STATEMENT OF PHYLLIS C. BORZI
ASSISTANT SECRETARY OF LABOR
EMPLOYEE BENEFITS SECURITY ADMINISTRATION
BEFORE THE
COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS
UNITED STATES SENATE

May 27, 2010

Introductory Remarks

Good morning Chairman Harkin, Ranking Member Enzi, and Members of the Committee. Thank you for inviting me to testify before the Committee today about multiemployer defined benefit pension plans. I am Phyllis C. Borzi, the Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA). EBSA's mission is to protect the security of retirement, health, and other employee benefits for America's workers, retirees and their families, and to support the growth of our private-sector employee benefits system.

One of my key responsibilities as the Assistant Secretary of Labor for EBSA is to serve as Secretary Solis' representative to the Pension Benefit Guaranty Corporation's (PBGC) Board of Directors, which she chairs. The subject of today's hearing is relevant both to EBSA's mission and to the PBGC Board's oversight responsibilities. I am pleased that your Committee is examining these issues and look forward to working with you to strengthen retirement security for working Americans.

The Department of Labor is committed to promoting policies that encourage retirement savings and protect workers' employer-sponsored benefits. Multiemployer defined benefit pension plans play a vital role in providing retirement security to millions of American workers and retirees. However, due to dramatic and permanent changes in the structure of some industries, compounded by the recent economic downturn, today some multiemployer plans face new questions about their ability to continue to provide meaningful benefits in the future. The common problems these plans face are a declining number of active participants and a significant drop in the number of employers who contribute to the plan. These larger problems for plans in troubled industries are not temporary and will not be solved by short-term funding relief.

Because the Department and the PBGC Board of Directors understand the valuable benefits that these plans provide to millions of workers and retirees, we are concerned about their long-term solvency. We are examining proposals to help multiemployer plans keep their commitments to workers and retirees, while also ensuring that the PBGC is able to continue to protect the retirement security of the 44 million workers and retirees in the more than 29,000 private defined benefit plans that it insures.

Background

The PBGC protects the pension benefits of about 1,500 multiemployer plans that cover more than 10.4 million workers and retirees.[1] While five percent of PBGC insured defined benefit plans are multiemployer plans, multiemployer plan participants constitute over 24 percent of all participants in PBGC-covered defined benefit plans. Multiemployer plans are collectively bargained plans that are maintained by labor unions and more than one employer. Contributing employers are generally from the same or closely related industries, such as the construction, trucking, textiles, or mining industries. Federal labor law requires these plans to be jointly administered, with equal representation from labor and management.

The number of multiemployer pension plans PBGC insures has been declining since 1980, falling approximately 30 percent from 2,200 in 1980 to 1,500 in 2009 – primarily due to plan mergers. [2] Over the same period, the total number of multiemployer pension plan participants has risen about 30 percent (from almost 8 million in 1980 to over 10 million in 2009). However, the percentage of active workers participating in multiemployer plans has declined since 1980, while, in contrast, the percentage of

[1] Pension Benefit Guaranty Corporation Annual Report 2009
[2] Pension Benefit Guaranty Corporation Annual Report 2009 and Forthcoming Pension Insurance Data Book 2009

participants who have retired or who are separated from employment and have not yet begun receiving a pension has risen. Active workers represented approximately 75 percent of multiemployer plan participants in 1980 but only 45 percent in 2007, while retired or separated participants represented approximately 25 percent in 1980 but significantly increased to 55 percent by 2007. This demographic shift is at the heart of the funding challenges that multiemployer defined benefit plans face.

Advantages and Disadvantages of Multiemployer Pension Plans

Multiemployer plans, like single-employer defined benefit plans, can provide workers and their families with a steady and reliable stream of income at retirement. In many multiemployer plans, the participant's benefit is based on a flat dollar amount for each year of service. This is different from most single-employer plans where benefits are typically based on years of service and earnings.

Multiemployer plans enable workers who switch employers frequently within the same industry to earn meaningful benefits under a defined benefit plan. Participants can continue to accrue credits toward their pension when they change employers, as long as the new employer is a contributing employer to the plan. This portability feature is what makes multiemployer plans attractive in industries such as construction where workers may switch employers frequently.

However, the concentration of multiemployer plans in a particular industry also creates a disadvantage for plans if that industry is in decline. A multiemployer plan depends on contributions from employers participating in the plan. When employers go bankrupt or otherwise withdraw from the plan, and the plan is underfunded, the remaining employers are responsible for contributing sufficient amounts to pay for the benefits of those participants who accrued benefits while working for an employer that is no longer contributing to the plan.

In 1980, Congress enacted the Multiemployer Pension Plan Amendments Act (MPPAA) to strengthen protections for multiemployer plans. Under MPPAA, employers who cease to contribute to a multiemployer plan are generally liable to the plan for their share of the plan's underfunding, known as withdrawal liability. Companies that go out of business, however, often fail to pay their withdrawal liability and leave the remaining employers responsible for larger contributions.

PBGC Assistance to Multiemployer Plans

The PBGC operates two insurance programs – one for multiemployer plans and one for single-employer plans. The PBGC multiemployer plan insurance program is, by law, operated and financed separately from the single-employer insurance program. The assets from one program cannot be used to support the other. The multiemployer program also has its own premium structure under which plans pay a flat rate of nine dollars per participant per year in 2010. This premium is indexed for wage inflation. In comparison, single-employer plans pay a flat rate of $35 per participant per year in 2010. An underfunded single-employer plan may also be required to pay an additional variable premium of up to 0.9 percent of the plan's unfunded vested benefits.

Unlike similarly situated single-employer plans, multiemployer plans that become insolvent receive assistance from the PBGC in the form of loans. There are strong incentives for adequate funding of multiemployer plans and for plans to avoid PBGC assistance. In addition to employers being jointly liable for unfunded benefits, the guaranteed benefit for participants is small. Currently, the maximum PBGC guaranteed benefit is approximately $13,000 for 30 years of service, compared with about $54,000 for workers who retire at age 65 in single-employer plans. In effect, workers in multiemployer plans bear more of the risk of plan underfunding than workers in single-employer plans.

Multiemployer plans pose a smaller risk to the PBGC than single-employer plans because the PBGC insurance program for multiemployer plans is the second "backstop."

Contributing employers are the first insurers of benefits. Instead of a plan terminating and being trusteed by the PBGC as under the single-employer program, PBGC multiemployer plan insurance is triggered by plan insolvency. When a multiemployer plan lacks assets to pay basic guaranteed benefits, PBGC provides financial assistance in the form of loans, but the plan, rather than PBGC, continues to pay guaranteed benefits.

Since 1980, PBGC has provided $500 million in financial assistance, net of repayments, to 62 multiemployer plans. While plans have an obligation to repay the financial assistance if the plan recovers from insolvency, only one plan has repaid PBGC.

The multiemployer program's deficit was $869 million for fiscal year 2009, with $1.5 billion in assets and $2.3 billion in liabilities. Most of the liabilities represent nonrecoverable future financial assistance to the 39 plans currently receiving financial assistance and to 65 other plans expected to receive assistance in the future. Exposure to additional future losses is a concern due to a number of long-term challenges that may affect the solvency of multiemployer plans.

Challenges Facing Multiemployer Plans

Just like other defined benefit plans, recent investment losses across all asset classes and low interest rates have impacted the funding status of many multiemployer plans. The Pension Protection Act requires multiemployer plan trustees to review projections of their financial status annually and to classify the plan as being in the green, yellow, or red zone. Generally, plans are classified as being in the yellow zone if they are in "endangered status" with funding below 80 percent, or the red zone if they are in "critical status" with funding below 65 percent. From 2008 to 2010, the percentage of calendar-year plans in green status has decreased and the percentage of plans in red status has increased. For 2008, 83 percent of calendar-year plans were in green status, 10 percent in yellow status, and 7 percent in red status. In contrast, for 2010, 54 percent of calendar-year plans were in green status, 16 percent in yellow status, and 30 percent in red status. Most recently, there has been an increase in the number of plans in green status. From

2009 to 2010, the percentage of calendar-year plans in green status increased from 39 percent to 54 percent.[3]

In response, many multiemployer plans have told us that they have already increased employer contributions or cut future benefit accruals to improve funding. In addition, the Administration is sympathetic to providing short-term funding relief for multiemployer plans impacted by the economic downturn by extending the amortization period to fund the plans.

A small number of multiemployer plans, however, are facing severe long-term financial problems that short-term funding relief will not solve. A number of trends have made it unlikely that these plans will recover unless they receive dramatic funding relief or other changes to the pension insurance program are made. One such trend that is particularly challenging is that, due to restructuring of and decline in particular industries, there has been a sharp decline in the number of new employers that join these plans and a dramatic drop in the ratio of active workers to retirees.

The Central States Pension Fund

The Central States Pension Fund, one of the nation's largest multiemployer defined benefit plans, is facing some of the most difficult long-term challenges. According to information provided by the Fund, the plan covers over 433,000 participants and provides monthly benefits to over 200,000 retirees and beneficiaries; active participants who provide the plan's contribution base have now dropped to 61,000. A large number of business failures in the last two years have drastically reduced the number of employers and active workers to support the retirees in the plan, severely compounding a downward trend caused, in part, by trucking deregulation in the 1980s. The obligation to pay benefits to employees and retirees of these defunct companies remains with the Central States Pension Fund. Like many other plans, Central States also recently suffered investment losses, which has contributed to its financial problems. Reductions in benefits

[3] Segal Survey of Calendar-Year Plans' 2010 Zone Status (Spring 2010)

and substantial increases in employer contributions during the past few years have not been able to fill in the gaps caused by the rapidly shrinking contribution base.

Partition Proposals

Representatives of the Central States Pension Fund have met with the Department and other members of the Administration about a proposal that would amend the Employee Retirement Income Security Act (ERISA) to permit some multiemployer plans to elect a "qualified partition." Earlier this year, Senator Casey introduced the "Create Jobs and Save Benefits Act of 2010" (S. 3157). The bill provides for many of the partition provisions proposed by Central States. We appreciate Senator Casey's leadership in calling attention to the situation facing Central States.

Current PBGC Partition Authority

PBGC has current authority to order the partition of a multiemployer plan. ERISA empowers the PBGC to order the partition of a multiemployer plan, either upon its own motion or upon application by the plan sponsor. Partition is a statutory mechanism that permits healthy employers to maintain a plan by carving out the plan liabilities attributable to employees of employers who have filed for Chapter 11 bankruptcy. Once partitioned, the PBGC assumes liability for paying benefits to the participants of this newly carved-out but terminated plan. Like all multiemployer plans, the new partitioned plan is subject to ERISA's multiemployer guaranteed benefit limits.

In order to grant a partition under PBGC's current authority, the PBGC must find that a substantial reduction in the amount of aggregated contributions under the plan has resulted or will result from employer bankruptcies and that the plan is likely to become insolvent. In addition, PBGC must find that contributions will have to be increased significantly to prevent insolvency, and that the partition would significantly reduce the likelihood of insolvency.

Since 1980, when the partition rules came into effect, PBGC has partitioned only two plans. In the case of Council 30 of the Retail, Wholesale and Department Stores Union, PBGC does not administer the partitioned plan, but rather provides funds to the trustees of the original plan who act as the paying agent for the partitioned plan. PBGC recently approved the partitioning of the Chicago Truck Drivers Union Pension Plan, which has more than nine retirees for each active worker.

Proposed "Qualified Partition"

The proposed "qualified partition" would permit a multiemployer plan to spin off into a new plan ("partitioned plan") the liabilities and certain assets attributable to employees of employers who have filed for bankruptcy or who have failed to pay their withdrawal liability. The proposal would transfer responsibility to the PBGC for payment of the full plan benefits of participants transferred to the partitioned plan, which in many cases would be well above the amount guaranteed by the PBGC under current law. The multiemployer plan would transfer to the partitioned plan assets that the plan contends should be sufficient to pay the benefits of the transferred participants for up to five years. Under the legislative proposal, the plan actuary could determine that fewer assets should be transferred to protect the solvency of the remaining multiemployer plan. Once the transferred assets run out, the United States Government would become liable for obligations arising from the partitioned plan.

We recognize the financial hardship facing workers and retirees who could experience lower pension benefits. At the same time, however, we believe that several elements of this particular proposal deserve further consideration. The proposal states that once a multiemployer plan elects a qualified partition, PBGC must order the partition. This framework leaves PBGC without power to make its own findings about the plan's financial condition or need for partition. Once the plan is partitioned, the multiemployer plan, not the PBGC, would continue to manage and invest the assets of the partitioned plan.

The rationale for allowing participants in the partitioned plan to receive their full benefits, while participants in other multiemployer plans receiving assistance from the PBGC and single-employer plans trusteed by the PBGC are subject to benefit guarantee limits, is unclear.

Also, under the proposal, the partitioned plan would use other PBGC funds, such as the single-employer plan fund, to pay benefits to participants in the partitioned plan. We are concerned about the impact of the proposal on participants in single-employer plans trusteed by the PBGC. As of the end of fiscal year 2009, the single-employer program insured about 33.6 million people covered by more than 27,600 plans, and reported a net deficit of $21.1 billion. The proposal ultimately makes the taxpayers liable for paying the benefits of the partitioned plan. Currently, no other benefit obligations assumed by PBGC are subject to the full faith and credit of the U.S. government.

We are examining these proposals and, in particular, the impact of the proposals on participants in other multiemployer plans and single-employer plans insured by the PBGC. The Administration is sympathetic to financial problems facing multiemployer plans and we hope to find balanced solutions. We need to make certain that any solutions protect the retirement security of workers and retirees and secure the PBGC's ability to continue to pay guaranteed benefits to all of the workers and retirees whose defined benefit plans it is responsible for insuring in both the single-employer and multiemployer programs. Any solution to the multiemployer problem might require an infusion of additional funds, for instance through an increase in plan premiums, into the PBGC. We will continue to work with representatives of the Central States Pension Fund on their proposal and would be happy to work with the Committee.

Conclusion

Thank you for the opportunity to testify before the Committee today at this important hearing and for your leadership in examining the future of multiemployer plans. The

Department remains committed to protecting the security and growth of retirement benefits for America's workers, retirees, and their families.