

September 30, 2018

The Honorable Orrin Hatch
Chairman
Joint Select Committee on Solvency
of Multiemployer Pension Plans
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Co-Chairman
Joint Select Committee on Solvency
of Multiemployer Pension Plans
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch and Chairman Brown:

The Pension Rights Center is pleased to submit comments to the Joint Select Committee on Solvency of Multiemployer Plans as the Committee works to find a bipartisan legislative solution to the insolvency crisis facing the multiemployer plan system. The Pension Rights Center is a national consumer organization that works to protect the retirement income security of workers, retirees and their families

Ensuring that retirees and employees receive the pension benefits they earned and were promised is fundamental to the American dream. Hard-working patriotic Americans—retired mine workers, truck drivers, warehouse workers, iron workers, including many veterans who fought to preserve democracy around the world—gave up wages, vacation pay, and other workplace benefits in exchange for the promise of a guaranteed pension at retirement. It should be noted that this was the promise that Congress made to them when it enacted the Employee Retirement Income Security Act (ERISA) in 1974.

These workers and retirees have been counting on this income to fund their retirement years and to avoid poverty in old age. If their promised pensions are cut, it will not only upend the lives of the pensioners themselves, but wreak havoc on their spouses, children, grandchildren and other family members. Pension cuts will also harm local economies where pensioners buy groceries, frequent restaurants and keep local businesses thriving. Moreover, a recent economic study suggests that the failure of the Central States plan alone could cost the nation tens of thousands of jobs, negatively impact GNP, and reduce federal and state and local tax revenue by billions of dollars.¹

For the past four years, the Pension Rights Center has been working with thousands of retirees who are increasingly perplexed and angry that their benefits have been put on the chopping block as a way of solving the multiemployer crisis. They know they delivered what their employers

¹ This study (<https://www.powrnw.net/wp-content/uploads/2018/09/2018-AB-Report.pdf>), by economist Alex Brill, a research fellow at the American Enterprise Institute, finds that the insolvency of the Central States, Southeast Southwest Areas Pension Fund alone would result in the loss of about 55,000 jobs nationwide by 2025, would drop the nation's Gross National Product by more than \$5 billion, reduce state and local tax revenue by almost \$450 million, and cut federal tax revenue by about \$1.2 billion.

and the country asked of them and played no role in the underfunding of these plans. Why, they ask, are they being singled out to pay the bill covering their plan's shortfalls?

The retirees voice the same frustrations and sense of betrayal that is more broadly reflected in national discourse among working class people. The retirees we have heard from are not partisan—they are Republicans, Democrats, and Independents, but they believe, with good cause, that America has turned its back on them. How this issue is resolved, and whether these retirees' concerns and fears are addressed in this Committee's proposed solution, will determine whether they have faith in or give up on America's promise. How this issue is ultimately resolved will have repercussions for our nation for years to come.

This Joint Select Committee can and must develop a comprehensive solution that fairly prevents the insolvency of a minimum of 130 severely underfunded pension plans, protects the earned benefits of 1.5 million retirees and workers, helps keep thousands of contributing employers in business, and restores the promise of ERISA. The Committee must also act to put the Pension Benefit Guaranty Corporation, which projects the likely collapse of its multiemployer plan insurance program by 2025, on a sound footing for the foreseeable future.

This letter will include three sections:

- 1) An explanation of how this emerging crisis developed and a critique of MPRA, which reversed the key promise of ERISA: that a plan cannot take away benefits that employees and retirees have already earned.
- 2) A description of the principles that should guide this Committee in developing its proposed legislation, including the repeal of the Multiemployer Pension Reform Act of 2014 (MPRA) and restoration of benefits already cut under that misguided statute.
- 3) The reasons that the so-called "composite" legislation cannot be a part of a solution.

I. How did we get here?

There are more than 10 million workers and retirees in 1,400 multiemployer pension plans—plans negotiated with more than one employer. Most of these plans are adequately funded, but about 130 plans, including several very large plans, are projected to run out of money within the next 10- 20 years.

There are a variety of reasons why certain multiemployer plans have serious funding shortfalls. First, the plans suffered substantial investment losses because of the severe market declines in 2001 and 2008. Also, economic changes have caused a decline in some of the industries that support multiemployer plans, with the result that some plans now find themselves with more retirees than active workers. This, together with company bankruptcies and numerous employers withdrawing from plans, has caused a significant decrease in contributions to the plans.

Congress, in an ill-advised attempt to address the funding problem, enacted MPRA in 2014, which empowered employer and union trustees of certain severely underfunded multiemployer plans to reduce already accrued retirement benefits—as much as 70%.

Congress passed MPRA without hearings or debate; the provisions of MPRA were simply attached by House leadership to must-pass spending legislation shortly before Congress

adjourned in December of 2014. MPRA eviscerated 40 years of protections under the federal private pension law, ERISA, which prohibited plan trustees from reducing benefits in pay status until the plan had exhausted its assets.

Since this law passed, almost two dozen multiemployer plans have applied to the Treasury Department for approval to cut their workers and retirees' benefits. Treasury has approved seven applications, rejected five, and is currently considering at least ten others. Thousands of retirees, who earned benefits that gave them a secure future, as well as their spouses, and the widows of deceased retirees, are now experiencing the devastating ramifications of what they see as "pension theft."

What is shocking to these retirees is that even as the Joint Select Committee is contemplating new solutions, there is talk among some stakeholders of keeping MPRA's cut-back provisions as an alternative or parallel solution. A fair and just solution requires that MPRA be repealed and replaced, not retained and augmented.

II. Elements of a Fair Multiemployer Solution

We understand that there will be give and take in crafting a multiemployer solution. We strongly urge the Committee to incorporate into any compromise approach the following core principles:

First, recognizing the importance of multiemployer plans to their participants, to their contributing employers, to their communities and to the nation, legislation should result in the financial stabilization of such plans so that a robust multiemployer system will continue into the future.

Second, the majority of multiemployer plans are financially sound and legislation should not harm those plans.

Third, the financial cost of repairing the multiemployer system should not be borne primarily by retired participants in these plans, as has occurred under MPRA. This legislation must be repealed and replaced with a workable solution that balances the interests of all stakeholders and protects the earned benefits of workers and retirees.

Fourth, federal financial assistance is appropriate given that the economic and human costs of not fixing the system vastly exceed the costs of fixing it.

Fifth, the Pension Benefit Guaranty Corporation's multiemployer program must be improved and put on a sound fiscal basis.

Sixth, shoring up the ability of currently financially-troubled plans to meet their benefit obligations should be the Committee's sole concern rather than authorizing new types of plans for adequately funded plans that would sap financial resources from existing plans.

The following elements of a legislative proposal would fulfill these principles:

- 1. Creation of a federal loan program that eases the cash-flow problems of financially-troubled multiemployer plans.** Such a program should earmark loans to fund existing retiree and deferred vested benefits, leaving the plans with the time, resources and tools to grow out of their financial problems through the existing contribution base and investment earnings. These loans should be available to all plans that are in critical and declining status as long as the plans can demonstrate that they will be able to repay the loans and satisfy their benefit obligations to active workers. As important, all plans that have cut benefits since the enactment of MPRA should be eligible to apply for loans so that they are able to restore workers' and retirees' benefits to their previous levels.
- 2. Plans should not be permitted to cut retirees' earned benefits.** MPRA has been used by plans to obtain financial stability at the expense of their older, vulnerable members by disproportionately focusing the largest benefit cuts on those who have already retired. This is inconsistent with a century of pension practice and law, which has always provided the strongest benefit security to those who have already retired and are no longer in a position to make up losses if their pensions are cut. Any legislation should repeal the cut-back provisions of MPRA.
- 3. The PBGC should be provided with sufficient resources to ensure that it can meet its current and future obligations to insolvent plans and also provide financial assistance to enable troubled plans to remain solvent.** In addition, resources should be provided to increase currently inadequate guarantee levels.
- 4. Legislation that provides for loans and/or PBGC assistance to ongoing plans should have guardrails to prevent abuse and ensure that the loans are repaid.**

We also believe that the voices of retirees and workers must be heard at all stages in the development and vetting of the Committee's proposals.

III. Composite plans are not the right solution

Lastly, composite plan legislation should not be part of the committee's deliberations on fixes for the multiemployer crisis. Composite plans, as envisioned, are poorly designed, could lead to the underfunding of today's adequately funded plans, would further endanger the PBGC's financial status, and would undercut the security of the entire multiemployer system.

In conclusion, we thank you for all of your hard work on this critically important issue and urge you to develop a comprehensive solution that fixes severely underfunded plans, protects the pensions of workers and retirees and puts the PBGC on sound footing. We will be happy to provide you and the other Joint Select Committee members with additional information.

Sincerely,

Handwritten signature of Karen Friedman in black ink.

Karen Friedman
Executive Vice President

Handwritten signature of Norman Stein in black ink.

Norman Stein
Senior Policy Advisor

Copy to: All Members of the Joint Select Committee on Solvency of Multiemployer Pension Plans

The Honorable Mitch McConnell

The Honorable Charles Schumer

The Honorable Paul Ryan

The Honorable Nancy Pelosi