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Preserving Multiemployer Pensions—Promises Made Should Be Promises Kept

BY GEORGE M. KRAW AND KATHERINE ROSELIN

The Pension Benefit Guaranty Corporation's multiemployer plan insurance program is a looming disaster that threatens the most vulnerable Taft-Hartley multiemployer plan retirees. The program now has a deficit of $42.4 billion.[1] It is projected to be insolvent within 10 years, notwithstanding the passage of MPRA, the Multiemployer Pension Reform Act of 2014. Legislative relief for the multiemployer plan program has been too little, too late: the incomplete reforms of MPRA may have postponed bankruptcy by only two years. The PBGC's continuing problems have earned it a place on the Government Accountability Office's High Risk List of programs in financial distress.[2] Meanwhile, sensible GAO recommendations to modernize the agency operations, by diversifying and expanding its board of directors, and providing stable senior management have not been implemented. The PBGC is estimating that one million of the 10 million multiemployer participants in the U.S. are at risk of having their pensions reduced because their plans and plan sponsors do not have the wherewithal to pay promised pensions. This at-risk population is likely understated. Anecdotal evidence is that troubled funds are continuing to assume overly optimistic investment returns of 6 percent to 8 percent for the coming decade. A number of troubled plans are relying upon large increases in contribution rates in the outlying years of the rehabilitation period at levels the plan sponsors likely will be unable to afford. In fact, the financial status of these plans may be considerably worse than their regulatory filings will indicate.

But as pointedly emphasized in a recent PBGC report, *The PBGC's Multiemployer Guarantee*[3], even if the multiemployer insurance program can avoid a complete collapse, the coverage of its guaranties will continue to decrease as a percentage of retirement income for future retirees in insolvent plans. Participants in these plans will see larger losses in their pensions as these plans become the wards of the PBGC. The multiemployer program eventually will require some form of direct government financial assistance, unless the government is willing to allow the PBGC, a federal government sponsored agency, to default on its obligations and raise broader doubts about the financial credibility of the U.S. Although the PBGC's obligations are not backed by the full faith and credit of the U.S., the agency is a creation of the U.S. government and its failure would so reflect. For now, the immediate focus should be on protecting the most vulnerable retirees. The challenge is to do this in a manner that will help the largest number of at-risk pensioners and is the least burdensome to tax payers. These circumstances also raise significant issues of generational fairness, and whether the government should walk away from social protection programs that it creates.

When President Gerald Ford signed the Employee Retirement Income Security Act on Labor Day in 1974, he wrote, "I am signing into law a landmark measure that may finally give the American worker solid protection in his pension plan."[4] But as Taft-Hartley indus-

[1] PBGC's multiemployer insurance program's deficit rose to $42.4 billion in fiscal year 2014, compared with $8.3 billion last year. Several additional large multiemployer plans now are expected to become insolvent within the next decade. *Pension Benefit Guaranty Corporation Annual Report, Fiscal Year 2014*, http://www.pbgc.gov/documents/2014-annual-report.pdf

[2] The GAO report states that the PBGC faces "an immediate and critical challenge with its multiemployer program." GAO High Risk Series, *Report to Congress*, February 2015, pp. 335-341, http://www.gao.gov/assets/670/668415.pdf.

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[3] *PBGC's Multiemployer Guarantee*, March 2015, http://pbgc.gov/documents/2015-ME-Guarantee-Study-Final.pdf.

[4] See "President Ford Signing ERISA of 1974," PBGC, http://www.pbgc.gov/about/who-we-are/pg/president-ford-signing-erisa-of-1974.html.

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tries of the mid-twentieth century such as trucking, coal mining and traditional manufacturing declined, emerging industries in technology and elsewhere avoided unionization and participation in Taft-Hartley plans. This in turn decreased workforce participation and increased the average age of Taft-Hartley plan participants. Pension plans with aging workforces must rely more on investment returns, which lead to increasingly aggressive investment programs that are susceptible to volatility in a way that conservatively financed pension funds are not, a circumstance most dramatically on display during the 2008 stock market collapse. Meanwhile, the guarantee for multiemployer plans never contained a cost of living increase, and now the insurance program does not have the resources it needs to pay pensions at promised levels if even one major plan collapses. The program is funded and maintained separately from the PBGC's other insurance program, which covers only single-employer plans. The PBGC receives no federal tax dollars.

The PBGC Multiemployer Insurance Program

Each multiemployer plan pays an annual insurance premium to PBGC based on the number of participants covered by the plan; the current premium is $26 per participant.[5] For some, the obvious solution to PBGC funding shortfalls is to increase the insurance premium to levels that would fund the multiemployer plan deficit. But such increases (which were considered by Congress during the drafting of MPRA) would likely create a death spiral for the entire Taft-Hartley defined benefit pension system by putting the burden on current workers, and creating major incentives to abandon the plans. Absent a rapid rise in interest rates—which would simultaneously reduce the cost of plan pensions and increase plan revenues—there is no way that the 1400 or so current Taft-Hartley plans can cover the PBGC's multiemployer plan deficit by themselves.

The PBGC provides financial assistance to plans that cannot pay basic PBGC guaranteed benefits to insured participants when due.[6] Insured participants include (1) active employees, (2) former employees who worked long enough to earn vested benefits, but who left the plan without receiving a retirement benefit immediately, and (3) retirees.[7] Before a plan receives financial assistance from the PBGC, the plan must suspend payment of all benefits in excess of the guarantee level.[8] Unlike the single employer plan system, the PBGC receives no assets from failed multiemployer plans.[9] The PBGC's maximum benefit guarantee is set by law, and is only for vested benefits.[10] Although the guarantee is often summarized as a maximum guarantee amount of $12,870 per year (payments are made monthly), that guarantee amount only applies in certain circumstances. It only applies to people who have worked at least 30 years in jobs covered by the plan and have a moderately high promised benefit.[11] With 20 years of service the PBGC's maximum guarantee cannot exceed $8,580 per year and may be less.[12] If a retiree has 10 years of service, the PBGC's maximum guarantee cannot exceed $4,290 per year. These amounts have not been increased since 2001.[13]

The PBGC study of the multiemployer plan guarantee concluded that:

1. ''To date, the multiemployer program has provided full coverage less often than the single-employer guarantee program.'' Twenty-one percent of multiemployer participants in current plans had benefits reduced versus 16 percent of participants in the PBGC's most recent study of single-employer plans.

2. The risk and size of benefit loss increased dramatically when the PBGC looked at the plans that are projected to require financial assistance in the future and apply the guarantee.[14]

The report noted that ''participant data available for this study show that the effectiveness of PBGC's safety net will decrease as additional terminated plans become insolvent.''[15] It concluded that, as the chart below demonstrates, ''the results of expanding the scope of the study beyond plans that have already terminated suggest that the gap between promised benefits and guarantees will further widen.''[16]

There are no clear paths to repairing the difficult deteriorating circumstances faced by troubled multiemployer plans. But a guiding principle should be to not make things worse for participants without full debate and transparency. Yet this is exactly what happened during the final stages of the passage of MPRA. At the last moment, a major employer, UPS, was able to insert a provision in the law that will significantly reduce its obligations to UPS employees in the Teamsters Central States Pension Fund.[17] The cost of this employer perk is likely to be borne by non-UPS Central States participants who lacked the lobbying power of UPS, thereby proving the Washington cliché that ''if you're not at the table, you're on the menu.''

The final version of MPRA also failed to include the innovative plan designs the National Coordinating Committee for Multiemployer Plans proposed to make it possible for plans to attract new employer participants. According to one participant in the legislative negotiations, these provisions were blocked because the House Ways and Means Committee did not review them in advance or score them for revenue effect. Whatever the cause, the reforms were left out of the final legislation. The loud publicity concerning the financial troubles of multiemployer plans and the withdrawal liability of employers has made Taft-Hartley defined benefit plans radioactive for most new employers. But without new employers, and younger workers, Taft-Hartley pension plans will eventually die off even if their immediate financial challenges do not kill them first. The cur-

[5] See ''Premium Rates,'' PBGC, http://www.pbgc.gov/prac/prem/premium-rates.html.
[6] See ''Multiemployer Insurance Program Facts,'' PBGC, http://www.pbgc.gov/about/factsheets/page/multi-facts.html.
[7] Id.
[8] Id.
[9] Id.
[10] Id.
[11] Id.
[12] Id.
[13] Id.
[14] See note 3 above, p. 1.
[15] Id.
[16] Id.
[17] See Michael Hiltzik, ''Congress' backroom pension-cutting deal is even worse than expected,'' Los Angeles Times, Dec. 10, 2014, http://www.latimes.com/business/hiltzik/la-fi-mh-congress-expected-20141210-column.html.

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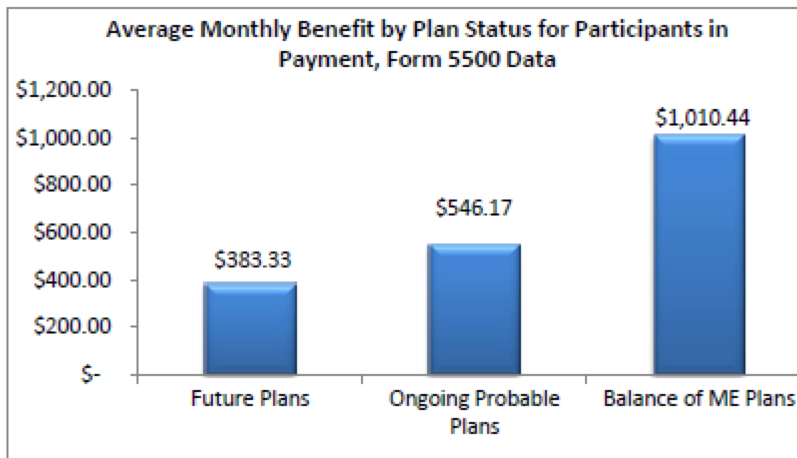

Source: PBGC's Multiemployer Guarantee, March 2015, Figure 4

rent withdrawal liability scheme is unsustainable and counterproductive, and the innovative plan designs are the best chance for revitalization of Taft-Hartley plans, and reducing some of the need for government financial assistance.

What Is to Be Done?

MPRA was an important advance in addressing the challenges facing Taft-Hartley plans and the PBGC multiemployer insurance program. But much work remains to be done.

1. *In all likelihood, the multiemployer insurance program eventually will require direct federal government financial assistance. The time to recognize this challenge is now, before there is a crisis.*

The $42.4 billion deficit in the multiemployer insurance program cannot be paid for by raising premiums on current plans. This deficit is likely to get worse because of continuing low interest rates for the foreseeable future. A ''bail in'' that requires current participants to pay the deficit will not work, and will accelerate the exit of sponsors and participants from plans. The PBGC and its overseers need to be making contingency plans for how to prevent the insolvency of the program. An immediate first step is to restructure and expand the PBGC board of directors.

2. *The current multiemployer plan guaranties are being degraded and need to be increased.*

The PBGC's Multiemployer Plan Guarantee describes the holes in the PBGC safety net and lays out the future problems for the multiemployer insurance program income guaranties. There is in effect a series of stealth cuts occurring in protections, cuts that will fall most heavily on those least able to afford them. Minimum guaranties should be raised, notwithstanding the current problems of the multiemployer insurance program, in order to fulfill Gerald Ford's stated hope to ''give the American worker solid protection for his pension plan.'' This will require other adjustments to the insurance program. Congress should consider giving the PBGC the power to restructure higher level pension benefits in advance of insolvency so losses are most equitably shared between different generations of participants. In addition, Congress should take steps that will encourage greater participation in Taft-Hartley plans, especially reform of the withdrawal liability rules, so as to better fund the insurance program.

3. *Give transparency a chance.*

Future legislation that addresses multiemployer plans should be publicly disclosed and debated in close to its final form. Stakeholders and their advocates ought to have an opportunity to fully vet such bills and comment on them before Congressional votes. It is unrealistic to expect individual members of Congress to delve deeply into the technical details and unexplained consequences of such legislation. But stakeholder advocates will so study the legislation if given the opportunity, and bring to light provisions that unfairly benefit or burden particular groups.

There are no perfect answers to the problems of Taft-Hartley plans and the PBGC's multiemployer insurance program. The goal must be to preserve the largest amounts of pensions for the greatest number of participants within the constraints of current economic conditions, government financial limitations, declining unions and changing workforces. To do so will require common sense, good will and a commitment to fairness and to the broader public good by all involved.