Former Teamster Alex Adams, right, is one of the hundreds of thousands of retirees whose benefits could be slashed if Congress passes legislation to restructure the laws governing multi-employer pension plans.

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The War on Pensions Goes Federal

Congress could apply a 'haircut' to previously sacrosanct pensions.

BY COLE STANGLER

Alex Adams, 71, worked in the trucking industry for 36 years before retiring in 2003. Five years later, Adams was diagnosed with cancer in his larynx and tonsils. As a result, he now takes food through a feeding tube and has to deal with a number of ongoing medical costs.

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Fortunately, as a member of the Teamsters, he regularly paid in to the Central States Fund—a national pension fund jointly administered by the union and several different trucking and construction employers. Now he receives a monthly check of about $3,500 from that fund that covers his medical expenses and allows him and his wife, who live in the Cleveland suburb of Maple Heights, to maintain “the lifestyle that we created for ourselves.”

That Teamsters pension was part of what drew him to a career in truck driving, Adams says, and motivated him to stay in the field in spite of the tough times that followed the industry's deregulation in 1980. Working mostly out of Cleveland, he became what's called a "casual" driver, taking short-term jobs for different employers whenever they became available.

"I wanted that pension. So I went from company to company, sometimes two companies in one day," says Adams. Later, he found more stable employment and rose to become president of Local 407 in 2000.

In addition to that Central States Fund check, he receives about $1,000 in monthly Social Security benefits and another $800 a month from serving on the Maple Heights City Council, but he says he can't imagine living without his pension check, since his and his wife's most significant expenses—like car payments, life insurance and healthcare—all depend on that income stream.

But Adams and hundreds of thousands of retirees like him may have to make do with less. Congress is expected to take up legislation in the next month that would fundamentally reshape the laws governing multi-employer plans. A soon-to-be-introduced bill could allow the trustees of some financially troubled plans, like the Central States Fund, to slash benefits already promised to current retirees. It's not yet clear how big those cuts would be.

Multi-employer plans in the spotlight

Like the multi-employer health plans that have become a flashpoint in Obamacare debates, multi-employer pensions offer workers "portability"—a construction worker, for instance, can work for a dozen different employers covered by the same union and continue paying into the same pension fund. Established in union contracts with employers, these plans cover roughly 10 million workers, mostly in construction, but also in manufacturing, retail, service and transportation.

While the reform bill's language has not yet been drafted, it is expected to closely mirror a February 2013 proposal, *Solutions not Bailouts*, from the National Coordinating Committee for Multi-Employer Plans (NCCMP), according to the group's executive director Randy DeFrehn. The proposal calls for granting special authority to pension trustees—comprised of representatives from labor and management—to take "early corrective actions" to prevent the future insolvency of the plans. These actions could include cutting benefits to current retirees like Adams.

A hearing on the topic by the pension subcommittee of the House Education on Workforce was scheduled for October 10, but has been delayed as a result of the shutdown and debt ceiling crises.

The NCCMP, made up of trade unions and employers that administer multi-employer health and pension plans, has poured hundreds of thousands into lobbying for the bill. Its efforts are lent clout by the fact that the group, at least nominally, represents both labor

and management. DeFrehn boasts that his organization has lobbied Congress with representatives from the labor movement, including the Central States Fund and several building trades unions. And a number of different unions with multi-employer pension plans, including the Teamsters, International Association of Machinists and Aerospace Workers (IAM), the International Brotherhood of Electrical Workers (IBEW), Service Employees International Union (SEIU) and the United Food and Commercial Workers (UFCW), participated in the NCCMP commission that led to the *Solutions not Bailouts* recommendations.

Of these unions, only the IAM has publicly broken from the NCCMP's anticipated proposal. Frank Larkin, IAM's communications director, calls the proposed change "the most significant cutback in retiree protections in nearly 40 years."

That's not hyperbole. If adopted, the proposal would strike at the core of Employee Retirement Income Security Act of 1974, designed to keep private-sector employers from withholding promised benefits. Under this foundational pension law and its 1980 amendment, employers are sometimes allowed to renege on promises made to future recipients, but the benefits of current retirees have long been deemed sacrosanct—with very few exceptions. (One of those, in rare cases, is bankruptcy, the process by which Patriot Coal, a spin-off of Peabody Energy, recently shed obligations to United Mine Workers of America retirees.) Prevailing logic has held that since current retirees are old and out of the workforce, they're unlikely to find another job. As Adams says, "I couldn't even go to Walmart and be a greeter. No one would hire me at 71 with cancer."

Larkin says he expects others in organized labor to start voicing opposition to the NCCMP plan soon. He tells *In These Times* that IAM has been meeting with organizations and unions to raise awareness. SEIU and UFCW did not respond to request for comment on this story. An IBEW spokesperson affirmed the union's support for multi-employer pension plans and told *In These Times* that its "participation in drafting the report was not extensive," but noted that the proposed cuts would apply in "only the most dire of circumstances."

Troubled times

The NCCMP paints its proposal to cut benefits to current retirees as a tough but necessary decision. The choice, it says, is between future insolvency or difficult sacrifices now.

Multi-employer plans are indeed facing financial problems. As a whole, these funds face a roughly $5 billion deficit, which is expected to balloon to $27 billion in 10 to 20 years, according to the Pension Benefit Guaranty Corporation (PBGC), the government-run agency that insures private pensions.

Several structural factors are driving that deficit upwards. The national trend of de-unionization coupled with job losses from the recession have meant that fewer and fewer workers are paying into funds as more and more retirees are starting to receive benefits. Employers also have an incentive to drop out of these pools when they can afford to do so —paying an exit fee has often proven more enticing than staying on the hook for owed

benefits. Furthermore, like other pensions across the country, multi-employer plans were ravaged by the Wall Street-driven economic meltdown of 2008. While about 75 percent of multi-employer plans were considered financially healthy at the beginning of 2008, according to government criteria, only 30 percent were considered to be so by the start of 2009.

But many plans have since improved—60 percent are once again stable, and only about 25 percent, many of them relatively small funds, are in critical status. In fact, it's two large pension funds in particular—the 410,000-participant Central States Fund and an 118,000-member United Mine Workers of America fund—that are responsible for much of the funding crisis. Together, they make up about 5 percent of all workers covered by multi-employer plans and about $26 billion of the $27 billion in liabilities of plans projected to go insolvent, according to the PBGC.

The UMWA did not respond to requests for comment on the state of its funds, but the Teamsters point to a variety of structural factors outside of the union's control. Leigh Strope, a spokesperson, says the poor financial condition of Central States can be traced back to the deregulation of the trucking industry, the recession of the early 2000s, and the most recent economic crisis.

On the other hand, Teamsters for a Democratic Union (TDU), a group of rank-and-file members opposed to the Teamsters leadership, lays much of the blame on union leaders for failing to deal with those crises. It argues the union didn't bargain enough new workers into the plan, noting that another large fund that has a broader base of contributors, the Western Conference of Teamsters plan, is doing just fine. The TDU also believes the union should never have let United Parcel Service (UPS) walk from the fund in 2007, which it says encouraged other companies to do the same and hiked up the ratio of retirees to actives to a dangerously high level. A high ratio puts stress on funds to produce returns in the stock market instead of relying on active contributions to pay benefits.

Thomas Nyhan, executive director of the Central States fund, says he opposed the decision to let UPS leave, since it cut off a key source of contributions to the fund. But, as a pension trustee, he had no say in what was ultimately an internal union matter. "This was not something we agreed to," he says. "We didn't have a choice."

Central States did get an influx of cash from UPS for the deal, but the fund subsequently lost it in the 2008 meltdown.

"While we gained a lot of assets, it made you more dependent on asset returns, because you won't get any of the corresponding contributions from the actives anymore that had left the plan," Nyhan says. "But you had a pile of money you had to invest to make up for that. The timing was so unfortunate."

Under the *Solutions not Bailouts* proposal, trustees could ostensibly only tamper with funds that, like Central States, are projected to be insolvent within either the next 15 or 20 years—and in the latter case, only if the ratio of inactive to active participants exceeds 2 to 1. Once trustees have exhausted "all reasonable measures to improve the plan's funded

position," then they'd be allowed to start hacking away.

The NCCMP's goal, it says, is to avoid a more dire alternative: one of these multi-employer pensions going insolvent. Should this happen, retirees will get little protection from the federal government. Unlike the Federal Deposit Insurance Corporation (FDIC), which insures Americans' bank accounts up to $250,000, the PBGC is not ultimately backed by the "full faith and credit of the United States government." The PBGC can cover a small portion of the benefits that retirees are owed—but nowhere close to all of the fund's obligations. On top of that, the PBGC itself is running low on cash, projected to become insolvent in ten years.

In other words, if a fund runs out of money, current retirees will bear the brunt of the consequences.

With these devastating financial projections and an additional set of rules governing multi-employer pensions set to sunset at the end of 2014, the NCCMP sees a golden opportunity to enact sweeping reforms. Its most recent annual conference, held at the swanky Westin Diplomat Resort and Spa in Hollywood, Florida, was entitled "Now Or Never."

"We really are at a kind of crossroads, something has to happen now or it will be too late," says DeFrehn, the organization's president, who began his career managing health and pension funds for the UMWA. "If [the pension trustees] could take a 5 percent haircut across the board and still preserve the plans for the long run, doesn't it make sense to intervene earlier?"

Another way?

Critics charge this is a false dilemma.

"Well gosh, if you're gonna run out of money and you're a pension plan, instead of just spending your money and then running out one day, why not cut all the pensions in half now and the money will last a lot longer?" says Ken Paff, TDU's national organizer. "If you have three children and you can only feed two, why not just kill one of them now rather than let three of them slowly starve to death? There's sort of a criminal logic to that, too."

Paff says there are plenty of reasonable alternatives, like increasing the miniscule premiums that multi-employer funds currently pay to the PBGC or making the federal government responsible for at least some of the PBGC's obligations. The AARP endorses those proposals and also suggests that the PBGC encourage some plans to merge in order to shore up risk.

The Pension Rights Center, a retiree advocacy group, encourages alternative fixes, like those outlined by AARP.

"In a lot of these cases, the union plans are not representing the wishes of the retirees," says Nancy Hwa, the Center's communications director. "It's the plans and management who are on the same side. And then you've got the rank-and-file people, particularly the

retirees, who don't really have a voice."

The Central State Fund's Thomas Nyhan says he originally supported federal funding assistance to the PBGC like the AARP is calling for, but was discouraged when congressional lobbying efforts in 2010 led nowhere.

In fact, the main lobbyist for the NCCMP's proposal is a former legislator who spearheaded that 2010 effort: Earl Pomeroy, who served as North Dakota's lone House representative for almost two decades before he was knocked out by a Tea Party challenger in 2010. Pomeroy took a lot of heat that year for legislation that he introduced with Sen. Bob Casey (D-Pa.) to create a fund within the PBGC that would be fully backed by the federal government—something akin to FDIC insurance for multi-employer plans. The proposal got a lot of pushback from an upsurgent Tea Party angry about the federal government's "bailout" of General Motors. The *National Review* blasted Pomeroy's proposal and Rush Limbaugh foamed at the mouth about "the Porkulus bill" aimed at saving greedy Teamsters retirees. The plan eventually went nowhere.

After leaving the House for a high-paying gig at the lobbying firm Alston & Bird—announced two days after he left Congress—Pomeroy joined up with the NCCMP in support of a radically different approach to solve the nation's multi-employer pension woes: the *Solutions not Bailouts* plan.

Thomas Nyhan of the Central State Fund, too, says he's been backed into a corner by political realities, and supports the NCCMP proposal out of his fiduciary duty to keep the plan solvent.

"How do you provide any measure of retirement security under these circumstances when you don't have Congress willing to do anything for you, when you don't have the administration willing to do anything for you?" Nyhan asks.

"Unless there's a sea change in the political will in Washington, I don't think [getting government assistance to the PBGC] is realistic," he says. "It's the judgment of my board that we should find a path, provide some measure of retirement security for our members out there, albeit at a lower level, rather than simply having them believe that their pension is going to continue in perpetuity—only to have the rug pulled out from underneath them completely."

A dangerous precedent

A particular concern of the IAM and other critics of the NCCMP's proposal is that granting trustees more authority to cut benefits will be a slippery slope. Multi-employer plans are one of the main sources of defined benefit pensions for American workers—plans in which benefits are based on a pre-determined formula. Defined benefit plans are increasingly rare as more and more businesses shift their employees to defined contribution plans or 401ks, transferring more of the investment risk to workers.

Public-sector pensions have been the target of cuts from budget-strapped state

governments, as Wall Street-inspired “reformers” plot to hand over states’ retirement assets to hedge funds. Now, multi-employer pensions, too, are on the brink of their own major “reforms”—which, in the technocratic language of austerity, means cuts.

“If this legislation included proposals to allow cuts to retiree benefits it would set a very bad precedent for all pension plans, large and small, public and private sector, troubled and well-funded, single-employer as well as multi-employer,” says Larkin.

“It will not be long before major corporations come along and say, well Congress allowed this in multi-employer plans, they should allow it in our plans as well,” warns Karen Ferguson, director of the Pension Rights Center.

On an even more basic level, TDU’s Ken Paff takes issue with the very title of the NCCMP plan, *Solutions not Bailouts*, and the unions who were complicit in its formulation. “Since when does the union movement adopt the corporate word that anything that benefits workers is a bailout—is a minimum wage a bailout now for poor people?” Paff says. “Is my Social Security check that I cash each month a bailout for me? We bailed out everybody else but we’re not gonna give so much as a free Oreo cookie to these retired people.”

“It seems that some of the unions are just giving up—they look at this Congress and say, well, they won’t pass anything to help workers, they only pass things to hurt workers. Well, it’s undoubtedly true this year,” Paff continues. “But should you just give up? I don’t see conservatives and anti-union people giving up. Do they really think that President Obama is going to sign a law abrogating Obamacare? I don’t think so. They don’t think that. They think beating the hell out of it over the long term draws support to their side. Some of them might be right. Maybe we should try it.”

Jim Carothers, 69, a retired car-hauler from Redford, Mich. who currently gets benefits from the Central States Fund, is more blunt about the stakes.

“I think it would mean the complete death of the labor movement of this country. I don’t know how you would organize people and promise them anything if we get a contract,” Carothers says. “The question becomes, well, why would I join the union then if you can’t deliver what you’re promising? And that for the labor movement strikes me as an incredibly dangerous proposition.”

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