The Heritage Foundation

CONGRESSIONAL TESTIMONY

Protecting 96,000 Coal Miners, 10.5 million Other Workers and Retirees with Multiemployer Pensions, and 150 million Taxpayers by Reforming Multiemployer Pensions

Testimony before
Energy and Mineral Resources Subcommittee

of the Natural Resources Committee

U.S. House of Representatives

July 24, 2019

Rachel Greszler
Research Fellow in Economics, Budgets and Entitlements
The Heritage Foundation

My name is Rachel Greszler. I am a Research Fellow in Economics, Budgets and Entitlements at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

In my testimony today, I would like to consider the merits and implications of providing taxpayer funds to the UMWA's pension plan and expanding assistance for its health benefits plans in light of the fact that the UMWA is only one of nearly 1,400 multiemployer pension programs, the vast majority of which are severely underfunded. I propose that congress instead address the multiemployer pension crisis comprehensively by maintaining the Pension Benefit Guaranty Corporation's solvency, enacting rules to prevent future underfunding, helping plans minimize pension losses, and protecting taxpayers.

The United Mine Workers of America Pension Plan

The United Mine Workers of America's (UMWA) pension plan is a deeply insolvent multiemployer pension plan. It includes about 96,000 participants, including just under 3,500 active workers. [1] Although the UMWA's pension and health benefits plans are often referred to collectively as though they cover

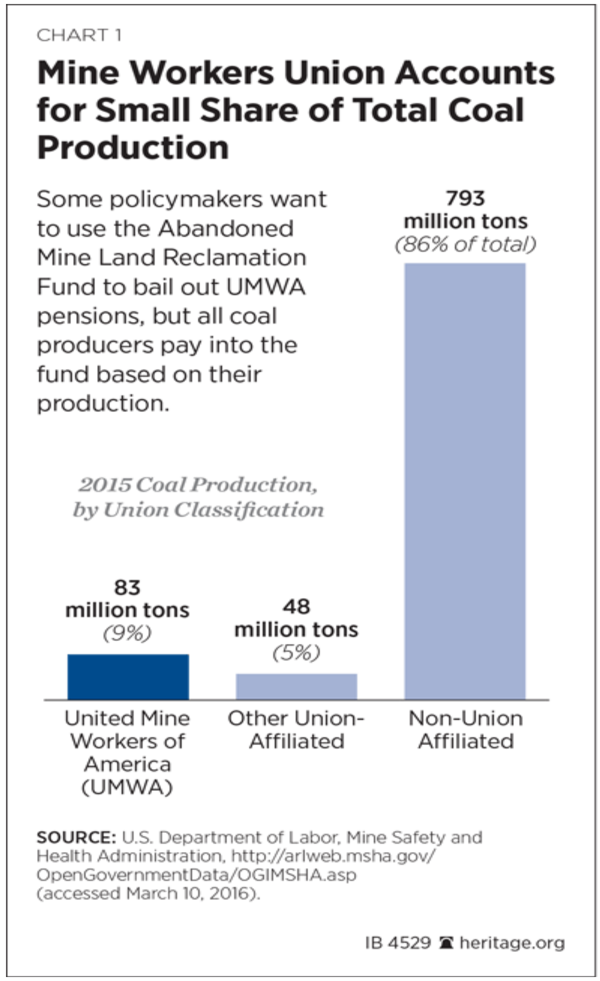
[1] According to the January 16, 2019, form 5500 plan filings from the UMWA's "United Mine Workers of America 1974 Pension Plan," available for download at freeerisa.com and including data from the plan year ending in 2018, the UMWA had 95,990 participants, including 3,486 active participants, with the remaining 92,504 being retired, vested and separated, or beneficiaries of retired or vested participants.

nearly all coal miners, the UMWA's plans only cover about 10 percent of all current coal workers. (See Chart 1.)

The plan has promised $6.5 billion more in benefits than it will be able to pay, and that figure is growing year by year.[2] The UMWA's pension promises were made by the plan's trustees, consisting of union officials and employer representatives, over the course of the past seven decades. At least in the early years of the pension plan's administration, the union trustees dominated the plan's decisions.[3]

UMWA pensions are relatively modest. In general, workers are eligible for pension benefits after 10 years of service and upon reaching age 55, with full benefits available at age 62 and with 30 years of service.[4] A worker with 30 years of service who retires at age 62 in 2016 would receive $2,021 per month, or about $24,250 per year, in addition to their Social Security benefit.[5] Because many pension beneficiaries spent significantly fewer than 30 years working in the coal mines, the average pension under the UMWA is $530 per month.[6]

But the UMWA's pension plan is only 29.9 percent funded and is projected to run out of funds to pay promised benefits within three years, in 2022.[7] The UMWA has one active worker for about every 25 retirees and in the year ending June 2018, the plan paid out $614 million in pension benefits and collected only $112 million in employer contributions—the equivalent of $5.50 in benefits for every $1 of revenues.[8]



[2]Ibid. The UMWA pension plan had $2.780 billion in assets and $9.285 billion in liabilities, creating an unfunded liability of $6.506 billion.
[3]Rachel Greszler, "Government Intervention in Coal Mining Seven Decades Ago No Justification for Pension Bailout Today," Heritage Foundation *Backgrounder* No. 3151, September 6, 2016, https://www.heritage.org/social-security/report/government-intervention-coal-mining-seven-decades-ago-no-justification.
[4]United Mine Workers of America, "UMWA Health and Retirement Funds, Pension Eligibility Requirements," http://www.umwafunds.org/Pension-Survivor-Health/Pages/Eligibility-Requirements.aspx (accessed March 9, 2016).
[5]United Mine Workers of America, "Summary Plan Description: UMWA 1974 Pension Plan," February 2014, http://www.umwafunds.org/Pension-Survivor-Health/Documents/2014_74PTSPD.pdf (accessed March 9, 2016).
[6]Cecil E. Roberts, "On S. 1714, the Miners Protection Act," testimony before the Committee on Finance, U.S. Senate, March 1, 2016, http://www.finance.senate.gov/imo/media/doc/03012016%20Roberts%20Testimony%20SFC%20Testimony%20Multiemployer%20Pensions.pdf (accessed July 22, 2019).
[7]Form 5500 plan filings from the "United Mine Workers of America 1974 Pension Plan," year ended June 30, 2018.
[8]Ibid.

When the UMWA pension plan runs out of money to pay promised benefits, the plan will receive financial assistance from the Pension Benefit Guaranty Corporation's (PBGC) multiemployer pension program. The PBGC is a government entity established in 1974 as a backstop against private pension plan losses. The PBGC does not have access to taxpayer funds, but relies on the revenues it collects to pay out insured benefits.

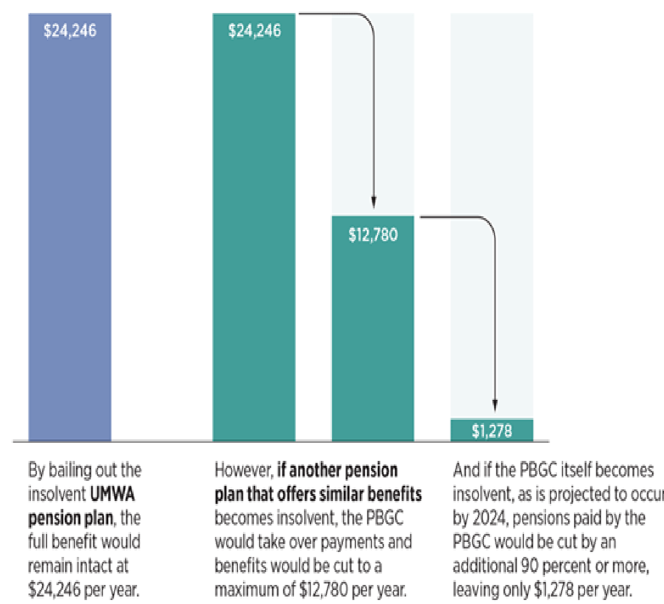
In general, the PBGC's multiemployer program does not insure 100 percent of promised benefits. Instead, it has a maximum benefit of $429 per year of service, so a worker with 10 years of covered work would receive no more than $4,290 per year while a worker with 40 years of service would max out at $17,160 per year.[9] Currently, 21 percent of PBGC beneficiaries receive less than their full promised benefit, but this figure is projected to rise to 51 percent for future multiemployer pension failures because those plans have higher benefit levels.[10]

When the UMWA pension fund becomes insolvent around 2022, the average UMWA benefit of $530 per month ($6,360 per year) would be reduced by $50 to $480, but a retiree with a 30-year work history and a $2,020 per month pension ($24,246 per year) would receive a $950 reduction in their monthly benefit, to $1,070 per month.[11] UMWA members also qualify for Social Security retirement benefits upon reaching age 62.

With the UMWA and other multiemployer pension plans such as the Central States Teamsters becoming insolvent between 2022 and 2025, the significant increase in claims on the PBGC's multiemployer program will cause the PBGC's multiemployer program to become insolvent in 2025, at which point it will only be able to pay about 10 percent to 15 percent of insured benefits.

CHART 2

Mine Worker Bailout Would Unfairly Preserve UMWA Pensions While Other Pensions Face Massive Cuts



SOURCES: Author's calculations based on the UMWA's pension benefits for a 62-year-old worker who retires in 2016 with 30 years of work history. Data on UMWA's pension eligibility are from UMWA Health and Retirement Funds, Pension Eligibility Requirements, http://www.umwafunds.org/Pension-Survivor-Health/Pages/Eligibility-Requirements.aspx (accessed March 9, 2016). Data on pension benefit cuts are based on PBGC's guaranteed level and U.S. Government Accountability Office, "Private Pensions: Multiemployer Plans and PBGC Face Urgent Challenges," Testimony Before the Subcommittee on Health, Employment, Labor and Pensions, Committee on Education and the Workforce, House of Representatives, March 5, 2013, http://www.gao.gov/assets/660/652687.pdf (accessed March 10, 2016).

IB 4529 heritage.org

For a worker—whether a mineworker or any other type of worker—with a 30-year career who was promised a $24,246 pension, their benefit would be reduced to $12,780 per year

---

[9]Pension Benefit Guaranty Corporation, "Multiemployer Insurance Program Facts," https://www.pbgc.gov/about/factsheets/page/multi-facts (accessed July 22, 2019).

[10]PBGC, "PBGC's Multiemployer Guarantee," March 2015, https://www.pbgc.gov/documents/2015-ME-Guarantee-Study-Final.pdf (accessed November 15, 2018).

[11]Author's calculations based on the UMWA's 1974 pension benefit summary plan description and the PBGC's benefit formula. The PBGC guarantees up to $12,870 per year for multiemployer plan pensions. For retirees with 30 years of service, the PBGC matches the first $3,960 per year at 100 percent and the next $11,760 per year at 75 percent. The current maximum has been in place since 2001. Calculations were based on a worker retiring in 2016.

when their plan becomes insolvent and to about $1,278 per year when the PBGC becomes insolvent. (See Chart 2 on p.3.)

This is what happens absent any required reforms to multiemployer pension plans or reforms to the PBGC's multiemployer program. H.R. 935, The Miners Pension Protection Act, would preserve 100 percent of pension benefits for the select group of UMWA coalminers but not for millions of other workers and retirees with multiemployer pensions.

The UMWA Health Benefits Plans

While UMWA pensions are relatively modest, their health care benefits are gold-plated. They include comprehensive medical, drug, and vision coverage with little to no cost to retirees. The UMWA plan includes only $5 copays for doctor visits and prescriptions and no cost for hospital visits.[12] In other words, eligible UMWA workers can retire at age 55 and pay nothing for health insurance while most non-union coal miners have to pay thousands of dollars for health insurance if they want to retire before they can collect Medicare at age 65.

Under current law, the UMWA has exclusive rights to tap the Abandoned Mine Land Reclamation (AML) fund as well as taxpayer dollars—up to $490 million per year—to provide its generous health benefits to so-called "orphaned" workers of coal employers that have gone out of business. Despite the fact that all coal producers are subject to the same AML fee and that the UMWA pays only about 9 percent of total contributions, no other coal producers have access to the AML or taxpayer funds to cover their promised compensation costs.

The bailout for the UMWA's health benefits plans was initially supposed to be temporary and did not include taxpayer funding. When the UMWA first received assistance through the Energy Policy Act of 1992, it was temporary and limited to interest on the AML. But when the AML interest was not enough to cover the UMWA's unfunded retiree health benefits, Congress opened the spigot of federal taxpayer funds and ended the time limit in 2008.

Again, through the Consolidated Appropriations Act of 2017, Congress further expanded taxpayer assistance to the fund by allowing another 22,000 retired coalminers access to the fund, bringing the total UMWA retirees receiving taxpayer funded health benefits to nearly 45,000.[13] This expansion also roughly doubled the cost of the bailout to now more than $300 million per year just for the UMWA's health benefits plans. Since 2008, taxpayers have contributed well over $1 billion, and now approaching $2 billion, to the UMWA's health benefits plan.

H.R. 934 would be the next iteration of expanded bailouts to the UMWA, covering another group of coal miners who became "orphaned" since the last expansion was passed in 2017. While fairness dictates that Congress should not provide health care benefits to one group of retired coal miners and exclude others, this demonstrates the problem with opening up the door to any kind of bailout because rarely is there an end in sight.

[12] United Mine Workers of America, "UMWA Health and Retirement Funds, Medical Copayment Summary," http://www.umwafunds.org/Health-Medical-Benefits/Pages/Medical-Copay-Summary.aspx (accessed March 9, 2016).

[13] U.S. Department of the Interior, "Budget Justifications and Performance Information Fiscal Year 2019," Office of Surface Mining Reclamation and Enforcement, Table 10, p. 93, https://www.osmre.gov/resources/budget/docs/FY2019_Budget_Justification.pdf (accessed July 21, 2019).

H.R. 935, the Miners Protection Act, reiterates the boundless nature of bailouts. This bill, the Miners Protection Act, would add pension benefits into the bailout fold, marking the first time in history that the federal government provided financial assistance to a private pension plan, and increase the annual amount of assistance to the UMWA from $490 million per year to $750 million per year.

Using the AML Violates the Purpose of the Fund and Puts Future AML Needs at Risk

Diverting funds from the AML for an entirely unrelated purpose is like using Superfund dollars to pay the retirement and health benefits of companies that contributed to pollution on Superfund sites. The AML was set up to provide funds to clean up environmental damage caused by coal mines that closed prior to 1977 when the Surface Mining Control and Reclamation Act was passed.

The Chief of the Office of Surface Mining (OSM) Reclamation and Enforcement, Alfred Whitehouse, laid out the Department's opposition to using the AML for a pension bailout during the Obama Administration in 2010, stating that the purpose of the AML fund is "to address the hazards and environmental degradation created by centuries of weakly regulated coal mining that occurred before [the Surface Mining Control and Reclamation Act's] enactment."[14] The fund was not set up as an insurance program in the event that private coal-mining companies promise their employees greater retirement benefits than they can afford.

Diverting additional revenues from the AML to select retiree benefits could restrict the fund from serving its intended purpose. Although the fund currently has about $2.5 billion in assets, the funds are needed for existing high-priority projects and new ones that will emerge.[15]

The OSM's recent budget request provides evidence that the fund does not have extra money sitting around to be given away for retirement benefits. The request included a $49 million per year increase in the current AML fee in order to "reclaim priority abandoned mine sites and address over $6 billion in remaining high priority AML sites nationwide."[16] According to the OSM, millions of Americans live within a mile of these abandoned sites, and many more areas could "become reclamation priorities as the old mines deteriorate and subside in the future."[17] Taking the interest out of the AML fund each year for UMWA health and pension benefits prevents the fund from serving its intended purpose.

What Would H.R. 935, The Miners Pension Protection Act, Do?

The Miners Pension Protection Act would provide the UMWA pension fund with access to hundreds of millions of dollars in taxpayer funds each year in order to preserve 100 percent of its promised benefits, despite having funded only 29.9 percent of what it promised. In total, the UMWA would have access to up to $750 million per year from taxpayers and the AML fund to use towards its broken health and pension benefit promises. Currently, the UMWA receives about $338 million per year ($270 million from taxpayers and $68 million

[14]Hearing, *H.R. 5479, Coal Accountability and Retired Employee Act of 2010*, Committee on Natural Resources, U.S. House of Representatives, 111th Cong., 2nd Sess., June 23, 2010.

[15]Office of Surface Mining Reclamation and Enforcement, "Reclaiming Abandoned Mine Lands: Title IV of the Surface Mining Control and Reclamation Act," May 21, 2015, http://www.osmre.gov/programs/AML.shtm (accessed March 9, 2016).

[16]Office of Surface Mining Reclamation and Enforcement, "Proposed FY 2017 Budget," http://www.osmre.gov/resources/budget/docs/FY17_Proposed_Budget.pdf (accessed March 9, 2016).

[17]Office of Surface Mining Reclamation and Enforcement, "Reclaiming Abandoned Mine Lands."

from the AML) to use exclusively for its health benefit plans.

The process through which these funds would be made available is confusing, leading many to believe the money is coming from a dedicated coal-mining fund, when in reality, 100 percent of the financial assistance provided for the UMWA's pension benefits would come from taxpayers through the general fund of the U.S. Treasury.

Under current law, the UMWA has access to up to $490 million per year for its health care fund. The first portion of that funding would come from interest earned on the AML fund and the rest would come from taxpayers. In fiscal year 2019, interest from the AML fund will cover less than 20 percent of the UMWA's unfunded health benefit costs; the AML will provide an estimated $67.5 million while taxpayers will have to pay the remaining $270.4 million.[18] Based on the 2019 projections, applying H.R. 935 would leave up to $416 million in taxpayer funds to be used to pay the UMWA's unfunded pension benefits.

It is unclear whether or not the proposed $750 million per year for the UMWA would be enough to cover all its unfunded health and pension benefits. Considering that the pensions bill has already been revised to increase the total funding available from $490 million in previous versions to $750 million in the current bill, and that the health benefits bill establishes yet another expansion of eligible beneficiaries and costs, it seems clear that policymakers intend to bail out the entirety of the UMWA's unfunded health and pension promises.

If Congress provides a taxpayer bailout to the UMWA's pension plan, this would be the first time in history that the federal government provided financial assistance to a private pension fund and would establish a costly and concerning precedent.

If Congress bails out one group of coal miners, it would be unfair to not also bail out steel workers, truck drivers, bakers, and confectioners, as well as all the rest of the roughly 1,400 groups of workers with multiemployer pension plans. And if Congress bails out pensions for private-sector workers, it would seem unfair to not also cover the roughly $4 trillion[19] to $6 trillion in funded pension benefits promised by state and local governments to public-sector workers like teachers and firefighters.[20]

The UMWA Is Only the Tip of a $638 Billion Iceberg

The UMWA pension plan is one of nearly 1,400 multiemployer pension plans across the U.S.,[21] and its roughly 96,000 participants represent a little less than one percent of the 10.6 million workers and retirees with multiemployer pensions across the U.S.[22] Of those roughly 10.6 million workers, 96 percent

[18]U.S. Department of the Interior, "Budget Justifications and Performance Information Fiscal Year 2019," Table 10, p. 93.

[19]Dr. Joshua Rauh, Director of Research and Senior Fellow, Hoover Institution, Hearing on How the Multiemployer Pension System Affects Stakeholders, Joint Select Committee on Solvency of Multiemployer Pension Plans, July 25, 2018, https://burypensions.files.wordpress.com/2018/07/rauh-written.pdf (accessed July 22, 2019).

[20]American Legislative Exchange Council, "Unaccountable and Unaffordable: Unfunded Public Pension Liabilities Exceed $5.9 Trillion," https://www.alec.org/app/uploads/2019/03/Unaccountable-and-Unaffordable-WEB.pdf (accessed July 20, 2019).

[21]Pension Benefit Guaranty Corporation, "Data Table Listing," Table M-6, PBGC-Insured Plans (1980–2017), Multiemployer Program, https://www.pbgc.gov/prac/data-books (accessed July 18, 2019). In 2017, the most recent year reported, there were 1,374 PBGC-insured multiemployer pension plans.

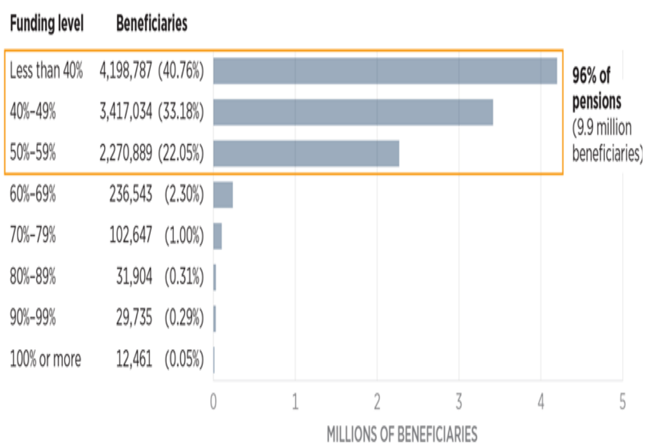
[22]Ibid., Table M-5, PBGC-Insured Plan Participants (1980-2017), Multiemployer Program. In 2017, the most recent year reported, there were 10.565 million PBGC-insured multiemployer plan participants.

of them are in multiemployer plans that are less than 60 percent funded. (See Chart 1 below.) The PBGC estimates that multiemployer pension plans have promised a combined total of $638 billion more in pension benefits than they are on track to be able to pay.[23]

To date, more than 50 multiemployer pension plans have become insolvent and are currently receiving PBGC assistance. Another 46 are projected to fail within the next 10 years,[24] and a total of 231 are projected to fail within 30 years.[25] (See Chart 2 to the right.)

CHART 1

96 Percent of Workers' Multiemployer (Union) Pensions Are Less than 60 Percent Funded



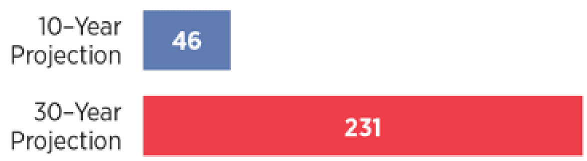
SOURCE: Pension Benefit Guaranty Corporation, "Data Table Listing," Table M-13, https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf (accessed August 29, 2018).

BG3345 heritage.org

CHART 2

Hundreds of Pension Plans Face Insolvency

PROJECTED NUMBER OF MULTIEMPLOYER PENSION PLAN FAILURES



NOTE: Includes only declining and critical plans (leaving out 70 critical plans that have exhausted reasonable measures and may become insolvent over this time period).
SOURCES: John J. Topoleski, "Data on Multiemployer Defined Benefit (DB) Pension Plans," Congressional Research Service *Report* R45187, August 10, 2018, https://fas.org/sgp/crs/misc/R45187.pdf (accessed December 2, 2018), and The Pension Analytics Group, "The Multiemployer Solvency Crisis: Estimates of the Cost and Impact of the Butch Lewis Act," http://www.pensionanalytics.org/files/Estimates%20of%20the%20Cost%20and%20Impact%20of%20the%20Butch%20Lewis%20Act.pdf (accessed December 3, 2018).

BG3371 heritage.org

The UMWA pension plan's insolvency would not be exceptional were it not for the plan's size and the UMWA's political influence. While the UMWA has about $6.5 billion in unfunded liabilities, the Central State Teamsters—another deeply troubled and soon-to-be-insolvent multiemployer pension plan—has an estimated $40.7 billion in unfunded liabilities.[26] The next 48 most underfunded

[23]Ibid., "Data Table Listing," Table M-9, Funding of PBGC-Insured Plans (1980–2015) Multiemployer Program, https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf (accessed November 12, 2018).

[24]The 6 percent of plans (79 plans in total) expected to fail within two decades are in the 2016–2035 period corresponding with the PBGC's most recent 2016 data on funding percentages. John J. Topoleski, "Data on Multiemployer Defined Benefit Pension Plans," Congressional Research Service, August 10, 2018, https://fas.org/sgp/crs/misc/R45187.pdf (accessed November 15, 2018)

[25]The Pension Analytics Group, "The Multiemployer Solvency Crisis: Estimates of the Cost and Impact of the Butch Lewis Act," http://www.pensionanalytics.org/files/Estimates%20of%20the%20Cost%20and%20Impact%20of%20the%20Butch%20Lewis%20Act.pdf (accessed December 3, 2018).

[26]According to the "Central States Southeast and Southwest Areas Pension Plan," form 5500 filing for the calendar year ending December 31, 2017, the plan had $15.3 trillion in assets and $56.0 trillion in liabilities, for an unfunded liability of $40.7 trillion. It is expected to run out of funds in 2025.

multiemployer pension plans have another $307 billion in unfunded liabilities.[27]

The multiemployer pension funding crisis is pervasive and growing by the day as the plans continue to dig themselves deeper into debt each year.

In order to just stay afloat, plans must not only make their required contributions for active workers, they also have to cover the interest costs on their unfunded liabilities—a "treading water" standard—yet almost no plans are doing that.[28] Financial economist and professor Joshua Rauh testified that only 17 percent of plans contributed enough to avoid sinking further into debt in 2016.[29] He found that multiemployer plans would have to increase contributions by 55 percent to 60 percent just to stay afloat—that is, to not sink further into debt. According to an analysis commissioned by the National Coordinating Committee for Multiemployer Pensions (NCCMP), if multiemployer plans were required to use what financial economists almost unanimously agree to be the appropriate interest rates, they would have to double or triple their contributions to meet their obligations.[30]

Moreover, even the so-called green-zone plans that are allegedly well-funded are in terrible financial shape. Dr. Rauh estimated that only 10 percent of "green-zone" plans are treading water, and the NCCMP study estimated that if plans were required to use appropriate discount rates that matched their "guaranteed" benefits, only 2 percent—instead of the currently acknowledged 62 percent—would be in the green zone.[31] It is only a matter of time before plans in the green zone enter "critical and declining" status and become insolvent.

Considering the breadth and depth of the multiemployer pension crisis, it would be unwise and unfair to pick winners and losers through selective bailouts such as The Miners Pension Protection Act. Virtually the entire multiemployer system is broken and in need of reform. Moreover, if Congress pledges taxpayer support for private-sector pension plans, it will be hard-pressed to not provide the same taxpayer support for state and local pension plans that have promised six to 10 times as much—between $4 trillion[32] and $6 trillion—in unfunded pension obligations.[33]

A whack-a-mole approach to the $638 billion in unfunded pension promises across nearly 1,400 multiemployer pension plans and 10.6 million workers and retirees would be unfair, inadequate, and counterproductive.

[27]Pension Benefit Guaranty Corporation, Pension Insurance Data, Table M-12, Concentration of Underfunding in PBGC-Insured Plans (1990–2015), Multiemployer Program, https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf (accessed July 18, 2019). Total underfunding of the top 50 most underfunded pension plans was $348.4 billion for 2015. The Central State Teamsters accounted for about $35.6 billion of this and the UMWA for about $5.6 billion.

[28]Joshua D. Rauh, testimony before the Joint Select Committee on Solvency of Multiemployer Pension Plans, U.S. Congress, July 25, 2018.

[29]Ibid.

[30]Michael D. Scott, letter to Members of the Joint Select Committee on Solvency of Multiemployer Pension Plans, National Coordinating Committee for Multiemployer Pension Plans, June 25, 2018. The analysis commissioned by the NCCMP was performed by Horizon Actuarial Services, LLC.

[31]Scott, letter to Members of the Joint Select Committee on Solvency of Multiemployer Pension Plans. The statistic that only 2 percent of plans would be in the green zone is based on a discount rate equal to the 30-year Treasury bond rate. The NCCMP letter did not argue that this is the appropriate interest rate, but rather emphasized the huge impacts—in terms of increased contributions and reduced solvency measures—that lower discount-rate assumptions would have on plans.

[32]Dr. Joshua Rauh, Hearing on How the Multiemployer Pension System Affects Stakeholders.

[33]American Legislative Exchange Council, "Unaccountable and Unaffordable: Unfunded Public Pension Liabilities Exceed $5.9 Trillion."

What Would a More Comprehensive Bailout—H.R. 397, the Rehabilitation For Multiemployer Pensions Act of 2019—Do?

As opposed to selective bailouts, the House of Representatives will vote this week on a comprehensive bailout of the multiemployer pension system in the form of H.R. 397, the Rehabilitation for Multiemployer Pensions Act of 2019. This act provides two separate layers of taxpayer bailouts for multiemployer pension plans and does little to nothing to reduce or even contain the underfunding problem. Consequently, the Rehabilitation for Multiemployer Pensions Act could end up costing taxpayers even more than the entirety of the multiemployer pension plan system's $638 billion in unfunded promises.[34]

Step 1: Loans. The Rehabilitation for Multiemployer Pensions Act would establish a Pension Rehabilitation Administration within the Department of Treasury, including a new Pension Rehabilitation Trust Fund. That fund would have access to and use taxpayer dollars to make loans to multiemployer plans that are both "insolvent" and "critical and declining," which means they are digging themselves into deeper holes each day. The loans would be massively subsidized, interest-only, balloon-payment loans. If plans could not repay their loans after 30 years, they could qualify for loan forgiveness.

The interest rate charged to plans would be set at what is considered the "riskless" 30-year U.S. Treasury bonds rate, currently about 2.5 percent.[35] Considering that these plans likely could not qualify for loans, or would have to pay interest rates of 10 percent or more, an example $10 billion loan would amount to an annual interest subsidy of $750 million, or $22.5 billion over 30 years.

Step 2. Direct Cash Assistance. In addition to loans, the Rehabilitation for Multiemployer Pensions Act would break the firewall that currently exists between taxpayers and the PBGC by granting the PBGC access to general fund revenues to provide direct cash assistance to the plans. Part of the reasoning for the direct cash assistance is to increase otherwise insolvent pension plans' funding enough that there would be at least a chance of them repaying the loans they would receive. Under the Butch Lewis Act, the Central State Teamsters plan (which has about $41 billion in underfunded pension promises and is on track to become insolvent in 2025), estimated that it would receive between $20 billion and $25 billion in direct cash assistance and between $11 billion and $15 billion in loans.

The Fallacy of a Loan Arbitrage. The notion with the cash assistance and loans is that plans will be able to purchase more secure assets, such as private-sector annuities, to guarantee their participants' promised benefits, and then hopefully leverage the funds gained from taxpayer loans to earn high returns in the stock market and pay back the loan. As financial expert Joshua Rauh pointed out, this idea is "built on the false logic that plans can get something for free if they receive low-cost subsidized government loans and invest the money in risky assets."

If loan arbitrage were a sound strategy, then the federal government could eliminate its annual deficits simply by borrowing twice its projected deficit, investing half, and earning an 8.9 percent return on its investments. The

[34] Rachel Greszler, "Policymakers Need to Know: What Is the True Cost of a Butch Lewis Act Pension Bailout?," Heritage Foundation *Backgrounder* No. 3371, December 11, 2018, https://www.heritage.org/sites/default/files/2018-12/BG3371.pdf.

[35] On July 19, 2019, the 30-year U.S. Treasury bond traded at 2.57 percent. U.S. Department of Treasury, "Daily Treasury Yield Curve Rates," https://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yield (accessed July 20, 2019).

problem there is that neither 8.9 percent returns nor multiemployer pension plans' 7 percent to 8 percent returns are appropriate for pensions' guaranteed benefits and there is also a significant risk that investments could lose, instead of gain money, leading to even higher deficits. That is what happened in 2008 when Puerto Rico tried to reduce its unfunded pension obligations by issuing pension-obligation bonds on which it hoped to exceed the 6 percent interest cost of the loans. When the stock market subsequently lost about half its value, the pension fund was left far worse-off.

Applying the loan concept envisioned in the Rehabilitation for Multiemployer Pensions Act to its comprehensive database of multiemployer pension plans, the non-partisan Pension Analytics group concluded:

> In general, a loan would delay a weak plan's insolvency, but would not prevent it. Eventually, taxpayers and the PBGC will be called upon to deal with insolvency costs in the form of loan defaults and PBGC assistance payments.[36]

Plans Unlikely to Be Able to Repay Loans. The reason plans would be unlikely to be able to repay their loans is because the loan qualification standard under the Rehabilitation for Multiemployer Pensions Act is equivalent to requiring mortgage applicants to prove they have no job, no savings, and a declining capacity to find employment before they can qualify for a mortgage. Considering that such loan qualifications are the exact opposite of what are necessary to receive a loan in the private market, it would be highly unlikely that plans could repay the loans.

With plans like the UMWA paying out $5.50 in benefits for every $1 it collects in revenues and no new entrants into the plan, it is clear than most plans would not be able to repay the loans. The Pension Analytics Group estimated that the default rate on these loans would be 52 percent absent separate cash assistance to the funds.[37] In the end, the Rehabilitation for Multiemployer Pensions Act could put taxpayers on the hook for hundreds of billions of dollars in loan forgiveness.

Failure to Address the Root Problem Plus Risky Loans Could Exacerbate Crisis. Because the Rehabilitation for Multiemployer Pensions Act does not address the root problem of the multiemployer pension crisis—irresponsible management allowed through a lack of appropriate funding rules and enforcement—and introduces a new element of risk, taxpayer costs for a multiemployer bailout could actually exceed the entirety of the $638 billion in multiemployer pension underfunding. This evokes the question of whether a pure cash bailout of all underfunding accompanied by a permanent freeze on multiemployer pension plans would be a more responsible use of taxpayer dollars than risky loans that encourage even more overpromising and underfunding.

If Congress wants to protect workers, retirees, and taxpayers, lawmakers will look for comprehensive reforms that minimize pension losses, prevent the problem from growing, and ensure it will never happen again. To ensure workers will not be deprived of their hard-earned pensions, lawmakers must understand what caused the multiemployer pension crisis.

[36] Pension Analytics Group, "The Multiemployer Solvency Crisis: Estimates of the Cost and Impact of the Butch Lewis Act," November, 2018, http://www.pensionanalytics.org/our_papers (accessed July 20, 2019).

[37] Ibid.

What Caused the Multiemployer Pension Crisis?

Historically, many multiemployer pension plans have engaged in practices that caused them to promise more in pension benefits than they set aside to pay. For example: Many plans used unreasonably high discount-rate assumptions that allowed employers to contribute far less than necessary to make good on promised benefits; some plans paid benefits to workers who did not have sufficient work history to earn those benefits; others increased benefits retroactively without funding them; and in limited instances, corruption and reckless investment choices contributed to plan underfunding.[38]

The rules for multiemployer pension plans—most of which were enacted at the request of multiemployer plan providers—give plan trustees enormous discretion in setting benefits and contributions. That discretion, coupled with adverse incentives to make lofty promises and inadequate contributions, made the multiemployer crisis inevitable.

As Chart 2 to the right shows, multiemployer pension plans that assumed 8 percent returns could make the exact same pension promises as single-employer pension plans while contributing only 57 percent as much as those that assumed 4 percent returns or 75 percent as much as those that assumed 6 percent returns.

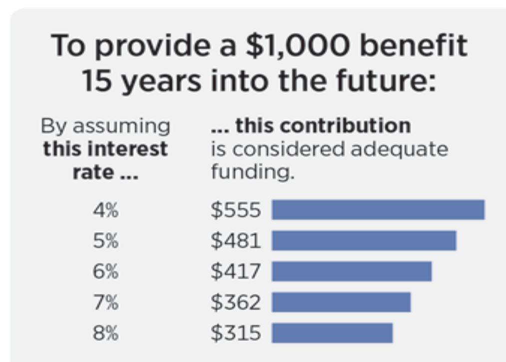
The only difference in these examples of contributions are the assumed discount rate. As virtually every economist agrees, the appropriate discount rate is one that matches the liabilities, and in the case of guaranteed pension benefits, a riskless rate of return closer to U.S. Treasuries is most appropriate.

Poor and reckless pension management practices were possible for decades without consequence because plans had far more workers paying into them than retirees receiving benefits. Failing to align pension contributions with promised benefits, however, is unsustainable.[39]

CHART 2

Understating Liabilities

By using higher interest rate assumptions, multiemployer plans can understate their liabilities and contribute less than necessary to fund promised benefits.



SOURCE: U.S. Government Accountability Office, "Pension Plan Valuation: Views on Using Multiple Measures to Offer a More Complete Financial Picture," September 2014, http://www.gao.gov/assets/670/666287.pdf (accessed August 16, 2016).

BG 3151 heritage.org

Some plans have attributed their funding crisis to contributing employers going out of business. It is true that when plans were already

[38]The Central State Teamsters plan came under federal investigation and oversight in the 1970s and 1980s due to infiltration by the mob and corrupt pension trustees that engaged in illegal activities with pension assets. For a detailed history of the Central State Teamsters pension fund, see U.S. Government Accountability Office, "Central State Pensions Fund, Investment Policy Decisions and Challenges Facing the Plan," Report to Congressional Requestors, GAO–18–106, June 2018, https://www.gao.gov/assets/700/692268.pdf (accessed August 23, 2018).

[39]James P. Naughton, "How the Multiemployer Pension System Affects Stakeholders," testimony before the Joint Select Committee on Solvency of Multiemployer Pension Plans, U.S. Congress, July 25, 2018.

underfunded the loss of participating employers exacerbated their underfunding, but only because of past mismanagement. If the plan had always aligned contributions with benefit promises, it would not matter how many employers went out of business or how few workers remained to contribute to the system because employees' promised benefits would already be there. But that was rarely the case as most plans had already accumulated significant pension shortfalls when they began to lose contributing employers.

Bailouts Without Reform Are Reckless and Irresponsible

There are clear reasons why multiemployer pension plans are underfunded and, in general, those reasons boil down to poor and often reckless management. While bailing out multiemployer pension plans would protect millions of workers from pension losses, it would also reward unions and employers who failed to make good on their promises. Multiemployer pension shortfalls have been known for decades and yet, plan trustees have consistently failed to either increase contributions or reduce accruals in order to prevent benefit cuts.

Without reform to the rules governing multiemployer pension plans and penalties on those who knowingly promised more than they set aside to pay, bailouts will only exacerbate pension underfunding. The Rehabilitation for Multiemployer Pensions Act would allow plans to continue to make promises that they cannot keep, putting taxpayers on the hook for potentially ever-increasing liabilities. Moreover, the requirement to prove insolvency before qualifying for a loan would encourage poorly funded, but not yet "critical and declining" plans to become more underfunded so that they can qualify for taxpayer funds.

During an exchange between Representative David Schweikert (R-AZ) and Thomas Barthold of the Joint Committee on Taxation during the Ways and Means Committee markup of H.R. 397, Mr. Barthold confirmed that upwards of 90 percent of multiemployer pension plans could qualify for taxpayer assistance under the bill provided they switched their assumptions to more reasonable ones that reveal a more accurate level of their underfunding.[40]

Bailouts Pick Winners and Losers

If Congress passes the Miners Pension Protection Act, it would be protecting benefits for about 96,000 workers and retirees while leaving up to 10.5 million others with multiemployer pensions subject to significant pension losses.

If Congress passes the Rehabilitation for Multiemployer Pensions Act, it will protect all 10.6 million workers and retirees with multiemployer pensions (and potentially more who may be added to current or new plans), but not the 27.5 million workers with non-union pension plans, and not the tens of millions of workers and retirees with state and local pension plans.

If Congress added a bailout for all pension plans (something that Senators Young, Braun, and Cotton have introduced a bill and resolution to prevent), workers with defined benefit pensions will be protected, but not those with their own defined contribution retirement accounts.

Extending the same bailouts proposed for defined benefit pensions to the majority of Americans who save through defined contribution plans like 401(k)s and IRAs would require a federal guarantee that all money deposited into a retirement account will

[40]The exchange between Mr. Schweikert and Mr. Barthold occurs around 1:22:00 here: https://www.youtube.com/watch?v=TYp1UpQKQ-k (accessed July 22, 2019).

earn at least 7.5 percent. But the federal government's own retirement program—Social Security—can only pay about 75 percent of its scheduled benefits with a roughly 4.5 percent rate of return,[41] guaranteeing 7.5 percent returns for all retirement savings would be extremely costly. And just imagine what it would do to individuals' incentives to take on extremely risky investments in hopes of earning well over 7.5 percent with the guarantee that they could not earn less.

If Congress does not want to pick winners and losers, it should not open the door to any form of pension bailouts.

Better Solutions to Protect Pensioners and Taxpayers

The multiemployer pension crisis poses serious consequences for millions of workers who stand to lose a significant portion of their pensions. Left unaddressed, the crisis will only continue to grow. Pensioners, employers, and taxpayers all deserve for this problem to be addressed in a way that minimizes pension losses, does not reward and encourage bad actors, and which, going forward, requires any union or employer who provides a pension plan to make good on their promises.

PBGC Reform

The first step towards protecting massive pension losses is to ensure that the government's pension benefit guaranty corporation (PBGC) can provide the level of pension benefits it has insured. While the federal government has not made pension promises itself, it has been in charge of the PBGC, and has failed to manage the PBGC's multiemployer program in a way that maintains its solvency.

The federal government should:

- **Increase the base PBGC premium at least threefold.** At only $29 per participant per year in 2019, the multiemployer premium is extremely low. Single employers pay a flat $80 per participant, per year, plus up to $541 per participant per year in variable-rate premiums.[42] The multiemployer premium should be at least $90 per participant per year.
- **Implement a variable-rate premium, applicable to all new unfunded liabilities.** Multiemployer pension plans that do not make the contributions necessary to fund their benefits should pay higher premiums than plans that do make adequate contributions. This is standard practice in all insurance programs, and the PBGC's single-employer program receives 73 percent of its premium revenue from its variable-rate premium.[43] Both the Obama and Trump Administrations proposed a variable rate premium for the PBGC's multiemployer program.
- **Mandate that the PBGC take over plans when they fail, as it does for single-employer plans.** When a multiemployer plan becomes insolvent, the PBGC makes loans to it (with no expectation of repayment) and the plan's trustees keep their jobs, simply transferring funds from the PBGC to beneficiaries. The PBGC should instead terminate the plans and directly pay beneficiaries.

[41] Orlo Nichols, Michael Clingman, and Alice Wade, "Internal Rates of Return Under the OASDI Program for Hypothetical Workers," Social Security Administration, March 2005, https://www.ssa.gov/OACT/NOTES/ran5/an2004-5.html (accessed July 20, 2019). Real rates or return for medium-earnings males and females born in 1997 average 2.5 percent. Adding the Congressional Budget Office's January 2019 projected PCE inflation measure of about 2.0 percent over the 2019–2029 period brings the nominal rate of return to about 4.5 percent.

[42] PBGC, "Premium Rates," https://www.pbgc.gov/prac/prem/premium-rates (accessed November 5, 2018).

[43] PBGC, "Data Table Listing," Table S-40, PBGC Premium Revenue (1980–2017) Single-Employer Program.

- **Impose a stakeholder fee.** Either in addition to reasonable PBGC premium increases or in place of flat-rate premium increases, policymakers could enact a per participant stakeholder fee assessed annually on employers, unions, and workers and retirees. Something like an $8 per month fee (less than $100 per year), assessed on each of these three stakeholder groups, would generate about $3 billion per year in additional revenues—enough to cover most, if not all, of the PBGC's shortfalls over the next two decades. Without undermining multiemployer pension plan solvency, this funding strategy would address plan trustees' concerns that imposing significantly higher PBGC premiums would hasten many plans' insolvency.

- **Impose a benefits-based premium.** Similar to the concept of a stakeholder fee, a benefits-based premium would apply only to multiemployer benefit payments. An analysis by the Pension Analytics group found that a 10 percent fee assessed on all multiemployer pension benefits would generate $4.5 billion in revenues—more than 15 times the roughly $290 million in annual PBGC premiums—and add 31 more years of solvency to the PBGC's multiemployer program, extending from 2025 to 2056.[44]

- **Enact a minimum retirement age.** With standard premiums should come a standard insurance policy. The PBGC should set a retirement eligibility age (tying it to Social Security's is an option), and if plans want PBGC insurance effective prior to that age, they should pay higher premiums.

These reforms to the PBGC would go a long way towards making the program solvent for the long run. Coupled with reforms that would make multiemployer plans themselves more solvent and reduce the number requiring PBGC assistance would further improve the program's finances and potentially eliminate the need for things like a stakeholder fee.

Prevent Future Underfunding by Correcting Multiemployer Pension Plan Funding Rules

Reforms to multiemployer pension plans are necessary to protect workers from irresponsible multiemployer pension funding rules that effectively allow unions and employers to steal from workers a portion of their compensation. To prevent future pension shortfalls, policymakers should:

- **Require multiemployer plans to use reasonable discount-rate assumptions that strengthen plan solvency.** This is perhaps the single most important reform to the multiemployer pension system. Financial economists overwhelmingly agree that unreasonable discount-rate assumptions contributed to plans' underfunding. There is no justifiable reason to allow multiemployer plans to use whatever rates they deem reasonable while requiring single-employer plans to abide by a prescribed set of drastically lower discount-rate assumptions. If multiemployer plans had to use the same discount rates as single-employer plans, only 2 percent of them—as opposed to the current 62 percent—would be considered in the "green zone," with generally 80 percent or higher funding.[45] While immediately requiring plans to use reasonable assumptions would cause some plans' required contributions to double, Congress could gradually implement this requirement by initially applying newly required discount rates only to new liabilities, and by transitioning

[44] CITE Pension Analytics.
[45] Michael D. Scott, letter to Members of the Joint Select Committee on Solvency of Multiemployer Pension Plans, National Coordinating Committee for Multiemployer Plans (NCCMP), June 25, 2018. The analysis commissioned by the NCCMP was performed by Horizon Actuarial Services, LLC.

existing liabilities to a lower rate over many years.

- **Prohibit plans from shortchanging workers by re-enacting an excise tax on multiemployer plans' shortfalls in annual required contributions.** No one would argue that plans should be able to promise workers benefits and then fail to take the necessary action to provide them. That is effectively stealing from workers a few decades in the future. If employers paid their employees only half of their wages, those employees would probably stop coming to work and could sue their employers to recover their unpaid wages. Since it is often too late to sue an employer once a pension fund becomes insolvent, Congress should enforce full payment of pensions through an excise tax on funding shortfalls. Such a tax already applies to single-employer pension plans and nominally to multiemployer plans, but its use has been effectively eliminated through a waiver provided in the Pension Protection Act for plans that claim they cannot meet their required contributions.

- **Freeze dangerously insolvent plans.** If a plan is already insolvent, it should not be allowed to continue racking up even higher liabilities to be passed onto the PBGC. Yet, badly underfunded multiemployer pension plans are continuing to make promises that they cannot keep. If plans are extremely underfunded (less than 60 percent), they should have to freeze benefit accruals and use contributions to improve their funding until they become 100 percent funded based on appropriate discount-rate assumptions.

- **Prohibit collective bargaining from setting contribution rates.** Negotiating for both pension accrual rates and pension contribution rates is like setting the price of an item without regard to how much it costs to make the item. Pension accrual rates must directly reflect what employers contribute to pension plans. Separate negotiations lead to shortfalls and should not be allowed. Contribution rates should be a formulaic result of negotiated accrual rates.

- **Require employers to recognize unfunded liabilities on their balance sheets.** Unlike single-employer pension plans that have to recognize their unfunded liabilities on their balance sheets, employers in multiemployer pension plans generally do not have to recognize their share of unfunded pension liabilities because those liabilities are not realized unless the employer withdraws from the pension plan. Congress should change the funding rules so that employers are actually on the hook for unfunded liabilities in multiemployer plans, which would result in the financial regulators requiring employers to recognize the liabilities on their books. These changes would make future pension promises more costly for employers and they would likely have to reduce their pension promises, but workers would be much better off with smaller promises that are payable than lofty and unpayable promises.

Minimize Pension Losses

Some plans are so underfunded that increasing employer contributions alone would be unviable. These plans need other options to confront their unfunded promises and minimize benefit cuts across workers and retirees. Policymakers should:

- **Enhance Multiemployer Pension Reform Act (MPRA) provisions to minimize benefit cuts across workers.** The 2014 MPRA provided a pathway for reducing pension benefits before plans run out of money, thus prolonging plan solvencies and minimizing pension losses across cohorts. With only 26 plans having applied for reductions—and only 14 having been approved for reductions—the

MPRA requirements proved too limiting.[46] For many plans, the underfunding is so severe that benefit cuts are the only way to protect workers and beneficiaries. As a Pension Analytics Group analysis concluded, “Absent deep benefit cuts, many plans are likely to become insolvent even if they have access to subsidized loans.” [47] Congress should ease the requirements to qualify for MPRA reductions, including changing the stipulation that cuts lead to plan solvency to instead require that they improve plan solvency.

- **Allow workers a buy-out option.** Most active workers today receive a bad deal from multiemployer pension plans. While they have a significant portion of their compensation (as much as $10–$15 per hour) directed towards a pension plan, they receive subpar returns. An analysis by the Pension Analytics group found that current retirees in multiemployer pension plans are receiving the equivalent of an 8 percent rate of return compared to just 2 percent for current workers.[48] This is less than even low-risk Treasuries pay, and if plans become insolvent, returns will be negative. Workers should be able to choose a lump-sum buy-out option that would provide ownership and a more certain income for workers who would rather have a smaller benefit that they can control than an uncertain promise of a higher benefit. This would also reduce future liabilities for the plan.

Combined, these reforms could minimize pension losses in the near term and create a decidedly more stable system going forward.

Conclusion

Congress has already learned from its experience with the UMWA’s health benefits plans that it is extremely difficult to provide a limited assistance without opening the door to much more. And to be fair, Congress should not pick winners and losers by covering certain workers and certain types of compensation, but not others.

The UMWA is only one of about 1,400 multiemployer pension plans across the country, virtually all of whom have promised more than they can pay. While these particular bills propose providing $750 million per year to the UMWA, covering all unfunded pensions promises would amount to at least $638 billion.

Moreover, bailouts reward reckless behavior and encourage more of it. Hard-working coal miners and other workers who accepted lower pay in exchange for the promise of future pension benefits did nothing wrong and deserve to receive all that they earned. But the trustees and unions running these plans should have, and likely did, realize that what they were doing was not sustainable, and yet they took little to no action to protect their workers and retirees.

The one group that requires the most protection in this situation is taxpayers. Taxpayers had nothing to do with the broken promises made by union pension plans, and they should not be forced to pay for them. The more than 300 million Americans who do not have multiemployer pension plans either already have, or will at some point need to save for their own retirement. They should not also have to

[46]Pension Rights Center, “Pension Plans That Have Applied to Cut Benefits Under the Multiemployer Pension Reform Act,” May 28, 2019, http://www.pensionrights.org/publications/fact-sheet/pension-plans-have-applied-cut-benefits-under-multiemployer-pension-reform-a (accessed July 21, 2019).
[47]The Pension Analytics Group, “Can the Multiemployer Pension System Be Rescued by Subsidized Loans?,” November 2018, http://www.pensionanalytics.org/our_papers (accessed July 21, 2019).
[48]The Pension Analytics Group, “The Multiemployer Pension System: An Analysis of Cohort Equity,” July 2018, http://www.pensionanalytics.org/our_papers (accessed July 21, 2019).

pay for the retirement of whomever Congress deems worthy of a taxpayer bailout.

Picking winners one plan at a time is no solution for the pervasive multiemployer pension crisis. If Congress cares about the pensions of more than 10 million workers with multiemployer pension plans, and if it does not intend to introduce 1,400 separate proposals and have 1,400 separate hearings such as this, lawmakers will instead look for a comprehensive solution to the multiemployer pension crisis.

Congress should protect pensioners by ensuring that its own entity—the PBGC—can provide a legitimate backstop against massive pension losses. It should also help protect workers from what amounts to wage theft by changing the rules so that multiemployer pensions plans do not have special privileges that allow them to overpromise and underfund their pension and other benefits. And finally, to confront the existing $638 billion shortfall, lawmakers should alter the rules to allow plans to minimize pension losses across current and future workers and retirees so that younger workers do not bear the entire cost of the shortfalls.

* * * * * * * * * * * * * * * * * * *

The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2017, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2017 income came from the following sources:

Individuals 71%
Foundations 9%
Corporations 4%
Program revenue and other income 16%

The top five corporate givers provided The Heritage Foundation with 3.0% of its 2017 income. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position for The Heritage Foundation or its board of trustees.