The Heritage Foundation

ISSUE BRIEF

No. 4923 | NOVEMBER 28, 2018

Joint Select Committee Multiemployer Pension Draft Proposal Would Do More Harm than Good

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Addressing the multiemployer pension system's $638 billion[1] in unfunded pensions promises and the Pension Benefit Guaranty Corporation's (PBGC) $54 billion[2] shortfall is no easy task, and the Joint Select Committee on Solvency of Multiemployer Pension Plans (JSC) should be commended for its examination of the situation, and attempting to alleviate pension shortfalls. No solutions will be pain free, but some will provide a fairer and less costly resolution than others.

This *Issue Brief* evaluates the JSC's proposal based on five goals that seek a fair resolution to an unjust situation. Those goals are to (1) meet the PBGC's insurance obligations, (2) fix the multiemployer pension system to prevent future shortfalls from developing again, (3) minimize pension losses for workers and retirees, (4) prevent taxpayers from having to pay for broken pension promises, and (5) avoid moral hazard caused by bailouts without recourse.

Unfortunately, the JSC's draft proposal fully meets only one of these goals (3), partially meets another (1), and fails to significantly meet the remaining three (2, 4, and 5). While the proposal protects promised pension benefits for up to 10 million workers almost completely, and meets the PBGC's insured guarantees, it does so at the expense of hundreds of millions of taxpayers, and unnecessarily increases the PBGC's obligations.

Most troubling is the proposal's failure to prevent the same problems from occurring again. Absent a drastic overhaul of the draft to prevent further underfunding and to eliminate—or at least drastically reduce—taxpayer costs, the JSC's draft proposal fails to improve the multiemployer system. Policymakers should instead turn to commonsense and equitable reforms that would accomplish all five of the goals. (This author provided examples of 12 such reforms in a recent recommendation to the committee.[3])

A Little Context

The problems facing multiemployer (union) pensions did not crop up overnight. Most of these plans' problems are decades—if not a century—in the making, boiling down primarily to excessive benefit promises without the necessary contributions to meet those promises. The problems are also not limited to a small subset of plans, but pervade the entire system. Out of 10.6 million workers and retirees that belong to multiemployer pension plans, 96 percent are in plans that are less than 60 percent funded.[4]

Significant plan failures will begin within about two years to five years, meaning that individuals in failed plans will receive PBGC benefits, which could be significantly lower than their promised benefits.[5] Moreover, beginning around 2025, the PBGC will only be able to pay about 10 percent to 20 percent of its insured benefit levels. Under current law, taxpayers bear no responsibility for private pension plans—neither for the promises made by unions and employers, nor for the PBGC's prescribed benefits.

This paper, in its entirety, can be found at
http://report.heritage.org/ib4923

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The JSC's Draft Proposal

Although the full text is not yet available, information on the preliminary proposal has become available through media sources as well as a preliminary draft of the proposal's discussion points that has circulated through Congress.[6] The components summarized below are not comprehensive of the full plan, they may not accurately reflect the draft language that has yet to be viewed by this author, and the entire proposal remains subject to change until the JSC releases a full set of recommendations.

Among other things, the preliminary draft proposal:

- **Provides up to $3 billion per year in transfers from taxpayers to the PBGC.** To cover the PBGC's existing shortfalls as well as its newly acquired liabilities and higher guarantees, the proposal transfers up to $3 billion per year from the U.S. Treasury to the PBGC.

- **Creates partitions to remove some liabilities from the least-funded plans.** Critical and declining plans—those that are less than 40 percent funded and have fewer than 40 percent active participants—can shift 125 percent of their costs for orphaned workers to the PBGC.[7] This eliminates the plans' orphan liabilities and provides a 25 percent cash infusion to reduce the plans' ongoing unfunded liabilities.

- **Doubles the PBGC's maximum guarantee.**[8] Changes the PBGC's multiemployer benefit calculation to double the maximum benefit (currently ranging from $4,290 to $17,160 for workers with 10 to 40 years of service),[9] and increases replacement rates for workers below the maximum benefit level.[10]

- **Requires plan termination within five years of insolvency.** Instead of waiting until a plan runs out of money, the PBGC will terminate plans five years earlier to minimize unfunded benefit accruals and preserve plan assets. At termination, plan recipients will receive newly doubled PBGC benefits.

- **Imposes new fees to help fund PBGC's higher costs.** Additional fees include: $4 per month for active workers ($2 paid by workers and $2 by their unions); between 0 percent and 6 percent of pension benefit reductions for retirees (the higher percentage applying to the worst-funded plans); a 1 percent variable rate premium (capped at $100 per participant and not applicable to the worst-funded, "declining" plans); and a new exit premium.

- **Repeals previous pension plan benefit reductions.** Plans that reduced benefits under the Multiemployer Pension Reform Act (MPRA) will have benefits restored and will be eligible for plan assistance contained in the proposal.

Evaluating the Draft Based on Five Important Goals

Whether the JSC's proposal will be successful depends on the goals that the committee seeks to accomplish. The five goals listed below focus on providing a fair resolution to a decidedly unjust situation, and to do so without setting a dangerous precedent or rewarding reckless behavior. The assessment assigned to each goal—good (G), bad (B), or mixed (M)—focuses on that goal, not the means of accomplishing the goal.

Goal 1: Meet the Pension Benefit Guaranty Corporation's (PBGC) Insurance Obligations (M)

- Meets the PBGC's multiemployer program insured obligations. (**G**)

- Retroactively enacts two costly new insurance benefits for which plans did not pay to receive: a newly doubled maximum benefit level; and for declining plans, a cash-equivalent-infusion equal to 125 percent of their orphan liabilities. (**B**)

- Minimally increases the PBGC's non-taxpayer revenues through a variable-rate PBGC premium and stakeholder fees. This is an improvement, but the premiums and fees are too low and do not apply to the worst-funded plans. (**M**)

Goal 2: Fix the Multiemployer Pension System to Prevent Future Shortfalls from Developing Again (B)

- Includes few, if any, consequences for plans that fail to make their required contributions**. (B)**

TABLE 1

Report Card: Joint Select Committee's Proposal on Multiemployer Pensions

1	**Meet the PBGC's multiemployer pension obligations**	**Mixed**
	• Ensures PBGC can pay full benefits	**Good**
	• Retroactively enacts two costly benefits that plans did not pay to receive	**Bad**
	• Enacts small PBGC revenue increases: stakeholder fees and a variable premium	**Mixed**
2	**Fix the multiemployer pension system and prevent future shortfalls**	**Bad**
	• Includes few, if any, consequences for plans that do not make required contributions	**Bad**
	• Financial assistance encourages plans to become critically underfunded	**Bad**
	• Imposes necessary but inadequate discount rate requirement	**Mixed**
	• Plans must terminate within five years of insolvency, but with little consequence	**Mixed**
	• Imposes helpful but inadequate conditions on plans requiring assistance	**Mixed**
3	**Minimize pension losses for workers and retirees**	**Good***
	• Preserves between 90 percent and 100 percent of promised benefits	**Good**
	• Imposes small but inadequate fees on workers and retirees	**Mixed**
	• Retroactively restores pension benefits reduced under the MPRA	**Good**
4	**Prevent taxpayers from paying for broken pension promises**	**Bad**
	• Taxpayers pay 125 percent of pension plans' promised benefits for orphans	**Bad**
	• Taxpayers become responsible for the PBGC's $54 billion deficit	**Bad**
	• Taxpayer liabilities expand by doubling the PBGC's maximum benefit	**Bad**
	• Sets precedent for $6 trillion bailout of state and local unfunded pensions	**Bad**
	• Prohibits risky loans and unlimited cash bailouts to insolvent pension plans	**Mixed**
5	**Avoid moral hazard caused by bailouts without recourse**	**Bad**
	• Allows worst-funded plans to dump orphan liabilities and more onto taxpayers	**Bad**
	• Lacks requirements to prevent unfunded promises from growing at taxpayers' cost	**Bad**
	• Incentivizes plans to deteriorate so they can receive taxpayer assistance	**Bad**
	• Minimizes termination consequences by increasing PBGC benefits and letting plan trustees keep their jobs	**Bad**
	• Reduces withdrawal liabilities	**Bad**
	• Grants favoritism based on political influence (the UMWA and AFM plans)	**Bad**
	• Requires critical plans to marginally reduce adjustable benefits	**Mixed**
	• Imposes helpful but inadequate conditions on plans requiring assistance	**Mixed**

* This positive assessment of minimizing pension losses applies strictly to that goal and ignores the consequences associated with the means of preventing pension losses. Those consequences include: unjustly requiring taxpayers to stand behind unions' and employers' broken promises; the moral hazard consequences of rewarding bad behavior without fixing the rules to prevent it from occurring again; and the added costs to non-PBGC beneficiaries of providing up to twice the insured benefit level.

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- Encourages plans to become less than 40 percent funded so that they can get rid of their orphan liabilities and receive additional taxpayer assistance from the PBGC. **(B)**
- Requires plans to use a specified discount rate. Currently, plans can assume they will earn whatever rates of return they want (higher rates drastically reduce required contributions), and multiemployer plans typically assume they will earn 7.5 percent per year. Excessive discount rate assumptions are the primary cause behind the multiemployer system's $638 billion in unfunded promises. Financial economists agree that the appropriate rate for a riskless asset, such as pensions, is a riskless rate—something close to U.S. Treasury bonds. The rate should be at least two, and up to four, percentage points lower than the plan's proposal. (**M)**
- Requires plans to terminate when they come within five years of insolvency. This is a positive move to prevent further underfunding, but it should apply sooner than five years before insolvency. Moreover, termination has little consequence when accompanied by a doubling of the PBGC's maximum benefit and allowing trustees of terminated plans to keep their jobs. **(M)**
- Imposes conditions on plans and plan trustees who require partition assistance. Plans requiring assistance should instead be frozen and plan trustees should lose their jobs. (**M)**

Goal 3: Minimize Pension Losses for Workers and Retirees (G)[11]

- Preserves between 90 percent and 100 percent of promised benefits for most multiemployer pension beneficiaries. **(G)**
- Imposes small fees on workers and retirees: $4 per month for active workers (split equally between workers and unions) and between 0 percent and 6 percent fees (equivalent to pension reductions) for retirees, depending on the plan's funding status. (**M)**
- Retroactively restores pension benefits previously reduced under the Multiemployer Pension Reform Act of 2014. **(G)**

Goal 4: Prevent Taxpayers from Having to Pay for Broken Pension Promises (B)

- Taxpayers would pay for 125 percent of plans' promised benefits to orphaned participants. (**B)**
- Taxpayers would become responsible for the PBGC's current $54 billion deficit. (**B)**
- Taxpayers' liabilities would expand through a doubling of the PBGC's maximum benefit. (**B)**
- Sets the precedent that taxpayers would pay for broken pension promises, potentially including state and local government's $6 trillion in unfunded promises. (**B)**
- Unlike the Butch Lewis Act proposal, this proposal does not include risky loans to insolvent pension plans or unlimited cash bailouts. The costs would nonetheless be significant and uncertain, and would likely rise over time. (**M)**

Goal 5: Avoid Moral Hazard Caused by Bailouts Without Recourse (B)

- Allows the worst-funded plans to eliminate a large portion of their costs by siphoning off orphaned workers. This negates a key feature of multiemployer pension plans to take care of orphaned workers. (**B)**
- Lacks necessary funding requirements, such as those applicable to non-union private pension plans, to prevent plans from making more unfunded promises and increasing taxpayer costs. (**B)**
- Incentivizes plans to deteriorate to less than 40 percent funding so that they can shift a big portion of their liabilities to the PBGC. (**B)**
- Minimizes or eliminates the consequences of plan termination by doubling the PBGC's maximum guarantee and by allowing plan trustees to keep their jobs after a plan terminates. (**B)**
- Reduces withdrawal liabilities for some plans and eliminates additional mass withdrawal liability. (**B)**

- Provides special provisions for select plans—the United Mine Workers of America (UMWA) and the American Federation of Musicians (AFM) plans—implying that the government will pick winners and losers based on political influence. (**B)**

- Requires critical plans to reduce adjustable benefits. This is necessary, but reductions will be minimal under the newly doubled maximum PBGC guarantee. (**M)**

- Imposes some helpful but minimal conditions on plans and plan trustees who require partition assistance. **(M)**

Conclusion

The Joint Select Committee on Solvency of Multiemployer Pension Plan's preliminary draft proposal at least partially meets two of five commonsense goals, but fails on three very important ones. The JSC proposal would ensure that the PBGC can meet all its pension insurance obligations and would reduce potential pension losses from as much as 90 percent under current law to roughly 6 percent or less. As Joshua Gotbaum, former PBGC Director and now guest scholar at the Brookings Institution said of a potential deal to protect pension benefits, "the trade-off has to be rules in place to ensure that this doesn't happen again."[12] The draft proposal does not include that trade-off. It imposes only minimal new funding requirements, and it encourages the same problems to continue, and even to grow larger, by incentivizing plans to become more underfunded so that they can qualify for taxpayer assistance. Finally, the proposal subjects taxpayers to tens—potentially even hundreds—of billions of dollars in pension liabilities that they would otherwise have zero obligation to pay, and it does so in a way that sets a precedent for taxpayers to become guarantors of other broken pension promises.

In short, the JSC proposal protects roughly 10 million pensioners at the expense of hundreds of millions of taxpayers—and it fails to fix the multiemployer pension system's underlying problems so that they do not occur again. By failing to enforce sound funding rules and by largely shielding private employers and unions from the consequences of their reckless actions, the proposal would enable more of the same irresponsible and unjust behavior to continue at taxpayers' expense.

While the JSC partially included five of the reforms recommended in "Congress's Multiemployer Pension Committee Should Act Now: 12 Reforms to Protect Pensioners and Taxpayers," it could improve its current plan by fully incorporating all 12 of those proposals.[13] Without substantial changes to prevent further underfunding and to eliminate—or at least drastically reduce—taxpayer costs, the JSC's preliminary draft proposal would do more harm than good.

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Endnotes

1. Pension Benefit Guaranty Corporation, "Data Table Listing," Table M-13, Plans, Participants and Funding of PBGC-Insured Plans by Funding Ratio (2015), https://www.pbgc.gov/prac/data-books (accessed November 15, 2018).
2. Pension Benefit Guaranty Corporation, *Annual Report 2018*, https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2018.pdf (accessed November 19, 2018).
3. Rachel Greszler, "Congress's Multiemployer Pension Committee Should Act Now: 12 Reforms to Protect Pensioners and Taxpayers," Heritage Foundation *Backgrounder* No. 3368, November 20, 2018, http://report.heritage.org/bg3368.
4. Pension Benefit Guaranty Corporation, "Data Table Listing," Table M-13, Plans, Participants and Funding of PBGC-Insured Plans by Funding Ratio (2015).
5. Currently, 21 percent of PBGC beneficiaries receive less from the PBGC than they would have from their plan, had their plan not failed. The PBGC projects that this figure will grow to 50 percent of future PBGC beneficiaries because plans which will become insolvent in the future have higher benefit promises than plans that have failed to-date.
6. Hazel Bradford, "Struggling Multiemployer Plans See Help Ahead at Expense of Healthy Funds," Pensions & Investments, November 20, 2018, https://www.pionline.com/article/20181120/ONLINE/181129978/struggling-multiemployer-plans-see-help-ahead-at-expense-of-healthy-funds (accessed November 26, 2018), and Michael Katz, "Congress Mulls Multiemployer Pension Bailout," Chief Investment Officer, November 26, 2018, https://www.ai-cio.com/news/congress-mulls-multiemployer-pension-bailout/ (accessed November 26, 2018).
7. Inactive participants include orphaned workers (those who worked for companies that went out of business) as well as any workers who were once employed by, but no longer work for participating employers.
8. The proposal retroactively applies the new, higher PBGC benefit levels to all plans that began receiving PBGC assistance after December 31, 2014.
9. PBGC, "Multiemployer Insurance Program Facts," https://www.pbgc.gov/about/factsheets/page/multi-facts (accessed November 27, 2018).
10. The current formula provides 100 percent of the plan's first $11 in monthly benefits and 75 percent of the next $44 in benefits, leading to a monthly maximum of $35.75. (The monthly benefit is multiplied by months of service.) The proposal replaces this structure with a 100 percent replacement up to the first $70 of monthly benefits.
11. This positive assessment of minimizing pension losses applies strictly to the goal of minimizing pension losses and ignores the consequences associated with the means of preventing pension losses. Those consequences include: unjustly requiring taxpayers to stand behind unions' and employers' broken promises; the moral hazard consequences of rewarding bad behavior without fixing the rules to prevent it from occurring again; and the added costs to non-PBGC beneficiaries of providing up to twice the insured benefit level.
12. Bradford, "Struggling Multiemployer Plans See Help Ahead at Expense of Healthy Funds."
13. Greszler, "Congress's Multiemployer Pension Committee Should Act Now: 12 Reforms to Protect Pensioners and Taxpayers."