Speech by Karen Friedman at the American Academy of Actuaries' Annual Meeting and Public Policy Forum (November 3, 2016)

Thursday, November 3, 2016

Thank you to the American Academy of Actuaries, Josh and others for inviting me to speak on this panel today on fixing underfunded multiemployer plans – and for those of you who know me, I love this topic.

As you will hear loud and clear, although this is a challenging issue, we at the Pension Rights Center believe that with a bit of ingenuity and a lot of shared thinking and shared responsibility, we CAN fix the problem of severely underfunded multiemployer plans and put the PBGC on sound footing – without the draconian cuts authorized by MPRA.

And for us, it’s not a matter of if, but when. No matter the size of the problem, we are still the richest nation in the world and when we put our minds and will into finding solutions, we always succeed.

So we were enthused to read the Academy’s terrific issue brief summing up the problems facing multiemployer plans, and putting forward a number of potential solutions. As you’ll hear from me in a few minutes, we are building on some of your ideas.

My talk will cover three areas: (1) Why MPRA is a bad law and why we need to help retirees whose benefits are still being cut under the law, (2) why the current structure of composite plans won’t fix the multiemployer problem, (3) and why the cut-back provisions of MPRA must be repealed – and what are the potential alternatives to MPRA.

I was told to keep my critique on MPRA brief and I will. So I thought I’d try some of Donald Trump’s syntax to make this simple: MPRA was a YUGE mistake. It had devastating consequences. And it’s a bad, BAD law. It could potentially hurt thousands upon thousands of retirees and workers. And that’s the truth folks!

And now back to my own syntax. You heard from Josh and Sandy, the many reasons why multiemployer plans became severely underfunded – and while the underfunding can be blamed on industry changes, economic changes, and other factors, the dismal condition of
a relatively small percentage of multiemployer plans IS NOT because of anything done by retirees.

They met their end of the bargain and they should not have their benefits slashed by as much as 50-70 percent to save these plans. That is contrary to the fundamental tenets of ERISA.

As you all know, we and thousands of retirees across the country opposed the application submitted by the Central States Pension Fund. And the Treasury Department, for sound legal reasons, rejected the application, most importantly, because the government officials determined that the plan, even with the steep proposed cuts, couldn’t survive for the long-term.

We were glad that the application was rejected because we thought it was poorly conceived on many counts. But we recognize that the rejection only buys us time to come up with a workable solution for Central States and other deeply distressed plans. We are committed to working with you and other stakeholders to save these plans — and it is our priority to find the right solutions in 2017.

But before I go there, it’s important for you to know that the PRC is hearing from retirees whose plans are now applying to cut their benefits. There are now at least 10 plans that have applied to cut their retirees’ benefits AND more than 50 plans have reported to the DOL that their plans are in critical and declining status.

As you all know, under the law, affected retirees and others can file comments to Treasury about whether they think the application meets the criteria set by MPRA.

We filed comments on behalf of retirees in the Central States Pension Fund and in Iron Workers Local 17. And we’re currently preparing to submit comments on the application submitted by the New York State Teamsters Fund. But there are other applications that urgently need scrutiny.

For example, Dinesh Dutt recently asked for help reviewing the Automotive Industries application writing that “I retired from the automotive industry after 32 years a mechanic, and I was told my pension was for life. Now, not only is my pension being threatened, but I cannot work in the only industry I’ve known. The possibility of cutting my pension by 69 percent would drop my monthly income to just around $1,500 per month which could drop me below the poverty line.

Our hope is that several of you will volunteer to help us help Dinesh and other retirees make the strongest case against cutting their benefits so they can have the effective voice MPRA intended.

We can’t forget these people. That’s what this discussion is about.

Before I get to alternatives to MPRA, which is the heart of what I want to talk about today, I want to briefly discuss the so-called discussion-draft composite bill introduced by Congressman John Kline.
The bill is touted by its supporters as the important completion of the MPRA agenda. Where MPRA allows severely underfunded multis to cut retirees' benefits to achieve solvency, the composite draft would allow healthier plans to reduce their current funding levels while transitioning to new uninsured plans.

Among our concerns is the idea that the proposal would, over the long term, reduce PBGC revenue and, in some cases, permanently eliminate withdrawal liability.

To make matters worse, in times of financial stress, the proposal would allow plan trustees to make deeper cuts in anticipated benefits in the new plan than is permitted for plans subject to MPRA.

We also worry that these incentives to move to these inferior plans may result in abandonment of some quite healthy defined benefit plans.

A coalition of consumer groups and unions are actively lobbying to defeat the composite bill – including PRC, AARP, the Western Conference of Teamsters, and the Machinists, Steelworkers, Boilermakers, and Teamsters unions. We also understand that the Administration is strongly opposed to the composite proposal.

We are not opposed to the idea of new hybrid plan designs. But we need to work together toward a much more protective design than the Kline proposal.

Now on to the subject that may interest you most. Is there an alternative to MPRA to solve the problem of critical and declining plans?

We believe there has to be a Grand Bargain like the one struck in Detroit when the city’s pension plan was going bankrupt. Originally, the Detroit emergency manager had proposed cuts of 34 percent but after a lot of bargaining, and outside experts coming together, the stakeholders found a way of sparing retirees from cuts greater than 4 percent.

The ideas I’m sharing today come from a diverse group of people, including actuaries, unions, employers, and other experts, and also from some pretty sophisticated retired truck drivers, who have studied Form 5500 filings, engaged in creative thinking, and come up with their own interesting concepts.

We recognize that any solution will be a compromise. There will have to be much give and take among stakeholders. There may be no perfect solution, but we believe that there are many paths to a workable solution that can save these plans and spare the retirees debilitating benefit cuts.

Let me start by saying there are two big problems that need to be solved. The first is ensuring that the PBGC is able to continue to pay benefits for the insolvent plans that it is already committed to supporting. The second is to solve the problem of so-called ‘critical and declining’ plans – but not by allowing these plans to make the harsh benefit cuts authorized by MPRA. The MPRA cutback provisions must be repealed!

And, of course, saving severely underfunded plans will make it a lot easier to ensure that the PBGC will have the capacity to meet its obligations to insolvent plans.
So here are some of the ideas we have heard so far:

Start with the basic structure of the **Keep Our Pension Promises Act** which was introduced by Senator Bernie Sanders and Congresswoman Marcie Kaptur and let’s apply it to solving the problems faced by the Central States Pension Fund and other critical and declining plans that have large numbers of so-called “orphan” participants (participants whose employers left the plan without paying everything they owed, often because of bankruptcy).

The legislation creates a legacy fund in the PBGC which would transfer an amount equal to the guaranteed benefits the PBGC would have to pay for the plans’ orphans if the plans were to become insolvent. Our calculations suggest that this “financial assistance” plus the plans’ investment earnings and contributions (including withdrawal liability contributions) should be sufficient to allow the plans to pay full benefits to all of their participants.

Now you are a bunch of skeptical actuaries and you’re listening and saying “yeah, right, Karen and where do you get the money so PBGC can take on these liabilities.”

As most of you know, the original KOPPA bill was paid for by partially repealing two tax breaks for billionaire speculators in real estate and art works. Some believe that these, in today’s political climate, are nonstarters.

But let’s look at a menu of other ideas to pay for both a KOPPA-type legacy fund and the PBGC’s current liabilities. You don’t like one, choose another. Consider them separate and apart, or mix and match. And like a good class of theatre improvisation, don’t say no, but say “yes and...”

So here are some of the concepts that have been put forward:

The Administration and others have suggested that multiemployer plans pay higher premiums. This would likely to be resisted by employers, who would recognize that they or their employees would ultimately pay for the premiums, and unions who would worry that increased premiums might encourage more employers to withdraw from the plans. But even the increase of $43 to $50 a year that the PBGC projects would be needed for 10-year solvency (and higher for 20-year solvency) would be very inexpensive insurance to ensure benefits that are very valuable to participants. Conceivably the premium increases could be partially offset by tax credits for employers who will indirectly bear the cost of the higher premiums.

Some retirees have suggested retiree self-payments: That is, those who are in critical and declining plans would pay a yearly or monthly assessment (that comes out of their pension) that is scaled based on yearly income. So instead of, say, being told they are getting a $1,500 a month pension cut, they voluntarily make payments to a legacy fund. A number of retirees we’ve spoken with like the idea of contributing voluntarily toward a solution – rather than having the trustees impose massive benefit cuts. It’s a messaging issue.
What about all 10 million employees and retirees in the multiemployer system paying membership dues of say $20 a year – something akin to an AARP membership. But for them it’s for the privilege of being able to still get benefits in a good multiemployer defined benefit plan. Would this solve the whole problem? Of course not. But it’s a piece. Sharing in keeping this great system alive!

The Academy’s issue brief offers an array of premium increases, variable or tied to withdrawal from plans. Also in the report is the suggestion of a transaction tax. For instance, an interstate freight tax that could be dedicated to the transportation industry? There are also loan suggestions that may be put forward – these could include low-interest government loans to plans or loans by financial institutions to employers.

None of these ideas are perfect and they all have advantages and disadvantages. But together, I think we can craft a grand bargain that solves the problem.

What the Pension Rights Center is committed to doing is helping organize a series of stakeholder summits to bring together those who have an interest in coming up with the right solution – you, employers big and small, unions, retirees, plan trustees. And then, let’s look at the components that work and those that don’t. We will need the creativity and the skill sets of actuaries to help us create an equitable solution, one that involves shared sacrifice and recognizes that we all have a stake in our multiemployer pension system.

Karen Friedman was a participant in a panel at the American Academy of Actuaries' Annual Meeting and Policy Forum.

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