Statement of
Thomas C. Nyhan
Executive Director and General Counsel
Central States Southeast and Southwest Areas
Pension Fund
Before the
Committee on Health, Education, Labor and Pensions
United States Senate
May 27, 2010

Chairman Harkin, Senator Enzi and the other members of this Committee, I would like to thank you for this opportunity to testify at this hearing on Building a Secure Future for Multiemployer Plans. My name is Tom Nyhan and I am the Executive Director and General Counsel of the Central States, Southeast and Southwest Areas Pension Fund (the "Fund"). I will talk to you today about how the deregulation of the trucking industry and the recession that began in 2008 has affected the Fund. I will also address how the "qualified partition" provisions in the Create Jobs and Save Benefits Act of 2010 (S. 3157), introduced by Senators Casey, Brown, Stabenow and Burris, will provide essential relief to the Fund, thereby protecting the pensions of hundreds of thousands of participants in the Fund, as well as the tens of thousands of jobs of those Americans employed by businesses that contribute to the Fund.

My message today is simple. I urge Congress to enact the "qualified partition" proposal this year.

Because of a confluence of forces, most notably the dramatic consolidation in the trucking industry and the most significant recession in decades, the Central States Fund faces an unprecedented financial crisis. If no action is taken, the Fund is projected to be insolvent in the next 10-15 years. And long before the date of insolvency, the remaining contributing employers will either be forced out of business (causing catastrophic job losses) or, fearful of the ramifications of insolvency, will adopt measures that would accelerate the insolvency date. Indeed, at present, many employers are already facing such financial distress. The "qualified partition" proposal will stabilize the Fund and prevent this crisis.

While many factors have contributed to the Fund's problems, the single largest factor relates to the pension benefits that are paid to retirees of employers no longer in business (and thus not contributing to the Fund). Over 40% of the annual pension benefits are paid to such retirees – commonly referred to as "orphan retirees."
When an employer with an underfunded corporate plan goes out of business, the PBGC assumes the obligations. When a company in a multiemployer plan goes out of business without paying its share of the liabilities, it is the surviving employers in the multiemployer plan that assume the liabilities. But they can't continue in this role, as the increased contributions are forcing more and more of these employers out of business.

The law currently provides a mechanism to address such a situation by "partitioning" the plan into two separate plans. S. 3157 updates the existing partition rules by allowing certain qualifying funds to elect partition, but with a price – the electing fund must transfer sufficient assets to the PBGC such that the PBGC will not have to use any of its funds to pay the benefits of participants transferred in the partition for a period of five years from the date the partition was elected. Given the current budgetary situation, the transfer of assets strikes an appropriate balance of significantly reducing the financial exposure of the PBGC while simultaneously allowing the fund to retain sufficient assets to keep it solvent.

The following provides more detail regarding the Fund, its status, and the partition proposal.

Overview of the Central States Fund

Multiemployer pension plans are collectively bargained, jointly administered pension plans funded by a number of contributing employers that are often in the same industry. The Fund is one of the largest multiemployer plans in the country, providing (as of December 31, 2009) coverage to nearly 423,000 participants across the country, including 81,000 active employees and 342,000 retirees, survivors and deferred vested participants.[1] The Fund is projected to pay approximately $2.9 billion in benefits in 2011. Since it began, the Fund has paid nearly $48 billion in benefits to working families.[2]

I have attached a slide presentation to my testimony that outlines the financial issues that the Central States Fund currently faces and I ask that this presentation be entered into the record.

Approximately 2000 employers contribute to the Fund. Nine out of 10 of these employers are small businesses, with fewer than 50 employees. Although these employers are in a variety of industries, including trucking/freight; car haul; tank haul; warehouse; food processing distribution (including grocery, dairy, bakery, brewery and soft drinks) and building and construction, historically there has been a heavy concentration of employers in the trucking industry.

[1] As of July 8, 2009 the IBT and YRCW, the Central States Fund's largest remaining employer entered into a Memorandum of Understanding ("MOU") whereby the company was allowed to terminate its participation in the Fund as of July 1, 2009, which further reduced the number of actives by approximately 24,000. The MOU is intended to relieve the company of the pension funding obligation in an effort to allow it to weather the recession. The MOU provides that the termination will be temporary and that YRCW intends to resume participation in the pension plan on January 1, 2011.

[2] Nearly 30 years ago, the management of the Central States Fund was reformed as a result of a consent decree entered into with the United States Department of Labor ("DOL"). Since then, the Central States Fund has operated under judicial and DOL oversight. The investments of the Fund are managed by major financial institutions initially screened by the DOL and approved by a federal judge. These financial institutions have *exclusive* management and control of the Fund's investment function.

Changes in the Fund since 1980. In 1980, there was one retiree/inactive employee for every four active employees in the Fund. Today, that ratio has flipped – there are 4.2 retirees/inactive employees for each active employee. A major reason for this dramatic shift has been the increased competition and reduced margins in the trucking industry that followed on the heels of trucking deregulation in 1980. Of the 50 largest employers that participated in the Central States Fund in 1980, only four remain in business today. More than 600 trucking companies that contributed to the Fund have gone bankrupt since 1980 and many thousands of others have gone out of business without filing formal bankruptcy. Also in 1980, Congress passed the Multiemployer Pension Plan Amendments Act of 1980, adding withdrawal liability obligations to employers that stop making contributions to an underfunded multiemployer pension plan. Because employers are fearful of incurring withdrawal liability, the Fund has not been able to attract new employers.

As a result of these trends, over 40 cents of every dollar the Fund now pays in benefits goes to retirees who were employed by an employer that went out of business without paying its proportionate share of the Fund's unfunded pension liability ("orphan employees"). This means the Fund is acting as the primary insurer of the unfunded pensions of employers that have gone out of business. It also means that the remaining employers in the Fund are responsible for funding the pensions of their defunct competitors' employees – or the pensions of retirees from a completely different industry.

The cost of funding these orphan benefits has grown to unaffordable levels. As an example, trucking industry employer contribution rates under the National Master Freight Agreement have doubled since 2003. The rates have increased from $140 per week in 2000 to $380 per week (nearly $9.50 per hour in a 40 hour week) per active participant at the end of the current collective bargaining agreement in 2013. Approximately $150 of that weekly contribution will be required to fund orphan participants benefits. Other contributing employers have been subjected to similar contribution increases.

Because of the increasing number of retirees and decreasing number of active employees, the Central States Fund's benefit payments to retirees have exceeded employer contributions in every year since 1984. In 2009 the Central States Fund paid approximately $2.74 billion in benefits while receiving employer contributions of approximately $675 million. This left an operating deficit of $2.1 billion that must be funded by investment returns.

Prior to 2001, investment returns were sufficient to allow the Central States Fund's asset base to grow despite paying annual benefits to retirees that exceeded annual contributions. But, during 2001-2003, the Fund investments lost money, and asset values declined.

The investment losses experienced during 2001-2003 were compounded by a significant decrease in covered employees due to employers going out of business. With the bankruptcy of Consolidated Freightways and Fleming Foods in 2003 and their failure to pay more than $403 million in withdrawal liability, the unfunded liabilities of the Fund increased.

These bankruptcies illustrate the role the Fund has played as insurer of pensions owed to the employees of defunct employers. For example, at the time of its bankruptcy, Consolidated Freightways maintained a "single employer" pension plan and was also a contributing employer to the Central States Fund. When it went out of business in 2002, the Pension Benefit Guaranty Corporation (the "PBGC") assumed responsibility for Consolidated Freightways' single employer plan for salaried employees, which was underfunded by $276 million. By contrast, the Central States Fund and its remaining employers assumed responsibility for $319 million in unfunded vested benefits owed to Consolidated Freightways's rank and file employees.

The Central States Fund took aggressive action to deal with underfunding after asset values declined during 2001-2003 – including freezing "early out" benefits and cutting the rate of future pension accruals in half. Moreover, the bargaining parties significantly increased contribution rates and reallocated money originally earmarked for other purposes to the Central States Fund.

Effect of the 2008 Financial Crisis on the Pension Fund. The steep decline experienced by the financial markets in 2008 compounded the Fund's problems. Not only did the Fund experience an investment loss of $7.7 billion in 2008, but benefit payments exceeded contributions by $1.75 billion, leaving the Fund with assets of $17.4 billion and a funded ratio of 48.5 percent. Given its annual operating deficit ($1.785 billion), the Fund would have to earn over 10% on its investments **<u>each and every year</u>** and maintain its employer base just to keep the asset base from deteriorating. Unless the Central States Fund reduces the liability associated with orphan participants, it will become insolvent within the next 10-15 years - the actual date of which will depend upon the Fund's investment experience and the rate at which contributing employers continue to go out of business.

<u>Partition of Multiemployer Plans</u>

Current Partition Authority. Congress anticipated the problem facing funds like the Central States Fund. Since 1980, the law has provided a way to address the funding problems that occur when there are an excessive number of orphan employees in a multiemployer plan. The PBGC may order the "partition" of a multiemployer plan, which in effect removes from the plan pension liabilities that were earned with failed employers that have gone through formal bankruptcy proceedings. The PBGC transfers plan benefits attributable to the orphan employees of the failed employers to a separate plan, and then guarantees the benefits of the orphan employees in that separate plan at the PBGC benefit guaranty level for multiemployer plans. The remaining portion of the plan covering employees of ongoing employers continues, but without the burden of the orphan liabilities. In effect, PBGC's partition authority enables the agency to surgically remove liabilities from a multiemployer plan to enable the plan to survive. Since 1980, only two multiemployer plan partitions have been allowed.

Qualified Partition Proposal. Under S. 3157, the PBGC's current partition authority will be updated to provide that a "Qualified Partition" of a multiemployer pension plan could be elected by multiemployer plans that meet certain, strict requirements. The Central States Fund would be eligible to elect a Qualified Partition, as well as the Western Pennsylvania Teamsters Pension Fund and a limited number of other smaller multiemployer plans. A Qualified Partition would transfer to a separate plan backed by the PBGC the responsibility for the vested benefits of participants earned with employers that filed for bankruptcy or otherwise went out of business. Along with the transfer of liabilities, the multiemployer plan would transfer to the PBGC assets so that the PBGC will have no obligation to pay the benefits of participants transferred in the partition for a period of five years from the date the partition was elected. The PBGC's benefit guaranty for participants whose benefits are transferred to the PBGC in a Qualified Partition would be increased to fully protect the benefits transferred. During that same five-year period, the trustees of the multiemployer plan may stop further escalation of the contribution rate of contributing employers if the trustees determine that such action is necessary and appropriate to preserve covered employment under the plan.

Qualified Partition Would Strengthen the Central States Fund and Protect the Participants and Beneficiaries of the Fund. Partition will prevent the Fund from becoming insolvent by removing liabilities for orphan employees. In the year after partition, the ratio of inactive to active participants in the Fund will improve from 4.2 to 1, to 2.2 to 1. The Fund's annual benefit payments will decline from $2.9 billion to $1.8 billion, assuming YRC resumes contributions as planned. Also, the gap between annual benefit payments and annual contributions that must be filled by investment earnings will be cut from $2.0 billion today to $.9 billion. With fewer unfunded liabilities, the Central States Fund would be projected to remain solvent through the 30-year projection period. As a result, the pensions of the participants remaining in the Fund would be protected. Moreover, orphan employees will not be adversely affected if a Qualified Partition is elected. They will continue to receive their promised benefits, which will not be reduced due to the partition.

Qualified Partition Would Protect Thousands of Employers – Most of Them Small Employers – and Preserve Tens of Thousands of Jobs. If the Fund's financial challenges are not addressed, contributing employers face escalating liabilities and cash contribution requirements as more employers fail. A contributing employer can stay in the plan, and risk being driven out of business. Or, if the contributing employer is unusually financially strong, it can withdraw as soon as possible and start paying off a portion of the plan's liabilities (which are capped in various ways) over 20 years as allowed by statute – leaving fewer employers to fund the plan and an even greater burden on the dwindling number of remaining employers. By stabilizing the Fund and enabling trustees to mitigate contribution requirements, partition would enable companies contributing to the Fund both to remain in the Fund and to remain financially viable, preserving thousands of jobs.

Qualified Partition Would Protect Other Multiemployer Plans. Importantly, the benefits of providing for a Qualified Partition are not confined to the jobs and retirement benefits of Central States' own population of participating employees. Many, if not most, of the employers that currently contribute to Central States Fund also do business outside the geographic regions served by the Central States Fund. Many of these companies contribute to multiemployer pension plans *other* than the Central States Fund. For example, a significant number of the contributing employers to the Central States Fund also contribute to the Western Conference of Teamsters Pension Fund – a multiemployer plan that is even larger than Central States and that offers coverage for workers in most of California and the Pacific Northwest. Without a Qualified Partition, the projected insolvency of the Central States Fund would have had a serious impact on the ability of these contributing employers to maintain their contributions to the other multiemployer plans they contributed to, thereby endangering these other multiemployer plans.

Qualified Partition Would Protect the PBGC. Because the Central States Fund will become insolvent, the PBGC will ultimately have to fund the benefits of participants in the Fund. By strengthening the Central States Fund and preventing its insolvency, a Qualified Partition of the Fund would prevent the PBGC from eventually having to assume the liabilities of the *remaining* participants in the Fund. This would save the PBGC billions of dollars with regard to the Central States Fund alone.

Conclusion

The partition proposal will stabilize the Fund and a limited number of other small multiemployer plans facing a similar financial crisis by allowing these multiemployer plans to elect to separate off the liabilities attributable to the orphan employees of bankrupt employers, together with a share of assets, from the liabilities and assets related to current contributing employers. It will greatly improve the actuarial soundness and long term prospects of the plans covered by the proposal. Thus, the partition proposal will reverse the forces that are driving employers out of business and costing jobs with each passing day.

Congress is deeply concerned about job losses in the Country. The partition proposal will preserve tens of thousands of jobs that otherwise will be lost in the immediate future. With a financially sound multiemployer plan, contributing employers will be able to meet their obligations to the Central States Fund while competing successfully in the marketplace. We urge Congress to address this issue as soon as it can.

Thank you for this opportunity to address the Committee. I will be happy to answer any questions the Committee may have.