National Coordinating Committee for Multiemployer Plans (NCCMP) Presentation to the Staff of the Joint Select Committee on Solvency of Multiemployer Pension Plans

Multiemployer Pension Crisis: Causes, Impact, Federal Workout Options and Solutions

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Multiemployer Impact and Crisis Causes

- **Multiemployer system is a significant financial contributor to the U.S. Government, States, and the National Economy**
  - $158.5 billion in federal taxes and $82.5 billion in state and local taxes (2015).
  - More than $1 trillion in GDP (2015).
  - $41 billion in pension payments and $203 billion in wages to actives (2015).
  - 13.6 million jobs.
- **Issues giving rise to solvency difficulties**
  - ERISA's anti-cut back rule limited ability of critical and declining plans to reduce liabilities.
  - Excise tax on contributions to well funded plans incented Trustees to increase liabilities in good times. Multiemployer pension contributions are part of multi-year collective bargaining agreements under which contributing employers, by law, do not have discretion to reduce contributions.
  - Withdrawal liability created in the Multiemployer Pension Plan Amendments Act of 1980 expanded employer liability and made it more difficult to impossible to sign new employers.
  - Deregulation of the trucking industry as well as trade and environmental policies decimated domestic industries.
- **False narratives of the crisis**
  - Irresponsible pension management by employer and union trustees.
  - Negligence by employer and union trustees.
  - Corruption by employer and union trustees.
  - Unreasonable actuarial or investment assumptions.

Self-Help, Doing Nothing and Federal Costs

- **Self-help solutions have not been allowed to work**
  - The Multiemployer Pension Reform Act, or MPRA, was intended to be a powerful solvency restoration tool. Treasury denied the Central States MPRA application. If the application was successful, Central States would be on the path to solvency, and approximately $20 billion of the PBGC's deficit is removed.
  - MPRA applications are difficult decisions, time consuming, and expensive. Trustees need to have faith that this is a real and predictable tool.
  - Benefit reductions through MPRA are a better alternative for retirees and actives than the PBGC financial assistance at plan insolvency.
- **The "Do Nothing" approach will result in:**
  - Systemically important and other plans failing.
  - Participants receiving 47 cents on the dollar until the PBGC is insolvent in 2025.
  - Participants receiving 2 to 6 cents on the dollar at PBGC insolvency.
  - Significant economic costs to U.S. taxpayer.
- **Economic costs to the U.S. Government will be very high just for Critical & Declining Plans**
  - **UPDATED September 13, 2018:** The U.S Government will lose between $31 billion and $101 billion in tax revenue (depending on assumptions of employment loss) over 10 years and between $68 billion and $213 billion on a net present value over the 30-year life of the proposed federal loan program.
  - **UPDATED September 13, 2018:** Federal safety net spending will increase by $175 billion over 10 years and $334 billion on a net present value over the 30-year life of the proposed federal loan program. In January 2012, Senator Hatch wrote that *"[i]t is simply not realistic to presume* that no state or local pension plan will fail or *that such failure will have no effect on federal spending or revenue."* This is equally true for multiemployer pensions where the failure will result in 94% to 98% benefit reductions to retirees.
  - **UPDATED September 13, 2018:** Total costs exceed between $207 billion and $277 billion over 10 years and between $402 billion and $548 billion on a net present value over the 30-year life of the proposed federal loan program.
  - Contagion costs are not included.

Plan Insolvency Contagion

- **Contagion is real but impossible to quantify today without the actual crisis. How does it take shape?**
  - **UPDATED September 13, 2018:** At the insolvency of Central States, employers with exposure to withdrawal liabilities in Central States and pension backstop liabilities to certain retirees in Central States currently comprise approximately 56% (not the 90% which was referenced in the July 19, 2018 submission) of the contributions to the Western Conference of Teamsters Pension Trust (Western Conference), a well-funded Green Zone plan.
  - **UPDATED September 13, 2018:** The employers with Central States withdrawal liability exposure comprise 12.5% of the 2017 contributions to Western Conference. United Parcel Service (UPS), which has a pension backstop liability to certain Central States retirees, comprised 43% of the 2017 contributions to Western Conference. UPS's share of Western Conference contributions has increased from 35% in 2010 to the 43% in 2017, an average annual increase of 8%. This is significantly above the average annual increase for non-UPS contributions. Assuming the same contribution growth rate until the projected insolvency of Central States in January 2025, UPS's contributions alone will exceed 52% of all Western Conference contributions. Many of these employers contribute to multiple Teamster plans, with UPS being a dominate contributor in a number of Teamster plans.
  - Even without plan termination at insolvency, employers will face decreased access to capital. Banks, the capital markets, rating agencies, and auditors will be considering these liabilities in their credit and capital decisions.
  - **UPDATED September 13, 2018:** The Financial Accounting Standards Board (FASB) is significantly more likely to revisit multiemployer pension accounting with respect to plan insolvency, particularly with the insolvency of a very large plan. Given a systemically important plan insolvency, FASB could also revisit multiemployer pension accounting standards generally. Each of these approaches would have significant consequences but with the latter impacting all plans and employers.
  - Employer bankruptcies and liquidations are highly likely, along with significant job losses.
  - Contagions happen quickly. In June 2008, Fannie Mae was a AAA rated Government Sponsored Enterprise that had just successfully issued $7.4 billion in common and preferred stock. In July 2008, Fannie Mae and Freddie Mac had difficulty issuing debt and MBS in the market because of concerns about their exposure to sub prime securities, the value of their portfolio, and their capital levels. Congress passed the Housing and Economic Recovery Act in July that allowed Fannie Mae and Freddie Mac to access more than $448.6 billion of Treasury capital. By September 2008, the value of the newly issued common and preferred stock was reduced by more than 95%.

Healthy Plan Solutions

- **Foundational Guidance – Follow the Hippocratic Oath – First, Do No Harm**
- **Current discount rate assumptions are appropriate for multiemployer pensions**
  - The current practice of using the actuary's best estimate for long-term rates of return is supported by the historical rates of return available to plans during any 30-year period with a portfolio comprised of 50% equities (S&P 500®) and 50% fixed income. Naturally, as one would expect, the current practice is based on each plan's future expected return for their unique asset allocation. By definition, if the asset allocation expects a lower return, the actuary's best estimate will be lower.
  - During the nine-decade period [from 1927 through 2017], the lowest 30-year return was 6.66 percent. The highest return for a 30-year period was 11.65 percent. The 30-year return for the 30 years ending on December 31, 2017 was 8.78 percent.
  - Multiemployer pensions are not risk-free assets and should not be discounted like risk-free assets.
  - PBGC's current guarantee for insolvent plans provides for only 47% of a retiree's contractual benefit. This is the rough equivalent of completely unsecured debt or other claim in default ("D" rated), which would never be confused with a risk-free Treasury bond, or alternatively the highest investment grade bonds in the market.
  - The PBGC has provided the public with every reason to doubt the ability of the agency to honor even this meager guarantee as it has reported that the multiemployer program will become insolvent around 2025, after which it will only be able to pay out what it takes in from premium income. At this point, the PBGC's multiemployer guarantee will cover between 2% and 6% of the retiree's contractual benefit.

Healthy Plan Solutions (Cont'd)

- **Current discount rate assumptions are appropriate for multiemployer pensions (cont'd)**
  - As noted in the Horizon report in June, using the 30-year Treasury rate would result in 96% of plans being subject to Red Zone rehabilitation plans. This will
    - (1) make employers uncompetitive in the market, which is likely to result in a number of contributing employers seeking relief under Chapter 11 or Chapter 7 of the Bankruptcy Code;
    - (2) likely result in contributing employers losing access to capital as banks and the capital markets allocate these new liabilities to employers as part of their credit and underwriting process; and
    - (3) put employers at a competitive disadvantage for retaining and recruiting active workers (the lifeblood of any pension system) as the active worker's accruals are cut to next to nothing, yet the contributions on their behalf skyrocket.
  - Changing the discount rates is an existential threat to the entire multiemployer system and its stakeholders. This includes the U.S. Government that receives a $158 billion (2015) annual dividend from the system in the form of federal tax revenues.

Healthy Plan Solutions (Cont'd)

- **GROW Act is needed for healthy plans**
  - Important voluntary tool for Trustees to retain the best features of defined benefit and defined contribution plans and address withdrawal liability for employers.
  - Participants protected in GROW Act plan though a 120% funding requirement. While benefits may be adjusted based on portfolio performance, the annual adjustments and nature and various protections limit the impact on participants. The one lesson that we have clearly learned is that under the current system of multiemployer defined benefits, pension benefits are not guaranteed.
  - Legacy plan is frozen (no new accruals) with statutorily required cash contributions to pay down any unfunded liability and to ensure that the full accrued benefits are paid.
  - Legacy costs are funded. Unfunded liabilities paid over 25-years through statutory contribution requirements from both legacy and new employers. There are no changes to the withdrawal liability responsibility of the legacy employers, except that with a frozen plan, they have a path to eventual elimination as the legacy plan becomes fully funded.
  - PBGC revenue is unaffected because the legacy plan continues to pay premiums on all legacy participants. New employers generally would not have signed a CBA that included a defined benefit plan.

Solutions Without Bailouts

- **Make corrections to MPRA so that it is a reliable and predictable tool for trustees to restore plan solvency, protect retirees from the draconian benefit cuts that they will otherwise see at insolvency from the PBGC, and ensure that the plan is no longer a financial liability of the PBGC.**
- **Pass a responsible, 1% federal loan program that WILL be implemented by the Executive Branch and that allows plans to restore plan solvency, demonstrate full repayment using conservative return assumptions, and protects retirees to the maximum extent possible.**
- **Facts on federal credit**
    - Credit programs are VERY difficult to get passed in Congress.
    - It is even MORE difficult to get the Executive Branch to implement a federal credit program.
    - OMB and Treasury rarely support federal credit programs.
    - While CBO will score a credit program, once a bill passes, under the Federal Credit Reform Act of 1990 (FCRA), the only score that matters is that of the Office and Management and Budget (OMB).
    - FCRA dictates how a credit program is scored and provides OMB with tremendous authority over implementation.
    - The current FCRA exemption for the PBGC is because it is not viewed as a credit program agency, despite the financial assistance (loan) program for insolvent multiemployer plans. Only one loan has ever been repaid.

Solutions Without Bailouts (Cont'd)

- **NCCMP's federal credit program principles**
  - Proposal must be credible to the U.S. Government and must solve the actual problems of the borrower plans. This includes conservative actuarial and investment assumptions. Program must lend enough so that it can be successful using these conservative assumptions.
  - The loan account is not part of plan assets and cannot be used to pay benefits or considered in withdrawal liability (except for principal losses). Additionally, benefit reductions and loan account investment earnings are excluded from withdrawal liability.
  - Proposal must maximize the probability of operational and policy success and the likelihood of implementation by the U.S. Government. This includes full repayment of the loan.
  - Proposal must be consistent with FCRA and longstanding federal credit policies. It is structured to address persistent U.S. Government concerns with federal credit, protect the taxpayer and the U.S. Government, and minimize the impact of the default side of the credit subsidy cost.
  - Proposal must provide a demonstrably better financial outcome for the U.S. Government.
  - Proposal must be paid for either by the borrower or the U.S. Government, not the multiemployer community at large.
  - Proposal must be structured in a way that minimizes the possibility of failure, as failed federal workouts are typically paid for by the entire industry.

Solutions Without Bailouts (Cont'd)

- **The key structural details of NCCMP's loan proposal include**
  - The plan is only entitled to the semi-annual investment earnings of the loan account, and cannot use the loan proceeds to pay for plan benefits. This is achieved by holding the loan proceeds in a separate loan account, which is held in trust for the U.S. Government.
  - The loan program is designed to restore plan solvency and demonstrate full repayment of the federal loan using only the investment earnings of the loan account, and with expected rates of return that cannot exceed 5.5%.
  - The loan itself (and not the Plan) is required to be rated by two Nationally Recognized Statistical Rating Organizations and achieve at least a BB+ rating from both.
  - Any benefit reductions are paid to the financing account and used to offset the credit subsidy costs calculated under the Federal Credit Reform Act of 1990 (FCRA).
  - If investment returns are negative and the corpus of the loan account is below the original amount, the plan forfeits future investment earnings until the corpus of the loan account is restored.
  - If investment returns exceed 9% annually, the excess is retained in a reserve sub-account of the loan account and can be used as a buffer in a future period.
  - Investments are limited to Level 1 and Level 2 assets.
  - In the event of material experience loss from the projections provided to support the loan approval, the transfer of investment earnings is suspended until the experience loss is covered.
  - At plan insolvency or mass withdrawal, the loan account is immediately returned to the U.S. Government. Any unpaid amounts on the loan account are first covered by plan assets.

Solutions Without Bailouts (Cont'd)

- **Policy decisions for Congress regarding a loan program**
  - Loan eligibility will dictate the size of the overall program required. The current NCCMP language limits loan eligibility to plans that have been rejected under MPRA or those that are statutorily ineligible. We estimate that the overall lending authority would need to be $100 billion under this standard. If the eligibility standard is relaxed, the overall lending authority required would be higher.
  - The level of benefit reductions required. NCCMP offered three alternatives for benefit reductions of 0%, 20%, or a higher amount that would result in a zero subsidy program.
  - The application of any benefit reductions to the financing account can be used to offset the credit subsidy costs, thereby lowering the cost of the program to the U.S. taxpayer.
- **Evaluating the U.S. Government's total cost of providing a loan program against the alternative**
  - The starting point is the credit subsidy cost of the loan program as calculated under the FCRA.
  - The credit subsidy cost can be offset in part, or in whole, by making benefit reductions payable to the financing account.
  - Absent a new solvency restoration tool in the form of a loan program, there will be significant reductions in federal tax revenue from both the retirees and actives in the plans going insolvent.
  - There will be significant new federal social safety net spending for the retirees in insolvent plans that see their benefits reduced 94% to 98%.
  - Contagion impact cost is a certainty but an estimate is difficult to quantify.
  - Cost and loss tax revenue numbers should be considered both as 10-year numbers as well as 30-year net present value numbers. The reason for the 30-year net present value calculation is that the scoring for federal credit programs is based on the net present value of the cash inflows and outflows over the life of the entire loan, which in this proposal is 30 years.

PBGC Solutions

- **Reform the PBGC and its finances**
  - The PBGC's multiemployer guarantee is an example of a failed program. Nobody would purchase insurance that would pay out 47 cents on the dollar. And they certainly wouldn't when the insurance company tells you that they will only be able to pay out between 2 and 6 cents on the dollar in less than 7 years.
  - PBGC premiums should not rise before the solvency restoration tools are allowed to workout these plans. At that point, PBGC premiums should be based on any unresolvable net deficit using realistic discount rates (not lower than the rate used by the Social Security Trustees to discount their full faith and credit obligations).
  - MPRA and the loan program are two very powerful solvency restoration tools that can and should be used to restore plan solvency. Fully implemented, these tools will ensure that plans never need PBGC financial assistance.
  - Successful MPRA or loan applicants will remove that plan from the list of plans that comprise the PBGC's deficit. By keeping plans from requiring PBGC financial assistance, the PBGC's financial needs are dramatically reduced.
  - The only reason that we need another solvency restoration tool today is because Treasury failed to implement MPRA as it was intended and rejected the largest and most systemically important plan (Central States).
  - In the interim, the PBGC multiemployer premiums will be rising annually based on the National Wage Index. Over the next 20 years, using below average increases in the National Wage Index, PBGC multiemployer premiums will average $38.50 per participant, per year.
  - Any future increase in premiums should be considered in the context of the economic impact of these premiums on plans, actives, and employers as well as the value of the insurance provided.

NCCMP Source Documents

Document Name	Description	Location
Multiemployer Pension Facts and the National Economic Impact, January 5, 2018	Multiemployer Form 5500 Data and National Economic Impact Analysis	http://nccmp.org/wp-content/uploads/2018/01/Multiemployer-Pension-Facts-and-the-National-Economic-Impact-Jan-5-2018.pdf
Multiemployer Pension Crisis and the Cost of Doing Nothing	Analysis of Tax Revenue Losses and Safety Net Spending for Critical and Declining Status Plans at Insolvency	http://nccmp.org/wp-content/uploads/2018/07/Multiemployer-Pension-Crisis-The-Cost-of-Doing-Nothing.pdf
NCCMP Submission to JSC, May 24, 2018	Answers to the JSC Members Questions from the April 18, 2018 Hearing	http://nccmp.org/wp-content/uploads/2018/05/NCCMP-Response-to-April-18th-Hearing-Full-Response.pdf
Horizon Report – Impact of Alternative Discount Rates, June 25, 2018	Analysis of Systemwide Impact of Alternative Discount Rates	http://nccmp.org/wp-content/uploads/2018/07/Horizon-Report-with-Coverletter.pdf
Segal Report – Appropriateness of Current Assumptions for Multiemployer Funding, July 6, 2018	Analysis of Historical Returns and Impact of Alternative Discount Rates on Representative Plans	http://nccmp.org/wp-content/uploads/2018/07/Segal-Report-with-Coverletter.pdf
Discussion Draft of NCCMP Loan Program	Legislative Language for Loan Program	http://nccmp.org/wp-content/uploads/2017/11/MPP-leg-draft-03-19-18-discussion-draft.pdf
Discussion Draft of Purpose and Terms and Conditions of NCCMP Loan Program	Overview and Terms and Conditions	http://nccmp.org/wp-content/uploads/2017/11/Loan-Program-Discussion-Draft-Feb-21-2018.pdf
United States Committee on Finance, State and Local Government Defined Benefit Pension Plans: The Pension Debt Crisis that Threatens America, A Report by Ranking Member Orrin Hatch (R-Utah), January 2012	Ranking Member Orrin Hatch's report on state and local government pensions, including the fact that the federal safety net programs will be used extensively in the event of failed pensions. (see page 4)	https://www.hatch.senate.gov/public/_cache/files/ecfaf678-a3ec-45a4-a2bf-3bca4fe9475d/Hatch%20Report%20-%20The%20Pension%20Debt%20Crisis%20that%20Threatens%20America.pdf