

December 10, 2015

The Honorable Jacob J. Lew
Secretary of the Treasury
U.S. Department of the Treasury
MPRA Office (Attn: Deva Kyle)
1500 Pennsylvania Avenue, NW, Room 1224
Washington, D.C. 20220

Re: Comments on Central States Pension Fund Application for Benefits Suspension
TREAS-DO-2015-009-0001 (Corrected copy of comments filed December 7, 2015)

Dear Secretary Lew:

We are writing to respond to the Department of the Treasury's request for comments on the application of the Central States, Southeast and Southwest Areas Pension Plan (hereinafter "Central States Pension Fund," or "Central States") to reduce benefits for plan participants and beneficiaries. The Pension Rights Center is the country's oldest consumer organization dedicated solely to protecting and promoting the retirement security of American workers, retirees, and their families.

Since the passage of the Multiemployer Pension Reform Act of 2014 (MPRA), and especially since the submission of the Central States application to reduce benefits, the Center has worked with thousands of participants who have sought assistance in understanding the Act and the Central States application. As we explain in these comments, we believe that the application has serious deficiencies and that it does not satisfy the relevant statutory criteria for approval of the application. In particular,

- The application fails to demonstrate that the plan took all reasonable steps to avoid insolvency;
- The actuarial assumptions, particularly the projection on future investment returns, are unrealistic and will not result in the plan remaining solvent in the long term;
- The benefit distributions are not equitable, and the plan misconstrued a critical component of the statute in assigning benefit cuts; and
- The application violated explicit and implicit statutory requirements designed to ensure fairness and transparency.

For these reasons we believe that MPRA requires that the Department of the Treasury reject the application.

We also note that an approved application is subject to ratification by the participants, and that Treasury may make adjustments in the plan if the participants vote against the application. Portions of our comments may be useful to the Department if participants vote against the Central States application.

Our comments are divided into six sections:

1. The first section includes general thoughts about MPRA and the Central States application, its timing, and the conflicts of interest that produced a strategy that singles out the most vulnerable participants and their families for the harshest treatment.
2. The second section shows that Central States has failed to take all reasonable measures to avoid insolvency, as required by the statute.
3. The third section demonstrates numerous ways in which the distribution of benefit cuts fails to satisfy MPRA's requirement that the benefit cuts are to be equitably distributed among the participants.
4. The fourth section addresses the interpretation of section 432(e)(9)(D)(vii) of the Internal Revenue Code, as specifically requested in the Department's solicitation of comments.
5. The fifth section explains why the benefit cuts, despite the remarkable pain they will visit on participants—particularly certain targeted groups of participants—are not likely to permit the pension plan to avoid insolvency indefinitely.
6. The sixth section identifies serious structural problems with the proposed implementation of the statute's procedural requirements, which were designed to ensure that retirees and former employees with vested benefits have effective representation and to ensure that the process is open, fair, and transparent.

I. General Comments

MPRA gives unprecedented power to trustees of certain multiemployer plans to reduce vested benefits, even and especially to individuals already retired. It reverses an almost universally accepted view—a view that informs ERISA's treatment of both single and multiemployer plans—that a plan must use its assets in the first instance to support the benefits of already retired participants, since retirees are the least able to make up losses in retirement income. In effect, MPRA allows trustees, who operate under severe structural conflicts of interest, to upset this long-standing legal and moral paradigm giving retirees first call on plan assets, and allows trustees to reach deeply into the pockets of retirees in order to help contributing employers and active employees.

MPRA was negotiated by a small group of lobbyists, which reportedly included lobbyists for Central States and the National Coordinating Committee for Multiemployer Plans, a trade group of which Central States is a contributor and one of its largest members. According to OpenSecrets.org, in 2014, Central States spent more than half a million dollars in plan assets to advocate for legislation that permitted it to transfer wealth from some of its members—retirees and deferred vested participants—to the interest groups that appointed the plan trustees. The negotiation sessions were closed to the public, and the product of those sessions, MPRA, was added to the must-pass Cromnibus legislation by a procedural rule. There was no committee vote or debate or floor debate on MPRA's substance in the House.

The Senate was then presented with the House-passed Cromnibus bill. Any Senate amendment to the legislation would have resulted in a closure of the federal government. The

Senate thus accepted the bill without amending it. It is unlikely that the MPRA language could have survived any open and transparent legislative process.

Given the importance of Central States to the design and enactment of MPRA, the Fund's application to suspend benefits can be seen as a continuation of a predetermined process that applies the most severe benefit cuts to participants of employers that went out of business or withdrew from Central States and to participants who are already retired or who no longer are working for a contributing employer.

MPRA vests in plan trustees nearly absolute decisional authority over whose benefits to cut and by how much, subject to certain statutory constraints. The trustees, however, in exercising this authority have clear and disabling conflicts of interest. Half of the eight trustees are appointed by contributing employers and half by the International Brotherhood of Teamsters, whose voting membership does not include retirees or former union members. Not surprisingly, the decisions made by these conflicted trustees treat retired and former employees—the ones without representation among the trustees—particularly harshly, while only modestly increasing the contribution obligations of employers.

We agree with the trustees that, in taking measures to improve the plan's financial position, "both the Trustees and the bargaining parties are constrained by what the active, voting members of the union can reasonably be expected to accept and by what the employers can afford to pay." But we do not agree that trustees appointed by voting union members and employers are fairly positioned to make these difficult calculations and to balance fairly and objectively the competing interests of all participants. The proof is in the pudding: the Central States trustees, within the statute's limits, protected the contributing employers and active employees at the expense of almost everyone else.

Moreover, those who negotiated MPRA tried to ensure that the trustees' decisions would be virtually unreviewable, by requiring the Department of the Treasury to accept their determinations unless "clearly erroneous." But, when applying a "clearly erroneous" standard, Treasury should be cognizant of the extraordinarily disabling conflicts of interest under which the trustees operated. Here we note that the Supreme Court and lower courts have repeatedly and consistently held that conflicts are a factor in deciding whether trustees and other ERISA fiduciaries have abused their discretion. Thus, the Department, in reviewing the application, is fully justified in keeping a strong focus on the powerful conflicting interests facing the trustees and how those conflicted interests influenced the trustees' decisions in favor of the businesses and active employees that appointed them.

We also urge the Department to consider the application strictly on its merits and to not be distracted by shrill warnings that failure to approve the application will only result in much harsher cuts later on. Such concerns are not germane to the merits of the application. We have, in fact, been told by some retirees that they would prefer steeper cuts a decade or more from now to cuts next July, so that they can begin saving and otherwise preparing for the cuts. Others are convinced that a "grand bargain" among stakeholders—including the government, whose policies contributed to the current financial problems faced by Central States—can be worked out for all plans. This might include sounder, more conservative funding of distressed plans

going forward; modest increases in PBGC insurance premiums (currently, only slightly more than \$2 a month per participant); and some general revenue to help the PBGC and plans burdened with legacy liabilities.

The Central States trustees and the NCCMP do not share the view that a “grand bargain” of this sort is possible and characterize those who do as naïve and unrealistic. But here we note that NCCMP has made wildly inaccurate and self-serving assertions and predictions in the past. For example, 10 years ago, the NCCMP (which opposed PBGC premium increases, which were and are a fraction of those paid by single employer plans), suggested that multiemployer plans posed little risk to their members and the PBGC. The NCCMP claimed that, “[t]he public and Congressional concerns about the PBGC’s financial condition should relate only to the single employer plan benefit guaranty program and fund; not to the multiemployer plan program or fund.” See *NCCMP, A Basic Guide to Multiemployer Plans* (2005). The Treasury Department should focus on the task at hand—reviewing this application under the statutory criteria—and not be influenced by trustee threats of what they might do if the application is rejected.

II. Central States Failed to Take Reasonable Measures to Avoid Insolvency

MPRA permits multiemployer plans that are in “critical and declining status” to “suspend” accrued benefits, but only if the plan has taken all reasonable measures to avoid insolvency. There are several reasonable measures that Central States could have taken to avoid insolvency, and, while those measures may not have been sufficient in themselves to avoid insolvency indefinitely, they would have reduced the need for benefit suspensions. The reasonable actions that the plan should have considered are

- (1) increasing contributions for those employers that could afford them;
- (2) immediately eliminating subsidized early retirement benefits, rather than eliminating such benefits over an extended period of time;
- (3) reducing plan administrative and investment management expenses; and
- (4) exploring whether the plan has viable legal actions against entities that managed plan investments and provided the plan with investment advice.

(1) Contribution Increases. Central States indicates that it will raise contribution rates beginning on August 1, 2018, by 2.5% annually, and by 3% annually beginning in 2028. (We note that the last time the Fund raised contribution rates in the future, it froze contribution rates before the full increases were effective.) Yet the Fund commissioned a report that concluded that most of the largest contributing employers “could satisfy their obligations and remain competitive. . . even if the proposed Contribute Rate increases are implemented.” (See Central States application, Prior Plan Actions, Item 19, pp. 268-271) The Fund does not explain why, or even if, it disagreed with this conclusion of the expert it retained, but its benefit suspension plan includes contribution increases that are substantially less than most employers could afford and remain competitive.

(2) Elimination of Early Retirement Subsidies. Central States is phasing out early retirement age subsidies between 2021 (when the minimum age for full retirement benefits will be increased to 62) and 2025 (when the age will be increased to 65). These changes could have been made under prior law, since they modify adjustable benefits. These changes could have

been imposed immediately, reducing the plan's future liabilities by approximately 3% without reducing the benefits of any participant already in pay status.

(3) Reducing Administrative Expenses. Central States' proposed plan does not take steps to reduce administrative expenses. (Central States salaries are generous; several staff members are paid more than United States Senators or Supreme Court Justices.) The Fund offers two reasons for not looking to administrative savings: such savings would be too small to forestall insolvency, and plan expenses are already low (which should, of course, be the case with such a large plan that can spread costs over a large participant base). The latter claim is mere assertion; the former claim is irrelevant if the Fund could achieve multi-million-dollar annual savings. It should also be noted that concern about high salaries and large expenses negatively affects the morale and support of plan participants, who do not see a sense of shared sacrifice among the Fund executives who propose to cut their benefits.

(4) Consideration of Civil Action Against Investment Advisors. Many plan participants believe that the firms that managed the Fund's investment portfolio have charged unwarrantedly large fees and imprudently invested a multibillion withdrawal liability payment. Before 2007, UPS was the Fund's largest employer, paying nearly one-third of the Fund's annual contributions. UPS withdrew from the Fund and made a \$6.1 billion withdrawal liability payment. The permanent loss of the UPS contributions severely compromised the Fund's ability to recover from investment losses, and should have caused its investment managers to implement immediate changes in the Fund's investment strategy in order to protect retiree benefits. But this was not done, and the "UPS endowment" was apparently placed in a risky mix of equities and exotic investments that evaporated within one year. By its own account, the Fund has never recovered from the simultaneous loss of 30% of its income and 35% of its assets. Accordingly, the trustees were under a duty to at least investigate the possibility of pursuing claims against responsible parties. There is no indication that the Fund has explored whether there are plausible civil actions that might be brought against one or more such firms.

III. Equitable Distribution of Benefit Suspensions

MPRA mandates that "any suspensions of benefits shall be equitably distributed across the participant and beneficiary population," and provides a non-exclusive list of factors that the trustees may consider in determining how to distribute benefit suspensions. (MPRA also provides a three-step ordering rule, in which a plan must first impose benefit suspensions on so-called orphans, second on all non-orphaned participants other than those who retired from UPS after 2007, and, finally, on post-2007 UPS retirees. This is considered in the following section.)

The Central States proposed plan fails to satisfy this criteria. The most egregious aspect of the benefit suspensions is the relative treatment of active members versus the treatment of retired members and deferred vested participants, which the application presents in a manner that disguises the degree of disparity among different classes. In addition to favoring active employees (and thus contributing employers) over all other participants, the trustees also created a cliff situation in which most participants with 19 years of service will receive a fraction of the benefit that they would have received with one additional year of service. Not only are such

cliffs inherently inequitable, but they also conflict with ERISA's backloading rules. Moreover, the trustees also in some cases propose cutting the benefits of divorced participants by 100%.

Below we discuss various decisions that cannot be justified under MPRA's "equitable distribution" requirement.

1. Active Employees v. Retired Employees

The chart on page 2.2.1 is written in a manner that suggests that active and retired employees will receive identical benefit cuts, but what it summarizes are not the cuts in benefits but the benefit amounts after the cuts are imposed. An active employee, in fact, will experience much smaller cuts in accrued benefits and even smaller relative cuts when measured at normal retirement age rather than at an early retirement age.

Active employees have been earning benefits at a rate of 1% of employer contributions since 2004, while most retirees had earned a benefit of 2% of contributions for a significant portion of their working years. The benefit-suspension plan would reduce all benefits to 1% of contributions. This formula does not cut the benefits that active employees earned since 2004. On the other hand, the benefits of many retired employees will include significant periods of service in which their benefits accrued at the 2% rate. The net effect is that a seemingly neutral formula generally cuts a greater percentage of retiree benefits than active employee benefits.

The Fund's proposal would even more unfairly reduce the benefits of retirees who benefited from the plan's earlier provisions for early retirement benefits. The Fund here recaptures the benefit of these subsidies from retirees (subject to a cap on benefit reductions for those with more than 20 years of service). While the statutory criteria for apportioning benefit cuts provide some support for some equalization of benefits, the trustees fail to consider the following factors that should have minimized the more severe benefit reductions for retirees:

- (i) Early retirement subsidies, which benefited the Fund, active employees, and contributing employers by creating job opportunities for younger workers, reducing seniority concerns for employers, and promoting industry stability;
- (ii) Lost pay and pension credits that members would have earned had they not taken early retirement;
- (iii) The inability of many retirees to return to work to make up for the losses they will experience under the proposed cuts;
- (iv) The reliance interest that people had in the plan's benefit structure when they choose a retirement date; and
- (v) Representations by the trustees and plan actuaries that the plan was well-funded during the retirees' careers and when most of them made their decision to begin benefits.

The application does not even mention these factors, which should have been considered and should have mitigated the difference between active and retired participants.

2. Active Employees v. Deferred Vested Participants

The trustees decided to reduce the benefits of deferred vested participants (unless they had more than 20 years of service) to a benefit of 0.5 percent of contributions, a benefit that will in most cases be half as much as the benefits of active employees or retirees. There is no specific statutory criteria that supports this extra draconian cut and, while there is an explanation for it (the trustees owe no allegiance to these individuals), there is no reasonable justification for it. These employees worked side by side and as hard as other participants for their benefits, and their expectations that their earned benefits would be paid to them were no less reasonable than that of other participants. In addition, anecdotal reports suggest that most deferred vested participants left the plan because their companies went out of business, and they were unable to find jobs for contributing employers; many remained unemployed unable to earn retirement benefits elsewhere.

3. 20-Year Cliffs

The trustees provide floors for benefit cuts—generally benefits can be cut no more than 50%—but only for employees with at least 20 years of service. This distinction violates the “equitable distribution” criteria. First, it creates a cliff situation, in which one or two years of extra service can mark the difference between a 50% and 70% reduction in benefits. In providing a phased-in ceiling on benefit cuts for those at least 75 years of age, MPRA implicitly shows a preference for phased-in, rather than cliff-based, reduction formulas. Moreover, reliance on a 20-year period is inconsistent with ERISA’s vesting rules (which forbid forfeitures based on periods of service exceeding in most cases five years of service) and accrual rules (the 20-year of service criteria results in a substantial effective backloading of benefits). The trustees justify the cliff in part by claiming, without even a shred of evidentiary support, that such individuals would have saved for retirement in their new jobs. Based on our long experience working with participants and pension plan coverage, we suggest that the opposite conclusion is more likely. In any event, the trustees apparently did no research to justify their hypothesis.

4. Certain Domestic Relations Orders

The Fund has proposed a 100% reduction in the benefits of some divorced participants. The situation arises when a domestic relations order provides that an alternate payee is entitled to a dollar amount of a participant’s benefit, rather than a percentage. The trustees are using a formula that first calculates the overall benefit reduction and then, from this reduced amount, pays the spouse the dollar amount, leaving the participant with the remaining benefit, which in some cases is zero. There is nothing in the legislation that suggests Congress wished plans to reduce any benefits to zero. The trustees should have treated, for benefit reduction purposes, the participant and alternate payee amounts separate benefits to avoid this result. (The overall floor on benefit cuts based on 110% of the PBGC guaranteed benefit, if applicable, could be prorated among the two benefits.)

5. Social Security Disability Benefits

There are a number of plan participants who receive Social Security disability benefits but do not receive a disability retirement benefit from the plan. The hardship of benefit cuts on such individuals will be substantial, and a mechanism for mitigating such cuts is necessary to satisfy the equity criteria.

6. Tier 3 Participants

Tier 3 participants are those participants with a contractual right to have any benefit cuts imposed by the plan replaced by the UPS retirement plan. Despite the fact that such retirees will be made whole, the trustees provided that UPS Tier 3 participants with at least 20 years of service will be subject to a more generous cap on overall benefits than other similarly situated Tier 3 participants. This is, simply put, irrational if, as the trustees believe, there is no statutory impediment to treating UPS employees identically to other participants, a position that we argue is correct (See Section IV of these comments.)

7. Other Considerations

The application does not consider a number of factors that bear on equity. For example, employer contributions are now significantly larger than before, so the 1% accruals for active employees are more valuable than the 1% accruals for retirees (and the 0.5% accruals for former employees will also often be based on much lower contribution rates).

The application also fails to consider the likely effect of active employees saving through existing 401(k) plans or through other defined contribution and hybrid plans that may be adopted in the future. The NCCMP is currently urging Congress to endorse new plan models, so-called “composite” plans, that could be adopted for active employees to make up benefit losses in the future. The availability of such retirement savings mechanisms will help active employees in the future; it will do nothing for retired participants or former employees.

IV. Section 432(e)(9)(D)(vii) of the Internal Revenue Code

Section 432(e)(9)(D)(vii) of the Internal Revenue Code creates a series of ordering rules. The Department has asked that comments address how these rules should be interpreted.

Section 432(e)(9)(D)(vii) creates three categories for benefit cuts:

Category 1: the benefits of so-called “orphans,” who are effectively defined as participants whose benefits are attributable to service for an employer that withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under the statute or an agreement with the plan;

Category 2: the benefits of all other participants except the benefits of certain UPS employees;

Category 3: the benefits of certain UPS employees for whom UPS is obligated to provide benefits equal to any reductions in benefits in the Central State plan.

The statute provides that a plan must first apply benefit cuts “to the maximum extent permissible” to benefits described in Category 1, i.e., orphan benefits; second to benefits in Category 2; and third to the benefits in Category 3, certain UPS employees.

These ordering rules, particularly those that apply to Categories 1 and 3, are open to competing interpretations. Category 1’s interpretive issues relate to when an employer should be considered to have withdrawn from a fund; how to treat an employer that has paid part of its withdrawal liability; and whether the statute’s parallel requirement that benefit adjustments be equitably distributed should be subordinated to the ordering principle. Category 3’s interpretive issue is whether any reductions should be applied to the relevant UPS employees before the benefits of all other participants are reduced to the maximum extent permissible under the statute.

With respect to Category 1, the Fund has taken the position that any benefits attributable to any employer who has paid a penny less of its withdrawal liability must be cut to 110% of PBGC guarantee levels, regardless of the circumstances. This interpretation is inconsistent with the statute as a whole and with common sense, and it is an incorrect construction of the particular language.

With respect to Category 3, the fund has taken the position that the statute does not require the reduction of the benefits of all Category 2 benefits by the maximum permissible amount as a precondition to the reduction of any Category 3 benefits. While the issue is a close one, we believe that the Fund’s position is the correct one.

1. Category 1 Ordering Rule

As noted, the Fund has taken the position that any benefits attributable to an employer who has failed to pay 100% of its withdrawal liability or is delinquent in withdrawal liabilities results in maximum benefit reductions for the employer’s former employees. This is an unreasonable interpretation of the statute and one that is inconsistent with the separate provision of the statute on equitable distribution of benefits, which indicates that one factor in deciding how to equitably distribute benefit cuts is “the extent to which benefits are attributed to service with an employer that failed to pay its full withdrawal liability.” The Central States interpretation nullifies the equitable distribution provision. There are, however, other constructions of the statute that give meaning to both sections of the statute.

First, the two sections can both be given meaning if the equitable distribution requirement modifies the language providing that Category 1 benefits are to be reduced to the maximum extent permissible. If the “maximum extent permissible” is limited not only by the PBGC’s 110% limitation but also by the requirement that benefits be equitably distributed, the trustees should have considered reducing the category benefits to an amount exceeding the 110% limitation.

Second, the language in the “equitable distribution” section might also be given meaning if Category 1 applies to the benefits of employees of a narrower group of employers than assumed by the Fund. For example, the Fund apparently considered Category One employers to include the following entities:

(1) an employer who had failed to pay the originally assessed withdrawal liability but later reached a compromise with the Fund to pay partial withdrawal liability;

(2) an employer whose withdrawal liability was partially discharged in bankruptcy;

(3) an employer who paid a substantial portion of its withdrawal liability or whose delinquency is relatively small;

(4) an employer that, because of the manner of its acquisition by another employer, incurred no withdrawal liability but the acquiring entity later incurred and failed to pay its complete withdrawal liability.

It is plausible that Category 1 does not include one or more of these groups. Such an interpretation would leave some operational meaning to the “orphan” criteria in the “equitable distribution” section of the statute and thus is more plausible than the broader construction that the Fund gives to Category 1’s coverage.

2. Category 3 Ordering Rule.

There are two plausible interpretations of how the Category 3 ordering rules apply. One, rejected by the Fund, is that the Fund is barred from making any reductions to Category 3 benefits until all other benefits have been cut to the maximum extent permissible. The other interpretation is that the statute contemplates that the trustees make reasonable cuts to Category 2 benefits and then turn to Category 3, with an implied limitation that the cuts cannot be larger than the cuts made to Category 2. This is apparently the position taken by the Fund. Given that Category 1 specifically provides that benefits shall be “first,” cut to “the maximum extent permissible” and that Category 2 did not include similar language, the Fund’s position that it can suspend Category 3 benefits once it has made reasonable and equitable reductions to Category 2 benefits is the better interpretation of the statute. (We note, though, that the Fund’s interpretation makes it inexplicable that it cut Category 3 benefits for UPS employees with 20 years of service more favorably than benefits of similarly situated non-UPS employees.)

V. Indefinite Avoidance of Insolvency

MPRA requires any benefit cuts must be at a level that is reasonably estimated to enable the plan to avoid insolvency indefinitely. The regulations indicate that the plan must use a period of at least 30 years to test plan solvency. In running the relevant calculations, the Fund begins with an assumption that plan assets will yield a 7.5% rate of return. Despite its selection by the plan’s actuary, this assumption is outside even a broadly drawn map of reasonable assumptions. A recent survey of future return forecasts prepared by a pension actuarial firm that specializes in multiemployer plans, shows that actuaries, on average, predict that there is below a

50% probability of a plan attaining a 7.5% rate of return over a 20-year period. See http://www.horizonactuarial.com/blog/uploads/2015/08/Horizon_CMA_Survey_2015_v0731.pdf.

In addition, we take issue with the stochastic modeling in the proposed regulations, which requires that the modeling show that the plan exceeds a 50% probability of remaining solvent over the 30-year period. The problem with this approach is that there is virtual unanimity that returns over the next decade will be lower than over the long-term, with even the most optimistic advisors generally predicting that a 7.5% rate of return is less likely than not to be realized. Thus, in running simulations with variable investment performance, predictions over the next 10 years should be given greater weight than predictions for later periods.

We also note that MPRA provides that it must be reasonably estimated that a plan will avoid insolvency after benefit cuts. The use of a stochastic modeling that weighs predictions 30 years out equally with predictions of 10 and fewer years is inherently unreasonable. Similarly, once benefits are cut, participants and the PBGC should be able to confidently expect that the plan will enjoy long-term solvency. This suggests that the plan's actuary should be using conservative rather than aggressive assumptions. The assumption that plan assets will return 7.5% on investments is simply not reasonable in this context and smacks of result-oriented reverse-engineered actuarial assumption and methodology.

We also hope that the Department of the Treasury will review in a meaningful manner the assumptions used by the Fund to ensure that such assumptions are based on objective fact and the input of independent experts rather than the conjecture and judgment of a consulting firm retained by its severely conflicted trustees.

VI. Procedural Issues with Respect to Effective Representation for Retirees and Deferred Vested Participants

MPRA provides certain procedural and substantive protections for participants that are needed to ensure a process that is fair, objective, and transparent. The process employed by Central States, however, failed to implement and achieve these required protections.

1. Central States Failed to Comply with the Participant Notice Requirements.

MPRA requires that the Fund provide "sufficient information to enable participants and beneficiaries to understand the effect of any suspension of benefits, including an individualized estimate of such effect" for each participant and beneficiary. Although the Fund informed participants how much their benefits would be reduced under the proposal and the years of service that were being counted, it failed to provide the worksheets that produced those estimates. This has made it impossible for participants to understand and evaluate the accuracy of the calculations. The information provided is of no value to the many retirees who have reason to believe that mistakes may have been made.

2. The Fund's Trustees Did Not Adequately Evaluate the Proposed Benefit Suspensions

Central States, through its trustees, was required to prepare and evaluate the plan reducing benefits to ensure it was equitable and met all statutory conditions, but at least one trustee has informed retirees that he failed to even read the application. Fatima Hussein, "Teamsters Voice Anger with Pension Trustee," <http://www.cincinnati.com/story/news/2015/12/05/teamsters-voice-anger-pension-trustee/76787920/>

3. The Retiree Representative Appointed by the Fund Has Not Effectively Advocated for Retirees and Deferred Vested Participants

Central States was required to appoint a representative to advocate for retirees and deferred vested participants, but appointed someone who was not competent to provide effective representation.

The statute requires that a plan with at least 10,000 participants must appoint a retiree representative no later than 60 days prior to submitting an application to cut benefits. The retiree representative "shall advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension period." The plan appointed an individual with no experience in pension administration or in law, someone who worked for a local whose members are public employees, whose work lives are very different from the majority of participants who are covered by the Fund. The Fund's executive director was recently quoted as saying that he did not believe that it was necessary to appoint someone who could "conduct an extremely in-depth review." Predictably, the Fund's appointee failed to advocate effectively for the retired and deferred vested employees.

First, she refused to meet or speak with retirees, including representatives of groups of retirees at any time during the process (although she did accept their letters). Her only claimed accomplishments were recommending to the trustees that they put a cap on benefit cuts for retirees and that they revise the reemployment rules for retirees—something that the trustees would almost certainly have done without her advocacy. (She did not succeed in getting a cap on cuts for those with fewer than 20 years of service.) She wrote letters to retirees in which she defended the need for benefit cuts, something that was not part of her advocacy function. She misled the retirees by indicating that in the absence of benefit cuts, the Fund would only be able to continue paying benefits for "a few years," even though the Fund itself indicated that it could continue paying benefits for a decade or more.

In addition, she hired a law firm whose ERISA practice was advising and representing trustees of other multiemployer plans, rather than a firm with experience representing participants and beneficiaries. Similarly, the actuary she hired is an advisor to multiemployer plans and regularly makes presentations (including presentations on MPRA) to the International Foundation of Employee Benefit Plans, an organization of multiemployer plan trustees. Surprisingly, the actuary completed his report before the benefit suspension application was filed. When asked by a retiree why he had not done a thorough review of the Fund's actuarial calculations, he replied that the retiree representative had not asked him to do an in-depth review,

and there was insufficient time for such a review. He and the retiree representative were apparently unaware of the statutory requirement that their advocacy continue “throughout” the benefit suspension process.

Perhaps most harmful, especially given the conflicts of interest faced by the trustees, the retiree representative failed to protest or try to mitigate the Fund’s decision to cut the benefits of retirees more severely than those of active workers. And she did nothing, so far as any of the documents she produced show, to represent the interests of deferred vested participants, who suffered the largest cuts other than orphans unless they had more than 20 years of service.

In addition, her initial comment to the Treasury Department about benefit cuts was a request that the Secretary of the Treasury create a tax credit to help affected participants—a request that the Secretary has no legal authority to grant.

While we do not question the advocate’s good faith, we do question her basic competence and question whether her actions met the minimum requirements of the statute. In short, she failed to give meaningful voice to those who otherwise had no voice in the process.

VII. Conclusion

The Central States Pension Fund’s application is seriously flawed and does not meet the statutory requirements for benefit suspensions established by the Multiemployer Pension Reform Act. The application, which most harshly disadvantages retired and former employees, exposes the clear and disabling conflicts of the trustees, making it impossible for them to fairly and objectively balance the interest of all the stakeholders in the Fund. In particular, the application fails to demonstrate that the plan has taken all reasonable steps to avoid insolvency; it has not satisfied the requirements that the benefit cuts be equitably distributed among the participants; and, most troubling, the application fails to show that it will actually lead to the long-term solvency of the fund.

The proposed benefit cuts would cause devastation to hundreds of thousands of retirees and their families without sufficient assurance that the Fund would not fail within their lifetimes. In addition, we believe that the procedural protections of the Multiemployer Pension Reform Act, such as the appointment of a retiree representative, were treated cavalierly by the Fund’s trustees, and that information provided by the Fund officials to participants has been purposefully opaque and unhelpful. For these reasons, we believe that the Department of the Treasury must reject the application.

Sincerely,



Norman P. Stein
Senior Policy Advisor