The Heritage Foundation

BACKGROUNDER

No. 3368 | NOVEMBER 20, 2018

Congress's Multiemployer Pension Committee Should Act Now: 12 Reforms to Protect Pensioners and Taxpayers

Rachel Greszler

Abstract

Virtually every worker with a union-run pension plan stands to lose some or most of his promised pension. That is because the multiemployer pension system as a whole is only 43 percent funded. Unions and employers want a taxpayer bailout so that they do not have to stand behind more than $600 billion in bad pension promises they made. Bailouts would only reward the bad actors while penalizing taxpayers who have no role in private pensions. Congress's Joint Select Committee on Solvency of Multiemployer Pensions should propose policies that would: ensure the Pension Benefit Guaranty Corporation's viability to provide pension insurance; require plans to take steps to minimize pension losses; establish equitable funding rules for union and non-union pensions alike; and maintain the current firewall between taxpayers and private-sector pension promises. Failure to act now would only increase the costs for pensioners and taxpayers alike.

The Joint Select Committee on Solvency of Multiemployer Pension Plans seeks to resolve $638 billion in unfunded pension benefits by November 30, 2018.[1] Over the past decades, about 1,400 multiemployer (union-run) pension plans covering 10.6 million workers made an estimated $638 billion in pension promises for which they did not set aside the funds.[2] Now, the unions that failed to deliver on their promises want Congress to solve their problems through taxpayer-funded bailouts of, or loans to, insolvent pension plans.

The stakes are high: $638 billion in unfunded pension benefits translates to an average loss of over $60,000 for every worker and retiree with a multiemployer pension or a loss of about $2,000 in new taxes for every man, woman, and child in America. That figure

Key Points

- Approximately 1,400 private union pension plans have promised over $600 billion *more* in pensions than they can pay. Now they want a taxpayer bailout.
- Bailouts will exacerbate the problem, causing employers and unions to make more pension promises they cannot keep.
- Taxpayers have no role in private pension plans and no obligation to the Pension Benefit Guaranty Corporation (PBGC). Nevertheless, Congress has an obligation to ensure the PBGC's viability and to prevent private pension providers from promising more than they can pay.
- Failure to act now will result in a decidedly worse outcome. Unfunded pension promises could increase by hundreds of billions of dollars, leading to greater pension losses and a higher likelihood of a taxpayer bailout.
- Congress's Joint Select Committee on Multiemployer Pensions should include all or any of 12 commonsense reforms that would increase fairness and security in the pension system while protecting pension beneficiaries and taxpayers.

This paper, in its entirety, can be found at **http://report.heritage.org/bg3368**

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

only covers private union pension plans. The price tag for $6 trillion in unfunded state and local pensions—which would be next in line for a bailout if Congress grants one to private-sector pensions—is $18,676 for every man, woman, and child in America.[3]

Taxpayer bailouts could drive these costs yet higher by incentivizing even well-funded pension plans to break their promises and instead shift their pension costs to federal taxpayers.

While the magnitude of the problem is enormous, it is not too late to enact reasonable reforms that would minimize pension losses, prevent taxpayers from paying for private-sector unions' and employers' broken promises, and create a more stable pension system for the future. The sooner Congress acts to correct systemic failures within multiemployer pensions, the smaller the consequences will be for all stakeholders.

That is why it is in the interest of all Americans that the joint select committee agree to reasonable changes and issue a report by the November 30 deadline. This *Backgrounder* provides 12 commonsense steps that the committee should include in its report to Congress in order to ensure that the Pension Benefit Guaranty Corporation (PBGC) can provide its insured benefits and that private-sector pensions are required to stand behind their pension promises.

Background

Multiemployer pension plans pool together multiple employers within a similar industry—such as trucking or steel—to provide a single pension plan. Multiemployer pension plans allow workers to move from one employer to another while keeping the same pension plan. These plans are jointly managed by both union and employer representatives. Across the U.S., approximately 1,400 multiemployer plans cover about 10.6 million participants, including active workers and retirees.[4]

Due to a variety of factors—most notably multiemployer pension plan trustees' use of inappropriate assumptions about investment returns when setting their plans' required contributions and subsequent failure to adjust those assumptions and contributions as shortfalls accumulated[5]—multiemployer pension plans have accumulated $638 billion more in pension promises than they have set aside to pay. These unfunded promises date all the way back to the inception of many pension plans, often decades or even a century ago. Today, the multiemployer system as a whole is only 43 percent funded, meaning that workers can expect to receive only 43 percent of the benefits they have been promised.[6] Moreover, that percentage is declining because plans continue to fall short of meeting necessary contributions.

Arguing against commonsense proposals suggests that unions and employers should be allowed to steal from their workers by making empty pension promises that they cannot keep.

Single-employer pension plans, which are run by one employer, as opposed to a union representing multiple employers, are significantly better-funded than multiemployer pensions. The single-employer pension system was 79 percent funded in 2015, compared to the multiemployer system's 43 percent fund-

1. Pension Benefit Guaranty Corporation, "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).
2. Ibid., and Tables M-5, PBGC-Insured Plan Participants (1980–2017), Multiemployer Program, and M-6, PBGC-Insured Plans (1980–2017), Multiemployer Program.
3. American Legislative Exchange Council, "Unaccountable and Unaffordable: Unfunded Public Pension Liabilities Exceed $6 Trillion," https://www.alec.org/app/uploads/2017/12/2017-Unaccountable-and-Unaffordable-FINAL_DEC_WEB.pdf (accessed November 5, 2018).
4. Of the roughly 10.6 million participants, about 38 percent are active workers; 28.5 percent are retirees; 27.5 percent are separated vested participants (individuals who accrued a pension benefit but are no longer working for a participating employer and are not yet eligible to retire and collect their benefit); and about 6 percent are beneficiaries of deceased workers or retirees. John J. Topoleski, "Data on Multiemployer Defined Benefit (DB) Pension Plans, August 10, 2018, https://fas.org/sgp/crs/misc/R45187.pdf (accessed November 4, 2018).
5. Rachel Greszler, "Not Your Grandfather's Pension: Why Defined Benefit Pensions Are Failing," Heritage Foundation *Backgrounder* No. 3190, May 4, 2017, https://www.heritage.org/sites/default/files/2017-05/BG3190.pdf.
6. PBGC, "Data Table Listing," Table M-9, Funding of PBGC-Insured Plans (1980–2015) Multiemployer Program.

ed status.[7] Single-employer pensions' better funding is due in part to the incentive structure that holds single employers individually accountable for their pension promises, as well as more secure federal funding rules. Due to the strong political influence of multiemployer pension plans, Congress has continually granted them separate and more lenient funding rules. In short, whereas single-employer plans must follow specified rules to ensure they can meet their funding promises, multiemployer pensions can use whatever they deem to be "reasonable assumptions" to claim that they will meet their promises.

When multiemployer pension plans fail (as has happened to more than 70 plans since 1974), the PBGC steps in to provide insured benefits to recipients of failed plans. The PBGC does not insure the full value of multiemployer pensions, however. Its maximum benefit ranges from $4,290 per year for workers with a 10-year work history to $17,160 per year for workers with a 40-year work history.[8] 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.[9]

Beginning around 2022, some large multiemployer plans will begin to fail. These claims will so overwhelm the PBGC's multiemployer program that it, too, will become insolvent in 2025.[10] Since the PBGC is not a taxpayer-financed entity, its only revenue with which to pay benefits comes from the premiums it collects, and those premiums will only pay for about 10 percent to 20 percent of insured benefit levels. Unlike the pension plans themselves, in which the federal government has no say in the negotiations between unions and employers, Congress is in charge of the PBGC and has an obligation to operate it in a manner that ensures its ability to pay insured benefits.

Joint Select Committee on Solvency of Multiemployer Pension Plans

Faced with mounting multiemployer plan failures and the PBGC's insolvency, Congress created the Joint Select Committee on Solvency of Multiemployer Pension Plans, tasked with alleviating the impending crisis. Over the past months, this committee held hearings and met with affected stakeholders. November 30 is the deadline for the committee to issue a report to Congress, which, if it earns the approval of at least five of eight Republicans and five of eight Democrats, will receive an expedited vote in the Senate.

The committee could recommend harmful policies—such as direct cash bailouts, loans to insolvent pension plans, or worsening the PBGC's finances by increasing its maximum guarantee—that would make the long-run situation worse and hurt more people than they help.

Or, it could recommend helpful policies—such as bolstering the PBGC's viability and enacting rules that would prevent further underfunding and help minimize pension losses across workers—which would create lasting improvement in the pension system, provide greater certainty for workers, retirees, and businesses, and protect American taxpayers without pensions from having to pay for private employers' broken pension promises.

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."

7. Ibid., and Table S-44, Funding of PBGC-Insured Plans (1980–2015) Single-employer Program, https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf (accessed November 12, 2018).
8. The maximum PBGC multiemployer benefit for a worker with a 10-year work history is $4,290, the maximum for a worker with 20 years is $8,580, the maximum for a worker with 30 years is $12,870, and the maximum benefit for a worker with 40 years of service is $17,160. Pension Benefit Guaranty Corporation, "Multiemployer Insurance Program Facts," https://www.pbgc.gov/about/factsheets/page/multi-facts (accessed November 4, 2018).
9. PBGC, "PBGC's Multiemployer Guarantee," March 2015, https://www.pbgc.gov/documents/2015-ME-Guarantee-Study-Final.pdf (accessed November 15, 2018).
10. PBGC, "Data Table Listing," Table M-13, Plans, Participants, and Funding of PBGC-Insured Plans by Funding Ratio (2015), https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf (accessed November 5, 2018).

As the committee contemplates recommendations, it should focus on the guiding principles of fairness and equity. It is not fair for employers and unions to make promises they cannot keep, or for Congress to force their broken promises onto taxpayers through explicit or implicit taxpayer bailouts. It is not fair for the government to force pension plans to purchase PBGC insurance and then neglect to ensure that the PBGC can provide the insurance it sells. It is not fair for the government to allow pension plans to keep making promises they cannot keep. And finally, it is inequitable for the government to create separate rules and requirements for single-employer pension plans and multiemployer pension plans; union workers deserve pensions that are just as safe and secure as non-union workers' pensions.

The Consequences of Action vs. Inaction

If the joint select committee does not get a majority of its Members to agree to any recommendations and Congress does nothing to address multiemployer pensions, the status quo dictates that: Many multiemployer plans will fail; beneficiaries of failed plans will turn to the PBGC for assistance; the PBGC will become insolvent; and workers will receive mere pennies on the dollar in promised pension benefits.

For anyone that wants to avoid a taxpayer bailout, doing nothing both now and in the future would accomplish that. Doing nothing, however, would also lead to significant financial hardship for current and future retirees; it could cause some companies to go out of business; and spillover effects could drag down other parts of the economy and raise government welfare costs.

> Providing taxpayer funds to pension plans and the PBGC, or issuing risky loans to insolvent pension plans, would unfairly force people without multiemployer pensions to pay for those who have them.

The longer Congress waits to act, the worse the situation will become. Financial economist and professor Joshua Rauh testified that 83 percent of multiemployer pension plans are digging themselves deeper into debt each year, to the tune of an additional $42 billion in debt in 2016 alone.[11] Waiting even five years could increase the size of multiemployer pension shortfalls by hundreds of billions of dollars.

If a family has been consistently spending 50 percent more than its income every month, racking up debt on a line of credit, that family would be far better off confronting its budget shortfall today than waiting another five years, when it will have twice as much debt to repay over half as much time. The same is true for multiemployer pensions. The longer Congress and the pension plan providers wait to address already massive shortfalls, the bigger those shortfalls will become, the greater benefit reductions will be, and the more people they will affect.

Moreover, there is a good chance that doing nothing now could lead to a decidedly worse policy response in the future. The pressure for a bailout will be far greater five to seven years from now when hundreds of thousands of retirees have their pensions cut by 50 percent to 90 percent. Enacting reforms now, before plans become insolvent, could prolong both the PBGC's and multiemployer plans' solvency, strengthen the system for current workers, and minimize pension reductions across participants.

Meeting the PBGC's Insured Benefits

Following in the wake of the Studebaker Automobile Company's failure in 1963, which wiped out thousands of workers' promised pensions, Congress enacted the Employee Retirement Income Security Act (ERISA) of 1974.[12] This included the establishment of the PBGC—a mandatory pension insurance program for all private pension plans—to prevent workers from losing the entirety of their pensions if their pension plan failed to meet its promises. Yet, with the PBGC on track to pay only 10 percent to 20 percent of insured benefits beyond 2025, it has proven an ineffective and insufficient means of protecting workers. That is, unless Congress enacts reforms now that it should have implemented decades ago.

A few relatively straightforward measures could keep the PBGC solvent over at least the next 20 years. To protect pensioners from near-complete losses that would come with PBGC insolvency, Congress should:

11. Joshua D. Rauh, testimony before the Joint Select Committee on Solvency of Multiemployer Pension Plans, U.S. Congress, July 25, 2018.
12. Katherine V. W. Stone, "The Retirement You Weren't Banking On," *The Washington Post*, May 15, 2005, http://www.washingtonpost.com/wp-dyn/content/article/2005/05/14/AR2005051400073.html?noredirect=on (accessed November 12, 2018).

1. **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.[13] The single-employer premium should be at least $90 per participant per year.

2. **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.[14]

3. **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.

4. **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 directly pay PBGC benefits to retirees, cutting out the middlemen pension trustees that failed to keep the plan solvent.

5. **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.

Coupled with reforms to the rules governing multiemployer plans themselves, these changes could make the PBGC solvent for the long run.

Strengthening Pension Plans, Minimizing Losses

The multiemployer pension system is complex, and no single reform or set of reforms will magically cure it, particularly because many plans' debts are insurmountable. However, the need for certain reforms is clear as day. Arguing against these commonsense proposals suggests that unions and employers should be allowed to steal from their workers by making empty pension promises that they cannot keep. To prevent future pension shortfalls, policymakers should:

6. **Require multiemployer plans to use reasonable discount-rate assumptions that strengthen plan solvency.** Financial economists overwhelmingly agree that unreasonable discount-rate assumptions contributed to plans' underfunding, so plans should not be allowed to use those unreasonable 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.[15] 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.

13. PBGC, "Premium Rates," https://www.pbgc.gov/prac/prem/premium-rates (accessed November 5, 2018).
14. PBGC, "Data Table Listing," Table S-40, PBGC Premium Revenue (1980–2017) Single-Employer Program.
15. 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.

12 Reforms to Protect Pensioners and Taxpayers

Reforming PBGC

1) Increase the base PBGC premium at least threefold.

2) Implement a variable-rate premium, applicable to all new unfunded liabilities.

3) Enact a minimum retirement age.

4) Mandate that the PBGC take over plans when they fail, as it does for single-employer plans.

5) Impose a stakeholder fee.

Creating a More Secure Multiemployer System

6) Require multiemployer plans to use reasonable discount-rate assumptions that strengthen plan solvency.

7) Prohibit plans from shortchanging workers by re-enacting an excise tax on multiemployer plans' shortfalls in annual required contributions (as exists for single-employer plans).

8) Freeze dangerously insolvent plans.

9) Prohibit collective bargaining from setting contribution rates.

10) Require employers to recognize unfunded liabilities on their balance sheets.

Minimizing Pension Losses

11) Enhance Multiemployer Pension Reform Act (MPRA) provisions to minimize benefit cuts across workers.

12) Allow workers a buy-out option.

7. **Prohibit plans from shortchanging workers by re-enacting an excise tax on multiemployer plans' shortfalls in annual required contributions (as exists for single-employer plans).** 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.

8. **Freeze dangerously insolvent plans.** If a homeowner purchased all new furniture just before evacuating for a hurricane, he would drive up the replacement value for his likely insurance claim. Multiemployer pension plans are doing this, in a way, by 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 instead put contributions toward improving their funding until they become fully funded.

9. **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.

10. **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 unless they withdraw from the pension plan. While employers in multiemployer pension plans do not directly own the pension plan, they nevertheless are responsible for a portion of the plan's unfunded liabilities, and Congress should gradually require that employers reflect those liabilities on their balance sheets, just as they require of single-employer pension plans.

    These changes would make pensions 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. These changes will not, however, reduce existing shortfalls in already promised benefits. To create a pathway for multiemployer pension plans to confront their unfunded promises and minimize benefit cuts across workers and retirees, policymakers should:

11. **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 more than half of the applications resulting in denial or withdrawal—the MPRA requirements proved too limiting.[16] 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.

12. **Allow workers a buy-out option.** Pension plans and workers could both benefit from a lump-sum buy-out option that would eliminate all future liabilities for the plan while providing 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.

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

A Reasonable Resolution to Undeserved Pension Losses

It is not fair that multiemployer pension plans promised workers benefits that they cannot pay them. It would be even more unfair, however, to force taxpayers who had no role in those promises (and who likely do not have pensions of their own) to pay for private-sector workers' pensions. Providing taxpayer funds to pension plans and the PBGC, or issuing risky loans to insolvent pension plans, would unfairly force people without multiemployer pensions to pay for those with them. This would set the precedent that the government will bail out collectively bargained pension plans but not average Americans who save in a 401(k) or individual retirement account.

The 12 reforms outlined here seek an evenhanded resolution to a decidedly unjust situation. They also seek to establish a precedent that the federal government will not bail out pensions. Bailing out private pensions could set the stage for bailing out state and local government pensions that have promised $6 trillion in unfunded pension benefits that threaten to impose an enormous burden on taxpayers—the equivalent of $18,676 for every man, woman, and child in America.

While all of these changes would come close to closing both the PBGC's and multiemployer pensions' shortfalls, each of these reforms is worthy of implementation in its own right. Members of the Joint Select Committee on Solvency of Multiemployer Pension Plans and other lawmakers should not pass up the opportunity to improve the outlook for workers, retirees, and taxpayers alike. Enacting some or all of these reforms now would be far less painful and costly than waiting until hundreds of thousands, or millions, of workers lose their pensions. The closer the

16. Pension Rights Center, "Pension Plans That Have Applied to Cut Benefits Under the Multiemployer Pension Reform Act," April 10, 2018, http://www.pensionrights.org/publications/fact-sheet/pension-plans-have-applied-cut-benefits-under-multiemployer-pension-reform-a (accessed November 20, 2018).

multiemployer system gets to crisis, the more likely it becomes that Congress will enact ill-conceived and risky measures that would unjustly force taxpayers to pay for other peoples' private pensions.

*—**Rachel Greszler** is Research Fellow in Economics, Budget, and Entitlements in the Grover M. Hermann Center for the Federal Budget, of the Institute for Economic Freedom, at The Heritage Foundation.*