STATEMENT FOR THE RECORD

SUBMITTED TO THE

U.S. HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS

"Discussion Draft to Modernize Multiemployer Pensions"

September 22, 2016

AARP
601 E Street, N.W.
WASHINGTON, D. C. 20049

Submitted By

David Certner

Legislative Counsel and Legislative Policy Director

AARP

For further information, contact:
Michele Varnhagen
(202) 434-3829
Government Affairs

On behalf of our 38 million members, and all Americans age 50 and over, AARP thanks Subcommittee Chairman Roe, Ranking Member Polis and members of the Education and Workforce Subcommittee on Health, Employment, Labor and Pensions for the opportunity to testify today on Chairman Kline's discussion draft for legislation to modernize multiemployer pensions. AARP has members in all 50 States and the District of Columbia, Puerto Rico, and U.S. Virgin Islands, and is a nonpartisan, nonprofit, nationwide organization that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

Background

The multiemployer pension system – which covers about ten million workers and retirees -- faces a number of important and complex challenges. We appreciate the efforts of many, on both sides of the aisle, to address these challenges. AARP is particularly concerned with protecting the earned and promised benefits of those in or near retirement. We therefore urge that any reported legislation affecting multiemployer pension plans focus first and foremost on protecting the earned pensions that millions of retirees and near-retirees count on for their retirement security. In addition, any legislation should address the funding problems faced by both the plans and the Pension Benefit Guaranty Corporation (PBGC). Finally, while AARP is open to consideration of new types of retirement plans, such as "composite" plans at issue today, any new plan design should be part of a comprehensive multiemployer system solution that ensures existing promises are kept and new ones are fair and adequate.

The multiemployer pension system – in which unions and employers join together to provide employee benefits to workers and their families – has been an important component of our nation's retirement income framework. When the economy is growing, plans can more easily meet their funding obligations, and ultimately their pension promises. However, as we are now seeing, declining funding creates the opposite effect. Employer withdrawals from the pension system and dramatic decreases in plan funding escalate the threats to pensions and the retirees who rely on them. Recent experience tells us that under such pressures, not everyone may be treated fairly or equally. In particular, it is important to note that under labor law, unions do not represent retirees -- when there is not enough money to provide benefits to all, unions by law represent active workers.

Several changes over recent decades have put increased financial stress on both single and multiemployer plans. For multiemployer plans, fewer contributing employers, fewer new covered workers, the financial crisis and volatile investment markets all played a role in diminishing pension funding. According to the PBGC, of the almost 1300 multiemployer pension plans, 328 are in what is called "critical" funded status (generally less than 60% funded). Another 168 are in "endangered" or "seriously endangered" status (generally less than 80% funded). According to the Congressional Budget Office (CBO), one million workers and retirees are at risk of not receiving full earned benefits as of today -- in a worst case scenario, all ten million workers and retirees would lose benefits.

Needed Steps

First, we need to adequately fund the promises that already have been made. We need to make sure that those who worked hard and played by the rules can count on getting the benefits they have earned. Older workers and retirees worked for decades and did everything they were asked to do. They worked overtime and helped grow their companies. It is unconscionable to tell them now that they are older, unable to work and possibly in poor health, that they will be forced into poverty or a vastly reduced standard of living. Regardless of the type of plan for active workers, the funding rules must remain adequate to fully fund existing plans for retirees and near-retirees. In short, we should not reduce funding for existing underfunded pension plans, including in order to fund contributions to start the newly proposed "composite plan." If you cannot fully fund one plan today, surely it will be more difficult to fund two plans tomorrow. Therefore, we urge that adoption of any new plan design, including composite plans, not reduce the ability of existing plans to fully meet their current funding obligations. We appreciate that the discussion draft already recognizes this principle, in part, by prohibiting critical status plans from operating a composite plan. However, this principle is not confined to critical status plans. AARP believes that additional protections are needed to prohibit other plans, especially endangered status plans, from contributing to a composite plan if it could risk their existing legacy plan contribution or cause its funding level to fall. While limiting composite plans to those plans that are better funded may serve the purpose of encouraging employers to improve funding in their existing plan if they are interested in a new plan design, this may also give rise to a downward spiral of defined benefit plans more generally.

AARP believes that provisions in the discussion draft that permit existing plans to divert current plan contributions to a composite plan will likely lead to harmful outcomes for those left behind in the legacy plans. If a plan is not in endangered status and has fully met its annual funding contribution, then funding becomes less of a concern. However, limiting composite plans to well-funded plans does little to address the funding challenges that many underfunded plans currently face. Reducing plan funding for a current endangered plan to fund a second plan puts at risk the benefits earned under the current plan. This is particularly true given recent experience with changes adopted under the Multiemployer Pension Reform Act (MPRA), under which plans are seeking to cut retirees' pensions due to inadequate plan funding.

The discussion draft includes provisions which not only reduce contributions by lengthening the funding period for legacy plans from 15 to 25 years, but also appear to limit legacy plan contributions by requiring that 25% of contributions go to the composite plan. We strongly believe the underfunded legacy plans should not be placed on a reduced funding course. We do not support a policy that would permit current underfunded plans to reduce their contributions in order to fund another plan. We urge the Committee to modify the draft to ensure that any legislation provides adequate funding for legacy plans. Specifically, we urge the Committee to address the following two key questions: 1) Are funding and transition payments adequate to ensure earned benefits in legacy plans can be fully paid, and 2) Can an entity struggling to fund one plan adequately fund two plans.

Second, we should help the plans that can be helped. There are a few dozen unions sponsoring most of the 1300 multiemployer plans. The PBGC should have broad authority to advise plans and help them merge as appropriate. Mergers will reduce administrative expenses and improve investment opportunities that are afforded to larger investment pools. The Labor Department should be empowered to assist in assuring adequate participant fiduciary protections in any merged plan. In addition, CBO estimates that with additional funding, PBGC could partition plans that bear liability for employers no longer in business, which would enable the remaining plans to pay the pensions earned by their own employees.

Third, we should strengthen the PBGC safety net. The PBGC is projected to run out of funds to pay almost all insured multiemployer benefits after 8 years (2025) and it currently faces a shortfall of $34 billion from 2017-2036. Congress must take steps to ensure the financial viability of the PBGC and protect the ten million workers and retirees who have earned a guaranteed pension. Regrettably, PBGC premiums – now $27 -- remained too low for too long (as low as $2.60 as recently as 2005), under the theory that these plans were not at risk. Premiums now must be significantly increased. The CBO estimates that a premium of at least $127 a year is needed to pay guaranteed benefits, and PBGC itself estimates that an average maximum of $156 is needed to cover 10 years, or $208 for 20 years (to achieve an almost zero percent chance of PBGC insolvency). While the reports outline the need for a large increase, significant steps are needed to insure a lifetime pension. PBGC premiums currently are paid wholly by the plan, but AARP would support creative approaches, such as tax credits, or a partial direct assessment against monthly retiree pensions, to help alleviate some of the burden on plans of a large premium increase. In addition, AARP would be open to a variable or graduated premium that would, for example, assess a lower premium for lower wage workers, or be based on a plan's funded status.

It is important to remember that the PBGC multiemployer pension guarantee remains low. PBGC only pays a maximum of $12,870 a year for a retiree with 30 years of service, an amount that is further reduced for retirees with lesser years of service. This maximum guarantee is a small fraction of the single employer plan guarantee of $60,136 (which also is indexed annually). Along with a premium increase, AARP strongly urges a reasonable increase in the maximum pension guarantee. At a minimum, the guarantee should be indexed to inflation.

Fourth, any new plan design should be fair and affordable. Many of the participating employers are indicating that they want to reduce their risk and move to a less costly system. We are open to the efforts of the parties to develop new pension models. However, Congress must ensure that any new system is fair and protective of workers and retirees. In addition, Congress should ensure that we do not create minimally regulated plans with less certainty and adequacy that not only put benefits at risk, but also risk turning well-run healthy plans into inadequate pension models.

Pension Protections for New Plans

Congress, in crafting the underlying regulatory laws in the Employee Retirement Income Security Act of 1974 (ERISA) and Multiemployer Pension Plan Act of 1980 (MEPPA), took

pains to ensure that benefit promises would be as secure as possible. Both took many years to get right and both have worked well for long periods.

ERISA and MEPPA have 5 key parts –

1. Periodic Disclosure of Information to Participants and Department of Labor;
2. Minimum Vesting and Benefit Accrual rules for employees;
3. Adequate Funding Requirements;
4. Fiduciary duty over plan monies and operations; and
5. Government and judicial oversight.

Congress must ensure that participants in composite plans are also covered by the fundamental protections included in both statutes.

Periodic Disclosure -- The discussion draft does not specify what types of benefit statements workers and retirees will receive. The draft provides DOL discretionary authority to adopt standards. AARP urges the Committee to add a specific requirement for annual or quarterly statements explaining to participants their plan contributions, accrued benefit, plan funded status and an explanation how accrued benefits may be reduced if plan assets fall below a certain level. The draft permits plans to provide all notices electronically, but surveys show workers prefer paper notices. Workers should automatically receive paper notices but be provided a choice of how they want to receive information.

Vesting and Accrual of Benefits -- The discussion draft also is not clear on the vesting and benefit accrual rules for participants. The draft specifically provides that current workers will be credited for prior service, but is silent on the rules for new participants -- these rules should be specified. In addition, the draft simply provides that the composite plan will provide for the payment of benefits "objectively calculated pursuant to a formula". This standard is much too vague. Are benefits determined by years of service or salary (or a combination of both)? How do contributions and investment return affect benefits? Also, if the composite plan becomes underfunded, the draft allows benefits, including core benefits, to be cut -- but it is not clear how such cuts would be implemented, and whether trustees could determine that retirees and older workers could bear the greatest burden of cuts.

Fiduciary Protection -- The discussion draft permits the existing and composite plan to be maintained by the same or different trustees, with a requirement of one retiree trustee on a composite plan. Congress should consider whether to require separate plan trustees, and should permit retirees to choose their representative, not the plan. Congress should also add specific protections against conflicts of interest, particularly to address conflicts between the legacy plan and new composite plan. Congress should consider how to resolve conflicts between active workers, deferred vested and retirees and how to ensure adequate government oversight.

Plan Funding -- Creation of a composite plan should not be an excuse to reduce funding for legacy plans. Plans that are already underfunded should not be put at further risk, and extending funding timelines will by definition reduce plan funding. In addition, market

volatility will increase funding strains on both legacy and composite plans, leading to a greater risk of benefit cuts in both. In particular, it appears that plan trustees are given significant discretion to reduce benefits in new composite plans, contrary to protections generally in place for accrued benefits in all other pension plan laws. Plans that seek to cut benefits do not even have to meet the limited requirements in MPRA of pending insolvency and need to obtain government approval.

Finally, the draft permits employers to terminate withdrawal liability when the legacy plan is 100% funded over several years. To better protect legacy plans, Congress should consider some failsafe protections, such as re-insurance, to ensure that future investment shortfalls do not result in future plan underfunding and retiree cuts. This is particularly true since, over time, withdrawal liability attached to the smaller legacy plans will be substantially reduced, further encouraging withdrawals and exacerbating the problem of a shrinking PBGC premium base.

Conclusion

The multiemployer pension system currently includes both well-funded plans and significant numbers of underfunded plans – the end result is a complex and challenging environment. We urge the Committee to continue open discussions on best ways to improve the system, including stabilizing the PBGC. We understand that in order to stabilize the system, everyone may be asked to share in any sacrifice.

We are happy to be part of any fair process to find a balanced solution. Participants -- especially those in or near retirement with few other options -- must be best protected, while ensuring that employer costs are reasonable. Congress must balance the differing needs of all groups: active and retired workers, plans, the PBGC and employers, including those who are no longer in business.

We appreciate the Committee's efforts to post and discuss the legislation publicly. The retirement security of ten million workers and retirees is at stake, and we owe it to them to have a fair, open and thoughtful process to address the looming challenges.