

A Pension Double Header: Reforming Hybrid and Multi-Employer Pension Plans

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Testimony

Chairman DeWine, Senator Mikulski and Members of the Committee:

Good morning. My name is Jeff Noddle and I am the chairman of the board, president and chief executive officer for SUPERVALU INC. I am currently chairman of the board for the Food Marketing Institute (FMI), as well as a board member for the Independent Grocers Alliance, Inc. (IGA) and chairman of its governance committee, as well as other corporate, civic and industry organizations. In addition, I serve on the board of the Food Industry Center at the University of Minnesota and the Academy of Food Marketing at Saint Joseph's University, Pennsylvania.

I want to thank you for the opportunity to testify on behalf of the 26,000 retail food stores represented by FMI regarding legislation to achieve comprehensive pension reform and retirement security. We would like to share our concerns about the future of multiemployer plans and some suggestions we have for better management of these plans.

Before I proceed, I would like to take a moment to tell you about my company. SUPERVALU INC., is a Fortune 100 company, based in Minneapolis, MN. We are the largest publicly held food wholesaler in the United States and this country's 7th largest grocery retailer. SUPERVALU manages a well-rounded portfolio of national and regional grocery retail banners that we constantly refine to address dynamic customer preferences and trends in the market. Since 1870, the enduring mission of our 58,000 employees is to serve our customers better than anyone else could serve them.

Each week, SUPERVALU serves over 10 million customers in its more than 1,500 corporately-owned stores in 41 states. Our corporate retail stores include Cub Foods in Minnesota, Wisconsin and Illinois, Bigg's in Ohio, Shopper's Food Warehouse in Virginia and Maryland, Shop-N-Save in Missouri, Illinois and Pennsylvania, and Save-A-Lot throughout the country. We operate 41 distribution centers, which supply more than 3,200 independent stores, in addition to our corporate banners.

SUPERVALU participates in 17 defined benefit multiemployer plans, providing retirement benefits to approximately 22,000 SUPERVALU employees throughout the United States.

Industry-wide, supermarkets employ approximately 3.5 million Americans, providing employees with good wages and excellent benefits, so employment in the industry is a

proven path to success for the American worker. The industry provides a variety of retirement plans among the wide range of benefits it provides. Supermarkets offer benefits to associates and management alike through almost every conceivable type of pension plan, including defined benefit, defined contribution--profit sharing and 401(k), hybrid, cash balance and employee stock ownership plans. The industry's defined benefit pension plans include both single-employer plans (those sponsored by an individual company and common in the steel, automotive and airline industries) and multiemployer plans, in which many companies join together to fund and operate the plans (common in the grocery and construction industries).

Multiemployer plans are governed, in part, by ERISA, like their single-employer plan counterparts. Unlike single-employer plans, however, multiemployer plans are also governed by the Taft-Hartley Act, which mandates that their Boards of Trustees have equal representation by Union and Management Trustees. They are also governed by the Multiemployer Pension Plan Amendments Act of 1980, which amended ERISA and provided special rules for multiemployer pension plans.

Approximately 1.33 million people in the supermarket workforce are covered by collective bargaining agreements (labor contracts). Unionized associates who work in the stores are primarily represented by the United Food & Commercial Workers Union. Warehouse workers and drivers are generally represented by the International Brotherhood of Teamsters. Most of these employees are participants in multiemployer pension plans.

Multiemployer pension plans are an important part of the nation's private sector retirement system, providing pension benefits for approximately 9.7 million workers and retirees in the United States. As I mentioned earlier, in 1980, Congress recognized some of the funding and operational differences between single-employer pension plans and multiemployer pension plans. As a result, Congress amended ERISA and established separate and distinct rules for multiemployer plans under the Multiemployer Pension Plan Amendments Act of 1980. Multiemployer plans provide retirement coverage for unionized employees of multiple employers within an industry or trade. The multiemployer plans are NOT union plans.

Two of the biggest differences between single-employer pension plans and multiemployer plans are the funding mechanism used and the manner in which benefit levels are established. In a single-employer plan, companies generally establish a benefit level first, with the contribution level increasing or decreasing each year depending upon changes in a plan's demographics as well as investment gains or losses during each plan year. Conversely, contributions to multiemployer plans are almost universally set at fixed rates established through collective bargaining by contributing employers and Unions representing the companies' employees. Benefit levels are then set by a plan's Board of Trustees, which, as I stated earlier, must consist of an equal number of representatives of Employers and Unions.

This funding mechanism and the tax laws existing under ERISA in the late 1990s

contributed to some of the funding problems multiemployer plans currently encounter. In the late 1990s, these plans' investment gains caused many plans to become overfunded to the point at which contributing companies' contributions (which were fixed by collective bargaining agreements) would not be treated as deductible contributions under the Internal Revenue Code if benefits were not increased (known as the full funding limit). A host of multiemployer plans attempted to reward long-term participants by increasing benefit levels retroactively under the theory that the long-term participants should be rewarded for the prior contributions made on their behalf and the resulting investment gains from those contributions. When the stock markets suffered huge losses from 2000 – 2002, these plans were unable to decrease the benefits granted for past service due to restrictions under ERISA. Even plans that did not increase benefits for past service suffered greatly from the 2000 – 2002 bear market.

Another difference between single-employer plans and multiemployer plans is the amount of control any one employer has over the operation of a multiemployer plan. As I stated earlier, the Board of Trustees of multiemployer plans are required by law to be managed by Boards of Trustees equally represented by Unions and Employers. Most Boards of Trustees consist of 3 – 4 Union representatives and 3 – 4 Employer representatives. Unless a company employs a large percentage of the plan's participants, it generally does not have a representative on the Board of Trustees. Furthermore, in many cases, employers do not even have the ability to vote on who represents them on the Board of Trustees. As a result, many employers who bargain in good faith with Unions to contribute to these plans and make contributions in good faith to these plans have no say in the operation of the plans and, in fact, receive little or no information concerning the plans' operations or funding levels.

Chain supermarket companies generally participate in several local, regional or national plans, depending on the company's size and area of operation. Some companies participate in as many as 50 multiemployer pension plans. So, it is common for even large employers to contribute to many multiemployer plans on which they do not have a Trustee seat. For example, while SUPERVALU contributes to 17 multiemployer pension plans, we have a Trustee seat on only 7 of these plans.

A third difference between single-employer plans and multiemployer plans is in the amount of government intervention with plans supported by companies that go bankrupt. In the single-employer plan arena, pension plans of bankrupt companies generally are taken over by the Pension Benefit Guarantee Corporation, which guarantees a reduced benefit to plan participants and is financially responsible to pay this benefit. This results in a financial burden on the PBGC. Conversely, when a contributing employer to a multiemployer plan goes bankrupt, the plan absorbs the loss, the company's employees continue to receive unreduced pension benefits, and the remaining contributing employers are required to bear the burden of paying these pension benefits. In fact, even when a multiemployer plan has a withdrawal liability claim against the bankrupt employer it rarely, if ever, collects the full amount of the claim because withdrawal liability claims are treated as general unsecured claims under the current bankruptcy laws. The Pension Benefit Guarantee Corporation is rarely called upon to assist

multiemployer plans due to these rules. Even if the PBGC is needed to assist a multiemployer plan that, as a whole, becomes insolvent, the PBGC assistance is only in the form of a loan and solvent contributing employers are called upon to increase contributions to the plan, over and above any amounts they agreed to contribute through collective bargaining.

As an example, a food industry company, Fleming Companies, filed for bankruptcy in 2003. Fleming had a single-employer pension plan that was taken over by the PBGC, which is required to shoulder the financial burden of paying benefits to the plan's participants. As part of the law under which the PBGC operates, plan participants and retirees may have their retirement benefits reduced. Fleming Companies also contributed to several multiemployer pension plans on behalf of its unionized employees. The PBGC did not step in to provide financial assistance for these multiemployer plans and unionized employees did not have their retirement benefits reduced. Rather, other employers contributing to the multiemployer plans are required by law to absorb any funding deficiency. In the case of Fleming, we estimate this amounts to over \$100 million dollars spread throughout several multiemployer plans. Finally, even though these multiemployer plans were able to file claims for withdrawal liability with the bankruptcy court, we understand the plans received only 5 – 10 cents on the dollar for their claims because, under bankruptcy law, the plans are unsecured creditors.

Given this background, I am here today to ask you to support the supermarket and food distribution industry's proposals to modify the laws governing multiemployer pension plans. We believe these proposals will provide a reasonable and rational framework for multiemployer pension plans to work through the problems now facing all pension plans (both single-employer and multiemployer). We are not asking for a government bail out; rather, we are asking you to help us establish a framework that will allow us to solve our own pension problems without monetary intervention by the government and without putting financial pressures on the Pension Benefit Guarantee Corporation. We believe that, if Congress acts now, multiemployer plans can solve their own problems so they do not become a burden on the federal government.

Our proposed reform focuses on two areas. First, we seek greater transparency of information from multiemployer plans. Second, we ask Congress to adopt mechanisms to allow Boards of Trustees to manage their own funding situations in a better manner.

As for transparency, the supermarket and food distribution industry is very concerned about the lack of transparency in multiemployer plans. Some of these plans are seriously underfunded, but employers have had considerable difficulty in obtaining current financial information about the funding deficiency. We believe there should be rules requiring these plans to provide the most current financial information, upon request, to both contributing employers and plan participants. In a single employer plan, the employer has direct and continual involvement in the financial management of their pension plan; there is no such direct involvement by employers in multiemployer plans. Without this current information, it is difficult to engage in collective bargaining in an informed manner and to work with the plan Trustees to address the underfunding

problem.

Our industry's second area of proposed reform attempts to provide a mechanism for underfunded plans to work through their funding issues. It is a proposal that would dovetail well with a proposal put forth by the trucking industry. Earlier this year a group within the trucking industry, including, United Parcel Service, YellowRoadway, the Motor Freight Carriers Association, the International Brotherhood of Teamsters, the National Coordinating Committee on Multiemployer Plans (NCCMP) and Central States Teamsters Pension Plan, came together and negotiated a proposal to address funding reforms. Their proposal focused on plans with funding levels below 65%. It also included a proposal for plans that are between 65% and 80% funded. At the same time, FMI and members of its Pension Task Force were independently developing long-term pension reform proposals. Earlier this year, FMI met with the trucking industry to discuss our respective visions of multiemployer pension plan reform.

FMI applauds the trucking industry's efforts. Due to philosophical differences, we came out of our discussions with different, but complimentary policy proposals. The trucking industry proposal includes a stop-light system of identification for multiemployer pension plan funding, which includes Green Zone plans (above 80% funded), Yellow Zone plans (65% - 80% funded), and Red Zone plans (less than 65% funded).

FMI's Task Force focused on the Yellow Zone plans, providing what we believe is a more specific mechanism to allow Yellow Zone plans to address their funding concerns. As a result, the FMI member companies drafted ideas for benchmarks, transparency, and funding reform that we believe will wrap around the trucking industry's proposals and provide comprehensive funding reform that will serve all multiemployer plans well into the future.

The FMI Task Force formulated its proposals in meetings with top actuaries and pension attorneys, where it became evident that the requirements of today's laws encourage plans to take a short-term, "snapshot" approach to determine their benefit formulas and funding requirements at the expense of sound long-term funding projections. The FMI Yellow Zone proposal attempts to create a mechanism whereby multiemployer plan actuaries are required to look at both the plan's current funding level and far ahead into the future (7 years) to make sure the plan will remain at an appropriate funding level. As a result, potential future funding problems are recognized early, when there is time to correct them in a reasonable and timely manner. This time is needed to allow the Boards of Trustees to act to adopt objective measures to improve a Yellow Zone plan and prevent it from becoming a Red Zone plan.

Once a Yellow Zone plan is identified as such, the plan's Board of Trustees will be required to prepare a Funding Improvement Plan that will improve the plan's funding ratio (within specified guidelines) and will postpone any deficiency in the plan's funding standard account. The Trustees will also be required to adopt a schedule of solutions that will allow employers and unions engaged in collective bargaining in the future to agree to contribution levels that are appropriate for the benefits provided by the plan. The

schedule of solutions in the FMI Yellow Zone proposal ranges from employer contribution increases to reductions in future employee benefit accruals, or a combination of both.

We believe that creating this mechanism will accurately address the unique nature of multiemployer plans, in which collective bargaining agreements fix contribution rates for several years into the future and where, under ERISA, Trustees are prohibited from retroactively reducing the benefit levels for plan participants. As a result, all parties (contributing employers, unions, and Trustees) will have the ability to act responsibly on behalf of employees by providing an accurate measure of expected liabilities over a longer time-frame and by providing a schedule of solutions to correct any funding problems on the horizon before they reach a crisis stage. We believe the FMI Yellow Zone proposal provides these solutions in a manner that will also maintain the collective bargaining rights of all the parties.

While many of the multiemployer plans in our industry are well funded, the funding standard account in some of these plans could reach a crisis state in four to six years if some of the laws governing these plans are not changed. Even plans that are currently 100% funded could have a significant deficiency in their standard funding account in future years. Therefore, we urge Congress to act now so defined benefit multiemployer pension plans can remain an important part of the nation's retirement system well into the future.

In summary, we in the retail food industry are very concerned about the nation's pension funding and retirement funding problems. Those of us who contribute to and participate in multiemployer pension plans are asking Congress to recognize the ways in which these plans differ from single-employer pension plans and to enact amendments to existing laws that will establish mechanisms to help us correct our problems ourselves.

Multiemployer pension plans have not, in the past, been a burden to the federal government or the PBGC, and we are not now asking for any financial assistance from the government. Rather, we ask for your help now, so we can continue to provide great retirement benefits for our millions of employees and retirees well into the future without ever becoming a burden on the federal government.

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