnesses, I would like to submit for the record statements and letters from employers and labor leaders who support the effort to provide a new option for workers to save for retirement through the creation of composite plans, including statements and letters from the Associated General Contractors of America, The Association of Union Constructors, the Broadway League, Dean Foods, International Union of Operating Engineers, the Kroeger Company, Mechanical Contractors Association of America, the National Electrical Contractors Association, North America's Building Trades Unions, Sheet Metal and Air Conditioning Contractors National Association, Super Value, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, United Brotherhood of Carpenters and Joiners of America, and the U.S. Chamber of Commerce.

And I ask unanimous consent that these be submitted for the record. And without objection, so ordered.

[The information follows:]

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

September 22, 2016

The Honorable Phil Roe
Chairman
Education and the Workforce Committee, Subcommittee on Health, Employment, Labor, and Pensions
U.S. House of Representatives
Washington, DC 20515

Re: Support Authorization of Composite Plans in the Multiemployer Pension Plan System

Dear Chairman Roe:

Thank you for holding the important hearing titled, "Discussion Draft to Modernize Multiemployer Pensions," which provides the framework for Congress to authorize a new type of multiemployer benefit plan design, the composite plan. The composite plan model was developed to provide an additional, voluntary option to workers with a lifetime of retirement security while providing employers with predictable costs.

AGC supports composite plans because they offer advantages over existing plan designs by taking the best features from each: the combination of predictable costs of 401(k)-style defined contribution plans, combined with lifetime income features, professional asset management and pooling of risks of traditional defined benefit plans.

Composite plans ensure fiscal viability by using a benefit formula to determine the retirement income each participant receives. The plan includes a Board of Trustees consisting of both employee and employer representatives that sets the plan's provisions. Employers contribute based on bargaining agreements' contribution rates with no liability outside the negotiated rate or withdrawal liability. The existing defined benefit plan, legacy plans, and liabilities would not be abandoned, rather employers would continue to contribute to the pension trust where a portion of the contribution would pay down legacy costs and a portion would go towards the new composite plan.

Composite plans improve upon the current multiemployer pension system by projecting funding for 15 years to help guarantee solvency. A plan's funding ratio must equal or exceed 120 percent and if the ratio falls below 120 percent, the plan is required to improve its projected funding level. The composite plan is a better alternative than a traditional defined benefit plan because the 120 percent funding cushion, emphasis on responsible funding policies, early intervention to address funding imbalances, and the ability to attract and retain contributing employers limit the chance of plan failure.

The composite plan model has been stress tested and has a proven track record. Tests show that a composite plan would have survived a comparable 2008 financial crisis without causing undue harm to contributing employers or participants. Additionally, the design is similar to the common practice throughout much of Canada, where they are highly successful with a growing employer base.

AGC remains committed to working with Congress and industry stakeholders to shore up the multiemployer pension system by authorizing composite plans. AGC urges Congress to pass composite plan legislation this year.

Sincerely,

Jeffrey D. Shoaf
Senior Executive Director, Government Affairs

2300 Wilson Blvd., Suite 300 • Arlington, VA 22201-3308
Phone: 703.548.3118 • Fax: 703.837.5400 • www.agc.org

The Association of
Union Constructors

FOR IMMEDIATE RELEASE

Media Contact:
David Acord, Director of Communications
703.628.5545
dacord@tauc.org

September 9, 2016

TAUC Applauds Legislation on Composite Plans Critical to the Sustainability of Multiemployer Pension System

ARLINGTON, VA – The Association of Union Constructors (TAUC) applauds Chairman John Kline for bringing forward legislation authorizing critically important multiemployer pension plan design reforms. If approved, this legislation will provide local joint labor-management trustees of multiemployer pension plans a voluntary tool to ensure the long-term viability of their funds and the benefits they provide.

TAUC's members are committed to maintaining the pension benefits and retirement security for the men and women they employ to construct and maintain the nation's industrial infrastructure. Unfortunately, market volatility and concerns about unfunded pension liability have caused many contributing employers to question their continued participation in multiemployer pension plans. This instability in the current multiemployer pension system has employers worried about the viability of their businesses, adding further pressure for many of them to leave the system.

TAUC, along with our construction industry and building trade union partners, have worked tirelessly to urge Congress to authorize the voluntary use of innovative plan designs – such as composite or hybrid plan structures – that would allow multiemployer plan trustees to ensure their plan participants continue to have lifetime retirement security in the future.

Despite significant efforts of plan-contributing employers and labor trustees, a number of multiemployer pension plans still stand on the brink of financial collapse. These deeply troubled plans could face insolvency in the near future. If left unresolved, the crisis facing multiemployer pension plans will be devastating not only to our members, employees, and retirees, but potentially harmful to many others, including the nation's pension retirement system and taxpayers.

Composite plans would allow trustees and bargaining parties, if they so choose, to fundamentally rebalance the risks in pension funding. The new plan designs would ensure guaranteed lifetime benefits so no participant has to fear outliving their retirement savings. At the same time, these designs would provide contributing employers cost predictability.

TAUC members are committed to maintaining pension benefits for the men and women who build, maintain, and modernize this nation's infrastructure and industrial facilities. We applaud

Chairman Kline for introducing this legislation authorizing the voluntary use of composite plans, and we urge Congress to swiftly approve the bill, which will provide labor and management the option to choose a plan design that provides a safe and secure lifetime retirement benefit to employees without risking the survival of businesses that offer good middle-class jobs with important benefits for workers and society.

ABOUT TAUC: The Association of Union Constructors is the premier national trade association for the 21st century union construction and maintenance industry. Our 2,000 member firms include union contractor companies, local union contractor associations and vendors in the industrial maintenance and construction field. We demonstrate that union construction is the best option because it is safer and more productive, and provides a higher quality and cost-competitive product. For more information visit www.tauc.org.

– # –

THE BROADWAY LEAGUE

729 SEVENTH AVENUE
5TH FLOOR
NEW YORK, NY 10019
T 212-764-1122
F 212-944-2136
BROADWAYLEAGUE.COM

September 9, 2016

The Honorable John Kline
Chairman
Committee on Education & Workforce
U.S. House of Representatives
Washington, DC 20515

Re: Composite Plan Discussion Draft

Dear Chairman Kline:

The Broadway League, the trade association for the national commercial theatre industry, represents more than 700 members, including employers who contribute to 11 Taft-Hartley defined benefit (DB) pension plans and 5 defined contribution (DC) pension plans with assets of $6.5 Billion. Collectively, these plans cover more than 120,000 current or future retirees.

We are writing to commend your efforts, as well as the efforts of other members of the Committee on Education and Workforce, which today issued a discussion draft of legislation that would provide voluntary tools that would enable employers and unions, collectively, to establish "composite" pension plans as a better alternative to existing DC plans. Although we do not expect composite plans to be broadly adopted in our industry in the near-term, we are concerned about the retirement security of workers in other industries where employers are no longer willing to contribute to DB plans – traditionally the most secure form of retirement income for employees. The introduction of this legislation is a welcome step in expanding the options of labor and management to ensure workers' retirement income security into the future.

Today, employers and unions are faced with a binary choice when considering worker retirement programs: DB vs DC. For employers, the DB model's greatest weakness is that all future pension obligations are carried by the employer. As we have seen, the result has been the rejection by employers of DB plans in favor of DC plans. However, the DC model's greatest weakness is precisely the inverse: all future pension obligations are borne by the employees. Unlike the DB model, employees with only DC accounts must assume the roles usually reserved to pension fund professionals in determining how long they might live, and to know how to best invest their available assets, control investment fees and exercise the discipline to enable those assets to be paid out in regular monthly amounts for the rest of their lives. The result, in this case, is that individuals entering retirement age often have little or no retirement income to provide retirement security for the remainder of their lives, nor do they possess the required skills to manage what they do have.

Therefore, we support the development of a "composite" pension plan design that marries the best features of the DB model (e.g., a defined benefit formula, professionally managed pooled assets, pooled longevity risk and elimination of "leakage") with the best features of the DC model (e.g., elimination of long-term liability risk) and we urge Congress to take necessary steps to enact responsible composite plan legislation before the end of the year.

Sincerely,

Christopher J.G. Brockmeyer
Director of Employee Benefit Funds

cc: Ranking Member Scott
Members of the Committee on Education and Workforce
Members of the Committee on Ways and Means

September 12, 2016

The Honorable John P. Kline
Chairman, House Committee on Education and the Workforce
Washington, DC 20515

Dear Chairman Kline,

On behalf of the undersigned companies, and our hundreds of thousands of associates and members nationwide, we want to commend you on the release of the 'Composite Plan' draft proposal. The draft proposal is the product of years of hard work by all involved and marks an important step towards strengthening our nation's retirement system.

Present law limits plan sponsors to providing retirement benefits in the form of traditional pension plans or 401(k)-style defined contribution plans. Each model has its advantages and disadvantages. The Composite Plan model offers a new approach – one that combines the flexibility of 401(k)-style plans with the security of defined-benefit plans – while limiting the financial risks that encourage employers to abandon the current multiemployer system. By combining the advantageous features of the options available under present law, Composite Plans will allow plan sponsors the opportunity to provide their employees with low-cost, professional asset management while maintaining the security benefits of a lifetime annuity. In addition, the funding safeguards that protect the core retirement benefits will allow plan sponsors to provide long-term retirement security without risking the health of their businesses, adding an incentive for employers to enter and remain in the multiemployer retirement system.

The draft proposal is consistent with these concepts and is an encouraging indication that Congress appreciates the need to strengthen the multiemployer retirement system. We look forward to working with Members of Congress on this initiative, and we hope that Congress will make the Composite Plan proposal a priority this year.

Sincerely,

Associated Wholesale Grocers, Inc.
Bimbo Bakeries USA
Dean Foods
Penske Truck Leasing Co., L.P.
Prairie Farms Dairy
Spangler Candy Company
SUPERVALU
The Kroger Co.

cc: Members of the House Committee on Education and the Workforce
Members of the House Committee on Ways and Means

International Union of Operating Engineers

AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

September 21, 2016

The Honorable Phil Roe, M.D.
U.S. House of Representatives
407 Cannon House Office Building
Washington, DC 20515

The Honorable Jared Polis
U.S. House of Representatives
1433 Longworth House Office Building
Washington, DC 20515

Dear Chairman Roe and Ranking Member Polis:

On behalf of the 400,000 members of the International Union of Operating Engineers (IUOE), most of whom have multiemployer pensions, I write to express the views of our organization on the subject matter to be considered in the Health, Employment, Labor and Pensions Subcommittee of the House Education and Workforce Committee on Thursday, September 22, entitled "Discussion Draft to Modernize Multiemployer Pensions."

IUOE members rely on their multiemployer pensions to provide them with dignity in retirement after a career of hard, oftentimes dangerous work, building and maintaining the nation's infrastructure. For many years they have fought and sacrificed at the bargaining table with their employers to ensure that their pensions were fully funded and would be there for them when they retire.

It is my understanding that the focus of the hearing will be the recently released "Discussion Draft to Modernize Multiemployer Pensions." That Discussion Draft proposes to create a new form of multiemployer pension plan, known as a composite plan, to address the rightful concerns of participants, employers and labor organizations in the continued availability of real retirement security at the bargaining table. While, as with all draft legislation, the Discussion Draft has certain points that will likely require further refinement and clarification, as a general matter we believe that the concepts incorporated offer a reasonable and voluntary alternative to the current multiemployer plan structure.

Of greater concern to us, however, is that in connection with consideration of the Discussion Draft, there might also be consideration of a further increase in the already exorbitant "premiums" extracted from multiemployer plans to fund the Pension Benefit Guaranty Corporation (PGBC).

The IUOE vehemently opposes any further increase in these payments, which are not risk based, and therefore are more in the nature of a tax than a premium, until a complete study of the PGBC is conducted to consider thorough restructuring, or *elimination of the agency's multiemployer plan program entirely*. The premium payments were doubled only two years ago, and we firmly believe that further reflexive increases will do more to undermine the multiemployer system than prop up the agency.

1125 SEVENTEENTH STREET, NW • WASHINGTON, DC 20036-4707 • 202-429-9100 • WWW.IUOE.ORG

The International Union of Operating Engineers appreciates your leadership on the critical issue of retirement security and applauds your willingness to conduct this important hearing on multiemployer pensions. We look forward to working with you and the Committee in helping assess the fundamental role of the PBGC in a thorough study of our current multiemployer pension system needs.

Sincerely yours,

James T. Callahan
General President

FOR IMMEDIATE RELEASE
Friday, September 9, 2016

CONTACT: Marco Giamberardino
(301) 215-4522;
marco.giamberardino@necanet.org

Electrical Contractors Support Effort to Modernize Multiemployer Pension Plan System

Call for Bipartisan Support Authorizing Use of Composite Plans

Five years ago, the National Electrical Contractors Association (NECA) and a diverse group of 40 labor and management stakeholders partnered up to form the Retirement Security Review Commission. The Commission's goal was to create solutions that will ensure multiemployer pension plans can continue to provide a reliable retirement benefit to millions of Americans while enabling the employers who fund them to remain strong contributors to the national economy.

In 2014, Chairman Kline shepherded passage of the Multiemployer Pension Reform Act of 2014, which made permanent several key provisions of the Pension Protection Act, included technical provisions that will improve the current system, and offered multiple options to help deeply troubled plans heading toward insolvency. NECA thanks the Chairman for his tireless work in finding new ways to modernize the current multiemployer system by creating new flexible plan designs, known as Composite Plans.

Multiemployer plans are currently limited by statute to be established as either traditional Defined Benefit or Defined Contribution plans. NECA believes additional legislation is needed to further modernize the current system and today Chairman Kline's discussion draft would do exactly that by authorizing innovative Composite Plans.

It is clear that a transient workforce, an aging population, and a weak economic recovery have led to unsustainable pension contributions and unfunded withdrawal liabilities that continue to put a strain on contributing employers. Facing growing risks, employers are forced to consider paying their withdrawal liability, and may face bankruptcy if they were to exit the system. This harms retirees receiving benefits, saddles other participating employers with a larger financial burden, and weakens the system overall. Composite plans would limit the financial risk for the employers while providing effective benefit protections for plan participants.

Of course, the adoption of Composite Plans would be voluntary and subject to the collective bargaining process. While no current defined benefit plan would be required to adopt any of these provisions, it is an important tool that should be made available to plans who choose to take advantage of this option. Chairman Kline's proposal ensures that a composite plan replacing a defined benefit plan would apply prospectively only and legacy plans will be fully protected.
Since 1946, NECA has worked through the collective bargaining process to offer pension plans that would help bring security, dignity, and peace-of-mind to all plan participants. Today, our joint labor-management, multi-employer pension plans have successfully provided coverage for millions of plan participants, retirees and surviving spouses, as well as its contributing employers. NECA urges Members of Congress from both sides of the aisle to support Chairman Kline's proposal and we look forward to working with you to ensure its passage this year.

###

The National Electrical Contractors Association (NECA) is the nationally recognized voice of the $130 billion electrical construction industry. NECA's 4,000 member contractors and our network of 119 Chapters are involved in specialized construction work related to the design, installation and maintenance of electrical systems nationwide.

NECA
NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

September 22, 2016

The Honorable Phil Roe
Chairman
Subcommittee on Health, Employment,
Labor, and Pensions
Committee on Education and the Workforce
United States House of Representatives
Washington, DC 20515

The Honorable Jared Polis
Ranking Member
Subcommittee on Health, Employment,
Labor, and Pensions
Committee on Education and the Workforce
United States House of Representatives
Washington, DC 20515

Dear Chairman Roe and Ranking Member Polis:

On behalf of the National Electrical Contractors Association (NECA), thank you for holding today's hearing to examine Chairman Kline's Discussion Draft to Modernize Multiemployer Pensions.

NECA is the nationally recognized voice of the electrical construction industry. Our organization represents 4,000 contractors, spanning 119 U.S. chapters in addition to several affiliated international chapters around the world. NECA chapters are signatory to 359 local unions of the International Brotherhood of Electrical Workers and its member companies contribute to both national and local pension plans. Since the early 1900s, NECA contractors have provided their workforce with competitive wages and health and pension benefits.

The unionized segment of the construction industry, including NECA contractors, has a substantial stake in the health and welfare of multiemployer pension plans. The industry comprises 54 percent of the total number of multiemployer plans and covers 37 percent of the system's 10 million participants.

NECA is grateful for Congress' passage of the Multiemployer Pension Reform Act of 2014 (MPRA), which provided important tools to plan trustees to avoid insolvency and devastating benefit reductions. Multiemployer plans are currently limited by statute to be established as either traditional Defined Benefit or Defined Contribution plans. Changing economic markets, an aging workforce, and astronomical withdrawal liabilities continue to hamper the ability of NECA contractors to stay competitive. Facing growing risks, employers are forced to consider paying their withdrawal liability, and may face bankruptcy if they were to exit the system. This harms retirees receiving benefits, saddles other participating employers with a larger financial burden, and weakens the system overall. Eliminating withdrawal liability moving forward is crucial to keeping employers in the multiemployer pension system.

NECA believes additional legislation is needed to further modernize the current system. We believe the discussion draft offered by Chairman Kline on September 9, 2016 would do exactly that through the authorization of innovative Composite Plans. Passage of this legislation would build on the MPRA reforms offering new and innovative structural designs that are necessary to ensure multiemployer plans can continue to provide a sound retirement benefit for our employees.

National Electrical Contractors Association
3 Bethesda Metro Center • Suite 1100 • Bethesda, MD 20814 • 301 657 3110 • 301 215 4500 FAX
www.NECANET.org

The adoption of Composite Plans would be voluntary and subject to the collective bargaining process. While no current defined benefit plan would be required to adopt any of these provisions, Composite Plans would serve as an important tool that should be made available to plans who choose to take advantage of this option. In addition, when the collective bargaining process produces a decision to convert from a traditional defined benefit plan to a new plan design, the new plan design provisions would apply prospectively only. All of the current funding rules, benefit protections, zone status provisions, and withdrawal liability requirements, would continue to apply to the benefits earned in the traditional defined benefit plan up to the point of conversion. It is very clear from Chairman Kline's discussion draft that Composite Plans would apply prospectively only and legacy plans would be fully protected.

Since 1946, NECA has worked through the collective bargaining process to offer pension plans that would help bring security, dignity, and peace-of-mind to all plan participants. The National Electrical Benefit Fund (NEBF) is our national plan which benefits participants, retirees and surviving spouses. This plan serves over 502,000 participating individuals and has over 8,000 contributing employers, making it the fourth largest Taft-Hartley Pension Plan in the United States. In addition to NEBF, NECA contractors contribute to 123 local pension plans covering over 800,000 participants and beneficiaries in the construction industry, with total assets of roughly $30 billion. Our joint labor-management, multi-employer pension plans have successfully provided coverage for millions of plan participants, retirees and surviving spouses, as well as its contributing employers. NECA urges Members of Congress from both sides of the aisle to support Chairman Kline's proposal and we look forward to working with you to ensure its passage this year.

NECA is thankful for the Committee's interest in the viability of the multiemployer pension plan system and urges the passage of legislation that authorizes new composite plans. We appreciate the opportunity to submit this statement for the record and look forward to continuing to work with Congress on this important issue.

Sincerely,

Marco A. Giamberardino, MPA
Executive Director, Government Affairs

cc: U.S. House Committee on Education and the Workforce

NORTH AMERICA'S
BUILDING TRADES UNIONS
Value on Display. Every Day.

For Immediate Release
September 22, 2016

Contact:
Tom Owens
202-756-4623
towens@buildingterades.org

North America's Building Trades Unions Issue Statement Following Congressional Hearing on Multiemployer Composite Plans

WASHINGTON, DC – Today, North America's Building Trades Unions (NABTU) issued the following statement:

"North America's Building Trades Unions wish to thank and commend Chairman John Kline and the House Committee on Education and Workforce for conducting today's important discussion, and for taking a critical step toward creating Composite Plans for multiemployer pension participants. The hearing today not only showed why multiemployer pension reform is so urgent, but also laid out a path for making it a reality.

"Working families across the county are facing significant uncertainty with their multiemployer pensions and they deserve to have additional tools available to preserve their retirement benefits. We look forward to working with the Committee, and all stakeholders, to continue the discussion and take steps this year to preserve retirement security for America's working families.

"Composite Plans are multiemployer retirement savings plans that draw from the best elements of defined benefit plans and defined contribution plans. These plans combine the best features of the current defined benefit and defined contribution plans to ensure regular, reliable monthly retirement income security for workers following a lifetime of service to their respective industries with the predictable cost structure of defined contribution plans. Employers benefit from predictability and the elimination of unfunded liability obligations that threaten their access from critical credit markets.

"The 2013 report identifying comprehensive, long-term multiemployer pension reforms, Solutions not Bailouts (http://www.solutionsnotbailouts.com/), called for the development of new plan designs in order to provide multiemployer pension funds with additional voluntary tools that would: strengthen the system, provide a lifetime benefit for employees, require no government funding, and provide a much needed incentive for employers to stay in the system.

# # #

ABOUT NORTH AMERICA'S BUILDING TRADES UNIONS

North America's Building Trades Unions is an alliance of 14 national and international unions in the building and construction industry that collectively represent over 3 million skilled craft professionals in the United States and Canada. Each year, our unions and our signatory contractor partners invest over $1 billion in private sector money to fund and operate over 1,900 apprenticeship training and education facilities across North America that produce the safest, most highly trained and productive skilled craft workers found anywhere in the world.

www.buildingtrades.org
www.Facebook.com/NorthAmericasBuildingTradesUnions
@BldgTrdsUnions

SHEET METAL AND AIR CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION

EXPERTISE
PERFORMANCE • TRAINING • STANDARDS

September 22, 2016

The Honorable Phil Roe
The Honorable Jared Polis
U.S. House of Representatives
Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor and Pensions
Washington, DC 20515

Re: Support Multiemployer Composite Plan Design

Dear Dr. Roe and Ranking Member Polis:

On behalf of the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), I want to express SMACNA's appreciation to you and all the members of the Subcommittee for taking the time to address the important issue about how to best secure retirement security for millions of Americans who participate in multiemployer pension plans. SMACNA supports Education and Workforce Committee Chairman Kline's draft proposal on Composite Plans and we hope this hearing results in bipartisan agreement and that Congress will act this year.

After a lifetime of working, every American would like to know they have a financially secure retirement waiting but we know that does not always happen. SMACNA proudly represents 3,500 construction companies through-out the country that have been willing to contribute generously to plans with lifetime retirement benefits negotiated through its collective bargaining process. Unfortunately, the Defined Benefit (DB) system has destabilized in recent years and SMACNA believes America's retirement system will be stronger and better if Congress would authorize Composite Plans, a new pension option for collectively bargained plans.

The Urgency

If contributing employers – the majority of whom are extremely worried about the status of the current system – begin to implement exit strategies, the DB system will weaken and the PBGC will be further undermined and much more quickly than currently anticipated.

SMACNA employers, some very large but the vast majority small and family-owned, have spent their lives, sometimes generations, building, maintaining and growing their businesses. While proud to provide middle class jobs, owners will not sit idly by and watch a lifetime of work go down because of failing pension plans. Too many DB plans have unknowable and unpredictable risk. Our employers want the opportunity to continue to provide a lifetime of retirement benefits and Composite Plans would give them that opportunity without risking the viability of their businesses.

SMACNA
CAPITOL HILL OFFICE: 305 4TH STREET NE • WASHINGTON DC 20002
PHONE: 202 547 8202 • FAX: 202 547 8810
HEADQUARTERS: 4201 LAFAYETTE CENTER DRIVE • CHANTILLY VA 20151-1209
MAIL ADDRESS: P.O. BOX 221230 • CHANTILLY VA 20153-1230
PHONE: 703 803 2980 • FAX: 703 803 3732
WEB: [illegible]

Give Workers a Choice

The dramatic shift in this country from Defined Benefit plans to Defined Contribution plans is already beginning to spill over into the multiemployer world. Facing a choice between a Defined Contribution plan and a Composite Plan, workers will choose the Composite Plan. SMACNA urges Congress to give employers and workers that choice.

Composite Plans have been designed around the familiar give and take of collective bargaining and would require any transition to be negotiated and approved by both labor and management fund trustees.

Composite Plan Design to Benefit Workers and Employers

The stakeholders have different needs but Composite Plan design has features employers and workers alike consider important in today's changing economic environment. The proposed design takes every reasonable precaution to ensure plans are secure and to assure that benefits already earned are not lost. For employers, Composite Plans provide cost predictability.

SMACNA is supported by more than 3,500 construction firms, supplying expertise in industrial, commercial, residential, architectural and specialty sheet metal and air conditioning construction throughout the United States. They contributed approximately $460 million in 2015 to The Sheet Metal Workers' National Pension Fund (NPF) and a similar amount has been contributed to dozens of SMACNA local DB plans.

SMACNA urges the quickest possible action on Chairman Kline's proposal to help modernize and reinvigorate the multiemployer retirement system so SMACNA employers can continue to provide good middle class jobs with health and pension benefits that benefit their workers and their families, their communities and the U.S. economy.

Sincerely,

Dana Thompson

Dana Thompson
Assistant Director, Legislative Affairs
SMACNA
305 4th Street, NE
Washington, DC 20002

UA/MCAA Joint Statement of Support
For Congressional Action This Year
On Composite Pension Plans

The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (UA) and the Mechanical Contractors Association of America (MCAA) applaud the efforts of Chairman Kline of the House Committee on Education and Workforce to find solutions to the challenges facing multiemployer defined benefit pension plans. The discussion draft providing for the creation of multiemployer composite plans will address some of the critical remaining issues needed to reform the multiemployer pension system.

For our industry, a failure to address the growing challenges facing multiemployer defined benefit pension plans today will lead to dire consequences for many of these pension plans' stakeholders—the millions of workers and retirees who rely on the promise that these plans would provide them a reliable and steady retirement income and the thousands of employers who contribute to and, along with unions like the UA, have sponsored these plans for decades.

For the last several years, the UA and the MCAA have been active participants in efforts by a coalition of unions, employers and pension plans, spearheaded by the National Coordinating Committee for Multiemployer Plans (NCCMP), to address the challenges our multiemployer defined benefit pension plans now face. And it has been our goal to formulate creative and realistic solutions that balance the interests of all of the plans' stakeholders. We believe the composite plan proposed by Chairman Kline is a critical piece of such a solution for reasons that include the following:

- Composite plans provide life time retirement income based on pooled longevity similar to defined benefit plans. In contrast, workers who must solely rely on defined contribution retirement vehicles face the real possibility of outliving their retirement savings or losing their savings through poor investment decisions.
- Composite plans are not intended to replace defined benefit plans but are intended to be an alternative to the 401(k)/defined contribution plans that are increasingly proposed when an employer refuses to participate in a defined benefit plan.
- The proposal includes provisions to protect and support the continued funding of the legacy defined benefit plans. This serves to protect the current pension benefits earned by retirees.
- Composite plans do not threaten the future funding of PBGC and by preserving the funding of legacy defined benefit plans by employers that would otherwise leave those plans, the composite plan proposal helps to ensure that those legacy plans will continue as long term premium payers.

The UA and MCAA strongly support the proposal to create composite plans and look forward to working with the Committee, and all stakeholders, to ensure passage of legislation this year.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Douglas J. McCarron
General President

September 16, 2016

Chairman John Kline
Education & Workforce Committee
U.S. House of Representatives
Washington, DC 20515

Ranking Member Bobby Scott
Education & Workforce Committee
U.S. House of Representatives
Washington, DC 20515

Re: Composite Plan Discussion Draft

Dear Chairman Kline and Ranking Member Scott:

On behalf of the members of our General Executive Board and our 500,000 members, I am writing to thank you for your continued hard work in seeking innovative solutions to the challenges facing multiemployer pensions and the working families participating in them.
As you know, looming shortfalls in multiemployer pension plans and the projected insolvency of the Pension Benefit Guaranty Corporation (PBGC), the federal backstop that guarantees these and other pensions, are direct threats to the retirement security of many of our members.

Your discussion draft of legislation that would establish "Composite Plans" – hybrid retirement savings plans that draw from the best elements of defined benefit plans and defined contribution plans – is an important step forward in securing the retirement of millions of working families.

Too many working American families are struggling to achieve retirement security and facing financial uncertainty. Composite Plans will help these hard-working families secure their futures.

We look forward to bipartisan support and approval for this legislation – and the creation of these vital composite plans – this year.

Thank you for your attention to these important matters.

Sincerely,

Douglas J. McCarron
Douglas J. McCarron,
General President

Cc: Members of the Education and Workforce Committee

101 Constitution Avenue, N.W. · Washington, D.C. 20001 · Phone (202) 546-6206 · Fax (202) 543-5724

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

September 9, 2016

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Kline:

On behalf of the thousands of large and small businesses that continue to maintain multiemployer defined benefit plans, the U.S. Chamber of Commerce commends you for your leadership and commitment to maintaining the multiemployer pension system. Specifically, the Chamber thanks you for moving forward with discussion draft legislation that would authorize composite plans, which completes the proposals presented by a joint group of management and labor groups in the report *Solutions Not Bailouts*, supported by the Chamber.

The Multiemployer Pension Reform Act of 2014 (MPRA) was a vitally important step in reforming the multiemployer pension system. MPRA made permanent the multiemployer provisions under the Pension Protection Act of 2006; gave the Pension Benefit Guarantee Corporation (PBGC) authority to promote and facilitate plan mergers; allowed plan sponsors to apply to the PBGC to partition a plan; increased PBGC premiums for multiemployer plans; and allowed for benefit suspensions in certain plans in critical and declining status. All of these provisions are essential tools in restoring the multiemployer pension system.

However, MPRA did not include composite plans. The discussion draft you are releasing today is a significant step in furthering the combined management and labor effort to move forward with composite plan designs. These designs would help maintain current benefits in multiemployer plans without incurring additional liabilities and ensuring participants are entitled to past earned benefits. Also, these designs could be helpful in retaining and attracting new employers and providing greater retirement coverage. At the same time, these new designs must protect legacy plans so they do not become punitive to current employers and participants.

The Chamber urges the Committee on Education and the Workforce and Congress to advance before the end of this legislative session authorizing composite plan designs as the best way for the multiemployer pension system to move forward.

Sincerely,

R. Bruce Josten

cc: House Committee on Education and the Workforce
House Committee on Ways and Means
Senate Committee on Finance
Senate Committee on Health, Education, Labor, and Pensions

NEW "COMPOSITE" RETIREMENT PLAN CONCEPT WILL STRENGTHEN RETIRMENT BENEFITS FOR WORKERS BY MAKING MULTI-EMPLOYER PLANS SUSTAINABLE

September 9, 2016

New House Education and the Workforce Committee Composite Retirement Plan Concept Will Provoke Vital Debate on the Best Way to Protect Workers, Retirees and Employers

The chief executive officer of the Associated General Contractors of America, Stephen E. Sandherr, issued the following statement today in response to the House Education and the Workforce Committee's newly released composite retirement plan concept:

"The fact this committee has released its concept for how firms may adopt "composite" retirement plans will provoke an important and necessary debate in Congress about the best way to enhance retirement security well into the future. Composite plans better allocate risk while ensuring the plans can pay the promised benefit levels for all retirees. Allowing firms and their workers to voluntarily adopt similar plans will give firms that may be hesitant to assume the kind of liabilities associated with defined benefit plans another reason to participate in multi-employer retirement plans. This will not only strengthen retirement benefits for countless workers, it will also reduce the reliance on the Pension Benefit Guarantee Corporation to buttress troubled plans.

"Moving forward, the Associated General Contractors of America is committed to working with Chairman Kline and others in Congress to move the debate from concept to completed legislation as quickly as possible this calendar year."

INTERNATIONAL COUNCIL OF EMPLOYERS
of Bricklayers and Allied Craftworkers

September 23, 2016

The Honorable Phil Roe
The Honorable Jared Polis
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Re: Support Multiemployer Composite Plan Design

Dear Dr. Roe and Ranking Member Polis:

On behalf of the International Council of Employers of Bricklayers and Allied Craftworkers (ICE), we wanted to offer our thanks for ongoing your efforts to promote retirement security and the recent hearing to consider Chairman Kline's Discussion Draft to Modernize Multiemployer Pensions. As the only wholly union international masonry contractors' association that represents 3,000 signatory contractors, ICE is committed to preserving a viable retirement plan that our member contractors provide for the most highly skilled masonry workers in the construction industry.

Mr. Kline's discussion draft of proposed legislation to modernize the nation's multiemployer pension system strengthens retirement security and follows years of bipartisan work led by a coalition of labor and business leaders. Composite plans provide workers a new option to save for retirement by authorizing an innovative multiemployer plan structure as a hybrid model that combines the existing options of traditional defined benefit plans and the defined contribution model, and would provide more retirement choices for workers, more flexibility for employers, and greater protection for taxpayers.

The contractor members of ICE want to continue to provide lifetime retirement security for their workers, but the current system is unstable and contractors are increasingly worried about liabilities and the long-term viability of their

Matthew S. Aquiline — **Executive Director**
1306 Lancaster Avenue — **Pittsburgh, PA 15218**
(202) 210-6069 — **maquiline@icebac.org**

businesses. Composite plans are a solution, not a bailout, and the use of them is not mandatory but rather a voluntary option at the disposal of plan trustees.

ICE urges Congress - Republicans and Democrats alike - to make the passage of composite plan legislation an immediate and top priority this year. The composite plan design allows implementation of more flexible plan structures that would reduce risk for contributing employers while providing reliable lifetime income, ensuring a secure retirement for workers.

Thank you for your consideration and we look forward to our continued work with you to ensure the retirement security of millions of Americans.

Sincerely,

Michael J. Schmerbeck

Michael J. Schmerbeck
President

Chairman ROE. I want to take a point of personal privilege. I don't know whether we will have another subcommittee hearing or a chance to do this, but I would like to thank my friend Ruben Hinojosa. I've been here now four terms, and Mr. Hinojosa from Texas and I have co-chaired the Adult Literacy Caucus together and have a real passion for adult literacy. He has been a true—a good friend and a true privilege to work with you. And, Ruben, I wish you nothing but the best. And thank you for the service, your service to our great country.

Mr. HINOJOSA. Thanks.

Chairman ROE. It's now my pleasure to introduce our distinguished panel of witnesses. Randy DeFrehn, well known here, is the executive director of the National Coordinating Committee for Multiemployer Pension Plans, NCCMP. Mr. DeFrehn has extensive experience working with multiemployer plans as a plan administrator, actuarial and benefits consultant, a registered investment adviser, and now with the NCCMP. He has served a 3-year term as a member of the Department of Labor's ERISA Advisory Council from 2007 until 2009. Welcome, Randy.

Rick Terven is the executive vice-president of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, or UA. The UA represents approximately 340,000 plumbers, pipefitters, sprinkler fitters, service technicians, and welders in local unions across America. Welcome.

David Certner is the legislative counsel and director of legislative policy with government affairs at AARP. He serves as counsel for AARP's legislative, regulatory, litigation, and policy efforts. Mr. Certner has also previously served as chairman of the ERISA Advisory Council for the Department of Labor. Welcome.

Jeff Green is a principal of Harris Davis Reber, LLP. Mr. Green has experience as president and owner of several midwestern structural steel precast erection, rebar placing, and crane service companies. He serves as a trustee for several multiemployer funds. And welcome.

Now I'll ask the witnesses to raise your right hand.

[Witnesses sworn.]

Chairman ROE. Let the record reflect the witnesses answered in the affirmative. Thank you.

Before I recognize you to provide your testimony, let me briefly explain the lighting system. You have five minutes to present your testimony. When you begin, the light in front of you will turn green; when one minute is left, the light will turn yellow; when your time has expired, the light will turn red. At that point, I will ask you to wrap up your remarks as best as possible.

Members will each have five minutes. And I won't cut you off in the middle of a sentence, but do try to wrap up when it turns red.

Mr. DeFrehn, you're recognized for five minutes.

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

Mr. DEFREHN. Thank you, Chairman Roe.

Chairman Roe, Ranking Member Polis, and members of the committee, I want to thank you for the honor of being able to appear before you again today on this important topic. My written testimony is more extensive than what I'll be talking to you about today, but I've selected some items that I think need special emphasis and perhaps can just start the discussion for the questions to follow.

The composite plan, as you heard, is neither a defined benefit nor defined contribution plan under the current law, as the variable nature of the benefits is neither definitely determinable, nor is it based on an individual account; rather, it is intended to bring together the best features of each. When the bargaining parties voluntarily determine that such a structure is preferable for a specific population, it would be made available to jointly-managed multiemployer plans as a successor to their current defined benefit plan. The model includes very clear conditions for the parties to pay off the liabilities of a legacy defined benefit plan as the first priority for contributions.

The discussion draft, which is several generations from the original proposal that was contained in the earliest draft of MPRA has benefited from the opportunity to more closely examine and stress test various proposals contained in this legislation. It has also been strengthened by a thorough review of concerns expressed by others, some of whom had participated in the proposal's original draft, and some expressed by the administration.

As the overall objective was to create innovative plan designs, the input by others has been welcome and beneficial to the overall end product. Such suggestions include proposals to limit plans that can elect to become composite plans by placing a statutory prohibition on critical status plans or those that can elect critical status. It also strengthens the funding of legacy plans by requiring that contributions to fund future accruals be subject to a higher funding standard than are required for the current defined benefit plans.

The discussion draft now requires contributions at the greater of the plan's required funding levels under the Pension Protection Act or something called the transition minimum contribution. It also strengthens the legacy plans by reducing the amortization period for existing liabilities over 25 years rather than over 30. At that level, plans which are permitted to adopt the composite components will still be able to offer benefit accruals at levels sufficient to retain the support of active workers, you'll hear some of those remarks by other witnesses, but it's critical that active workers continue to support these plans in order to allow them to fund all of their obligations.

Many of the actives are currently paying multiples of the contribution rates of the people who went before them, but receive only a fraction of the benefit accruals that were in effect for the earlier retirees.

Other changes to improve the discussion draft include elimination of trustee discretion in determining the amount of contributions payable to the legacy and composite plans, and requiring new employers who contribute to the plan to also contribute to legacy plans, which will help pay off these liabilities faster. If the parties so desire, benefit plan could mirror the current plan design for the defined benefit plan. It could also continue some of the more favorable features of those plans.

The new structure is clearly not a defined benefit plan, however, as benefits are variable based on the value of market—market value of assets, as currently happens with any defined contribution plan. Again, these are a combination of both features here. The amount one would receive would be adjusted on an annual basis determined using a 15-year projection at the plan's assumed rate of return to mitigate the frequency and impact of market fluctuations. Contributions to both plans would be determined by the plan's actuary. As the investment—as the market risk for future service rests with the participant, however, the minimum contribution requirement to fund the cost of future accruals would be set at 120 percent of the actuary's projected costs to provide a market—a buffer against market volatility.

For plans that are making a complete conversion to the new model, a fresh start may be elected, which would allow the plan to amortize existing liabilities over a 25-year period. Stress testing of this approach shows that in almost all cases, this would be sufficient to retain the current benefit accrual under the defined benefit plan as the target accrual funded at the 120 percent without increasing contributions. Such a fresh start does not excuse full funding of any of the accrued liabilities, but simply extends the period over which such liabilities would be funded.

As this is not a defined benefit plan, service earned after adoption would not be subject to the PBGC guarantee, nor would employers be subject to withdrawal liability. As Chairman Roe has indicated, although there have been suggestions that the PBGC insure a portion of this benefit, these are not included in the discussion draft, and we believe that was the correct option. Chairman, may I—maybe for one extra minute.

The question of PBGC and their current deficit is something that we have struggled with as a community for some time. We have examined it, we looked at the administration's proposal, and contrary to their proposal, the structure of their proposal, we believe that it rather than strengthen PBGC, it would do exactly the opposite by driving employers out of the system. It's the view of the reconvened Retirement Security Review Commission that came up with these original proposals that the agency—the entire system for the PBGC should be carefully reexamined and a variety of alternatives examined.

From the types of—the way the premiums are structured, whether they be based on the benefits themselves that are guaranteed or the wage rates of the people covered, whether or not the guaranty itself should be adjusted upward or downward, but lastly, we believe that there is—there are some—there are some alternatives that would mitigate the current projected deficit of the $52 billion, perhaps by half, by examining and changing some of the rules that apply to single employer plans and making them available to the PBGC for multiemployer plans.

With that, I'd close my comments, and I thank you for the opportunity to be here, and welcome your questions.

[The statement of Mr. DeFrehn follows:]

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

815 16TH STREET, N.W., WASHINGTON, DC 20006 • PHONE 202-737-5315 • FAX 202-737-1308

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

September 22, 2016

Discussion Draft to Modernize the Multiemployer Pensions

Testimony of:

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

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

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

I would like to thank the Committee for the opportunity to appear here before you once again on the topic of multiemployer retirement security. It is also an honor to say thank you, on behalf of the more than 10 million participants in multiemployer defined benefit plans, for the continued leadership shown by this Committee and Sub-committee in examining their retirement security needs and spearheading truly comprehensive reform designed to enable our plans to confront the realities of today's markets and providing a roadmap that will perpetuate the system which has worked so well for nearly 70 years.

The discussion draft before you today addresses the third and final segment of the recommendations of the Retirement Security Review Commission (or Commission), a broad based consortium of stakeholders representing more than 40 stakeholder groups including labor unions, employer associations, large plans, large individual employers and advocacy organizations from industries across the multiemployer community. For a period of eighteen months this group met to review the strengths and weaknesses of the multiemployer defined benefit pension system and formulate recommendations designed to weather its current challenges and to facilitate its success in the future. By passing the Multiemployer Pension Reform Act of 2014, you have already addressed the recommendations to make technical corrections to the Pension Protection Act to preserve the financial health of the more than two-thirds of plans which have already, or will soon regain their financial stability following the back-to-back recessions since 2000; and those recommendations designed to preserve plans otherwise headed for insolvency and preserve benefits of participants in such plans above levels they would have otherwise ultimately received under prior law.

Today's focus on the recent Discussion Draft addresses the remaining category of recommendations from the Commission concerning innovative new benefit structures designed to address the shortcomings of both the current defined benefit or defined contribution plans.

Background

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

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

While ERISA provided for the creation of the PBGC to provide a safety net for plans in industries that fail, the multiemployer plan guaranty fund was not implemented until the passage of the Multiemployer Pension Plans Amendment Act of 1980. A second aspect of that legislation was the creation of withdrawal liability – in essence, an exit fee – to be paid by employers who withdraw from plans with unfunded vested benefits. While theoretically a sound idea, industry specific limitations on when this fee is imposed, the 20 year cap on the amount ultimately imposed, amounts excused by bankruptcy courts and departures of small employers that are judgment-proof have resulted in recovery of less than 10% of assessed liabilities and have made withdrawal liability more of a hindrance than a help to the long-term financial health of plans by creating a barrier to entry by new employers that might otherwise join the system and an incentive to existing employers to depart.

When this fee was first imposed, it was forecast by some to be the end of multiemployer plans; however, a combination of conservative benefit payments, an expanding economy and robust investment markets soon made unfunded liabilities a thing of the past for the vast majority of plans. Instead, the focus of attention for most plan sponsors shifted to Treasury's maximum deductible limits which limited the current deductibility of contributions to over funded plans. The remedy to this problem for the vast majority of plans was to increase benefit payments sufficient to raise the cost high enough to preserve the current deductibility of contributions. It is estimated that over seventy percent of plans faced this problem in the late 1980's and 19990's. While effective for addressing the immediate problem these actions also increased recurring plan liabilities prior to the inevitable market corrections and re-emergence of unfunded liabilities that followed soon after the turn of the century.

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

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

For still other employers, however, these recent past developments have left them feeling that the current structure continues to present an unacceptable risk of recurrence, causing them to seek other forms of pension coverage for their employees. For these employers, the only alternative currently available is a defined contribution plan based on an individual account – primarily, the 401(k). As a primary form of retirement security vs. a wealth accumulation process, however, for average workers defined contribution plans present certain recognized inefficiencies which may result in lower benefit payments during the decumulation phase, many of which are vexing even to those who specialize in retirement policy matters, including assuming the responsibility for making correct investment choices, paying the lowest possible fees and in estimating (our own) life expectancy.

To the Commission this resulted in yet another challenge: how to find an alternative plan design for the future that would reduce or eliminate the risks of unfunded liabilities for those employers, yet addresses the shortcomings of the current defined contribution system so that workers can continue to receive a regular monthly retirement income and maximize the utility of employer contributions without requiring each participant to take on responsibilities of actuary and investment manager for which they are ill equipped. The result of their analysis was a recommendation to encourage the development and approval of an American version of innovative, "shared risk" plan designs which have become more prevalent in other parts of the Western world. The Commission offered two different models - the variable defined benefit and the composite (or target plan as it was described in the Commission's report) as illustrative rather than finite solutions for the future. Having determined that no statutory changes were required for the variable defined benefit model which has already been adopted and, in at least one situation received a tax qualification letter from Treasury, the current proposal is focused on the composite model.

The composite plan is neither a defined benefit, nor a defined contribution plan under the current statutory structures, as the variable nature of the benefit is neither definitely determinable, nor is it based on an individual account, rather it is intended to bring together the best features of each. When the bargaining parties voluntarily determine such a structure is preferable for a specific population, it would be made available to jointly managed, multiemployer plans as a successor plan to their current defined benefit plan. The model includes very clear conditions for the parties to pay off the liabilities of the "legacy" defined benefit plan as the first priority for contributions. The discussion draft, which is several generations from the original proposal included when MPRA was first introduced, has benefited from the opportunity to more closely examine and stress test various proposals contained in this legislation. It has also been strengthened by a thorough review of concerns expressed by others; some of whom had participated in the proposal's original draft, and by some expressed by the Administration. As the overall objective was to create innovative plan designs, the input by these others has been welcome and beneficial to the overall end product. Such suggestions include proposals to limit plans that can elect to become composite plans by placing a statutory prohibition on critical status plans or those which can elect critical status. It also strengthens the funding of the legacy plans by requiring that contributions to fund future accruals be subject to a higher funding standard than are required for the current defined benefit plans. The discussion draft now requires contributions at the greater of the plans' required funding levels under the Pension Protection Act, or the Transition Minimum Contribution. It also strengthens legacy plan funding by reducing the amortization period for existing liabilities over 25 years rather than 30. At that level, plans which are permitted to adopt composite components will still be able to offer benefit accruals at levels sufficient to retain the support of active workers; many of whom are paying multiples of the contribution rates paid by recent retirees for a fraction of the benefit. Other changes to improve the discussion draft include elimination of trustee discretion in determining the amount of the contribution payable to the legacy and composite plans and requiring new employers who contribute to the plan to also contribute to the legacy plan which will pay off these liabilities faster.

If the parties so desire, the benefit plan design could mirror the current plan design for the defined benefit plan. It could also continue many of the more favorable features of defined benefit plans. From the participants' perspective, this new structure will provide higher monthly benefits than would be derived from simply purchasing an annuity from his or her account balance in a defined contribution account. This can be accomplished in several ways including through the pooling of longevity risk, and by limiting other features that result in plan leakage and ultimately lower retirement income such as loans, hardship distributions, distributions before retirement and lump-sum distributions, as benefits would be required to be paid as annuities.

This new structure is clearly not a defined benefit plan, however, as benefits are variable based on the market value of assets (as currently happens with defined contribution plans). The amount one would receive would be adjusted on an annual basis determined using a fifteen year projection at the plan's assumed rate of return to mitigate the frequency and impact of market fluctuations.

Contributions to both plans would be determined by the plan's actuary. As the market risk for future service rests with the participant, however, the minimum contribution requirement to fund the cost of future accruals would be set at 120% of the actuarial projected costs to provide a buffer against market volatility. For plans that are making a complete conversion to the new model, a "fresh-start" may be elected which would allow the plan to amortize existing liabilities over a 25 year period. Stress testing of this approach shows that in almost all cases, this would be sufficient to retain the current benefit accrual rate under the defined benefit plan as the target accrual, funded at the 120% level without increasing contributions. Such a fresh-start does not excuse full funding of any of the accrued liabilities, but simply extends the period over which such liabilities would be funded.

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

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

In the event of a catastrophic market event, and all other reasonable measures as described above are exhausted, all benefits, including core benefits in pay status could be adjusted in order to restore required funding.

As it is not a defined benefit plan, service earned after adoption would not be subject to PBGC guaranty, nor would employers be subject to withdrawal liability. Both of these features would remain in place, however, for remaining obligations under the legacy plan. While some have suggested that a portion of the benefit be guaranteed as a means of extending the payment of PBGC premiums on employees with no prior service in the legacy plan, that suggestion was not included in this draft as the intent of the composite plan is not to replicate the current defined benefit system – a point which has been made several times in this document. However, the suggestion raises a concern that has been touched upon by the Committee in the past and is referenced in the Questions and Answers published in conjunction with the release of the Discussion Draft.

That concern is over the current deficit of the PBGC. While the magnitude of this deficit has grown exponentially over the past few years, the assets available to meet the Agency's obligations have remained relatively constant. Although the proposals put forth by the Administration to eliminate the deficit may provide a solution to the mathematical problem, the structure put forth – of including a variable component and assessing an exit fee on employers leaving the system –demonstrates an astonishing lack of understanding of the collective bargaining process upon which multiemployer plans are found and the delicate balance of the needs of the stakeholders. Implementation of this proposal will produce the opposite result, by driving employers from the system and weakening the funding of plans thereby putting the Agency at greater risk and threatening the future of even the well-funded plans. Shortly after the Administration made it's proposal, the NCCMP reconvened the Retirement Security Review Commission for the limited purpose of examining the PBGC's precarious situation and looking at alternatives to the current safety net structure upon which it is based. At the end of their deliberations, the Commission concluded that the magnitude of the proposed premium increase is unachievable through the current (or proposed structure) and that there is a need for a full review of the fundamental premise of the guaranty program itself, how it is structured; should the benefit be restructured as a function of the benefits being paid or of the wages in the industries covered, noting that in some of the low wage industries the proposed premiums would surpass the annual contributions being made to the plan. The analogy was made to having a mandate to purchase home owners insurance, only to learn that the annual premiums equal or surpass the value of the home being insured.

It discussed whether there are alternatives that exist that could significantly reduce the exposure of the community at large to the failure of one mega-plan or of a specific industry. Among the options discussed were industry or union based risk pools, or mandating that the PBGC be charged with the responsibility to intercede and step in to take over a fund, just as it currently does in the single employer fund, at such time as a plan which meets the criteria to apply for MPRA relief, has such relief denied by the Department of the Treasury. Such intervention would be immediate following the Treasury's denial and a finding by the fund that it is unable to craft an alternative that meets Treasury's demands for a restructured rescue plan. As in the single employer situation PBGC would immediately reduce benefits to the level sustainable by the plan assets to allow maximum payment of the fund's own obligations by its own accumulated assets before coverage under the guaranty fund would be provided.

There are other similar alternatives that could be implemented and, rather than having the Congress enact massive premium increases under an admittedly short legislative calendar, the Commission has recommended that a study be commissioned by the Congress to conduct a thorough evaluation of these and others that may be suggested, so that those who are truly dependent on the safety net can receive the help needed when all other avenues have been precluded.

Conclusion:

In the past few years much as been made of the need to improve the retirement security of workers. This body has taken bold action to preserve the long-term solvency of multiemployer plans in last year's passage of MPRA. Yet there remains one last aspect reform to be enacted.

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

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

Respectfully submitted,

Randy G. DeFrehn

Randy G. DeFrehn
Executive Director

Chairman ROE. Thanks very much.

Mr. Terven, you're recognized for five minutes.

TESTIMONY OF RICK TERVEN, EXECUTIVE VICE PRESIDENT, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING NDA PIPE FITTING INDUSTRY, ANNAPOLIS, MARYLAND

Mr. TERVEN. Thank you, Chairman.

Chairman Roe, Ranking Member Polis, and members of the committee, it is an honor to appear before you today. My name is Rick Terven, and I am the executive vice-president of the United Association of Plumbers and Pipefitters.

The UA strongly supports composite plans as proposed in the discussion draft. We view composite plans not as an alternative to defined benefit plans, but as an alternative to the inadequate defined contribution plans that we see sometimes replacing existing defined benefit plans. The UA also believes that the provisions of the discussion draft that support the funding of the legacy defined benefit plans will preserve some of these plans that may otherwise fail due to an eroding contribution base.

Multiemployer defined benefit plans exist in industries characterized by frequent short-term employment. Our defined benefit plans have enabled skilled workers to earn a pension that provides lifetime income. These plans have provided essential safeguards for the financial security of construction workers, and have been the primary form of retirement benefit in the construction industry.

While defined contribution plans have replaced defined benefit plans in many industries, in construction, defined contribution plans generally remain supplemental to defined benefit plans. Many multiemployer defined benefit plans suffered significant investment losses in economic downturns in the last decade and suffered further losses from reduced contribution strains, because work on which employer contributions were required remained depressed for years following the 2008 crash.

Employer bankruptcies, in which obligations to plans have been discharged, have further attacked the funding of defined benefit plans. Some plans that were once solidly funded found themselves in critical or endangered status under the Pension Protection Act. Unions and employers have worked together to stabilize these plans, but even the plans that are recovering financially are not as secure as they once were.

In 2010, the Financial Accounting Standards Board proposed changes in corporate financial statements that have required an employer to make disclosures about potential withdrawal liability. Although disclosures were ultimately limited, the publicity surrounding this proposal made lending institutions aware that employers potentially faced withdrawal liability. As a result, employers have advised they now find it very difficult to obtain credit even if they have no intention of withdrawing from a multiemployer defined benefit plan. Employers cannot operate without access to credit. And threatened with losing their companies, employers have used various methods to leave plans. Employers will negotiate and pay withdrawal liability once their plan becomes relatively well funded rather than face the continued uncertainty.

Even if they make their required contribution, forces beyond their control could result in substantial withdrawal liability.

New employers are advised they—have advised they will not enter a defined benefit plan for fear of this withdrawal liability. As employers leave a multiemployer defined benefit plan and no new employers replace them, the contribution base for the plan is severely undermined. Employers and employees see little advantage to continuing in this plan. The UA believes that it is essential to the retirement security of our members to offer plans that provide lifetime income. In our experience, this security cannot be achieved through current defined contribution plans. The intermittent nature of our work, the access to retirement funds and defined contribution plans, self-directed investments, and the immediate impact of market changes all limit the growth of account balances.

The proposed reforms in the discussion draft issued by Chairman Kline offer this new composite plan design that we feel will preserve the lifetime income feature of the defined benefit plan but will not drive contributing employers out of the system because of the very threat of withdrawal liability. Eroding an employer's support is significantly harming defined benefit plans and is certainly one of the reasons for plan insolvency. And as long as the threat of withdrawal liability exists, the pull of employers contributing to multiemployer defined benefit plans will not increase sufficiently to support the system. There will be a growing trend toward defined contribution plans, which typically cannot ensure that desired income security to workers in the mobile industries that rely on multiemployer plans.

It is our goal to help formulate creative and realistic solutions to the challenges facing our multiemployer defined benefit plans that balance the interests of all the plan's stakeholders, and we believe the composite plan proposed by Chairman Kline is a critical piece of such a solution for reasons that include the following: we believe the composite plan proposed by Chairman Kline—exhibit me. Chairman Kline's plan, composite plan will provide lifetime retirement income based on pool longevity, similar to defined benefit plans. In contrast, workers who must solely rely on defined contribution plans face the real possibility of outliving their retirement savings or losing their savings through poor investment decisions. Composite plans are not intended to replace—

Mr. Chairman, could I get an extra minute to finish this?

Chairman ROE. Sure.

Mr. TERVEN. Thank you.

Composite plans are not intended to replace defined benefit plans, but are intended to be an alternative to the 401(k) defined contribution plan that are increasingly proposed when an employer refuses to participate in a defined benefit plan.

Composite plans have features of both defined benefit and defined contribution plans. Composite plans provide for the accumulation of benefits and a lifetime benefit in a manner similar to defined benefit plans. In times of economic distress, composite plans benefits may be reduced like a defined contribution plan, but the reduction is not immediate and the advanced funding provisions are sufficient to protect participants.

Furthermore, our Canadian members have plans subject to similar provisions, and those plans have run very well over the years, providing lifetime benefits to our Canadian members. The proposal includes provisions to protect and support the continued funding of the legacy defined benefit plan, and this serves to protect the current provisions benefits by participants and retirees. These composite plans do not threaten the future of the funding of the PBGC, and by preserving the funding of legacy defined benefit plans by employers that would otherwise leave those plans, the composite plan proposal helps to ensure that those legacy plans will continue as long-term premium payers.

The composite plan discussion provides an additional option to secure lifetime retirement income and our employees where support for defined benefit plans continue to erode. If composite plans are not made available, we believe that many existing defined benefit plans will eventually be replaced with defined contribution plans or no plan. The opportunity for creative solutions to our retirement income challenge is within our grasp. We strongly encourage Congress to expand available plan offerings to enable labor and management to find solutions which best meet their specific needs.

I once again thank you for your work to improve the retirement security for our members and for the rest of the 10.4 million participants in multiemployer plans. Thank you, sir.

[The statement of Mr. Terven follows:]

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

"Discussion Draft to Modernize Multiemployer Pensions"

Thursday, September 22, at 9:30 a.m.
Rayburn House Office Building, Room 2175
Washington, DC.

Chairman Roe, Ranking Member Polis and Members of the Committee, it is an honor to appear before you today on this important topic affecting millions of working men and women. My name is Rick Terven. I am the Executive Vice President of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada and a member of UA Local 99, Bloomington, Illinois. The United Association and its affiliated local unions co-sponsor with their collective bargaining partners more than 150 multiemployer defined benefit pension plans and many defined contribution plans. The United Association welcomes the opportunity to present testimony to this Subcommittee in support of the Discussion Draft to Modernize Multiemployer Pensions. The discussion draft, if enacted, would make a composite plan option available to Boards of Trustees and collective bargaining parties to continue to provide lifetime retirement income to the employees in multiemployer plans.

The United Association views composite plans not as an alternative to defined benefit plans. In our view, defined benefit plans provide the most secure lifetime retirement benefit to our members. But, as I will discuss, our defined benefit plans are threatened and it is becoming increasingly difficult to retain employers in those plans and to attract new employers. The United Association views the composite plan option as an alternative to the inadequate defined contribution plans that would otherwise replace existing defined benefit plans. The United Association also applauds the provisions of the discussion draft that supports the funding of the "legacy" defined benefit plan. We believe this is an important provision and will preserve some defined benefit plans that might otherwise have failed due to an eroding contribution base.

Multiemployer plans exist in industries such as construction, trucking and entertainment characterized by frequent short term employment. Multiemployer defined benefit plans have enabled skilled workers to earn a pension that provides lifetime income. These plans have provided essential safeguards for the financial security of construction workers and have been the primary form of retirement benefit in the construction industry. While defined contribution plans have replaced defined benefit plans in many industries, in construction they generally remain supplemental to defined benefit plans.

Many multiemployer defined benefit plans suffered significant investment losses in economic downturns in the last decade. Defined benefit plans in many industries suffered further losses from reduced contribution streams because work on which employer contributions were required remained depressed for years following the 2008 crash. Employer bankruptcies in which obligations to Plans have been discharged have further attacked the funding of defined benefit plans. Some plans that were once solidly-funded found themselves in critical or endangered status under the Pension Protection Act. In most cases, unions and employers have worked together to stabilize these plans but even the plans that are recovering financially are not as secure as they once were due to changes that threaten the continued existence of multiemployer defined benefit plans and the financial security of covered employees.

In 2010 the Financial Accounting Standards Board proposed changes in corporate financial statements that would have required an employer to make complicated disclosures about potential withdrawal liability if it withdrew from a multiemployer plan. Although this proposal was ultimately modified to limit disclosures, the publicity surrounding this proposal made lending institutions aware that employers' potentially face withdrawal liability. As a result, employers have advised that they now find it difficult to obtain credit even if they have no intention of withdrawing from a multiemployer defined benefit plan.

Employers cannot operate without access to credit and threatened with losing their companies, employers have used various methods to leave plans. Employers will negotiate and pay withdrawal liability once a plan becomes relatively well funded rather than face the continued uncertainty that even if they make their required contributions, forces beyond their control could cause such liabilities to re-emerge. More importantly, new employers will not enter a defined benefit plan for fear of withdrawal liability. As employers leave a multiemployer defined benefit plan and no new employers replace them, the contribution base of the plan is severely undermined. Employers and employees may see little advantage to continuing the plan.

The United Association believes that it is essential to the retirement security of our members to offer a plan that will provide life time income. It has been our experience that for most of our members this security cannot be achieved through current defined contribution plans. The intermittent nature of the work, the access to retirement funds typical of defined contribution plans, self-directed investments and the immediate impact of market changes tend to limit the growth of account balances.

The proposed reforms in the discussion draft issued by Chairman Kline offer a new "composite" plan design that will preserve the life time income feature of a defined benefit plan but will not drive contributing employers out of the system because of the threat of withdrawal liability. The eroding employer support is causing significant harm to traditional defined benefit plans and is certainly one of the reasons for plan insolvency. As long as the threat of withdrawal liability exists, the pool of employers contributing to multiemployer defined benefit plans will not increase sufficiently to support the system. There will be a growing trend toward defined contribution plans which typically cannot ensure the desired income security to workers in the mobile industries that rely on multiemployer plans. It has been our goal to help to formulate creative and realistic solutions to the challenges facing our multiemployer defined benefit plans that balance the interests of all of the plans' stakeholders. We believe the composite plan proposed by Chairman Kline is a critical piece of such a solution for reasons that include the following:

- Composite plans provide life time retirement income based on pooled longevity similar to defined benefit plans. In contrast, workers who must solely rely on defined contribution retirement vehicles face the real possibility of outliving their retirement savings or losing their savings through poor investment decisions.
- Composite plans are not intended to replace defined benefit plans but are intended to be an alternative to the 401(k)/defined contribution plans that are increasingly proposed when an employer refuses to participate in a defined benefit plan.

- Composite plans have features of both defined benefit and defined contribution plans. These plans provide for the accumulation of benefits and provide a life time benefit in a manner similar to traditional defined benefit plans. In times of economic distress, benefits may be reduced like a defined contribution plan but the reduction is not immediate and the advance funding provisions are sufficient to protect participants. Furthermore, our Canadian members have plans subject to similar provisions and those plans have run very well over the years providing life time benefits to our Canadian members.

- The proposal includes provisions to protect and support the continued funding of the legacy defined benefit plans. This serves to protect the current pension benefits earned by retirees.

- Composite plans do not threaten the future funding of PBGC and by preserving the funding of legacy defined benefit plans by employers that would otherwise leave those plans, the composite plan proposal helps to ensure that those legacy plans will continue as long term premium payers.

The composite plan discussion provides an additional option to secure life time retirement income for our employees where support for traditional defined benefit plans continues to erode. If composite plans are not made available, we believe that many existing defined benefit plans will eventually be replaced with defined contribution plans. The opportunity for creative solutions to our retirement income challenges is within our grasp. We strongly encourage Congress to take advantage of it and expand available offerings to enable labor and management to find solutions which best meet their specific needs.

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

Respectfully submitted,

Rick Terven
Executive Vice President

Chairman ROE. Thank you, Mr. Terven.

Mr. Certner, you're recognized for five minutes.

TESTIMONY OF DAVID CERTNER, LEGISLATIVE COUNSEL AND LEGISLATIVE POLICY DIRECTOR, AARP GOVERNMENT AFFAIRS, WASHINGTON, D.C.

Mr. CERTNER. Thank you, Mr. Chairman. My name is David Certner, and I am legislative counsel and policy director for AARP. And on behalf of our 38 million members, we thank you and Chairman Polis for the opportunity to testify today.

The multiemployer pension system, covering about 10 million workers and retirees, faces a number of complex challenges, and we appreciate the efforts of many to address these issues.

AARP is particularly concerned with protecting those in or near retirement. We therefore urge that any legislation focus first and foremost on protecting the earned pensions that millions of retirees and near retirees count on for their retirement security. In addition, any legislation should address the funding problems faced by both the plans and the PBGC. And, finally, while AARP is open to new plan designs, any new plan should be part of a comprehensive solution that ensures existing promises are kept and new ones are fair and adequate.

The multiemployer system has been important to our nation's pension framework. However, withdrawals and dramatic decreases in plan funding have escalated the threats to pensions and the retirees who rely on them. Of the over 1,300 old employer pension plans, nearly 500 are in critical to endangered funded status.

We need the following steps. First, we need to adequately fund the promises that already have been made. We need to make sure that those who worked hard and played by the rules can count on getting the benefits they have earned. In short, we should not reduce funding for existing underfunded pension plans, including in order to fund contributions for the newly proposed composite plan. If you can't fully fund one plan today, surely it will be more difficult to fund two plans tomorrow; therefore, we urge the adoption of any new plan design, including composite plans, not reduce the ability of existing plans to fully meet their current funding obligations. Reducing plan funding for a current endangered plan to fund a second plan simply puts at risk the benefits earned under both plans.

Before acting, we urge the committee to address the following two key questions: are funding and transition payments adequate to ensure earned benefits in legacy plans can be fully paid; and two, can entities struggling to fund one plan adequately fund two plans?

Second, we should help the plans that can be helped. A few dozen unions that sponsor most of the 1,300 multiemployer plans, the PBGC should have broader authority to advise plans and help them merge as appropriate to reduce administrative expenses and improve investment opportunities.

Third, we need to strengthen the PBGC safety net. The PBGC is projected to run out of funds by 2025, and Congress must take steps to ensure its financial viability. Regrettably, PBGC premiums, now at $27, remained too low for too long, as low as $2.60

as recently as 2005, and they must be significantly increased. The CBO estimates that a premium of at least $127 a year is needed to pay guarantied benefits. AARP would support creative approaches, such as tax credits or even a partial assessment against monthly retiree pensions to alleviate some of the burden of the large needed premium increases.

Also, the premium—the multiemployer pension guaranty remains low, only a maximum of $12,870 a year, a mere fraction of that available in a single employer system, and that's for a retiree with 30 years of service, and that premium guaranty—that pension guaranty should be increased.

Fourth, any new plan design should be fair and affordable. We are open to new pension models. However, Congress must ensure that any new system is fair and includes protections against the creation of minimally regulated plans with less certainty and adequacy that put all benefits at risk.

Congress must ensure that participants in composite plans are covered by the fundamental protections included in current law. Notably, we urge the committee to add a specific requirement for annual statements that explains to participants their plan contributions, their accrued benefit, the plan funding status, and how accrued benefits may be reduced if plan assets fall below a certain level.

The discussion draft should also clarify the vesting and benefit accrual rules for participants. If the composite plan becomes underfunded, the draft allows benefits to be cut, but it's not clear how such cuts would be implemented, the trustees seem to have wide discretion in how retirees and older workers would be protected against large benefit cuts.

Congress should also permit retirees to choose their own representative and also add specific protections against conflicts of interest, particularly conflicts between the legacy plan and new composite plan, and there should be adequate government oversight.

Finally, creation of a composite plan should not be an excuse to reduce funding for legacy plans. Plans that are already underfunded should not be put at further risk. Also, plan trustees should not be given the significant discretion to reduce benefits in composite plans. That's contrary to the protections that are in place generally for accrued pension benefits under all other pension laws.

In conclusion, the multiemployer system does present a complex and challenging environment, and we urge the committee to continue these open discussions on the best way to improve the system, including stabilizing the PBGC. We are happy to be part of any fair process to find a balanced solution, keeping in mind that we need to protect retired workers and their families.

And the retirement security of 10 million workers and retirees generally are at stake, and we owe it them to have a fair, open, and thoughtful process to adjust to these challenges. Thank you.

[The statement of Mr. Certner follows:]

AARP
Real Possibilities

STATEMENT FOR THE RECORD

SUBMITTED TO THE

U.S. HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS

"Discussion Draft to Modernize Multiemployer Pensions"

September 22, 2016

AARP
601 E Street, N.W.
WASHINGTON, D. C. 20049

Submitted By

David Certner

Legislative Counsel and Legislative Policy Director

AARP

For further information, contact:
Michele Varnhagen
(202) 434-3829
Government Affairs

On behalf of our 38 million members, and all Americans age 50 and over, AARP thanks Subcommittee Chairman Roe, Ranking Member Polis and members of the Education and Workforce Subcommittee on Health, Employment, Labor and Pensions for the opportunity to testify today on Chairman Kline's discussion draft for legislation to modernize multiemployer pensions. AARP has members in all 50 States and the District of Columbia, Puerto Rico, and U.S. Virgin Islands, and is a nonpartisan, nonprofit, nationwide organization that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

Background

The multiemployer pension system – which covers about ten million workers and retirees -- faces a number of important and complex challenges. We appreciate the efforts of many, on both sides of the aisle, to address these challenges. AARP is particularly concerned with protecting the earned and promised benefits of those in or near retirement. We therefore urge that any reported legislation affecting multiemployer pension plans focus first and foremost on protecting the earned pensions that millions of retirees and near-retirees count on for their retirement security. In addition, any legislation should address the funding problems faced by both the plans and the Pension Benefit Guaranty Corporation (PBGC). Finally, while AARP is open to consideration of new types of retirement plans, such as "composite" plans at issue today, any new plan design should be part of a comprehensive multiemployer system solution that ensures existing promises are kept and new ones are fair and adequate.

The multiemployer pension system – in which unions and employers join together to provide employee benefits to workers and their families – has been an important component of our nation's retirement income framework. When the economy is growing, plans can more easily meet their funding obligations, and ultimately their pension promises. However, as we are now seeing, declining funding creates the opposite effect. Employer withdrawals from the pension system and dramatic decreases in plan funding escalate the threats to pensions and the retirees who rely on them. Recent experience tells us that under such pressures, not everyone may be treated fairly or equally. In particular, it is important to note that under labor law, unions do not represent retirees -- when there is not enough money to provide benefits to all, unions by law represent active workers.

Several changes over recent decades have put increased financial stress on both single and multiemployer plans. For multiemployer plans, fewer contributing employers, fewer new covered workers, the financial crisis and volatile investment markets all played a role in diminishing pension funding. According to the PBGC, of the almost 1300 multiemployer pension plans, 328 are in what is called "critical" funded status (generally less than 60% funded). Another 168 are in "endangered" or "seriously endangered" status (generally less than 80% funded). According to the Congressional Budget Office (CBO), one million workers and retirees are at risk of not receiving full earned benefits as of today -- in a worst case scenario, all ten million workers and retirees would lose benefits.

Needed Steps

First, we need to adequately fund the promises that already have been made. We need to make sure that those who worked hard and played by the rules can count on getting the benefits they have earned. Older workers and retirees worked for decades and did everything they were asked to do. They worked overtime and helped grow their companies. It is unconscionable to tell them now that they are older, unable to work and possibly in poor health, that they will be forced into poverty or a vastly reduced standard of living. Regardless of the type of plan for active workers, the funding rules must remain adequate to fully fund existing plans for retirees and near-retirees. In short, we should not reduce funding for existing underfunded pension plans, including in order to fund contributions to start the newly proposed "composite plan." If you cannot fully fund one plan today, surely it will be more difficult to fund two plans tomorrow. Therefore, we urge that adoption of any new plan design, including composite plans, not reduce the ability of existing plans to fully meet their current funding obligations. We appreciate that the discussion draft already recognizes this principle, in part, by prohibiting critical status plans from operating a composite plan. However, this principle is not confined to critical status plans. AARP believes that additional protections are needed to prohibit other plans, especially endangered status plans, from contributing to a composite plan if it could risk their existing legacy plan contribution or cause its funding level to fall. While limiting composite plans to those plans that are better funded may serve the purpose of encouraging employers to improve funding in their existing plan if they are interested in a new plan design, this may also give rise to a downward spiral of defined benefit plans more generally.

AARP believes that provisions in the discussion draft that permit existing plans to divert current plan contributions to a composite plan will likely lead to harmful outcomes for those left behind in the legacy plans. If a plan is not in endangered status and has fully met its annual funding contribution, then funding becomes less of a concern. However, limiting composite plans to well-funded plans does little to address the funding challenges that many underfunded plans currently face. Reducing plan funding for a current endangered plan to fund a second plan puts at risk the benefits earned under the current plan. This is particularly true given recent experience with changes adopted under the Multiemployer Pension Reform Act (MPRA), under which plans are seeking to cut retirees' pensions due to inadequate plan funding.

The discussion draft includes provisions which not only reduce contributions by lengthening the funding period for legacy plans from 15 to 25 years, but also appear to limit legacy plan contributions by requiring that 25% of contributions go to the composite plan. We strongly believe the underfunded legacy plans should not be placed on a reduced funding course. We do not support a policy that would permit current underfunded plans to reduce their contributions in order to fund another plan. We urge the Committee to modify the draft to ensure that any legislation provides adequate funding for legacy plans. Specifically, we urge the Committee to address the following two key questions: 1) Are funding and transition payments adequate to ensure earned benefits in legacy plans can be fully paid, and 2) Can an entity struggling to fund one plan adequately fund two plans.

Second, we should help the plans that can be helped. There are a few dozen unions sponsoring most of the 1300 multiemployer plans. The PBGC should have broad authority to advise plans and help them merge as appropriate. Mergers will reduce administrative expenses and improve investment opportunities that are afforded to larger investment pools. The Labor Department should be empowered to assist in assuring adequate participant fiduciary protections in any merged plan. In addition, CBO estimates that with additional funding, PBGC could partition plans that bear liability for employers no longer in business, which would enable the remaining plans to pay the pensions earned by their own employees.

Third, we should strengthen the PBGC safety net. The PBGC is projected to run out of funds to pay almost all insured multiemployer benefits after 8 years (2025) and it currently faces a shortfall of $34 billion from 2017-2036. Congress must take steps to ensure the financial viability of the PBGC and protect the ten million workers and retirees who have earned a guaranteed pension. Regrettably, PBGC premiums – now $27 -- remained too low for too long (as low as $2.60 as recently as 2005), under the theory that these plans were not at risk. Premiums now must be significantly increased. The CBO estimates that a premium of at least $127 a year is needed to pay guaranteed benefits, and PBGC itself estimates that an average maximum of $156 is needed to cover 10 years, or $208 for 20 years (to achieve an almost zero percent chance of PBGC insolvency). While the reports outline the need for a large increase, significant steps are needed to insure a lifetime pension. PBGC premiums currently are paid wholly by the plan, but AARP would support creative approaches, such as tax credits, or a partial direct assessment against monthly retiree pensions, to help alleviate some of the burden on plans of a large premium increase. In addition, AARP would be open to a variable or graduated premium that would, for example, assess a lower premium for lower wage workers, or be based on a plan's funded status.

It is important to remember that the PBGC multiemployer pension guarantee remains low. PBGC only pays a maximum of $12,870 a year for a retiree with 30 years of service, an amount that is further reduced for retirees with lesser years of service. This maximum guarantee is a small fraction of the single employer plan guarantee of $60,136 (which also is indexed annually). Along with a premium increase, AARP strongly urges a reasonable increase in the maximum pension guarantee. At a minimum, the guarantee should be indexed to inflation.

Fourth, any new plan design should be fair and affordable. Many of the participating employers are indicating that they want to reduce their risk and move to a less costly system. We are open to the efforts of the parties to develop new pension models. However, Congress must ensure that any new system is fair and protective of workers and retirees. In addition, Congress should ensure that we do not create minimally regulated plans with less certainty and adequacy that not only put benefits at risk, but also risk turning well-run healthy plans into inadequate pension models.

<u>Pension Protections for New Plans</u>

Congress, in crafting the underlying regulatory laws in the Employee Retirement Income Security Act of 1974 (ERISA) and Multiemployer Pension Plan Act of 1980 (MEPPA), took pains to ensure that benefit promises would be as secure as possible. Both took many years to get right and both have worked well for long periods.

ERISA and MEPPA have 5 key parts –

1. Periodic Disclosure of Information to Participants and Department of Labor;
2. Minimum Vesting and Benefit Accrual rules for employees;
3. Adequate Funding Requirements;
4. Fiduciary duty over plan monies and operations; and
5. Government and judicial oversight.

Congress must ensure that participants in composite plans are also covered by the fundamental protections included in both statutes.

Periodic Disclosure -- The discussion draft does not specify what types of benefit statements workers and retirees will receive. The draft provides DOL discretionary authority to adopt standards. AARP urges the Committee to add a specific requirement for annual or quarterly statements explaining to participants their plan contributions, accrued benefit, plan funded status and an explanation how accrued benefits may be reduced if plan assets fall below a certain level. The draft permits plans to provide all notices electronically, but surveys show workers prefer paper notices. Workers should automatically receive paper notices but be provided a choice of how they want to receive information.

Vesting and Accrual of Benefits -- The discussion draft also is not clear on the vesting and benefit accrual rules for participants. The draft specifically provides that current workers will be credited for prior service, but is silent on the rules for new participants -- these rules should be specified. In addition, the draft simply provides that the composite plan will provide for the payment of benefits "objectively calculated pursuant to a formula". This standard is much too vague. Are benefits determined by years of service or salary (or a combination of both)? How do contributions and investment return affect benefits? Also, if the composite plan becomes underfunded, the draft allows benefits, including core benefits, to be cut -- but it is not clear how such cuts would be implemented, and whether trustees could determine that retirees and older workers could bear the greatest burden of cuts.

Fiduciary Protection -- The discussion draft permits the existing and composite plan to be maintained by the same or different trustees, with a requirement of one retiree trustee on a composite plan. Congress should consider whether to require separate plan trustees, and should permit retirees to choose their representative, not the plan. Congress should also add specific protections against conflicts of interest, particularly to address conflicts between the legacy plan and new composite plan. Congress should consider how to resolve conflicts between active workers, deferred vested and retirees and how to ensure adequate government oversight.

Plan Funding -- Creation of a composite plan should not be an excuse to reduce funding for legacy plans. Plans that are already underfunded should not be put at further risk, and extending funding timelines will by definition reduce plan funding. In addition, market volatility will increase funding strains on both legacy and composite plans, leading to a greater risk of benefit cuts in both. In particular, it appears that plan trustees are given significant discretion to reduce benefits in new composite plans, contrary to protections generally in place for accrued benefits in all other pension plan laws. Plans that seek to cut benefits do not even have to meet the limited requirements in MPRA of pending insolvency and need to obtain government approval.

Finally, the draft permits employers to terminate withdrawal liability when the legacy plan is 100% funded over several years. To better protect legacy plans, Congress should consider some failsafe protections, such as re-insurance, to ensure that future investment shortfalls do not result in future plan underfunding and retiree cuts. This is particularly true since, over time, withdrawal liability attached to the smaller legacy plans will be substantially reduced, further encouraging withdrawals and exacerbating the problem of a shrinking PBGC premium base.

Conclusion

The multiemployer pension system currently includes both well-funded plans and significant numbers of underfunded plans – the end result is a complex and challenging environment. We urge the Committee to continue open discussions on best ways to improve the system, including stabilizing the PBGC. We understand that in order to stabilize the system, everyone may be asked to share in any sacrifice.

We are happy to be part of any fair process to find a balanced solution. Participants -- especially those in or near retirement with few other options -- must be best protected, while ensuring that employer costs are reasonable. Congress must balance the differing needs of all groups: active and retired workers, plans, the PBGC and employers, including those who are no longer in business.

We appreciate the Committee's efforts to post and discuss the legislation publicly. The retirement security of ten million workers and retirees is at stake, and we owe it to them to have a fair, open and thoughtful process to address the looming challenges.

Chairman ROE. Thank you, Mr. Certner.

Mr. Green, you're recognized for five minutes.

TESTIMONY OF JEFF GREEN, PRINCIPAL, HARRIS DAVIS REBER L.L.C., BELLEVUE, NEBRASKA

Mr. GREEN. Chairman, committee members and staff, I appreciate the opportunity to provide an owner's perspective of the current state of multiemployer defined benefit plans and the need to provide plan trustees with additional options. My name is Jeff Green, and I am and have been a part owner of several construction companies employing building trade union members. I'm a management trustee on several multiemployer plan funds and have a strong personal interest in the continued viability of organized retirement benefits for our employees and union members.

The 2014 Multiemployer Pension Reform Act and the proposed ERISA changes to incorporate composite plans are welcome tools to assist trustees in providing secure retirement benefits.

Unions provide a reliable pool of safe, experienced, trained, and productive workers to accommodate a contractor's changing construction project demands. Through the pooling of benefits and resources, the unions and employers provide mutually-bargained wages and fringe benefits in line with the value provided by the employees and members. These workers value retirement security delivered through defined benefit and defined contribution plans administered by both labor and management trustees.

ERISA became law in 1974 in order to address significant problems in retirement plan funding, administration, vesting, reporting, and transparency. Subsequent amendments, laws, and regulatory decisions were enacted with the intent to strengthen individual retirement security. In the multiemployer community, a consequence is to shift defined benefit plan financial obligations generated over decades under current employers. Construction employers do not have the financial resources to supplement retirement plans, let alone guarantee a plan's benefits. Requirements that a current employer assume the unfunded liabilities for the entire plan, recognizing a given year, are onerous to contractors. Construction contractors assume risk in everything that they do, but are unwilling to take an unlimited and unknown defined benefit plan risks.

I will provide some examples of the potential financial obligations that participating in a defined benefit plan places upon a contractor. We placed reenforcing steel in a parking garage in a new market in Ohio and paid about $200,000 in construction contributions due to a defined benefit plan over a year-long project. Our project costs came in higher than experienced and we had a negative margin. This happens a lot on projects. We later received a letter from the plan stating that the trustees desired to reorganize the plan and that our share of the plan's unfunded liability would be close to $400,000 paid out over time. This would be an initial $400,000 that the plan expected us to pay should the plan default, based on working on only one job, and a job we lost money on.

In our home market, the plan has assets of over $260 million, and I believe it's very well managed and administered. Recent years of below expected investment returns resulted in the plan actuaries determined that the unfunded vested benefits increased from $14 million to $30 million, a $16 million liability increase. The actuaries recognized the long-term nature of the plan and averaged short term results over many years to provide annual accurate plan representation. Based on the plan's 2 million man-hours worked and the $16 million change in 2015, a local contractor employing 150 individuals would be assessed about $2 million in unfunded vested benefits. This assignment of unfunded benefits in 2015 exceeds the contractor's net profit for that year.

Contractors are required to only note in their public financial statements that they participate in multiemployer retirement plans. There was an effort a few years ago by the Financial Accounting Standards Board, or FASB, for companies to state the unfunded vested benefits allocated to them. This proposal was not adopted. The proposal would be a nightmare to accurately report on and would show that almost all employers participating in multiemployer plans have negative equity. The plan's liabilities exceed the employer's assets.

Financial institutions are critical to our industry for loans and bonding capacity. These institutions rely on the public financial statements to make their business decisions. Most financial institutions would have serious concerns if all defined benefit liabilities were reflected on a contractor's public financial statements.

A key element to the current plan's abilities to address their funding shortfalls is to increase plan contributions, preferably through more hours being contributed to plans. There are practical limits to the hourly retirement contribution rate and the subsidy amount paid by existing members. Growing a plan's participation requires attracting contractors with the capital and ability to take on additional work and employ more members. The laws and regulations intended to protect retirement security had the unintended consequence of discouraging employer growth and participation.

Every retirement plan has unique circumstances and the participating employers have their own market concerns. Legislation that empowers the plan's trustees to utilize all approaches to develop and implement the best solutions are needed. Attracting employers and participants into existing and new multiemployer plans are critical to providing the resources and strength needed for a plan's long-term success.

Thank you.

[The statement of Mr. Green follows:]

Education and Workforce Committee
Testimony of Jeff Green, Principal Harris Davis Rebar
Thursday, September 22, 2016

Chairman, Committee Members and Staff, I appreciate the opportunity to provide an owner's perspective of the current state of multi-employer defined benefit plans and the need to provide plan trustees with additional options. My name is Jeff Green and I am and have been the part owner of several construction companies employing Building Trades Union members. I am a management trustee on several multiemployer plan funds and have a strong, personal interest in the continued viability of organized retirement benefits for our employees and Union members. The 2014 Multiemployer Pension Reform Act and the proposed ERISA changes to incorporate composite plans are welcome tools to assist trustees in providing secure retirement benefits.

Unions provide a reliable pool of safe, experienced, trained and productive workers to accommodate a contractors changing construction project demands. Through the pooling of benefits and resources, the Unions and employers provide mutually bargained wage and fringe benefits in line with the value provided by the employees/members. These workers value retirement security delivered through defined benefit and defined contribution plans administered by Labor and Management trustees.

ERISA became law in 1974 in order to address significant problems in retirement plan funding, administration, vesting, reporting and transparency. Subsequent amendments, laws and regulatory decisions were enacted with the intent to strengthen individual retirement security. In the multiemployer community, a consequence is to shift defined benefit plan financial obligations generated over decades onto current employers. Construction employers do not have the financial resources to supplement retirement plans, let alone guarantee a plan's benefits. Requirements that current employers assume the unfunded liabilities for the entire plan recognized in a given year are onerous to contractors. Construction contractors assume risks in everything that they do, but are unwilling to take on unlimited and unknown defined benefit plan risks.

I will provide examples of the potential financial obligations that participating in a defined benefit plan places upon a contractor. We placed reinforcing steel on a parking garage in a new market in Ohio and paid about $200,000 in contributions to their defined benefit plan over the year-long project. Our project costs came in higher than expected and we had a negative margin. We later received a letter from the plan stating their trustee's desire to reorganize and that our share of the plan's unfunded liability would be close to $400,000, paid over time. This would be an additional $400,000 that the plan expected us to pay should the plan default, based on working on only one job. A job we lost money on.

In our home market, the plan has assets of over $260 million and I believe is very well managed and administered. Recent years of below expected investment returns resulted in the plan actuaries determining that the unfunded vested benefits increased from $14 million to $30 million, a $16 million liability. The actuaries recognize the long-term nature of the plan and average short-term results over many years to provide an accurate plan representation. Based on the plan's two million man-hours worked and the $16 million change in 2015, a local contractor employing 150 individuals would be assessed about $2 million in unfunded vested benefits. This assignment of unfunded benefits for 2015 exceeds the contractor's net income for the year.

Contractors are required only to note in their public financial statements that they participate in multiemployer retirement plans. There was an effort a few years ago by the Financial Accounting Standards Board, or FASB, for companies to state the unfunded vested benefits allocated to them. This proposal was not adopted. The proposal would be a nightmare to accurately report on and would show that almost all employers participating in multi-employer plans to have negative equity; the plan's liabilities exceed the employers' assets. Financial institutions are critical to our industry for loans and bonding capacity. These institutions rely on public financial statements to make their business decisions. Most financial institutions would have serious concerns if all defined benefit plan liabilities were reflected on public financial statements.

A key element to the current plans' abilities to address their funding shortfalls is to increase plan contributions, preferably through more hours being contributed to plans. There are practical limits to the hourly retirement contribution rate and the subsidy amount paid by active members. Growing a plan's participation requires attracting contractors with the capital and ability to take on additional work and employ more members. The laws and regulations intended to protect retirement security have the unintended consequence of discouraging employer growth and participation.

Every retirement plan has unique circumstances and the participating employers have their own market constraints. Legislation that empowers a plan's trustees to utilize all approaches to develop and implement their best solution are needed. Attracting employers and participants into existing and new multi-employer plans are critical to providing the resources and strength needed for the plan's long-term success.

Thank you.

Chairman ROE. Thank you, Mr. Green.

I now recognize the chairman of the full committee, and he is now recognized for five minutes.

Mr. KLINE. Thank you, Mr. Chairman. I thank the witnesses for being with us today. Excellent testimony, as we're trying to solve the problem that some of us have been dealing with for a long time.

And, Mr. DeFrehn, I think back years and some of the people sitting behind you, in the office as we tried, that is Chris, but, you know, we're trying to figure out how we can do something to avoid the collapse and, frankly, the complete destruction of these multiemployer plans.

And Mr. Green just testifying about the impact on employers and how the withdrawal liability in some cases is so high, it's worth more than the entire value of some companies, auto dealerships, for example, and how do we grapple through this.

And so the first thing I want to do is thank you and the members of the coordinating committee for working together so long and so hard and pushing through this, and in your work in helping us get MPRA without the composite plan piece through and put into law. I think we did good work with MPRA. I think it's a shame that the Secretary of the Treasury and his special master made a disastrous decision in not accepting Central State's carefully worked out plan to save that retirement plan. It may haunt them and all of us for years to come. I thought it was a complete irresponsible step.

So now, though, we're still trying to get that piece that alluded us last time and get something that will allow and encourage employers to stay in the system. That's kind of at the core of what we've got here, excellent testimony from you, but if you have a withdrawal liability that is so punitive that it will put you out of business, why would you ever get into this thing. So I very, very much appreciate that work that you've done.

Mr. Certner, can you—I was interested in your testimony about PBGC's looming insolvency. I'd like to ask you to take a minute to talk about why that's so important, and then can you describe in greater detail what it means when AARP says they would support a, quote, partial direct assessment against monthly retiree pensions? I found that to be pretty surprising coming from AARP that you would be assessing a new fee on retirees. Can you just take a minute or so here and talk about that PBGC issue and the assessment on retirees?

Mr. CERTNER. Yes, Mr. Chairman, and thank you. We all know that the PBGC is significantly underfunded and we think that the PBGC insurance premium promise is key to protecting so many of these plans that may be heading into insolvency, and obviously want to make sure that if plans do go under, they will have the promised backing of the Pension Benefit Guaranty Corporation.

So you well know the dire straits that the Pension Benefit Guaranty Corporation is in, and part of that has been a premium that has been much too low over the years and too low now. You know, the premium on the single employer side is scheduled to be $69 a person next year, but the variable rate of premium can go up as much as $500 a person. For the multiemployer system, the premium right now is only at $27, dramatically too low for the system. So we think we need a substantial increase in the premium.

Now, we understand the problems that many have in trying to accommodate a large premium increase and we've heard certainly from several of our colleagues here about the potential impact on some of the employers who may or may not want to be in the system, and so we are happy to explore ways to try to get that premium to a higher and more sufficient level with contributions from not just employers. And so, for example, we think that some of these plans, for example, should be eligible for some tax credits to help for some of the premium payments.

We're also willing to look at having some of the retirees pay essentially an insurance premium on their own benefits. I can tell you, having spent a lot of time and heard from many of the people who are experiencing potential cuts of 20, 30, 40, 50 percent in their benefits, that paying a little bit of the insurance premium on their amounts that can potentially go and help insure their benefits is a small price to pay to avoid benefit cuts of 50 percent.

So we're willing to look at that as part of a larger package to try to get those premium amounts essentially up to a level that's acceptable and to keep the system more solvent.

Mr. KLINE. Okay. Thank you very much.

Mr. Chairman, I see I'm down to seven seconds. And in my usually fruitless efforts to encourage my colleagues, I'm going to yield back.

Chairman ROE. I was looking forward to gaveling the chairman down. I didn't get to.

Mr. KLINE. Good work.

Chairman ROE. Mr. Pocan, you're recognized for five minutes.

Mr. POCAN. Thank you, Mr. Chairman.

First let me just speak for myself only in—you know, I do see us in a place of tough and tougher decisions in the sense that when you look at what's caused a lot of this, one of the initial reasons the 2001 and 2008 stock crashes, you know, banks and auto companies got bailouts, CEOs got bonuses, and retirees are left hurting in essential states, the mine workers and others.

And, you know, I just—I find it an unfortunate set of priorities sometimes that government has dealing with these issues. I just want to put that out there as a personal opinion.

Since this is only the second hearing really we've had in about 16 months, it's the first chance we get to look at the draft, I'm going to ask you in under a minute, because that's what you're going to have, 45 seconds each, to take the exact opposite role of what you just advocated for, because I want to really know the pros and cons. So those of you who were advocating for it, just talk about what some of the potential problems are, and for those of you who argued against it, what some of the pros are. I just think we're still trying to gather information as we're having this conversation.

So if we could start just right down the line. Mr. DeFrehn?

Mr. DEFREHN. I was afraid you'd do that.

Mr. POCAN. Yeah.

Mr. DEFREHN. I hadn't thought about that very much, really, to try to respond in the time you've allotted.

You know, it—we've spent so much time trying to address the shortcomings, it's really hard for me to take the position that we think that there are some other things that argue against this, because, quite frankly, we don't really see much option for the plans long-term other than to try to encourage the existing employers to stay in, and bring new ones in, new ones that can help fund through the existing legacy liabilities. That's why this model was created. And we believe that we collectively, both the ones that participated in it the way this was designed originally, and the input that we received from others, including the administration, has made this a stronger proposal. So I think that what you've got here is—

Mr. POCAN. I'm going to stop you just because of time, and also I'm going I'm going to try the question again. I know it's hard to take the opposite.

Mr. DEFREHN. Yeah, it is.

Mr. POCAN. But, honestly, I think everyone agrees that this isn't a perfect solution for everybody. We are trying to find the best solution out of a bad situation.

Mr. DEFREHN. It's certainly not the best solution for everyone, and it was never intended to be. It was only for those employers that are committed to leaving the system and go to—

Mr. POCAN. Sure. I just want to make sure we've got time for everyone. So as honestly as you can be taking the opposite role, and I understand that it's a very tough question, Mr. Terven.

Mr. TERVEN. I think it's an excuse me. Thank you. I appreciate that.

You know, it is a very tough question. You know, I've been around for quite a while now around here and I've sat in a lot of meetings to try to figure out the pros and cons in this, and I am a union official, who I don't see the benefit cut situations in a lot of things that I do, but I also am realistic to see that the members are not getting there to pay the costs that we presently have. And like you so eloquently said earlier, I don't see the bailout situation coming out there to preserve these situations.

I think we are looking at ways to do things ourselves together as a labor and management coalition, and I think that structure has worked well and we've done put our minds together and asked for different ideas, different solutions, and we come right back to this solution here. So it's very hard for me to figure that one out.

Mr. POCAN. Thank you. Mr. Certner.

Mr. CERTNER. Well, I guess from my perspective, then, the answer would be that if the stock market never goes down and continues to exceed 7 percent every year for the future, then this actually could work.

Mr. POCAN. Okay. I think I'm failing at my question, but, Mr. Green.

Mr. GREEN. I'm proposing that we allow the trustees flexibility to do what makes sense for their plans, so the flip side would be to stay with the current constraints and limit the availability for people to do what they believe is right. And to me, that it may provide false security to existing retirees that they'll be fine, but in the long-term, it's going to be a problem.

Mr. POCAN. So in the remaining minute I have, if anyone can take this question, just walk me through with the composite plan how it would respond to a recession. What's going to happen to payees, to people paying in? Can someone walk me through that real quickly, Mr. DeFrehn?

Mr. DEFREHN. Yes, actually. I kind of welcome that question, because David's comment about if you get 7 and a half percent, this could work, but, in fact, we've done stress testing on this, replicating the market performance for the 10-year period, including the 2008 period, and what we found is that this new model outperforms what you might expect, and the plan—we started out with a plan that wasn't very well funded to begin with, a yellow zone plan, saw the first 10 years getting the experience that was anticipated, the assumed rates of return, and then the next 10 replicates the last 10.

And what we found was the yellow zone plan goes into red for two years, allocation—reallocation of some—

Mr. POCAN. There's three seconds left. That didn't answer the question. I apologize. I know—so what I'm going to do is just realize I failed miserably at that and filling in for Mr. Polis. And I will yield back.

Chairman ROE. I thank the gentleman for yielding. I now yield myself five minutes.

First of all, I want to applaud both labor and management for coming up with this new approach. And I think a new approach is needed in the 21st century. And, Mr. Terven, I want you to—you mentioned the Canadian plan, your partners in Canada. Could you inform us a little bit about what they've done? They obviously have an experience, so—

Mr. TERVEN. Thank you, Mr. Chairman. As you said too is if—we have a group that's close with us from Canada, and they have reigned this model of the composite plan for a long time. In the model referenced in the New Brunswick was put in place for public sector employees that's proposed here has been a better alternative to a defined contribution plan in which the worker must be his own investment manager and also his own actuary.

I think with the plan they have, and we've looked at it and asked all of our leaders over in Canada, just what do you feel about this, I have not heard one bad thing since they've moved to this situation. So the composite plan they use has been very effective.

Chairman ROE. Frankly, I'm very intrigued by it.

And here, Mr. Green, you mentioned, and I have several very close friends in the construction business, the margins in that business now are razor thin. I mean, you bid a job and you miss it just a little bit, and your profit margin is like a grocery store with 1 percent.

We have a demographic issue in the country where—I have one large employer in my district that will have 2,000—25 percent of their workforce can retire in the next five years, so we're going to have to replace those people. How do you encourage somebody to go into a plan, like you as a contractor, knowing that you had this huge—potential huge liability? How does that work?

Mr. GREEN. Well, I think, yeah, the point there is to attract young individuals. And it's hard for them to say, hey, I want to pay—I want to have a secure retirement, but a lot of money is going to go to pay for existing problems, and so there's equity for the new employees to do that. And also, you know, existing employees have the opportunity to go work for other people as well. So our challenge is how do we keep our existing employees and how do we attract new members?

Chairman ROE. I think you're right. And I think let me just briefly go over this, so to simplify it for me. This plan differs from a 401(k). A 401(k), as Mr. Terven said, is you're your own actuary, you're your own manager of your plan. This will allow you to pool these assets in a managed plan, but you wouldn't have necessarily a defined amount of money each year that you would—that could possibly change somewhat, but a properly managed plan, you could rely on a fairly stable income, as Mr. DeFrehn said, over a period of 10 years, I've looked at it, and it would have no PBGC backup, it would have no insurance, but there would be no PBGC premium either.

That money could go into the actual retirement. And I'm trying to think what wouldn't be good about this plan other than Mr. Certner is correct, it's allowing people to walk away from a legacy plan that's already stressed. That's—I think we have to address that.

But other than that, why wouldn't you do this? And, Mr. DeFrehn, I'll leave that with you. I mean, you all brought the idea up with Chairman Kline.

Mr. DEFREHN. Yes, Mr. Chairman. We—in trying to get this thing—balance the interests of all the stakeholders here, I think we've tried to address some of those concerns. We looked at trying to require—keep the employers in the system, because in the long-run if we don't have those employers, we won't be able to survive. And so we put some incentives in there to both require higher funding for the legacy plan, new employers coming in also have to contribute to their legacy plan, which will help the funding on that and faster fund those, but the other thing it does is it takes away the incentive for employers to leave the system, what Jeff was talking about earlier.

When a plan gets fully funded, there is nothing that keeps employers in, and the accounting standards now are providing an incentive for them to leave the system. So we've created a bridge that gets employers comfortable with the notion of staying in the plan so that if there is a bad market, you can reallocate some of those future contributions back to cover the losses. If they've left the system, there's no one to cover those losses and the legacy plan is harmed much more.

So, you know, I think we've gotten what we were trying to work for. Obviously there'll be other things that people identify that—where this discussion draft can be strengthened, and we hope that happens, because we want the best model for the workers here.

Chairman ROE. Yes. And I'll very quickly, in my little bit of time remaining, is before what happened in a defined benefit plan during an up year of the market, we cut the contributions. And you're in a down market, Mr. Certner's right, we haven't done away with the economic cycle. I like this where you can over—you can up to 160 percent. I've never heard yet in the eight years I've been here anybody come in here and complain about having too much money in their pension fund.

Mr. Hinojosa, you're recognized for five minutes.

Mr. HINOJOSA. Thank you, Chairman Roe and Interim Ranking Member Pocan.

Today's hearing is a step in the right direction. We must keep an open mind and focus on learning more about Chairman Kline's discussion draft legislation. I appreciate his thoughtfulness in looking for a good solution to preventing insolvency. The working employees' pension plan is a critically important issue that we're discussing here today. The economic security of millions of workers and retirees is at stake, and we in Congress must ensure the continued sustainability of multiemployer pension plans without undermining the entire system.

The funding problems facing plans require action on Congress's part to provide plans to participating employers with solutions that do not jeopardize the current benefits earned by retirees. This includes our coal miners, who we must also protect to avoid a national pension crisis.

In addition, we must not put the already underfunded Pension Benefit Guaranty Corporation in greater risk of insolvency.

Now I want to go to my first question. This is addressed to David Certner. In your testimony, you indicated that AARP is open to consideration of new types of retirement plans, such as the composite plans. However, in your testimony, you gave, several recommendations that must be included to improve Chairman Kline's draft.

So which of these recommendations do you believe is the most important, and why? And, secondly, do you believe that AARP could eventually endorse Chairman Kline's proposal if some of your recommendations are incorporated.

Mr. CERTNER. Thank you for that question. I think there's two issues there. One is just the question about just funding in general, so that if you are essentially reducing funding to legacy plans because some of that money's being siphoned off into composite plans, regardless of what the composite plan looks like, can that possibly work? And we have strong doubts, and we'd love to see some actuarial analysis done through the PBGC about whether or not you could have any kind of plan established like that that's siphoning money away from a legacy plan that doesn't put the legacy plan at risk. So that's sort of the first part about whether you could have any kind of two plans at all.

On the second half, we do have hybrid plans currently that are allowed under law, things like, for example, cash balance plans that include features of both defined benefit and defined contribution plans. I don't understand this new plan and what an individual thinks they may be getting from it, because you don't have an account balance so you can see what your account is, and you don't even have a formula that you can count on, because the trustees have wide discretion to change that formula every year. So the uncertainty of that plan and essentially the ability that's given to trustees to cut back benefits you have earned is completely unheard of in pension law. We just simply don't allow that. Once you earn a benefit, generally speaking under pension law, that's your money and it can't be taken away.

Here there seems to be almost an annual determination about what your benefit would be, and so you can lose an accrued benefit. And that's particularly true, you know, if you're going to have some market volatility and there's going to be down markets. So I think those are probably two of the key issues.

Mr. HINOJOSA. Thank you for responding. The next question is to Mr. DeFrehn.

In the testimony by Mr. Certner, he made the case for why increasing the PBGC premiums is necessary. I am especially interested in your ideas to improve the long-term fiscal sustainability of PBGC. And, as you know, it is the multiemployer pension program which is projected to be insolvent in less than 10 years. Do you agree with Mr. Certner and, if yes, what do you think needs to be done in order to prevent this from happening?

Mr. DEFREHN. There is no question the PBGC faces a problem. The agency was created as a safety net, not as an insurance company, and that is why Congress has always acted on the premium levels rather than having them adjusted, as an insurance company would.

Mr. Certner referenced the fact that the premiums were low for many years and compared and contrasted that with the single-employer system. The single-employer system is an insurer, for lack of a better term here, of first resort. If a corporation goes out of business, there is no one to backstop the liabilities. In a multiemployer plan, the other employers are the insurer of first resort and the PBGC is insurer of last resort. That explains why we have such a differential on the premiums and on the guarantee levels. As a matter of fact, initially there was a lot of pushback towards having the PBGC guarantee at all. It is a necessary safety net, though, for plans that do fail, and we believe that it needs to be examined very closely. Some of the things that the Commission had looked at—

Chairman ROE. Mr. DeFrehn, if you could wrap that up.

Mr. DEFREHN. I am sorry.

Chairman ROE. The gentleman's time is expired.

Dr. Foxx, you are recognized for five minutes.

Ms. FOXX. Thank you, Mr. Chairman.

Actually, what Mr. DeFrehn was saying, let me join into a comment I was going to make. When I first got on this committee in 2005, we tackled issues related to the PBGC. Then-Chairman Boehner said he wondered why nobody had tackled the PBGC and pension issues for 30 years, and when we got into it we found out why. It is hard; it is very hard. And I think that is what we are seeing here again today.

I would like to ask you, Mr. DeFrehn, a question: You touched on this issue before, but I would like you to expand on your comments related to critics who have raised questions about whether the proposal weakens current funding standards for legacy multiemployer defined benefit pension plans; and would you talk a little bit more about how the discussion draft addresses these concerns, to ensure existing plans are sufficiently funded.

And I know we have four minutes, but I would like you not to take up the whole 4 minutes so I can ask one more question.

Mr. DEFREHN. Certainly. I think the short answer is that the discussion draft, it eliminates some of the discretion in terms of how the allocation of the contributions are handled. It puts in a minimum that is higher, through the transition minimum contribution and the current PPA levels, so that the dollars flowing through will adequately fund the legacy plan even if you take the 30-year extension—or, excuse me, the 25-year extension for the fresh start.

As I started to mention earlier, we have done some stress testing on that. And we have some results that I would like to have entered into the record so you can see how that works.

Ms. FOXX. Thank you very much. Mr. Chairman, I would ask for whatever he has to be entered in the record be entered into the record, without objection.

Chairman ROE. Without objection, so ordered.

[The information follows:]

Segal Consulting

COMPOSITE & LEGACY PLAN
Comparative Stress Testing

September 2016

Prepared by:
Aldwin Frias, FSA, MAAA, EA
Diane Gleave, ASA, MAAA, EA
Eli Greenblum, FSA, MAAA, EA

This document has been prepared by Segal Consulting at the request of the NCCMP to assist in evaluating the potential outcomes of the Discussion Draft released on September 9, 2016, on pension funding under certain stressful scenarios. This document may not otherwise be copied or reproduced in any form without the consent of the NCCMP and Segal Consulting, except to the extent otherwise required by law and may only be provided to other parties in its entirety. The actuarial calculations have been prepared under the supervision of Bridget P. Orr, ASA, MAAA, EA.

Doc #8407848v3

Stress Testing Goal and Methodology

GOAL: Measure Legacy/Composite Plan's ability to recover from major investment shock

- Mature DB plan
  - Actual construction industry plan with 4,000+ participants
  - Endangered (yellow zone), but projected to emerge from the Yellow zone in 2029
- 2026-2035 investment experience are presumed to repeat actual 2005-2014 median returns for multiemployer plan universe (*source: Segal Rogerscasey*)

Actual Year:	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Mapped Year:	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Median Investment Return:	*6.65%*	*12.15%*	*7.37%*	*-22.34%*	*17.12%*	*11.73%*	*1.70%*	*11.44%*	*14.99%*	*6.20%*

- Apply investment shock to replicate 2008 financial downturn
  - Re-evaluation of contribution requirements in current and legacy/composite plans

Stress Testing Goal and Methodology *continued*

GOAL: Measure Legacy/Composite Plan's ability to recover from major investment shock

- Assume transition to Legacy/Composite Plan in 2016
  - **Transition Scenario #1 – Minimum Legacy Plan Contribution**
    - Legacy plan assumed to get minimum required to satisfy both the Transition Contribution Rate (TCR) and Funding Improvement Plan (FIP) requirements, while using 25*-year amortization "fresh start"
    - Remainder goes to Composite plan, more than sufficient to satisfy 120% projected funded percentage rule
  - **Transition Scenario #2 – Maximum Legacy Plan Contribution**
    - Composite plan assumed to get only minimum contribution to satisfy 120% projected funded percentage rule
    - Remainder goes to Legacy plan, while using 25*-year amortization "fresh start"
- Allow new Legacy/Composite plan to slowly mature until shock – no gains/losses thru 2025
  - Assume 2026-2035 returns replicate 2005-2014 returns (median each year)
  - 7% assumed in other projection years

* *Note – Discussion Draft has 30 years; a 25-year fresh start is presumed to prevail*

Transition Scenario #1

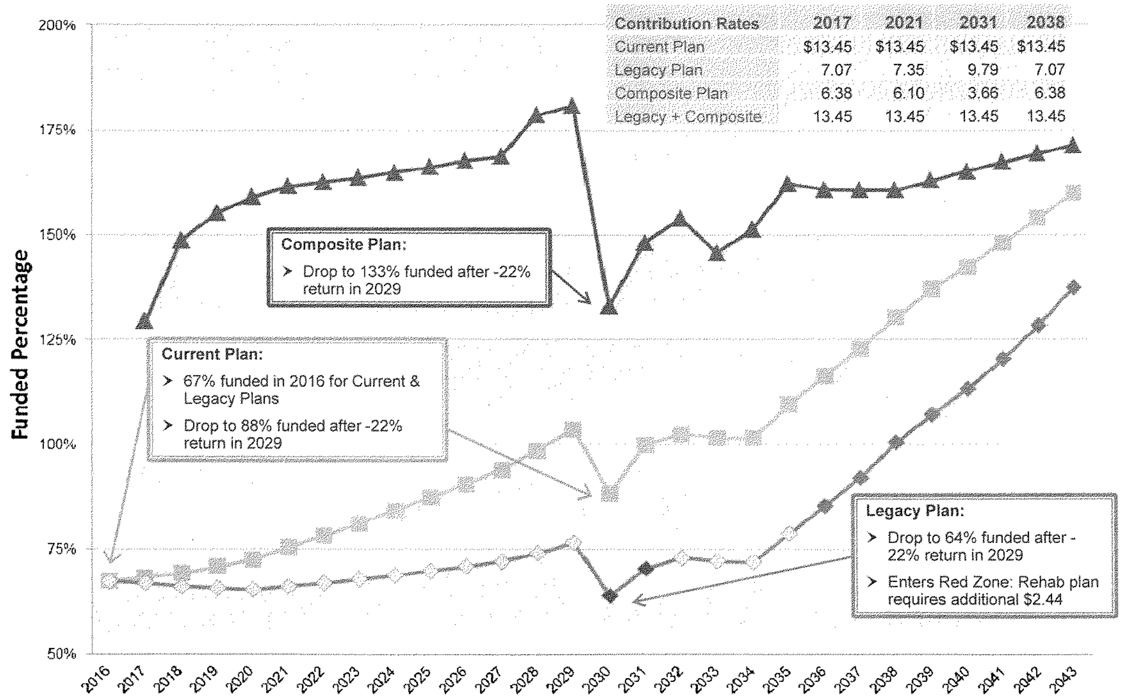
Minimum Legacy Plan Contribution

Summary of required hourly contribution rates:

- **Current Plan**: Contribution rate is set at $13.45 in 2017 to fulfill FIP goals, and avoid Red Zone in a few years.
  - Plan remains in the Green zone after 2029 shock; Plan stays well over 80% funded and credit balance stays positive after 2029. **By 2031, the Plan is 100% funded.**
- **Legacy Plan**: Calculated $5.68 TCR overridden: $7.07 is needed to satisfy current FIP
  - To avoid Early Red in 2021, updated FIP requires an additional $0.28 from Composite Plan
  - After 2029 shock, plan is certified in Red Zone beginning in 2030; rehab plan requires $9.79 in 2031
  - Gains result in early emergence to yellow zone (2032), then green zone (2036)
  - Rate drops back to original TCR of $7.07 in 2038
  - Funding recovers from low of 64% in 2030, reaching 85% by 2036, then **above 100% by 2038**
- **Composite Plan**: Contributions are the difference between Current and Legacy Plan.
  - The plan reaches 181% funding before the shock and drops down to 133% after the shock
  - $0.28 and $2.44 of contributions are diverted back to the Legacy Plan, in 2021 and 2031, respectively
  - After 2030, Plan stays well over 120% funded, hovering around **160-170% long term**

	2017	2021	2031	2038
Current Plan	$13.45	$13.45	$13.45	$13.45
Legacy Plan	7.07	7.35	9.79	7.07
Composite Plan	6.38	6.10	3.66	6.38
Total Legacy + Composite	13.45	13.45	13.45	13.45

Transition Scenario #1 – Minimum Legacy Plan Contribution



Contribution Rates	2017	2021	2031	2038
Current Plan	$13.45	$13.45	$13.45	$13.45
Legacy Plan	7.07	7.35	9.79	7.07
Composite Plan	6.38	6.10	3.66	6.38
Legacy + Composite	13.45	13.45	13.45	13.45

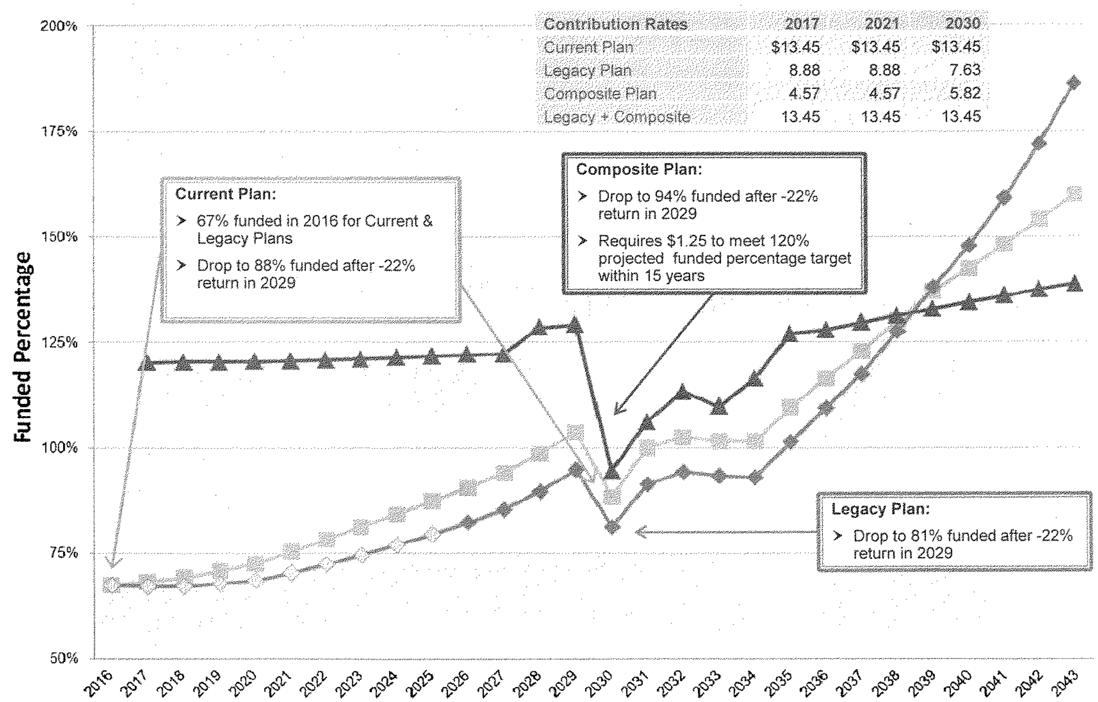
Transition Scenario #2
Maximum Legacy Plan Contribution

Summary of required hourly contribution rates:

- **Current Plan**: Contribution rate is set at $13.45 in 2017 to fulfill FIP goals, and avoid Red Zone in a few years.
  - Plan remains in the Green zone after 2029 shock; Plan stays well over 80% funded and credit balance stays positive after 2029. **By 2031, the plan is 100% funded.**
- **Legacy Plan**: Contributions are the difference between Current and Composite Plan Contribution rate of $8.88 is more than enough to meet TCR and FIP goals ($7.07)
  - After 2029 shock, funding percentage drops to 81% in 2030, but remains in the Green zone
  - $1.25 of contributions are diverted back to the Composite Plan in 2030 (see below)
  - Funding recovers and remains in the Green zone, reaching **100% by 2035**
- **Composite Plan**: Contribution rate of $4.57 is sufficient to satisfy 120% projected funded percentage target within 15 years
  - Plan reaches 129% funding before the 2029 shock and drops down to 94% after the shock
  - After 2029 shock, an additional $1.25 is diverted to satisfy 120% projected funded percentage target within 15 years. Funding recovers, reaching **120% by 2035** due to gains

	2017	2021	2030
Current Plan	$13.45	$13.45	$13.45
Legacy Plan	8.88	8.88	7.63
Composite Plan	4.57	4.57	5.82
Total Legacy + Composite	13.45	13.45	13.45

Transition Scenario #2 – Maximum Legacy Plan Contribution



Contribution Rates	2017	2021	2030
Current Plan	$13.45	$13.45	$13.45
Legacy Plan	8.88	8.88	7.63
Composite Plan	4.57	4.57	5.82
Legacy + Composite	13.45	13.45	13.45

Appendix: Current Endangered Plan Metrics

Plan of Benefits

- $120 accrual rate
- Normal Retirement Age: 65*
- Unreduced benefit at 60*/30
- Early retirement: 52/10, reduced 3%-6% per year
- Identical benefits and eligibility provisions for Composite plan
- $13.45 negotiated hourly contribution rate, effective 1/1/2017

* certain cohorts have lower normal & unreduced age requirements; assumed average retirement age = 61

Assumptions and Methods

- Industry activity: actives work an average of 1,500 hours every year
- Investment return: 7.0% except 2026-2035 experience replicates 2005-2014
- Contribution rate: static, unless required to fulfill funding improvement plan (FIP) or rehabilitation plan
- As employees terminate or retire, new entrants replace them with same demographic profile as current active population
- No future gains/losses on all other assumptions (mortality, turnover, retirement, etc.)

Current Funding Profile

- Actuarial liability:
  - Active = 32%
  - Inactive = 7%
  - Retirees = 61%
- 67% Funded Ratio
- Normal Cost = 5% of Active actuarial liability
- Active average age/service: 44/13
- Retiree average age: 69

Appendix: Assumed Expenses and Investment Returns

➤ 7% return (net of investment expenses) assumed for all years, except 2026-2035

➤ 2026-2035 returns are presumed to repeat actual 2005-2014 median returns for multiemployer plan universe (*source: Segal Rogerscasey*)

Actual Year:	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Mapped Year:	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Median Investment Return:	*6.65%*	*12.15%*	*7.37%*	*-22.34%*	*17.12%*	*11.73%*	*1.70%*	*11.44%*	*14.99%*	*6.20%*

➤ Administrative expenses:

- For Legacy plan = Current plan
- For Composite plan = 20% of Current plan
- All plans' expenses assumed to grow 3.5%/year

➤ Other assumptions (actuary's best estimate for minimum funding purposes) available upon request

Ms. FOXX. Thank you.

Mr. Green, my husband and I have been in the construction business off and on all of our lives, and so I thank you very much for coming here and explaining to people what very small margins most people earn by being in the business. I think some of our colleagues sometimes on the other side of the aisle think that folks in private business are out there making lots and lots of money and not being very fair to the people who they employ. And I know most people in private industry try very hard to make whatever they can to stay in business and also treat their employees very, very fairly.

We have consistently heard over the years about the effect of withdrawal liability and how it actually provides a disincentive for employers to contribute to defined benefit plans. And it is clear we need more employers in the system if we want to provide a more stable system.

Can you explain how withdrawal liability impacted your business and why it is so important that employers and workers have an option for a new type of plan?

Mr. GREEN. Yes, ma'am. Most construction companies are held by small companies. So my wife and I personally had to guarantee all of our loans with the banks. And so it is a personal business and it is personal with the employees.

And if you were required to show the liability on your financial statements, the banks and sureties would not want to work with you. As an example, it takes about 40 or 50 thousand dollars per employee in working capital just to stay in business. And it challenges—when you have a business and if you wanted to sell the business, prospective buyers are very concerned about what liabilities are hidden on the balance sheet.

Ms. FOXX. Thank you very much, Mr. Chairman. I will yield back.

Chairman ROE. I thank the gentlelady for yielding.

Ms. Bonamici, you are recognized for five minutes.

Ms. BONAMICI. Thank you very much, Mr. Chairman. Thank you for holding this hearing today, and I also want to thank Chairman Kline for his work here today.

But I also want to emphasize that I am glad to hear that this is a statement about a proposal, that it is recognized even in the title of the hearing that this is a discussion draft. As Representative Foxx just said, this is hard. And I am glad we are having a discussion, because there is really a lot at stake today.

One of the things that I think about when I am home in Oregon and talking to people about retirement security, which actually comes up quite a bit these days, it is important that we protect the hard-earned and promised benefits of retirees. It is important for the thousands of workers and retirees, for example, in my state of Oregon who are participants in the green zone Western Conference Pension Plan, for example, are that they continue to be in a well-funded plan and are not disadvantaged as a byproduct of any proposal or legislation that we come up with here. We need to make sure that workers who have played by the rules can count on getting the benefits that they have earned.

And, Mr. Chairman, I would like to offer into the record a statement from the co-chairs of the Western Conference of Teamsters Pension Trust. The Western Conference, as you likely know, is a large and very successful plan with about 585,000 vested participants, at least $36 billion in assets. And the Western Conference has been well-managed and financially sound since its inception about 60 years ago. Its co-chairs have written to this committee to express their deep concern and, in fact, opposition to the composite legislation as proposed because quote "it would severely weaken the funding status of both composite and legacy retirement plans and cause damage to healthy plans in the broader multiemployer pension system."

So when one of the largest and best-managed green zone pension plans in the country concludes that composite plan as outlined in this proposal would harm workers/retirees in the multiemployer pension system as a whole, we as the committee should listen closely and work with them and others to develop a plan that doesn't put so many people at risk.

Mr. Certner, can you talk about whether the enactment of this legislation has the potential to reduce the likelihood of retirees receiving their well-deserved benefits? Furthermore, if this composite plan proposal were enacted as drafted, would retirees have a vote on whether or not to accept benefit cuts and would the U.S. Treasury have to approve benefit cuts?

Mr. CERTNER. As I stated in my testimony, essentially what is happening here, of course, is that we are reducing funding for the legacy plans, and that reduced funding is going to the new composite plan. So, by definition, the legacy plan is going to be worse off. It is going to be worse funded. And now the plan is going to be responsible for—the employers are going to be responsible for two different plans. Particularly if there is some market volatility, there is going to be I think a lot of difficulty in trying to meet the adequate funding for both the new composite plan and the old legacy plan; and I think, because of that, it will put the old legacy plan more at risk.

Ms. BONAMICI. Would there be an opportunity for retirees to vote on whether they need to accept a benefit cut?

Mr. CERTNER. Well, certainly under MPRA, as established, there are some minimal standards, including giving retirees the right to vote and giving the government some authority to approve it. Under the new composite plans, we don't even have that limited standard. That really is all at the discretion of the trustee. So there is I think even less protection.

And thirdly, I would add since you are moving a lot of people out of the traditional system into these new composite plans, you are undercutting the entire PBGC premium base, because there are no premiums being paid for those new composite plans. And so the well-funded plans are then going to have to basically pick up the entire burden of the PBGC premium base.

Ms. BONAMICI. Thank you. And I want to follow up on that. And I know Mr. DeFrehn talked about the need for some sort of comprehensive PBGC reform, and I absolutely want to align myself with the comments of Mr. Pocan and others about the need to make sure that we are protecting workers.

I know, Mr. Green, the majority summary of the bill asserted that by transitioning into composite plans, employers will have more opportunity to expand their businesses and hire new workers. But I am wondering, as far as you know, was there an economic analysis undertaken that provides support for that statement. And I know there was some talk about stress testing, but it is my understanding that the stress testing that Mr. DeFrehn mentioned and others, it was only done, an analysis on composite plans, but did not consider what happens to legacy plans at the same time.

So do you know was there some sort of economic analysis taken? And maybe, Mr. Certner, you would weigh in on that as well.

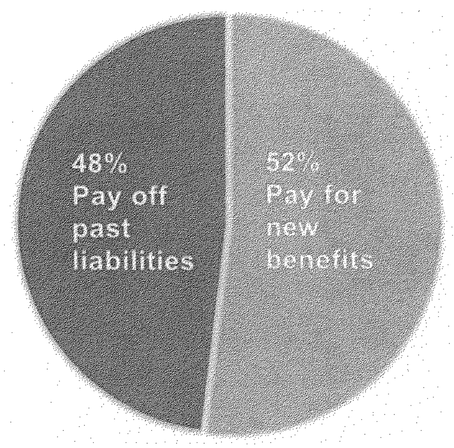
Chairman ROE. The gentlelady's time is expired.

Ms. BONAMICI. Maybe for the record. Thank you, Mr. Chairman.

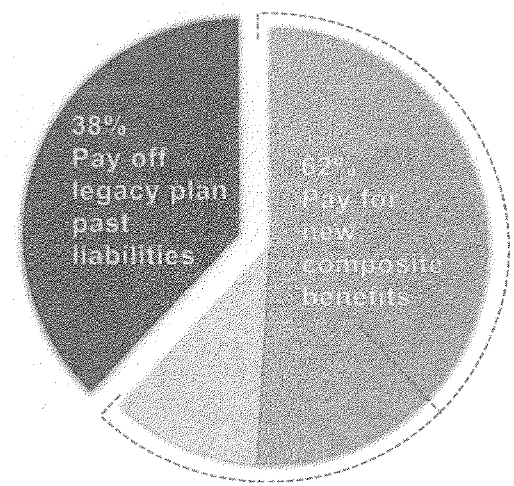
[The information follows:]

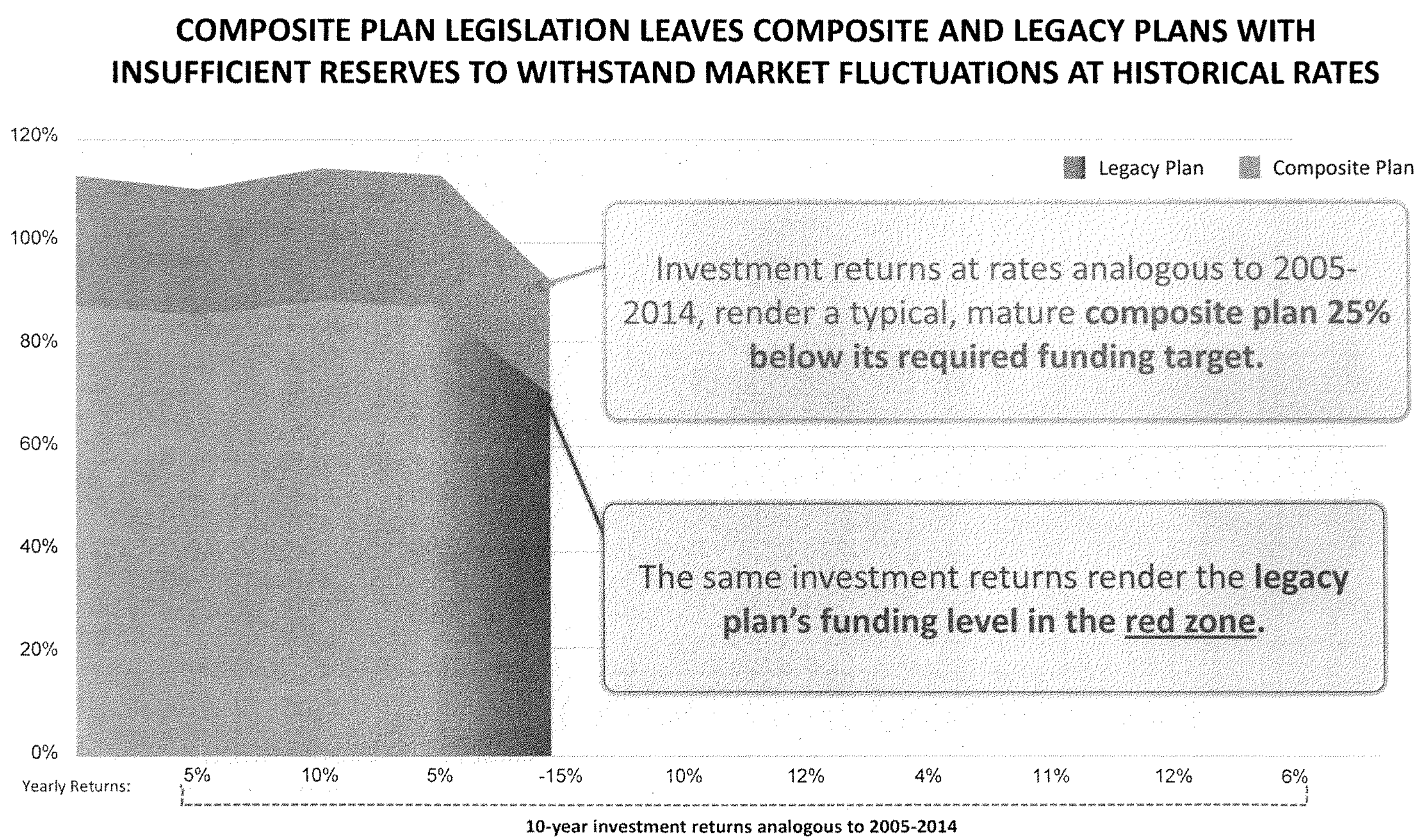
COMPOSITE PLAN LEGISLATION IMMEDIATELY REDUCES LEGACY PLAN FUNDING AND DIVERTS THAT MONEY TO THE COMPOSITE PLAN

Traditional Multiemployer
Defined Benefit Plan

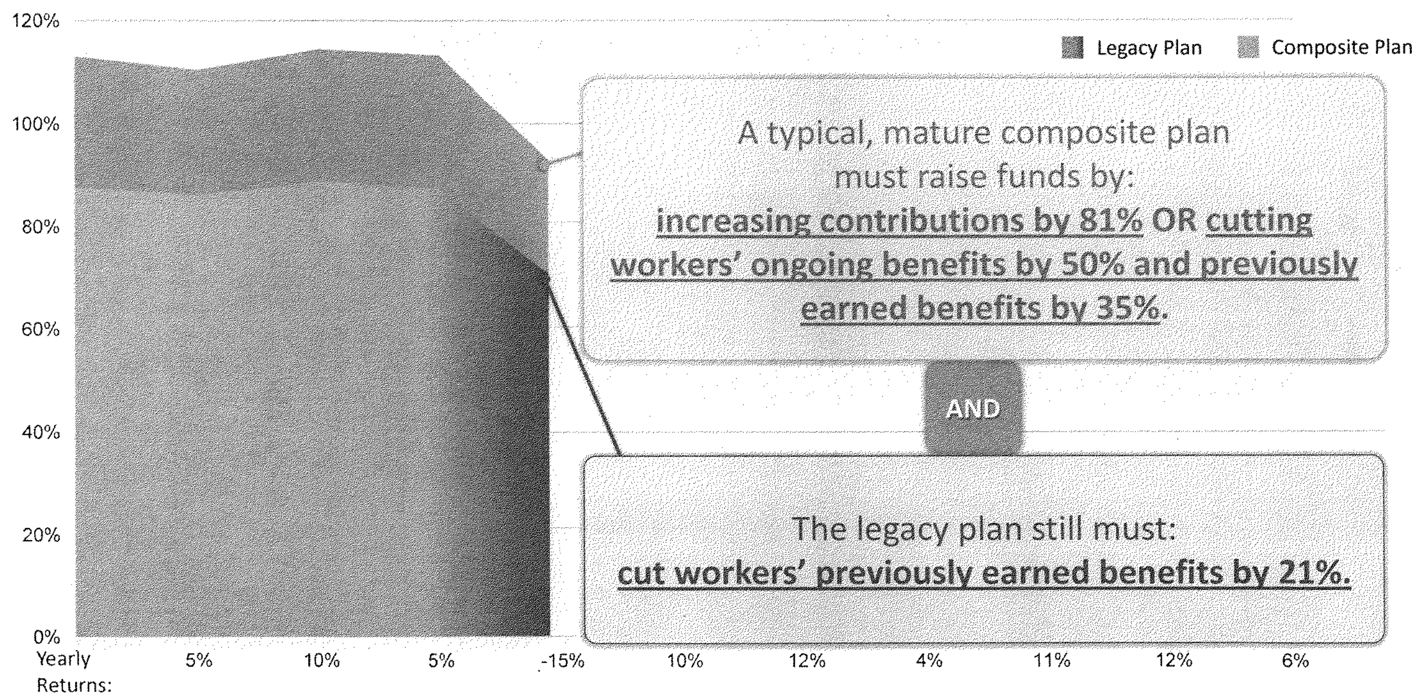


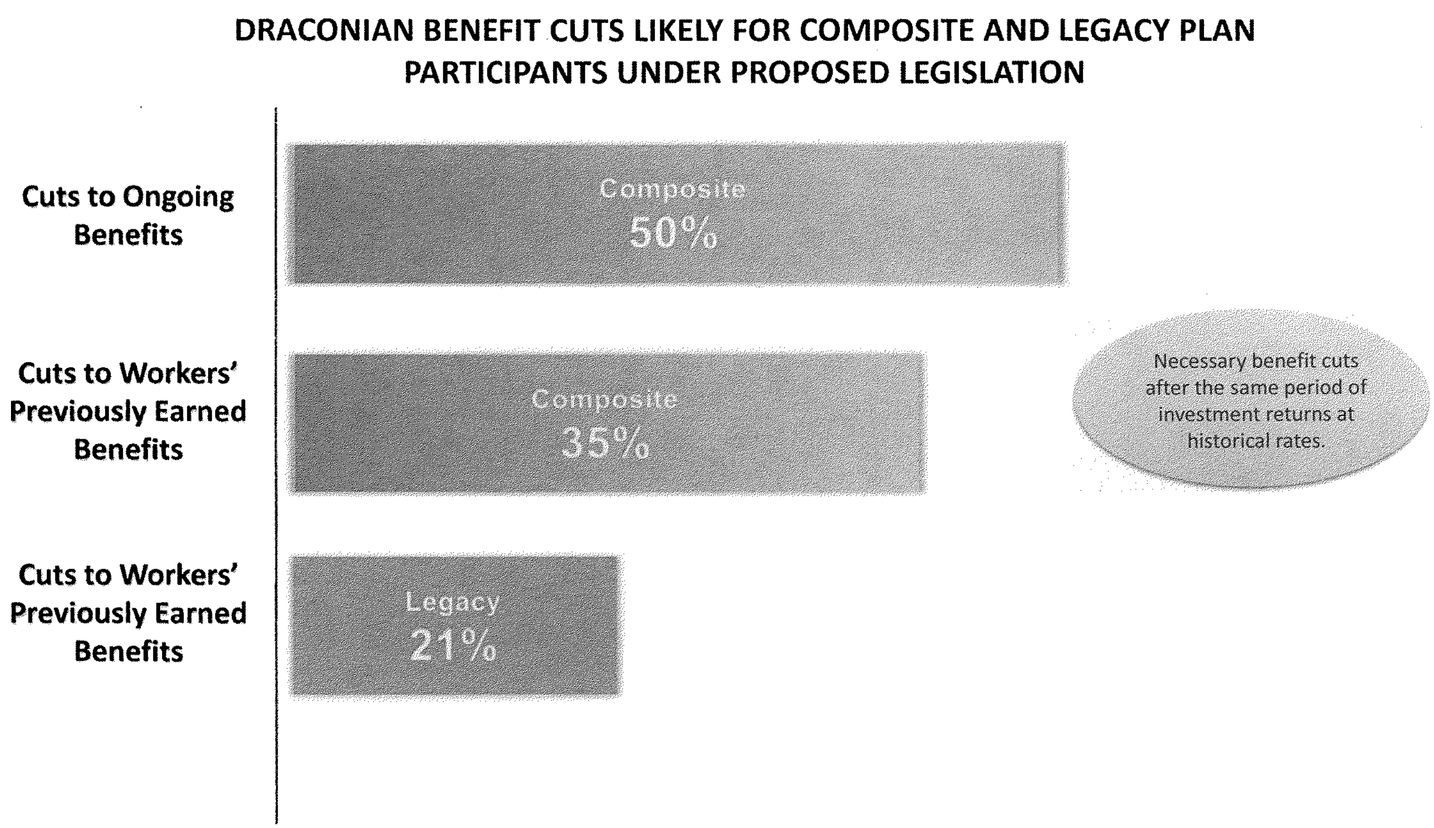
Legacy / Composite Contribution Split
After Transition




COMPOSITE PLAN LEGISLATION LEAVES COMPOSITE AND LEGACY PLANS WITH INSUFFICIENT RESERVES TO WITHSTAND MARKET FLUCTUATIONS AT HISTORICAL RATES
120%
100%
80%
60%
40%
20%
0%
Legacy Plan
Composite Plan
Investment returns at rates analogous to 2005-2014, render a typical, mature **composite plan 25% below its required funding target.**
The same investment returns render the **legacy plan's funding level in the red zone.**
Yearly Returns:
5%
10%
5%
-15%
10%
12%
4%
11%
12%
6%
10-year investment returns analogous to 2005-2014

COMPOSITE LEGISLATION REQUIRES DRASTIC MEASURES TO IMPROVE PLAN FUNDING AFTER THE SAME MARKET VOLATILITY




DRACONIAN BENEFIT CUTS LIKELY FOR COMPOSITE AND LEGACY PLAN PARTICIPANTS UNDER PROPOSED LEGISLATION
Cuts to Ongoing Benefits
Composite 50%
Cuts to Workers' Previously Earned Benefits
Composite 35%
Cuts to Workers' Previously Earned Benefits
Legacy 21%
Necessary benefit cuts after the same period of investment returns at historical rates.

Chairman ROE. Thank you.
Ms. BONAMICI. I yield back.
Chairman ROE. Mr. Allen, you are recognized for five minutes.
Mr. ALLEN. Thank you, Mr. Chairman. And just a little background, our company now is 40, just celebrated our 40th year in the construction industry. And I remember back when I was 25 years old and I started that company and began to, some five years later, think about those folks retiring. And we started a 401(k) program, and the reason we did that was because I didn't think social security would be around for our folks. And so I convinced people that from top to bottom that, you know, they needed to provide for their own retirement, because I wasn't sure that the government program would be around.

And, of course, I did the same and, of course, you know, it has been very successful. We have only had two people retire from our company and they are both doing well, but you know, our workers are getting older, which is one of the problems we all have is that we have a graying workforce. And all of these pension and profit-sharing programs and retirement programs are in trouble. I mean, it is just folks paying in versus folks taking out benefits.

Mr. DeFrehn, you know, as far as the—there have been impediments under current law that prevent employers and unions from adopting, you know, these plan designs. I guess two questions is: One, you know, if you could go back 30 years, would this be the type of plan that you would look at, or what would our options be if we looked back and say, okay, we made these mistakes, now what do we do?

Mr. DEFREHN. I think this would have been a good model. I mean, when PBGC was—the multiemployer guaranty program was put into place and they added withdrawal liability, theoretically, it was a good idea. An exiting employer who is leaving a plan with unfunded liabilities pays their proportionate share on the way out the door. But in practice, there are a number of exceptions that keep that from happening and the withdrawal liability has, in fact, become an obstacle rather than a help for those plans.

So, going back to those 30 years, I think we would have reconsidered that had we known this kind of information.

Mr. ALLEN. Yes. Again, for whatever reason, we don't consider, you know, the beginning with the end in mind, again, with social security and some of the other programs.

Mr. Green, in your written testimony you discussed how plan contributions are the key element for plans' ability to address funding shortfalls, but that there are limits. How would this new plan design help employers avoid the unpredictability of increasing plan contributions that exist in traditional plans today?

Mr. GREEN. The wages paid to the individual are important. The individual needs to believe that what he is getting is of value. The employer's concern is that if they pay the fringe and they can understand that cost, will someone come back in the future and say, hey, you owe additional money? And so the concern is what liabilities are you stumbling into that you are not aware of?

Mr. ALLEN. I see. As far as, Mr. Certner, your concerns with this composite program, how can they be addressed?

Mr. CERTNER. As I think I said earlier, I think there are two issues. One is just the funding, whether or not a plan, particularly one that is not well-funded, can basically fund two different plans and what that will mean particularly to the legacy plans, and particularly when you have more volatile markets. I would like to see some more numbers that show that actually can occur, because we have some doubts about that.

Second of all, I think the benefit problem seems to be extremely ephemeral in these plans. It is not at all clear to an individual what they are going to be getting and how it could change basically every year, depending on the ups and downs of the market, and potentially deep benefit cuts that are given at the discretion of the trustees to make. That is an extremely unusual setup, and we don't have anything like that in the pension world.

Normally, you know, you know what you are going to get if you are in a defined benefit plan. And if you are in a 401(k) fund, you have your account balance and you know what your account balance is from year to year and it is not up to some trustee to look at the environment and say, well, we need to make some adjustments to benefits to not just meet this plan but to some of the funding that has to go into the old plan. So I think that is part of the problem.

Mr. ALLEN. Thank you very much for your testimony, and I yield back.

Chairman ROE. I thank the gentleman for yielding.

Mr. Scott, you are recognized for five minutes.

Mr. SCOTT. Thank you.

Thank you, Mr. Chairman. Mr. Chairman, we have heard a lot about whether you pool the assets or slice them up. Frankly, it is like having a pizza. You don't have more pizza if you cut it into slices; you still have the same amount of money. And whether or not we are going to have enough money to pay out the benefits really doesn't depend on whether you slice it into separate accounts.

Mr. Certner, you know, when you have a defined benefit plan, the employer takes all the risk of a downside in the market. If there is an upside in the market, the employer benefits, but the employee gets what he gets. If you have a defined contribution plan, the employee takes the risk of a downside in the market, but also gets the benefit if there is a surprise upside.

Who takes the upside and downside risk with the composite plan?

Mr. CERTNER. It seems to me most of the—I mean, it could be either way here, because part of the answer could be that if the market goes down, the employers would need to contribute more, and that is normally what it would be in a defined benefit plan.

But at least what I am hearing from my colleagues here is that employers won't contribute more and then, therefore, the risk is then really put back on the employees and the retirees on the composite plan and the legacy plan, because I think what I am hearing will happen is that you can only get so much more out of the employers. The employers don't want to take on any more of the risk and the liability and, therefore, when you hit market volatility, there is going to be a dramatic level of underfunding that since the employer is not making it up is going to shift it right back onto the employees and the retirees.

Mr. SCOTT. So the employees take the downside risk. What about the upside, who enjoys the upside surprise? If there is higher return than you would expect, who gets the benefit of that?

Mr. CERTNER. I am probably not the best one to answer that, because I am not sure what happens with that upside—

Mr. SCOTT. The employer would not have to contribute as much, so he would get the benefit of the upside.

Mr. CERTNER. The employer would benefit from it. You know, I guess, in theory, you could take some of that money and share it with your employees, but in all likelihood, the employer I think would use it to offset any contributions they need to make.

Mr. SCOTT. You indicated the problem with dealing with the legacy plan at the same time you are going to a new plan, you put both at risk. Is there a separate calculation as to what you—if you go into a new plan, is there a separate calculation as to how much you have to put into the legacy plan, over and above, what you need to fully fund the new plan, or do you have the same calculation and just try to make up the best you can what you owe on the legacy plan?

Mr. CERTNER. What I gather, what basically they are doing is they are stretching out the contributions that are made to the legacy plan. In other words, they are contributing less to the legacy plan each year, because of it being stretched out over a longer period of time. So that means there needs to be an additional contribution from the composite plan as well. As I think I sort of alluded to earlier, if the markets are doing well and never go down, then that money will be there to transfer and make those contributions. But should there be a down market or some volatility, I am not sure where that money comes from. I don't know how we keep those plans well-funded.

Mr. SCOTT. You have also mentioned the retirees. Does a retiree pay into the PBGC?

Mr. CERTNER. There will be premiums paid on anybody who is in the premium base, but all these composite plans would be out of the base. There would be no premiums on them.

Mr. SCOTT. Is the retiree paying premiums?

Mr. CERTNER. The retirees are not paying anything today. They are paying premiums on behalf of any of the participants, the employers.

Mr. SCOTT. The employers pay a premium into the PBGC for someone who is fully retired?

Mr. CERTNER. Right, for any of the participants in the plan.

Mr. SCOTT. Mr. Green, you mentioned, in your testimony you talked about the last man standing rule and all the bizarre things that happen to employers who participate. What would be the downside of just repealing the last man standing rule?

Mr. GREEN. I believe that the purpose of the last man standing rule is to ensure that moneys are paid for the retirees.

Mr. SCOTT. And then what happens if nobody wants to come in and take those liabilities?

Mr. GREEN. If no one would take those liabilities, the employers, it wouldn't be a concern for them, but then there is really no guarantee of retirement benefits.

Mr. SCOTT. If you repeal the last man standing rule, wouldn't it be more likely that new employers would come into the plan?

Mr. GREEN. The last man standing rule applies when the plan is basically being liquidated. The concern is, is for existing benefit plans, what additional liabilities are there. My testimony, the Omaha plan is very, very well-funded and well-managed. However, in 2015, there was a $60 million shortfall that would be reflected by the employees.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman ROE. I thank the gentleman for yielding.

Mr. Walberg, you are recognized for five minutes.

Mr. WALBERG. Thank you, Mr. Chairman.

Thanks to the panel. Mr. Green, after your conversations with labor and management representatives, do you believe that the composite plan structure will be adopted within the industry, and will it help the workers and employees, in your mind?

Mr. GREEN. I believe providing the trustees additional tools to meet their needs will be adopted where it makes sense. We are not talking about requiring people to follow these plans. It is another option for them.

Another point I would like to make, as Congressman Allen knows, construction people are very—it is a personal business. We are very, very protective of our employees. And so any—if we—and trustees, if we do something, we want to do it for the benefit of our employees.

Mr. WALBERG. As employers and workers move to adopt the new plan designs prospectively, underfunded legacy liabilities must also be addressed.

Mr. Green, will employers continue to fund liabilities attributable to legacy defined benefit plans as well as under the rules prescribed by the draft legislation?

Mr. GREEN. I believe employers are willing to help pay for underfunded legacy plans. Their concern is, if I pay money now, will I owe money in the future? So if we say, hey, we are going to pay money now and that is it, there is no problem there.

Mr. WALBERG. Thank you.

Mr. Terven, your written testimony noted that your union's members participated in more than 150 multiemployer defined benefit plans. How many of those plans are facing financial difficulty and underfunding?

Mr. TERVEN. Thank you. I don't have the specific numbers regarding the number of plans facing the funding challenges, but I do know that the construction industry tends to have better funding experience than do many other industries. Nevertheless, this new model is envisioned as an alternative for some plans and an additional component of some of our larger and regional or national plans.

And as so eloquently stated by quite a few people today, the important thing for all of us to remember is, this is a voluntary alternative which will provide adequate funding for both models. And we are not suggesting a new form of a defined benefit plan for industries where the existing model has existed and is working well. The defined benefit plans will still provide the gold standards.

However, for situations where the employers have determined they can no longer accept the risk associated with the existing defined benefit model and are determined to exit the system in favor of the current 401(k) system or no system, the composite plan provides a viable alternative that mitigates some of the volatility of the benefit adjustments inherent in daily valued benefit contribution plans and allows higher benefits to be paid than would possibly be paid. By spending down the account balance of a 401(k) or even using this as a balance to purchase annuities.

Mr. WALBERG. So you would expect that many employers will end up leaving defined benefit plans?

Mr. TERVEN. Every meeting I go to that is a labor-management meeting that I have been to in the last two years has talked about everything on withdrawal liability. Everything that they keep coming to us over and over again is that they can't compete with withdrawal liability, because it is like an invisible boogieman at the bank saying, you may be required to pay certain amounts of money and we don't know what it is. But these are family businesses that are very, very concerned about that factor and this withdrawal liability around their necks.

And we can't survive without contractors, because our contractors put us to work, and it also brings in the younger people that we try so hard to bring into these systems. So we are looking for viable alternatives, not in a locked-out system like I heard earlier today.

We have to change and change with the times to make sure we can make sure these are viable defined benefit plans and plans for our retirees.

Mr. WALBERG. I appreciate hearing that realistic perception that there has to be that working relationship, contractor-employee. It has to work for both of you.

One final question, Mr. Terven. One feature of the composite plan structure is that it removes the threat of withdrawal liability. Based on your discussions with employers, do you believe that this new structure will attract employers and how will it affect your industry?

Mr. TERVEN. The recession in the construction industry I believe was really a depression, and we had devastating unemployment. We are still trying to get out of it. And it has these pre-recession losses, but they affected our plan funding in such a way that subsequent investment gains have depressed hours of contributions. It resulted in the re-emergences of these unfunded liabilities that you are talking about that serve as an impediment to the entry of new employers. When we have been out trying to organize new employers, they keep bringing up the fact of this withdrawal liability and that if it wasn't in front of them, they would be glad to be a part of the organizations that we try to do to take care of the workers. Because they want something for their workers. They like the plan that we have. They are just trying to figure out how to get away from this unfunded liability.

And I think that the new plan design—I will say this. We referred to the composite structures as defined contribution plus rather than a defined benefit minus, by addressing the shortcomings of each one of them. And I think this gives the trustees, labor and management, equal representation to say, does this best fit our plans and how do we proceed forward to ensure the viability of lifetime benefits.

Mr. WALBERG. Thank you. I yield back.

Chairman ROE. The gentleman's time is expired.

Ms. Wilson, you are recognized for five minutes.

Ms. Wilson of Florida. Thank you, Chairman Roe and Ranking Member Polis for your leadership in holding today's extremely important discussion on preserving retirement security for America's working families. I applaud the bipartisan efforts of my colleagues in working together on the issue of multiemployer pensions.

We work on this issue because we understand how important it is for workers to have the peace of mind of knowing that the pensions that they have come to rely on are solvent and will carry them through their later years. Every person who works hard to earn his or her pension deserves to have that entire pension.

I am a strong supporter of defined benefit pension plans that provide guaranteed lifetime income to retirement. So as we examine these plans today, let us be sure that the plans are fair to both participants and employers, these new plans, and protect the hard-earned retirement benefits of American workers and retirees.

We must make sure that these alternative plan designs mitigate risk to employers, but we also must make sure that these new alternatives do not shift an excessive amount of risk onto workers. We must also be sure that the plans continue to pay out reasonable benefits and that safeguards are in place to prevent plans from going underfunded, jeopardizing workers' retirement.

This proposal does not go far enough to ensure the retirement security of American workers and other participants in multiemployer pension plans. I am also concerned that it could permit unprecedented cuts to retiree benefits and is not protected by the Pension Benefit Guaranty Corporation.

I am currently reviewing and reserving judgment on the draft while approaching the process with an open mind. I believe all sides must be heard and have their views taken into consideration. If the committee and Congress as a whole decides to act on this important issue, we must make sure that it is manageable for all concerned, especially retirees. The last thing we need is for us to fail in our efforts to get this right.

And as we consider improving and ensuring the solvency of pensions, just as a strong reminder, we must keep in mind our coal miners, whose pensions and health benefits are in dire jeopardy. If Congress does not act on the Coal Healthcare and Pensions Protection Act, over 20,000 retirees stand to lose their health benefits by the end of the year.

Mr. Certner, would the enactment of this legislation reduce the likelihood of retirees receiving their well-deserved benefits?

Mr. CERTNER. I think that is the ultimate concern here, is that if you are moving retirees into legacy plans and you are essentially having to fund another plan, there simply won't be enough money to fund both plans. And we know from the start you are reducing the amount of money going into those legacy plans. At the same time, you are moving all of these companies or these plans out of basically the premium system, the PBGC premium base, because the composite plans don't pay premiums. So there is no insurance premium even going into the backstop.

So these legacy plans are going to be left with less funding and then having to compete with funding with the new plan that has some, you know, limits and caps on money going back and forth. So we think it puts those legacy plans much more at risk than they are today. And, of course, we know today we have nearly 40 percent of the plans that are in some kind of endangered funding status.

So we think it is just going to make those plans even more at risk; therefore, putting the retirees more at risk and putting the PBGC losing its premium base more at risk.

Ms. Wilson of Florida. At risk of what?

Mr. CERTNER. Well, risk of plans going under, there not being enough funding, and the PBGC not having enough money even to provide the guaranteed backstop.

Ms. Wilson of Florida. Well, Mr. Green testified that this plan would attract employers and expand the funding base of pension plans. Do you agree with that?

Mr. CERTNER. I think that is somewhat speculative, but even if they do come in, if we hit a market downturn then I think this is going to be very difficult for them to deal with, because you hear them all saying that the employers don't want to have increased liability. They don't want to—you have to contribute more. They don't want to pay additional PBGC premiums.

So they want to go into the system, but they don't really want to have to expand their liabilities, and that is exactly what would happen in a market downturn. So if the market goes down, as it will ultimately do, it is going to I think leave some of these plans, both the composite plan and the legacy plans, I think in a very difficult situation.

Ms. Wilson of Florida. Thank you very much.

Chairman ROE. The gentlelady's time is expired.

Mr. Guthrie is recognized for five minutes.

Mr. GUTHRIE. Thank you, Mr. Chairman.

I appreciate the opportunity to be here for us to try to get our hands around how we can help people preserve their hard-earned retirement benefits in a way that is sustainable. So that is the intent of everybody here.

So, Mr. Green and Mr. DeFrehn, I have a question. Under current law—so as employers consider adopting new plan designs, are there options under current law that they could consider and how do these compare to the draft? Could they already do this now? I have had some discussions where people say there is not necessarily this but other options. And, if so, what could they do and what is different from the draft?

Mr. DEFREHN. There are a number of different options that employers can adopt. Cash balance plans can be adopted. They have not been popular. They have their drawbacks as well.

Once again, I think there is a fundamental misunderstanding of what is trying to be accomplished here. We are not talking about reinventing a defined benefit system, and that is why there is no

PBGC premium. It is not a defined benefit plan, and the PBGC was created to protect defined benefit plans.

Instead, what we have is something that is viewed as a shared risk or defined ambition plans elsewhere in the world, where they have been in place for some time. Recognizing that the markets are not as dependable and more volatile than they have ever been, what we are doing is we are making sure that the workers, rather than being handed a savings account at the end of their career, will receive a regular monthly pension benefit.

The volatility here, we should be not comparing this with the current defined benefit system; we should be looking at a 401(k). Every day the market changes; your benefits go up and your benefits go down. This model allows a more modified, moderated approach, where the adjustments are made annually, based on the market performance for the plan for that year. It is according to a hierarchy that spells out, first, you negotiate additional contributions or adjust further accruals. If the plan is sufficiently harmed by a bad market, then you do what you can do under the DB system in a red zone plan, reduce subsidized early retirement benefits. And it is not until there is a catastrophic event that you would be—and all of those other options are exhausted that you would invade anybody's benefit that would be in pay status or the core benefit that could be paid.

So I think this model is one that should not be viewed as a defined benefit plan and things like a vote on what changes are made to the accruals. But the last discussion draft deals with the kind of discretion that would otherwise be up to the trustees by specifying that you have to go through these hierarchies before you can adjust the benefits and pay status.

So, in effect, what we are doing is we are protecting the pensioners far beyond what they are protected in a current 401(k), and that is really the model we should be looking at as the comparison.

Mr. GUTHRIE. Mr. Green, anything to add to that?

Mr. GREEN. Two points. The first point is, as a trustee, it would be hard to come up with your own plan. I mean, there is a lot of overhead to getting that done. So having good guidelines that have been reviewed by Congress and approved and a regulatory agency would be a huge plus.

And the second point I would like to make is the assumption that the amount of money coming in and contributions will stay the same is not valid. I mean, I believe that adopting different plans will bring more money in and more contributions, which will help us; but I am certain that the current regulations are hurting that and it is pushing money out, and so we need money coming in.

Mr. GUTHRIE. Thanks. I have a pretty long question so I will try to get to it quickly and give you time to answer, Mr. DeFrehn.

I have an employer in my district who said his withdrawal liability is worth more than his business right now and in that situation. So I know you all touched on it already, but I want to ask this question, Mr. DeFrehn: One of the biggest problems facing employers in the multiemployer pension system is withdrawal liability, the exit fee that the employer is supposed to pay upon leaving the plan. The prospect of this liability can be a significant detriment to employers contributing to a plan and a deterrent to attracting new employers. However, the purpose was to require that employers actually pay for the benefit liabilities attributed to their employees. The composite plan proposal does not include withdrawal liability.

How can a plan ensure that the benefit promises are adequately funded if employers are not required to pay a fee if they leave the plan?

Mr. DEFREHN. Similar to a 401(k), the contributions are coming into the plan, and you take that contribution, you project it forward for 15 years at the assumed rates of return and you see whether you are meeting your funding targets. You have to be 120 percent before you can make any changes to improve benefits; and below that, if you are not at the 120, you have to adjust to make sure that the plan is adequately funded.

Mr. GUTHRIE. Thank you. My time is up.

Chairman ROE. I thank the gentleman for yielding.

Mr. Jeffries, you are recognized for five minutes.

Mr. JEFFRIES. Thank you, Mr. Chairman, for this hearing, for your leadership on this issue. I also want to thank the ranking member.

This is a very important issue in the context of what constitutes the American Dream as we know it. The American Dream I think can be broken down into the notion that if you work hard, earn a living wage, you will have an opportunity to provide for your family, to purchase a home, to send your children to college so hopefully they can have a better life than the one that you had, and then to retire with dignity and security.

And we know if you look at the different elements there, though the economy has recovered significantly over the last eight years, because of structural changes that we have experienced for more than 40 years: We have an underemployment phenomenon that exists in this country; we have skyrocketing costs related to higher education that have increasingly made it difficult for middle class families, working class families to send their children to college; and then, of course, challenges as it relates to retirement security. And so while we have to deal with the underemployment issue, we have to deal with home ownership and higher education access, certainly retirement security is a critical component of the American Dream.

In that regard, a few questions. I will start with Mr. Certner. Composite plans are exempt from paying PBGC premiums. Is that correct?

Mr. CERTNER. Yes.

Mr. JEFFRIES. And so I guess as a result, is the expectation that PBGC premiums will drop significantly under a composite plan if it is adopted?

Mr. CERTNER. I would have to think so, because there would be more people in the composite plan than left in the legacy plan. So, for that employer, the PBGC premiums would drop.

Mr. JEFFRIES. And am I correct that PBGC is currently projected to deplete its funding in about a 6-year period?

Mr. CERTNER. 2025 I believe is the latest projection.

Mr. JEFFRIES. And so if that depletion takes place under current projections and if a composite plan was adopted, which presumably would accelerate it, how does that leave, you know, retirees in the context of the volatility that you have spoken about in terms of the market?

Mr. CERTNER. I think that is part of our concern. We obviously have a number of problems in the system, but one of the problems is to stabilize the PBGC. And what this proposal seems to be doing is moving more plans out of the PBGC framework, so there won't be any premium payments on those plans; plus, actually, over time I think it is going to make it easier to withdraw from the system as well. So that will drive even more companies out of the PBGC framework.

So initially you are going to have some taken out of the framework. Over time, you are going to have even more that can get out, because withdrawal liability will be reduced. So if you start having a run to the door of companies leaving, the PBGC is already on the verge of collapse. We need to do some tough things to shore it up. I don't know how we can do that if everybody is running out the door.

Mr. JEFFRIES. I yield now the balance of my time to Representative Bobby Scott.

Mr. SCOTT. Thank you.

Mr. DeFrehn, I had asked previously about the fact that if there is a downside market, the employee can suffer from the downside market, and you seemed to disagree when I said that they did not enjoy the upside. If there is a surprisingly good market, how would the employee benefit?

Mr. DEFREHN. Well, Mr. Scott, remember that these are contributions that go into a trust fund. And the gains that are realized by the assets that are invested in the trust fund remain in that trust fund for the benefit of the participants. The level of benefits and when benefit improvements are made, there are some restrictions on being able to spend a windfall profit too quickly; but basically, the collective bargaining process is one where the benefit would be improved once you get above that 120 percent. So they would share in those gains.

Mr. SCOTT. Is that mandated or discretionary?

Mr. DEFREHN. It is discretionary until you get to the point where the maximum deductible is hit, and that is currently at 140 percent of the funding level. Beyond that, then the benefits would have to be spent or the employers contributing to the plan would no longer be able to deduct these contributions under current—

Mr. SCOTT. Would the contributions continue to be required?

Mr. DEFREHN. Yes. In our system, although in a single-employer environment, employers often, when they hit their funding target or they meet even their minimum funding requirement, that is all they put in. Here, the contributions are negotiated. And so those contributions are coming in anyway. And—

Mr. SCOTT. So the contributions would continue to have to come in, and any upside from that would accrue to the benefit of the employee?

Mr. DEFREHN. That is correct. There is no way to have these assets depleted by the contributing employers. Once they are in the trust, they stay in the trust.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman ROE. Thank you, Mr. Scott.

Mr. Grothman, you are recognized for five minutes.

Mr. GROTHMAN. Mr. Terven, do I have that right? A feature of the composite plan design is a more flexible benefit structure that is just based on assets and the funds. Are you comfortable with that structure? And, when coupled with the conservative funding requirements, are you satisfied that this will provide adequate income security for your members even if the benefits go up and down? Would you be satisfied with that?

Mr. TERVEN. Yes, sir. But I would also like to remember, we are not suggesting a new form of defined benefit. As I said earlier, where a defined benefit is in place and it is strong and it is structured, it is the gold standard, it will stay there, all right? But I do feel that this alternative benefit will help increase more hours for people to have in their system to be able to afford their benefits and bring in new contractors and new employees.

Mr. GROTHMAN. Okay. A question for Mr. Green. You are a trustee. You know that defined benefit plan trustees make decisions affecting active workers, retirees and employers. The draft legislation would empower trustees to manage all aspects of the plan, including the benefits. Could you comment on that or how seriously you think the trustees will take their responsibilities?

Mr. GREEN. Trustees take their responsibility very, very personally. I mean, we have labor and management, both representatives there. Most of our retirees and participants are known on a first-name basis. In Omaha, we have about 4,000 actives in the plan. And so we take it very seriously. And then also, the labor side talks to their members and they are very well-represented.

Mr. GROTHMAN. Okay. I will yield the remainder of my time to the chair.

Chairman ROE. Thank you, Mr. Grothman.

I think what we are hearing today—and I am really glad we are having this hearing—is that we have opened up I think an option that business has to have. Let me just say this: Why would any new company go into a plan and accept a huge withdrawal liability that may exceed the value of their company? I can tell you I wouldn't do it with mine. I can flatly tell—Mr. Terven, I can flatly tell you that. I wouldn't put my company and my employees at that risk, because I might bankrupt and they may lose their jobs. Why would I do that? So I think offering this new option, and what Mr. Terven said, we have an example already in Canada where he has not heard anybody complain about that system, about that plan.

And, Mr. Certner, I agree. Look, we have underfunded plans. That is a problem, there is no question about it. And we can't allow those plans to get worse, because we have got 10 million people and those retirees depending on that. But as we gray and age, as Mr. Allen was saying, in this country, we have got to figure a way to get younger new workers in plans that work for them and work for the business that employed them.

So, Mr. Terven, I am going to open up for you. You said it once and I want you to say it again. I think this is essential for the survival of the multiemployer pension system.

Mr. TERVEN. Thank you, Mr. Chairman. I cannot say it enough. I have watched this business for a long time move around and I have watched, and I have watched a large employer be told to me that they could write a billion dollar check to walk away from unfunded liability. We cannot afford in these industries to lose these contractors that are supporting our members and the workers in this country to walk away with a billion dollar check and have no benefit structure for the future that we have going here.

And if our contractors cannot compete or do not know what that percentage of unfunded liability situation will continue to be—and one of the things that was touched on that I would like to, if I could, was the legacy plan.

It is my understanding on this one, because the people are talking about starving out the legacy plan, but it is my understanding that those involved—and I have been around with these guys for a long time in some of these meetings. The key component of those meetings shared the understanding that the promises and obligations made to those in the existing defined benefits would be honored in their entirety. The discussion draft I believe moves that ball forward on the objective by clarifying that legacy plans have first call on the contribution provided on a specific funding regimen in which the funding of the legacy plan is the greater of the requirements. So I don't see how that is going to be detrimental to our legacy plans.

So I think it is a great option and I think it is the one we have to have if we are going to sustain future benefits for our people. One of the areas—

Chairman ROE. It puts another tool in the toolbox.

Mr. TERVEN. Exactly. Here's a good thing.

Chairman ROE. I am going to have to interrupt you, Mr. Terven. My time has expired for the second time.

And thank you, Mr. Grothman.

Mr. Courtney, you are recognized for five minutes.

Mr. COURTNEY. Thank you, Mr. Chairman.

I want to thank all the witnesses here. I mean, this is obviously a very serious group of individuals who are sincere and thoughtful in terms of the hard work that you have done. I am very concerned about the way this process is evolving, though. We saw this movie two years ago and, as Chairman Kline, who is a serious, thoughtful guy and was deeply involved in the pension language that was put into the CRomnibus, tested that, you know, the way it has evolved with the Department of Treasury's interpretation, it is the law of unintended consequences in terms of just what has happened here.

And, again, it is obvious we are not going to have a markup. You know, the chairman had his kind remarks for Mr. Hinojosa which were well-deserved, but, frankly, that kind of sends the signal. This subcommittee is not going to do a markup. We are not going to have a full committee markup. We are days away from recessing until lame duck. And the only opportunity to enact this is going to be as part of probably some kind of omnibus bill.

And I just think that, you know, we are going to have the same kind of comments that Mr. Kline made earlier today about the fact that, well, you know, it really didn't evolve the way it was supposed to.

I mean, Mr. DeFrehn, you have mentioned a number of times the fact that the administration has weighed in with comments and suggestions, but, for the record, have they endorsed the draft recommendation?

Mr. DEFREHN. I haven't spoken with anybody about the draft proposal since—

Mr. COURTNEY. You are not aware then that the Department of Labor or the Pension Benefit Guaranty Corporation has publicly endorsed this package. Isn't that correct?

Mr. DEFREHN. I believe that they are in the process of evaluating it. At least—

Mr. COURTNEY. And that is fine. That is fine. But the bottom line is here, we are talking about doing something that affects millions of people and, you know, it is handle with care for all the reasons that you have all said from both sides of the issue here. And, you know, there clearly is opposition, as we see here this morning. And, you know, some of the comments that Mr. Certner has made about ways to improve this approach are not going to get incorporated. I mean, let us face it. You know, you guys have sort of come together with a package here, I understand that, but the fact of the matter is this process is over, in terms of really what the language is going to look like. I mean, look at the calendar; it is just common sense.

And, you know, I guess the only thought that, you know, I was going to propose is that, you know, clearly we have a division here. We have got the trades who, you know, support this approach. We have got industrial unions which oppose this approach. We have folks who are representing seniors that are, again, negative in terms of this.

You know, why can't we sort of move a little slower in terms of a phase-in, with some type of pilot approach for those sectors that feel that this is existential in terms of the future? And, Mr. Certner, maybe you can just sort of comment on that. Why do we have to sort of force this into the entire spectrum of pension plans, given the fact that the process is not proceeding with regular order and that we have still got kinks that we have to work out?

Mr. CERTNER. I agree. I mean, obviously, the discussion draft just came out recently and these folks may have been spending a lot of time with it. But if you are talking about a discussion between union and management, you know, I think you know unions, by law, don't represent retirees. And that is the problem and one of the reasons we are here today is because, you know, we think in many cases they are getting the short end of the stick here.

And we understand that there are a lot of concerns about making sure this continues in an ongoing fashion, but we want to make sure we take the right processes to protect retirees. Our pension laws have been very clear over time that when you have an accrued benefit, it is earned, it can't be taken away. And we are playing with a fundamental rule of pension law.

And I know there are huge problems here, but we have given over incredible discretion to trustees under these new composite plans to make changes to benefits on an annual basis. I don't know how you could even tell a participant what their plan benefit is. I don't even know how you would describe it, because the trustees can change it every year. That is not the way pension laws worked for 40 years, and to just do something like that as part of an omnibus would be a pretty dramatic change without, I think, a lot of due consideration.

Mr. COURTNEY. Thank you. And I would just say, you know, for the trades, you know, one of their mottos is measure twice, cut once. We are not measuring twice here. That is not the way this is moving forward.

And, again, George Miller was my hero, you know, as a member on this committee. He worked very hard in that package 2 years ago and, frankly, it just has not evolved the way I think the proponents, as Mr. Kline said, envisioned. And just it is a cautionary tale for all of us in terms of just, you know, using the lame duck session as a vehicle to make a change that is just that widespread in terms of impact on retirees.

I yield back.

Chairman ROE. I thank the gentleman for yielding.

Mr. Polis, you are recognized.

Mr. POLIS. Thank you. My first question is to Mr. DeFrehn. There is a continued concern, as we heard expressed, that legacy plans will be underfunded. Of course, we don't want legacy plans to descend into distress. AARP has raised several concerns regarding funding of legacy plans, including the requirement that 25 percent of the contributions go to the composite plans.

Mr. Certner testified moments ago that the provisions in the discussion draft that permit existing plans to divert current plan contributions to a composite plan will likely lead to harmful outcomes for those left behind in legacy plans, end quote. You got to hear that.

Do you agree that this could lead to harmful outcomes? If not, why not? And can you explain why it is important to set the 25 percent requirement mentioned in the statute?

Mr. DEFREHN. Yes. And thank you for your question. The stress testing that I referred to earlier was just done, was completed based on the discussion draft, which shows clearly that the requirements under the law to have the greater of the transition minimum or the current PPA requirements will continue to allow those legacy plans to be fully funded in a reasonable period of time.

And even testing it against the 22 percent loss that was incurred in 2008, these plans, a yellow zone plan would fall into red for 2 years before it returns by simply reallocating contributions by the bargaining parties, not by the trustees.

So I believe that is certainly a clear option here.

Mr. POLIS. Do you agree with Mr. Certner's testimony that permitting existing plans to divert current plan contributions to a composite plan will likely lead to harmful outcomes for those who remain in legacy plans?

Mr. DEFREHN. Not at all. You have to remember that a defined benefit plan is comprised of two portions: One is paying off the existing accrued liabilities; and the second is the normal cost or what you are putting in for future service and current service. What we are doing here is we are simply splitting off that second piece that would normally have to be funded out of the same plan. It is now being funded in a plan that has no risk, and it has some different features to it.

Mr. POLIS. I have a couple more questions to get in. But, as you know, some groups who represent workers have taken issue with the fact that the draft allows for an employer to amortize his existing legacy plan liability over a quarter century. They prefer a shorter period, like 15 years that is in the pension-protection-act.

Your testimony got into that a little bit, but could you briefly elaborate on why you think 25 years is appropriate instead of 15 years?

Mr. DEFREHN. Certainly. And this comes back to your earlier question as well. It has to do with the new employees and the current active employees. We have to make sure that the active employees remain as supportive as the employers, because when you get to the bargaining table, it is just as easy for the union to say, we are going to bargain out of the existing plan and go to a 401(k), as it is for the employer to do that.

We have examples. For example, there is a construction industry plan in the Midwest where the contribution rate is over $19 an hour. If you are working 2,000 hours a year, that is $38,000 a year you are putting in. The active employee is getting 90 cents of that $19 for his own retirement. We have to make sure they have a benefit, and that is where the extended amortization is required.

Mr. POLIS. Mr. Terven, and while today's hearing is about a specific issue relating to pensions that are very important, we also need to think about this in the larger context of protection and benefits for employees.

I recently introduced a labor package that would enhance labor laws, so we can provide workers a fair shot at obtaining and maintaining good jobs with livable wages, setting higher standards for employers. When I talk with workers in my district, they often bring up their concerns around not being paid the overtime they deserve. And for some, that they aren't getting the wages they should have earned. They have been victims of wage theft.

Unfortunately, the current rules and the Fair Labor Standards Act are often either ignored or not taken seriously. For too many Americans, wage theft and ignoring workers' rights to overtime is, sadly, part of their experience.

Can you speak to the importance of beefing up penalties for violating FLSA and how workers could benefit from tougher penalties on bad actors?

Mr. TERVEN. Thank you. I think a fair wage or a livable wage discussion cannot be limited to just payment per hour, week, month, or the year. A fair wage must also include a pension that will provide for workers when they retire. And we have to make sure that the pension will be there when the employee retires and that it will sustain them over their retirement years. And this is why this hearing is so important.

And for many workers and the members of our union and other unions, the question of the sustainability of their pensions under the current economic conditions and past practices is a very serious matter. It is very serious to the members of our union, to the employees of our employers, and the employers themselves, as it affects the sustainability of a talented workforce in a competitive company.

So when you raise the issue of the fair wage or livable wage to support a family, for education of their children, for the purchase of a home, to provide for their health care, yes, it must also include the adequacy and sustainability of their pensions. And I commend you for raising these issues, and I look forward to working with you and the other members of this committee, hopefully in a bipartisan manner to make sure that America's skilled workforce can continue to earn the wages that support their families and have those protections and provide for the retirement. There is a lot of work to be done in America today and on behalf of the employees and the employers to try and make this a reality for all men and women in America's remarkable skilled and talented workforce. These issues cannot be separated.

Mr. POLIS. Thank you, and I yield back.

Chairman ROE. I thank the gentleman for yielding.

And, again, I would like to thank our witnesses for taking the time—it has been an excellent committee—to testify before our subcommittee today. And before we adjourn, I will ask Mr. Polls if he has any closing remarks.

Mr. POLIS. Mr. Chair, I have an additional letter to submit to the record, without objection.

Chairman ROE. Without objection, so ordered.

[The information follows:]

Joint Statement of the International Association of Machinists and Aerospace Workers, the International Brotherhood of Boilermakers, the International Brotherhood of Teamsters, the National Retirees Legislative Network, the Pension Rights Center, and United Steelworkers Opposing Consideration of "Composite" Pension Legislation

The International Association of Machinists and Aerospace Workers, the International Brotherhood of Boilermakers, the International Brotherhood of Teamsters, the National Retirees Legislative Network, the Pension Rights Center, and the United Steelworkers strongly oppose legislation recently released by the House Education & Workforce Committee that would create "composite" multiemployer pension plans.

Our organizations strongly support defined benefit pensions plans that provide guaranteed lifetime income to retirees. The composite legislation does not go nearly far enough to ensure the retirement security of our members and other participants in multiemployer pension plans. The draft provides inadequate funding for composite plans and weakens the funding base for existing ("legacy") plans by allowing plans to "refinance" their obligations to the legacy plan over 25 years—more than 10 years longer than current law allows. This reduces contributions to fund benefits under legacy plans, making them vulnerable to funding shortfalls in times of market volatility.

Protecting the benefits of workers in legacy plans would require *deep* cuts to active workers in composite plans in times of market instability. Even devastating benefit cuts for active composite plan participants may not be enough to save the legacy plans from painful benefit cuts. Moreover, the legislation would permit unprecedented cuts to retirees' benefits. The proposed legislation does not even contain the few procedural protections for composite plan participants offered to traditional and legacy plans by the Multiemployer Pension Reform Act (MPRA), making it much easier for composite plans to make massive benefit cuts. Additionally, composite plans, unlike traditional and legacy plans, are not protected by the Pension Benefit Guaranty Corporation (PBGC).

Finally, composite plans are exempt from paying PBGC premiums, and as a result, PBGC premium contributions will drop precipitously. When combined with plan failures, the PBGC will be saddled with significant new liabilities at the same time an already underfunded multiemployer insurance program is depleted of funds.

In short, while we do not oppose the concept of new forms of retirement plans, we do oppose legislation that changes pension funding rules in a way that harms retirement security. The composite legislation is a raw deal for American workers and retirees that puts them at greater risk of major cuts to their retirement savings.

With so few legislative days left in the 114th Congress, we urge the Education & Workforce Committee not to take up this legislation this year. The revised legislation still has serious problems for Congress to address before enacting such sweeping changes to our retirement system. We stand ready and eager to work closely with members of Congress next year to develop legislation that solves the fiscal challenges facing multiemployer pension plans in a manner that is fair to both participants and employers, while protecting the hard-earned retirement benefits of American workers and retirees.

September 21, 2016

Mr. POLIS. And I just want to thank Dr. Roe for holding this important hearing. I want to thank Chairman Kline for putting forward a discussion draft. Retirement security is incredibly important for our workers and, of course, for companies as well. We need to take the time to fully discuss how to ensure that employees' benefits are protected and companies can remain competitive.

I want to thank the witnesses for being here today. This is the start of a process of stakeholder input, and I greatly appreciate the time that all of you have taken to share your thoughts with us today on this topic.

And I yield back.

Chairman ROE. I thank Mr. Polis for yielding.

And I again thank the panel for being here.

And let me just close out by saying, in this country 29 percent of people over 55 have no retirement savings. That is a national tragedy when you think about it. I mean, none. I know when I began my small business over 35 years ago now, we had just 12 employees. We now have 450 employees, which we have a 401(k). We have had a retirement plan from day one. As Mr. Green said, people have stayed with me for 40 years in our business. And actually, one outlasted me; she has still there working and will have a very substantial retirement benefit package when she leaves. And I am happy for that. I am glad about that.

As Mr. Allen was saying, I started thinking about retiring when I started working, about how we provide for people who get up every day when they have a bad cold and they are feeling bad or whatever and come to work for me. They deserve a decent retirement. Mr. Chairman, you said that and I agree with you 100 percent.

We have various options out there available to us. We have personal savings, we have a 401(k), IRAs, defined benefit plans. We have now this new hybrid plan called a composite plan, which is to me very intriguing. And when I was the mayor of Johnson City, Tennessee, I watched a defined benefit plan. When I began there in 2003, 11 percent of the total wages were used to make the accruals that we needed. Six years later, it was 19 percent. It was totally unsustainable for the taxpayers in that small community. We couldn't continue to do that; there had to be other options available.

And, as Mr. Green brought out, we are not going to attract companies to go into a defined benefit to sign onto a potential liability that exceeds the value of their business. I know I would never do that. You wouldn't be a good business owner if you did.

So I think you all have brought up, and I think what Mr. Courtney brought up is not altogether factual. I think the NCCMP's initial shot at this 3 years ago was changed a lot by this. And I think the same thing, this is a hearing to begin the process, not the endpoint today. And we have heard a lot of good ideas. And certainly, I think Mr. Polis brought up harmful outcomes, and I think the harmful outcome is doing nothing. I think you will end up with a bad outcome if we do nothing. And I think this subcommittee and this committee and you as stakeholders out there won't have done your job if we do nothing.

So I want to thank you again for the beginning of this process and I look forward to doing this. I am very intrigued by this and, with no further comments, this meeting is adjourned.

[Additional submission by Ms. Bonamici follows:]

Western Conference of Teamsters Pension Plan
An Employer-Employee Jointly Administered Pension Plan – Founded 1955

Statement of Chuck Mack and Edward R. Lenhart
Co-Chairs, Western Conference of Teamsters Pension Trust

Subcommittee on Health, Employment, Labor, and Pensions
Education and the Workforce Committee
U.S. House of Representatives

Hearing on "Discussion Draft to Modernize Multiemployer Pension Plans"
September 22, 2016

Chairman Roe, Ranking Member Polis, and Members of the Subcommittee, we are pleased to submit this statement for the record on behalf of the Western Conference of Teamsters Pension Trust ("WCTPT") to express our deep concerns with the proposed composite pension legislation recently released by the Education and the Workforce Committee, because it would severely weaken the funding status of both composite and legacy retirement plans, and cause damage to healthy plans in the broader multiemployer pension system.

WCTPT is the country's largest and most successful multiemployer pension plan. For over 50 years, the plan has provided substantial, secure retirement benefits to over 500,000 retirees. The plan has approximately 585,000 active and inactive vested participants, including retirees, with participants or retirees in all 50 states and nearly every U.S. Congressional district. Over 1,400 employers contribute to the Trust, almost three-quarters of which are small businesses with fewer than 50 employees.

The WCTPT has over $36 billion in assets, and is well-funded. Since the Pension Protection Act funding rules took effect, the WCTPT has always been in the "green zone." The Trust has maintained a responsible investment strategy and benefit plan design, and its Trustees have made difficult choices to keep the Trust fiscally sound. For example, in 2003, WCTPT reduced future benefit accruals shortly after the dot-com bubble burst in order to maintain plan strength. The Trust's Union and Employer Trustees have a long history of working together to promote the well-being of our plan participants. Over the past 20 years, including the 2008 downturn, the WCTPT's investments have averaged a return of over 8 percent annualized.

Despite WCTPT's strengths, the discussion draft legislation threatens to harm our participants and retirees, regardless of whether WCTPT transitions to a composite plan. The WCTPT opposes this legislation because it will weaken the multiemployer retirement system in four major ways:

(1) The changes to the funding requirements for existing ("legacy") plans set up both the composite plan and the legacy plan for failure.

(2) The proposed legislation subjects both legacy and composite plan participants to a risk of substantial benefit cuts in times of market volatility, even at historical rates.

(3) The legislation would increase the likelihood of employers withdrawing from legacy plans.

(4) The legislation would further threaten the financial health of multiemployer pension plans by eroding the premium base of the already underfunded Pension Benefit Guaranty Corporation (PBGC).

The composite plan legislation is harmful for participants in both the new composite plans, and the legacy plans, because it permits legacy plans to maintain inadequate reserves to withstand market downturns, while requiring deep cuts to composite plans to make up for the shortfalls. Even healthy plans would face serious funding gaps if, after transitioning to a composite plan, they face market fluctuations similar to those seen in recent history.

I. Proposed Composite Plan Legislation Sets Up Both Composite and Legacy Plans for Failure

The moment a traditional multiemployer pension plan transitions to a composite plan, the funding base of the existing ("legacy") plan is significantly reduced. The legislation changes legacy plan funding requirements to allow legacy plans to "refinance", and pay off past plan liabilities over at least 25 years — approximately 10 years longer than the time period permitted under current law.

By allowing plans to pay off liabilities over a longer time, the legacy plans' annual funding requirements are immediately reduced. Like refinancing a house with a new, longer-term mortgage, the legacy plans' funding requirements go down because the debt is paid off more slowly. The balance from this funding reduction is diverted to the new composite plan.

With this reduced funding, both the legacy and composite plans lack sufficient reserves to withstand market fluctuations. For example, a period of investment returns similar to 2005 to 2014 would quickly render a typical legacy plan's funding level in the red zone. At the same time, these investment returns would render a typical, mature composite plan 25 percent below its required funding target, risking cuts to workers' pension benefits.

II. Proposed Legislation Subjects Legacy and Composite Plan Participants to Risk of Substantial Benefit Cuts

With both the legacy and composite plans underfunded, our actuarial models predict that the proposed legislation would require either substantial benefit cuts or unrealistic contribution increases as a result of market fluctuations at historical rates. During a market scenario analogous to the period from 2005 to 2014, a typical, mature composite plan would be required to cut workers' future benefits by 50 percent and previously earned benefits by 35 percent. At the same time, the legacy plan must cut workers' previously earned benefits by 21 percent.

To avoid benefit cuts, employers would be required to increase composite plan contributions by 81 percent— above and beyond what they have already committed. This is simply not a realistic option. Dramatic contribution increases are impracticable in any economic climate — and even more so in times of the kinds of market volatility that would render pension plans underfunded.

Additionally, the legislation would allow unprecedented cuts to retirees' benefits. Making such cuts would, under the Committee's proposal, be easier than ever before: The bill would permit cuts to retirees' benefits in the composite plan without even the few procedural protections for plan participants offered by Multiemployer Pension Reform Act. There would be no vote of plan participants, and no review or approval by the U.S. Treasury. Plan trustees would be free to make cuts on their own, if they believed there was no other "reasonable" option.

Even devastating cuts to the benefits of composite plan participants may not be enough to save legacy plans. The legislation caps further the amount of contributions that legacy plan can receive by guaranteeing that at least 25 percent of incoming contributions go to the composite plan. Faced with these limitations, legacy plans may be starved of the funds they need to remain solvent.

III. Proposed Legislation Will Increase the Likelihood that Employers Will Withdraw From Legacy Plans

In addition to weakening the funding base of multiemployer pension plans, the legislation would make it easier for employers to withdraw from legacy plans altogether. Under current law, an employer may withdraw from a multiemployer pension plan, but must pay "withdrawal liability" to cover its share of benefits already earned by its employees. How much an employer pays in yearly withdrawal assessments is calculated based on its contributions to the plan within 10 years of withdrawal.

Under the new legislation, the cost of withdrawal will be reduced substantially. By allowing employers to significantly cut their legacy plan contribution rate by "refinancing" through the 25-year "fresh start"—the provision that lowered employee contributions to legacy plans in the first place—the proposed legislation can dramatically lower the cost of withdrawing from the plan over time. This incentivizes withdrawal from plans that are already potentially underfunded, leaving even fewer employers to fund legacy plan benefits.

IV. The Proposal Would Further Erode the PBGC Premium Base and Pressure Healthy Plans to Fund PBGC Obligations

While many of the provisions described above would directly harm participants in the composite and legacy plans, the proposed legislation would also have major consequences for the multiemployer pension system as a whole. In particular, the bill would weaken the premium base of the PBGC, eroding a backstop available to protect at least some of the retirement benefits of participants in failed plans.

Composite plans are not required to pay PBGC premiums, even though their creation is likely to increase benefit payments by the PBGC. As participation in the frozen legacy plans inevitably declines, because no new employers join the plan and participation shrinks as individual retirees die, PBGC premium contributions will likewise drop. When combined with relaxed withdrawal liability requirements, which as described above will weaken legacy plans, and failures of already underfunded plans, the PBGC will be saddled with significant new liabilities.

The bill also harms participants in healthy plans, regardless of whether they transition to a composite plan. Healthy plans are already paying higher premiums and will likely face additional increases in the future. From 2014 to 2016, PBGC premiums more than doubled. Because the draft legislation will erode the PBGC premium base and weaken existing pension plans, it has the practical impact of shifting a disproportionate and unsustainable share of the PBGC's funding obligations onto healthy plans and, potentially, taxpayers.

V. Conclusion

The composite legislation puts both composite and legacy plans at risk of underfunding, puts workers and retirees at significant risk of major benefit cuts, further weakens legacy plan funding by encouraging employer withdrawal, and puts healthy plans and potentially taxpayers on the hook for PBGC underfunding. As a healthy, responsibly managed pension plan, the Western Conference of Teamsters Pension Trust cannot support legislation that would harm the retirement system.

We strongly urge the Committee not to take up this legislation this year, especially with so few legislative days left in this Congress. WCTPT looks forward to working with this Subcommittee and the full Education and the Workforce Committee next year to develop legislation that strengthens the retirement system.

[Whereupon, at 11:34 a.m., the Subcommittee was adjourned.]