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CLIENT BULLETIN

House Holds Hearing on Multiemployer Pensions

"The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis"

In previous newsletters, we have discussed the Joint Select Committee of The Solvency of Multiemployer Plans ("Joint Select Committee") and followed its progress in seeking a solution to the multiemployer pension crisis. Though it was a valiant effort, no consensus solution was reached and no legislation was proposed. See *Client Bulletin 2018-76.*

However, the issue is not dead. Since that time, the Rehabilitation for Multiemployer Pensions Act (formerly the "Butch Lewis Act") was introduced into the House as House Bill 397 (H.R. 397) in early 2019. The Bill would create a Pension Rehabilitation Trust Fund to establish a Pension Rehabilitation Administration within the Treasury Department. Among other things, the purpose of the Pension Rehabilitation Administration is to make loans to eligible multiemployer defined benefit plans.

On another front, on March 7 the House Subcommittee on Health, Employment, Labor and Pensions (HELP) held a hearing on *"The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis."* We will now take a look at that hearing.

Hearing Overview

A video of the nearly 2½ hour hearing is available for viewing on YouTube. The opening statements of Chairwoman Rep. Frederica S. Wilson (D-FL) and Republican Rep. Tim Walberg (R-MI) have also been posted on the hearing website:

HELP Subcommittee Leadership Statements

Opening Statement of Chairwoman Rep. Frederica Wilson (FL-24), (D-FL)

Opening Statement of Rep. Tim Walberg (R-MI), Ranking Republican

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The following witnesses testified:

1. **Mr. Joshua Shapiro**
   Vice President, Pensions
   American Academy of Actuaries
   Washington, D.C.
   - Download Testimony

2. **Ms. Mary Moorkamp**
   Chief Legal Officer
   Schnuck Markets, Inc.
   St. Louis, MO
   - Download Testimony

3. **Mr. James Morgan**
   Blue Island, IL
   - Download Testimony

4. **Dr. James Naughton**
   Assistant Professor of Accounting Information & Management
   Kellogg School of Management at Northwestern University
   Evanston, IL
   - Download Testimony

5. **Mr. Glenn Spencer**
   Senior Vice President
   U.S. Chamber of Commerce
   Washington, D.C.
   - Download Testimony

6. **Dr. Charles Blahous**
   J. Fish and Lillian F. Smith Chair and Senior Research Strategist
   Mercatus Center at George Mason University
   Arlington, VA
   - Download Testimony

7. **Ms. Mariah Becker**
   Director of Research and Education
   National Coordinating Committee for Multiemployer Plans (NCCMP)
   Washington, D.C.
   - Download Testimony

Highlights of Witnesses Written Testimony

We will look at a few of the highlights of the written testimony. All of the witnesses testified as to the urgency of the situation in light of the dire straits facing the PBGC which is facing insolvency by 2024-25, with UMWA trouble looming in 2022.

Mr. Joshua Shapiro - *Vice President, Pensions American Academy of Actuaries*
Mr. Shapiro's lengthy written testimony included an introduction to the multiemployer pension system and highlighted multiemployer plan basics, multiemployer funding rules, withdrawal liability, insolvent multiemployer plans, and factors contributing to funding shortfalls. Some of the factors contributing to funding shortfalls included:

- Significant losses were experienced on plan assets in the first decade of the 21st century
- Benefit improvements adopted in response to the investment gains of the 1990s
- Maturing of pension plans as retiree populations become a larger component of liabilities
- Shifts in the industries supporting multiemployer pension plans

His testimony closed with a Summary of Current System Challenges and the following warning and exhortation:

> The multiemployer pension system stands at a crossroads. These plans have allowed millions of American workers to retire with reliable lifetime income that most would have been unable to achieve had these plans not been there. But the system has proved to not be strong enough to withstand the combination of demographic trends, industrial shifts and economic declines that have occurred in

recent years. As a result, more than a million participants face the possibility of losing their retirement benefits and thousands of businesses are in jeopardy.

Congress faces a dual challenge. Action is needed to address the looming crisis that will occur when both plans and the PBGC exhaust their resources and reach the point of insolvency. The multiemployer system also needs to be reformed so it can continue its invaluable mission of providing retirement income to people who need it, while also ensuring that the system does not fall into crisis again.

Ms. Mary Moorkamp - *Chief Legal Officer Schnuck Markets, Inc.*
Ms. Moorkamp had previously testified before the Joint Select Committee in June 2018 at the *Joint Select Committee Hearing on Employer Perspectives on Multiemployer Pension Plans.* Schnuck Markets is an employer that will be hit hard when Central States goes insolvent due to withdrawal liability.

Ms. Moorkamp testified on behalf of Schnuck Markets, a large employer with more than 13,000 employees serving 100 grocery stores in five states: Missouri, Iowa, Indiana, Illinois and Wisconsin. More than 75% of Schnuck's workforce is unionized. Schnuck also began contributing to Central States in the 1950's, which Fund now covers about 200 of Schnuck's 13,000 plus member workforce.

She explained that in 1958, Schnuck's weekly contribution rate to Central States was $3 per week which was about 3% of Schnuck's Teamster teammates' total compensation package (salary, retirement and health and welfare benefits). There was no such thing as "withdrawal liability," and Schnuck's liability was limited to funding our pension obligation for our teammates under our Collective Bargaining Agreement.

Today, Schnuck's contribution rate to Central States for 2019 is $342 per week, amounting to between 19% and 21% of our Teamster teammates' total compensation package. This compares to a compensation percentage of around 4% to 6% for our non-Teamster teammates' pensions. The $342 per week contribution level is 114 times the contribution rate in 1958. For some historical context, in 1958, a gallon of milk cost $1, a loaf of bread was 20 cents, and a gallon of gasoline was 25 cents. Today, at a 114 times increase, the cost of these items would be $114 for a gallon of milk, $22.80 for a loaf of bread, and $28.50 for a gallon of gas.

In addition to rising contribution costs, Schnuck's potentially faces large employer withdrawal liability for its 200 employees which in 2016 was over $281 million, or an average of $1.4 million per employee. For each new store Schnuck's opens a driver is needed. Adding that one employee increases the company's withdrawal liability by $200,000.

Ms. Moorkamp closed with a set of general principles that should be considered when addressing this financial crisis.

Mr. James Morgan – *Retiree from Hostess Bakery*
Mr. Morgan's testimony is probably the testimony of most retirees in multiemployer plans as far as how he felt about his pension and the hardship he would suffer from cuts under the *Multiemployer Pension Reform Act (MPRA),* which is why he supports H.R. 397, the *Rehabilitation for Multiemployer Pensions Act.*

> Mr Morgan worked for 33 years at Hostess Brands' Wonder Bread bakeries in Illinois until the company went bankrupt and closed its doors in 2012. Working in an industrial bakery is an extremely physically-demanding job. You are on your feet for at least eight hours and usually longer because we worked a lot of overtime.
>
> And no benefit was more important to us than our defined pension benefit. We negotiated and fought for our pension because we knew that having that pension meant that we would be able to retire with dignity after a lifetime of very hard work.
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> In fact, having a good pension was so important to us that we would often negotiate less in pay raises in favor of increasing our negotiated pension benefit level. In some years, many of us took all, or a portion, of our negotiated pay increases and purchased additional pension benefits. This was money out of our own pockets. That's how much we valued our pension.
>
> My pension benefits have not made me rich. Not at all. But my pension check each month is the only way I am able to make ends meet. If I lost those benefits or they were cut, it would be devastating. I definitely would not be able to pay my bills each month, afford groceries and take care of necessary medical needs. I don't know what I would do. I know almost all of my former co-workers are in the same position.
>
> We are not asking for a handout. We earned our pension benefits. We worked hard for our pension benefits. We sacrificed for our pension benefits. We were guaranteed our pension benefits.
>
> We did our part by putting in an honest day's work under difficult conditions.
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> All we are asking for is fairness.

James P. Naughton - *Assistant Professor, Kellogg School of Management, Northwestern University, Chicago, IL*

Professor Naughton submitted lengthy written testimony in which he attributed the origin of the current multiemployer pension crisis to an inherent attribute of how plan trustees have run the plans. He criticized the use of a calculating pension liabilities using a discount rate based on anticipated investment returns rather than using a lower discount rate that reflects the rate at which the obligation to pay the pension benefits can be settled. However, many commenters have observed that the use of such a lower proposed rate would cause current pension liabilities to balloon.

Professor Naughton also advocated stricter funding rules for multiemployer plans, stricter than for single employer plans, because there is an interconnectedness across multiemployer plans and contributing employers (i.e., most plans have several contributing employers, and most employers contribute to several different plans) that exacerbates the consequences of poor outcomes.

Professor Naughton also suggested amending the withdrawal liability provisions to prohibit withdrawals until a legislative solution is finalized.

Mr. Glenn Spencer - *Senior Vice President, U.S. Chamber of Commerce*
Mr. Spencer's written testimony was brief. He highlighted significant employer concerns.

> Withdrawal liability - While withdrawal liability is not booked until a plan actually terminates, the exposure to withdrawal liability is starting to impact employers now. When banks or other creditors know that an employer is part of a struggling multiemployer plan, they begin to question the creditworthiness of a business, which can lead to less than optimal lending rates or a denial of credit.
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> Employer withdrawal liability may cause employers to lose the opportunity to expand business operations through mergers, because companies that are not part of the multiemployer system may not wish to expose themselves to withdrawal liability. And finally, small family businesses may decide not to pass the business down to heirs to avoid passing along withdrawal liability. Worse, some may find that selling their business to fund their own retirement has become impossible because withdrawal liability is higher than the value of the business.
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> High contribution rates - As unfunded liabilities have increased, employers have faced rates that have doubled or tripled. Some employers are paying as much as $15.00 or more per hour to plans for every hour an employee works. While most employers would rather absorb the higher contribution rates than incur withdrawal liability that could bankrupt them, the ultimate effect is that employers become less competitive. It is questionable whether employers can sustain ever increasing rates over the long term.
>
> Potential contagion effect - Many employers contribute to more than one multiemployer plan. Should an employer with exposure to many plans face withdrawal liability from any one of those plans, it could go bankrupt. At that point, all the other plans in which it participates will face increased financial pressure, possibly causing them to become insolvent and triggering withdrawal liability for other employers in those plans, leading to a cascade of bankruptcies and failing plans.

Mr. Spencer closed with some general principles and also submitted a copy of the U.S. Chamber of Commerce released report titled The Multiemployer Pension Plan Crisis: Businesses and Jobs at Risk.

Dr. Charles Blahous - *J. Fish and Lillian F. Smith Chair and Senior Research Strategist Mercatus Center at George Mason University*
Dr. Blahous' testimony echoed many of the same criticisms of the multiemployer system as stated by Professor Naughton. We will not repeat those arguments here.

In addition Dr. Blahous also hammered at what he considers to be inadequate PBGC multiemployer plan premiums:

> In 2018, PBGC collected $295 million in flat-rate premiums from multiemployer plan sponsors, as opposed to $1.8 billion in single-employer flat rate premiums and $3.7 billion in single-employer variable rate premiums. This occurred in the context of a $54 billion projected deficit in the multiemployer program, as

> compared with a $2 billion projected surplus in the single-employer program. In a nutshell, multiemployer premiums are inadequate and fail to properly recognize the risks of plan underfunding.

He also emphasized the problem of "orphan" liabilities.

> Orphan liabilities are the obligations of plans to pay benefits to former workers of employers that have since withdrawn from sponsorship. An employer withdrawing from sponsoring a multiemployer pension plan is theoretically obligated to make a withdrawal liability payment equal to that employer's share of unfunded vested benefits, but various limitations and exceptions often cause actual withdrawal payments to fall well short of this amount. It is therefore often much less expensive for a sponsor to withdraw from a plan than to continue contributing to it, which has a predictable adverse impact on multiemployer plan funding. Research finds that the most underfunded multiemployer plans have a substantially greater share of "orphan workers" than better-funded plans, on average. One study found that orphan workers in critically underfunded "red zone" plans constituted 27% of their participants, compared with only 10% in comparatively healthy "green zone" plans.

Ms. Mariah Becker - *Director of Research and Education, National Coordinating Committee for Multiemployer Plans (NCCMP)*
As we head into the NCAA's "March Madness", we couldn't resist noting that Ms. Becker drove to the hoop to score with lots of data on how the multiemployer system affects federal taxes paid on pension payments, wages and related economic outlook. She also provided a very detailed look at the economics and laws affecting multiemployer pensions for a fuller picture of how the multiemployer pension problem arose in her 13 pages of heavily footnoted written testimony.

Figure 2. Federal Taxes Paid on Pension Payments, Wages, and Related Economic Output[2]

Federal Taxes ($ Billions)	2015	10-Year Federal Budget Window
Paid on Pension Benefits to Retirees	$3.5	$37.2
Generated from Economic Output Related to Pension Spending	$6.6	$70.4
Paid on Wages to Active Employees and Economic Output on Wages	$148.4	$1,552.9
Total Federal Taxes Paid	**$158.5**	**$1,660.5**

Figures 1 and 2 show that in 2015 alone, the multiemployer system provided $158 billion in taxes to the U.S. Government. We also provided $41 billion in pension income to our retirees and paid more than $203 billion in wages to our 3.8 million active workers. Combined, the pension and wage income supported 13.6 million American jobs and generated $1 trillion in GDP.

Ms. Becker also highlighted the costs of inaction to participants, employers, taxpayers and the U.S. government. She noted that one report stated:

> *"...the loss of projected pension benefits to Central States pensioners would lead to the loss of more than 55,000 jobs across the United States in 2025. Labor income would drop by nearly $3 billion, and GDP by more than $5 billion. State and local tax revenue would decline by nearly $450 million, and federal revenue by $1.2 billion."*

Ms. Becker illustrated the possible increase in government "safety net" social services that would be expected if a solution to the multiemployer funding crisis is not found.

The estimate was based only on the extra social services costs generated by the 63,000 retirees in pay status through the PBGC and the 653,379 retirees in pay status in critical and declining status plans.

Figure 7: New Federal Safety Net Spending by Program (2019-2028) and (2019-2048) ($Billions)

New Federal Safety Net Spending	2019-2028	2019-2048 (Net Present Value)
Housing Assistance[24]	$69.9	$133.3
Supplemental Security Income (SSI)[25]	$46.9	$89.5
Supplemental Nutritional Assistance Program (SNAP)[26]	$13.3	$25.4
Medicaid (10% of Retirees in Pay Status Eligible)[27]	$4.1	$7.9
Low Income Home Energy Assistance Program (LIHEAP)[28]	$4.1	$7.7
Total New Federal Safety Net Spending	**$138.3**	**$263.8**

Combined, the 10-year cost to the U.S. Government of not finding a bipartisan solution to the multiemployer pension crisis is between $170 billion and $240 billion. These costs will continue for decades after the first 10-year budget window and, on a net present value basis, will cost between $332 billion and $479 billion over the 30-year period between 2019-2048.

Conclusion

The sense from the hearings has been that if the multiemployer pension system fails, the fall-out will not only devastate contributing employers, employees and retirees, possibly lead to the failure of other multiemployer plans and increase the burden on state, local and the federal government to provide "safety-net" social services to the impacted. We will report on any future hearings or legislative news on solutions for the multiemployer pension crisis.

NCCMP Response Regarding Discount Rates

In response to the statements from some witnesses that the discount rate used for funding multiemployer pensions should be changed from the expected investment return to an annuity close-out rate, the National Coordinating Committee for Multiemployer Plans (NCCMP) had earlier presented information to the Joint Select Committee rebutting the continued criticisms of multiemployer funding methods which is still relevant:

- *Impact Of Alternative Discount Rates On Multiemployer Pension Plan Funding*
- *Appropriateness Of Current Assumptions For Multiemployer Funding*
- *NCCMP Briefing To Joint Select Committee Staff*

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