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On "Assessing the Challenges Facing Multiemployer Pension Plans"

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Thank you Chairman Roe, Ranking Member Andrews, and members of the Subcommittee for the opportunity to testify today. My name is Michele Murphy. I am the Executive Vice President of Human Resources and Corporate Communications for SUPERVALU Inc. ("SUPERVALU"). I have responsibility for SUPERVALU's pension plans, and I serve as a Trustee for one of the 20 multiemployer pension plans in which SUPERVALU participates.

I. ABOUT SUPERVALU Inc.

As a preliminary matter, you may have read or heard about SUPERVALU's recent divestiture of many of its retail stores and warehouse operations. The information I am providing you today is for the remaining SUPERVALU, meaning the going forward company.

SUPERVALU is a Fortune 500 company (about #150) and one of the largest grocery wholesalers and retailers in the U.S., with annual approximately $17 billion in sales.

SUPERVALU is also one of the founding members of the Association of Food and Dairy Retailers, Wholesalers and Manufacturers, a group of employers spread throughout the food industry that is concerned with the future of multiemployer pension plans (the "Food Employers Association").

Today, SUPERVALU operates 572 supermarkets , 177 pharmacies and 41 distribution centers, located in 34 states. Our distribution centers supply not only the company-owned supermarkets I just mentioned but also almost 3,000 independent grocers, franchisees and licensees. SUPERVALU's net earnings margin is just over 1%, reflecting the highly competitive nature of the retail food industry.

SUPERVALU also supports approximately 2,100 charities, schools and grassroots organizations in the communities we serve, and contributed food and funds equal to 4.2 million meals in 2012.

SUPERVALU has approximately 35,000 employees. About 15,000 of these employees are covered by 52 collective bargaining agreements ("CBAs"), making SUPERVALU one of the larger unionized employers in the United States. SUPERVALU primarily works with two labor unions - the United Food and Commercial Workers International Union ("UFCW"), which represents almost 74% of our unionized workforce, and the International Brotherhood of Teamsters ("IBT") which represents about 24% of our unionized workforce. SUPERVALU's other unions include the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union ("BCTW&GM"), the International Union of Operating Engineers ("IUOE"), the International Association of Machinists ("IAM"), the Automotive, Petroleum and Allied Industries Employees ("AP&AIE), and the United Steelworkers ("USW").

SUPERVALU contributes to 20 multiemployer defined benefit pension plans. In 11 of these plans, we account for 5% or more of the plan's total contributions. In 2012, SUPERVALU contributed approximately $38 million to these plans as required by our CBAs. However, as described in greater detail below, if the NCCMP multiemployer reform recommendations are not enacted into law, SUPERVALU could be required to contribute more than $500 million over the long term (in addition to the contributions currently required under its CBAs) to fund pension benefits previously accrued under these plans, as 19 of these plans have withdrawal liability. Much of this money would not go to cover the pension costs of SUPREVALU employees or retirees but rather to cover pension costs of retirees who never worked for SUPERVALU.

II. MULTIEMPLOYER DEFINED BENEFIT PENSION PLANS

A. Overview

A multiemployer defined benefit pension plan is a retirement plan to which more than one employer contributes. These plans are managed by a board of trustees, half of which are appointed by contributing employers and half of which are appointed by participating unions. The plans are funded pursuant to CBAs. In most plans, the employer contribution levels are established in the CBA through collective bargaining between the respective employers and unions. The Board of Trustees establishes the pension benefits to be provided to participants, based on the Plan's funding levels and projected contributions. Many multiemployer plans were designed to serve as retirement vehicles for smaller employers and employers with a mobile workforce, where employment patterns prevented employees from accruing adequate retirement benefits under traditional, single employer pension plans. In other words, multiemployer plans were established so that workers' pensions could be portable as they moved from job-to-job within the same industry. They are most common in the retail, transportation and construction industries.

Multiemployer plans are subject to the Labor Management Relations Act of 1947, otherwise known as the Taft-Hartley Act. These plans are also subject to the Employee Retirement Income Security Act of 1974 ("ERISA") and the relevant provisions of the Internal

Revenue Code of 1986. As I stated before, these plans are required to have equal employer and union representation on the board of trustees. Although the trustees are selected by management and labor, they are required by law to act solely in the interests of plan participants.

B. Withdrawal Liability

Before the enactment of ERISA and the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), an employer's obligation to a multiemployer plan was generally limited to the contribution it was required to make during the term of the CBA. Once it made the agreed-upon contribution, the employer had no further liability. Thus, if an employer terminated participation in a multiemployer plan following the expiration of its CBA, it did not have any further liability to the plan.

In 1980, Congress enacted MPPAA, which was designed to address perceived problems with the multiemployer pension plan rules, including the possibility that an employer could terminate participation in a plan without having fully funded its share of plan benefits. MPPAA, in turn, strengthened the manner in which pension benefits were protected by requiring contributing employers that terminated their participation in a plan to make payments to cover their share of any unfunded benefits. This is known as "withdrawal liability."

C. "Last-Man Standing" Rule

When a withdrawing employer fails to fully pay its withdrawal liability (which is common for employers that become bankrupt or simply go out of business) the responsibility for the unfunded liabilities of the bankrupt employer is shifted to the remaining contributing employers in the Plan. This is referred to as the "last-man standing" rule. In many ways, the last man standing rule is endangering successful employers and their employees because the successful employers are required to pay for the failure of unsuccessful companies in the Plan.

Even in those cases where an employer exits a plan and fully pays its withdrawal liability, the remaining employers are still responsible for ensuring that there is adequate funding in the future to cover plan liabilities attributable to the exiting employer. Thus, if the plan has adverse investment experience, the remaining employers must ultimately pay additional contributions to fund the benefits of the workers and retirees of the withdrawn employer unless the plan experiences future "excess" investment returns that make up the loss.

D. Implications

The "last man standing" rule saddles employers that remain in a multiemployer plan with potential liability for pension obligations of workers and retirees that never worked for the remaining employers. This includes not only those who worked for a competitor of the remaining employers, but also, in many cases, those who worked in a completely different industry than the remaining employers. Shifting risk to the remaining employers places an unfair burden on the remaining employers and, depending on the employer's financial condition, could threaten the continued viability of these companies, too. Essentially, it creates a domino effect within the multiemployer pension plans that ultimately damages otherwise successful employers, reduces pension benefits for retirees, and puts further strain on the Pension Benefit Guarantee Corporation.

Given the impact of the "last-man standing" rule, it is not surprising that multiemployer pension plans are not attracting new employers. Employers do not want to join a multiemployer plan that could expose them to future withdrawal liability on benefits earned by employees of other employers, including benefits earned long before the employer joined the plan.

E. Pension Benefit Guaranty Corporation

The last-man standing rule also underscores the disparity in the way the government insures single employer pension plans versus multiemployer pension plans. If an employer in a multiemployer plan goes bankrupt and cannot pay the withdrawal liability, the first step is for other contributing employers to assume the unfunded liabilities of failed employers and essentially pay for these liabilities through higher contributions to the multiemployer pension plan. This makes the remaining employers more costly and less competitive in the marketplace. As more contributing employers fall by the wayside, the previously successful employers become less successful and they, too, become in danger of going out of business. This is the domino effect I mentioned earlier. Eventually, the funding burden becomes too severe for the multiemployer plan and its contributing employers.

For example, the Hostess bankruptcy in 2011 increased the remaining employers' share of the unfunded liability of the Teamster's Central States, Southeast and Southwest Areas Pension Plan ("Central States Pension Fund") by almost $600 million. SUPERVALU's share of these unfunded liabilities was about $9 million even though SUPERVALU comprises less than 2% of the Central States Pension Fund. This is worth repeating – SUPERVALU's contributions to Central States are funding about $9 million of unfunded liabilities attributable to Hostess employees and retirees -- even though they never worked for SUPERVALU, and in fact, worked in a different industry.

If a multiemployer plan becomes insolvent, the PBGC loans money to the plan to pay benefits, and the pension payments must be reduced to the extent they exceed the PBGC statutory maximum. Currently, the maximum PBGC multiemployer guarantee is $12,870 per year for a retiree with 30 years of service at age 65. This is far different from a failing single employer plan for two reasons. First, with the failed single employer plan, the PBGC steps in and assumes the plan's liabilities and assets and pays the pension benefits. Second, the benefits in a single employer plan are subject to a maximum guarantee of about $57,477 per year, much higher than the multiemployer plan guarantee level.

III. SUPERVALU's PARTICIPATION IN MULTIEMPLOYER DEFINED BENEFIT PLANS

Like many food employers, SUPERVALU began participating in multiemployer plans at least as far back as the 1960s – in an era during which its exposure to these plans was limited to the contribution it was required to make during the term of its CBAs. Thus, its decision to participate in these plans was made well before the rule changes made by ERISA and MPPAA.

As a result of its warehouse and transit operations, SUPERVALU, like a number of food employers, became a contributing employer to trucking industry multiemployer pension plans during the 1960s – at a time when trucking companies were federally regulated and, thus, dominated participation in these plans. Deregulation has resulted in a dramatic consolidation in the trucking industry since the 1980s. Thus, many unionized trucking industry employers have left the business (many through bankruptcy), and food and beverage employers – like SUPERVALU – now represent the largest segment of contributing employers to many of these multiemployer plans.

The impact of the market consolidation in the retail food and trucking industry was exacerbated by the 2001 tech bubble and the 2008 stock market crash. Much of the current multiemployer plan underfunding is a direct result of these market events, as well as the structural problems inherent in ERISA and MPPAA. All of these factors have resulted in reduced plan funding levels and lower the contribution streams into the plans.

As previously mentioned, SUPERVALU could be required to make additional future contributions of $500 million simply to fund previously accrued pension benefits, with most of this additional contribution going to fund the benefits of participants who never worked for SUPERVALU. In fact, this may be an optimistic estimate because it assumes a very conservative employer attrition rate.

While SUPERVALU participates in 20 different multiemployer plans, approximately 60% of its exposure is attributable to the Central States Pension Fund. It is estimated that 40% of the current retirees in the Central States Pension Fund are "orphans" who worked for employers who have left the Fund and who did not work for any of the remaining contributing employers in the plan.

IV. SUPERVALU'S MULTIEMPLOYER PLANS

SUPERVALU has also been a long-time proponent of multiemployer funding reform, including increased transparency. In 2005, SUPERVALU's then CEO, Jeff Noddle, testified before Congress in support of the Pension Protection Act. Further, for the past several years, SUPERVALU has disclosed in its Annual Report its participation in multiemployer plans, including the theoretical estimate of its aggregated exposure to the underfunding in such multiemployer plans. These disclosures provide more detail than is required by federal accounting rules.

SUPERVALU has also worked with unions at the bargaining table, and its trustees have worked with union trustees and other employers to address the funding of the 10 multiemployer plans on which SUPERVALU has a trustee. Given the current rules, this work has focused on a combination of contribution increases and prospective benefit adjustments. Over the last several years, when bargaining labor contracts with multiemployer plans, more than 30% of SUPERVALU's total package settlement dollars have gone to increased contributions to the multiemployer pension plans in order to try to improve the funding of these plans. While we believe these increases were needed, they unfortunately resulted in little money being left over to pay wage increases, especially in light of the continuing increases in health care costs.

There are many other anomalies and threatening business conditions SV experiences attributable to its participation in multiemployer plans. For example,

--SV recently closed 2 Teamster facilities. The work was transferred to other facilities participating in Central States so withdrawal liability was not triggered. However, had the work been moved to other union facilities that did not participate in Central States, hundreds of millions of dollars in withdrawal liability would have been triggered.

--SV has one UFCW fund where contribution rates increased over 246% in a 2 year contract. In another Teamster fund, contribution rates will increase 19% each year of a 5 year contract.

--SV rating agencies are acutely aware of SV withdrawal liability, essentially treating it as debt when we refinanced debt this past spring.

Notwithstanding these efforts, SUPERVALU still faces significant exposure from underfunded plans, as do hundreds of other employers. We are nearing a tipping point where many good and successful employers will be brought down because of the unintended consequences of MPPAA. If this happens, multiemployer plans will go insolvent, resulting in harm to retirees and, ultimately, costing the federal government billions of dollars. Now is the time for Congress to act to prevent such a crisis.

V. SUGGESTED CONCEPTS CONGRESS SHOULD CONSIDER

The National Coordinating Committee for Multiemployer Plans ("NCCMP") has worked diligently with many employers and unions over the past several years to prepare recommended legislative solutions to the multiemployer plan dilemma. SUPERVALU has been represented in this work through its membership in the Food Employer Association and supports the solutions set forth in the NCCMP report. The NCCMP report sets forth many ideas to improve the current law with respect to multiemployer plans. The following is a discussion of one of the measures that are particularly important to SUPERVALU as a contributing employer.

A. Remediation: Measures to Assist Deeply Troubled Plans

In our opinion, salvaging troubled plans is the most important area for Congress to address. A "wait and see" or a "do nothing" approach will simply not work. It would ruin employers, put employees out of work, reduce pension payments to retirees, and ultimately endanger the existence of the PBGC. Changes need to be made to multiemployer plan rules – and now is the time. The most important of these changes would be to allow a plan's Board of Trustees to implement a program that would suspend benefits, even to retirees, if doing so is necessary to prevent the plan from becoming insolvent and to preserve the plan for its participants. Naturally, certain safeguards would need to be enacted to make sure these reductions were done in the most equitable manner possible.

The biggest example of this issue for SUPERVALU is the case of the Central States Pension Fund. As I said before, SUPERVALU's share of the unfunded liabilities continues to grow every year as other Central States employers fall by the wayside. The retirees from these failed companies would be much better off in the long run if pension benefits were reduced now instead of waiting until the Plan becomes insolvent, when these same retirees could have their pensions cut by as much as two-thirds (and possibly much more, unless the PBGC is provided the necessary funds to meets its obligation with respect to the multiemployer plan guarantee).

B. Preservation: Proposals to Strengthen the Current System

The second topic I want to discuss is technical corrections to the Pension Protection Act ("PPA"). The PPA was an important piece of legislation that started setting the right course for multiemployer plans. We strongly believe it should not be allowed to sunset at the end of 2014. That being said, there are many minor technical changes that we believe should be made which, when taken together, would greatly improve the ability of multiemployer plans to improve their funding levels. Some of these are:

- Allowing plans that are projected to enter the critical zone within the next five years to enter critical status in the current year. By allowing plans earlier access the additional tools afforded plans in critical status, the plan may be able to moderate the actions that must be taken to fix the plan.
- Conform the rules applicable to plans that are in endangered and critical status by providing that the same rules applicable to red zone plans will apply to yellow zone plans during the funding improvement adoption period and the funding improvement period. Currently different rules apply to plans in the yellow zone that are more onerous than those that exist for red zone plans. This illogical structure should be corrected by applying the red zone rules to yellow zone plans
- Provide that any contribution increases attributable to Funding Improvement Plans or

Rehabilitation Plans will be disregarded for withdrawal liability purposes. The additional contributions required to improve plan funding under a funding improvement or rehabilitation plan are producing a perverse incentive for employers to withdraw in order to avoid having these additional contributions result in greater potential withdrawal liability. For example, three employers withdrew in the last year from a small UFCW pension plan in Wisconsin because the increased contributions required under the rehabilitation plan were dramatically increasing their withdrawal liability exposure. The employers felt it was better to exit now and basically pay double their current contribution rate – the multimillion dollar withdrawal liability assessment plus an amount equal to their current contributions into a defined contribution plan – instead of risking increased withdrawal liability exposure attributable to the increasing required contributions. If the additional money was not added to the contribution rate for calculating the withdrawal liability payments, these employers may have stayed in the multiemployer plan.

C. Innovation: New Structures to Foster Innovative Plan Designs

Finally, we need to look to new types of multiemployer retirement plans that both provide reasonable benefits to retirees and protect contributing employers from risks associated with other employers going bankrupt. One of these mechanisms would be the creation of a new form of multiemployer plan, that would provide protection to employers (because no withdrawal liability) and would protect the core benefits of retirees (unless adjustment is necessary to prevent plan insolvency).

VI. CONCLUSION

Again, Chairman Roe, Ranking Member Andrews, and members of the Subcommittee, I thank you for the opportunity to testify to your Subcommittee on behalf of SUPERVALU and the Food Employers Association. SUPERVALU applauds this Subcommittee for its leadership on important job of addressing the structural problems facing the multiemployer system. We are grateful for the opportunity to tell our story, and we look forward to working with you and others on a solution that will ensure the continued viability of the multiemployer pension system.