AUTOMOTIVE INDUSTRIES PENSION TRUST FUND

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Via Email and U.S. Mail
Members of the United States Senate &
United States House of Representatives
Joint Select Committee on Solvency of
Multiemployer Pension Plans
219 Dirksen Senate Office Building
Washington, DC 20510
email: JSCSMPP@finance.senate.gov

Dear Ladies and Gentlemen:

Thank you for the opportunity to submit input to the Joint Select Committee on Solvency of Multiemployer Pension Plans. The Trustees of the Automotive Industries Pension Plan ("Plan"), a multiemployer Plan in critical and declining status, would like to provide you with an explanation regarding how the Plan came to be in its current financial state and why Congress needs to act in order to remedy this situation.

I. Introduction

The Plan was formed in 1955 to provide pensions for its participants working under collective bargaining agreements between local unions of the International Association of Machinists and Aerospace Workers/Teamsters Automotive Employees/International Union of Painters and Allied Trades and machine, manufacturing and automotive industry employers generally in the Northern California region. As of January 1, 2017, the Plan represents over 25,000 people, including 3,928 active participants, 11,179 retirees and beneficiaries, and 10,594 inactive vested participants (who are or will be eligible to receive a pension from the Plan but have not yet retired). Our active participants currently work for approximately 155 different employers located in mainly in California with some employer presence in an additional 11 states (Alaska, Arizona, Arkansas, Florida, Kansas, Louisiana, Nevada, New Mexico, Oregon and Texas).

United Parcel Service, SSA Terminals, Gillig, Waste Management and Marine Terminals are our largest contributing employers, collectively contributing on 40% of our active participants.

Our active participants work in a number of occupations primarily related to the automotive industry, including automotive dealerships, auto and truck repair shops, auto body repair shops, and auto parts distributors and retail shops. They also work for machine and manufacturing businesses, including manufacturing plants, canneries, bakeries, and waterfront repair and in maintenance. Approximately 80% of our retirees reside in California and the remaining 20% reside in 48 other states, Guam and Puerto Rico and abroad.

The Plan has been in critical status since 2008 and qualified for critical and declining status commencing in 2015. As of January 1, 2017, the fair market value of the Plan's assets was $1,169,543,231 and its liability for vested benefits was $2,153,319,932. The Plan was 53.4% funded as of January 1, 2017 and is projected to become insolvent in 2030.

II. Overview of the Financial Decline of the Plan

a. Loss of Contributing Employers Results in Permanent Loss of Revenue to Plan

The economic recessions of 2001 and 2008 hit the automotive industry particularly hard. In November 2008, two of the largest automotive makers, General Motors and Chrysler, following declines in sales from 35% (Chrysler) to 45% (GM), each announced that they were on the verge of insolvency. In response, rather than letting these companies fail, the federal government invested and loaned General Motors and Chrysler over $60 billion dollars as part of the Troubled Asset Relief Program (TARP) and a structured Chapter 11 bankruptcy plan of reorganization. Pursuant to the bankruptcy restructuring, GM sought to terminate 40% of its retail network, terminating contracts with thousands of its dealerships nationwide, while Chrysler sought to terminate 25% of its dealership contracts. While the bailout ultimately saved GM and Chrysler, the Plan lost more than 50 Bay Area contributing dealerships due to the dealership terminations. The loss of dealerships had a cascading effect, leading to the closing, bankruptcy or sale of automotive parts retails shops and other automotive related businesses in the Bay Area and a further loss of contributing employers. In 2000, the Plan had 450 contributing employers. Currently, only 155 contributing employers remain, a decline of almost 70%.

The Plan's active participant population (those participants currently working for a contributing employer) has declined by 53% over the last 15 years. The resulting loss in contributions to the Plan means that there is less money available to pay for retirees' benefits. In 2015, benefit payments to retirees ($134 million) greatly exceeded the contributions coming into the Plan ($23 million) on behalf of active (working) participants. The Plan is currently paying out almost $6 for every dollar it receives in contributions. As the Plan is unable to attract new contributing employers and continues to lose contributing employers (as further explained below) the current ratio of six retirees and inactive vested participants for every active participant is expected to worsen further weakening the Plan's funding status.

b. Loss of Investment Value Due To Recessions

The Plan's investments have not recovered from the market declines of 2000-2002 and the market crash of 2008. The Plan lost 28% of its investment value in the 2008 market crash alone. Plan investments have performed well in recent years on a percentage basis, but because those gains were made on a smaller amount of assets, these gains have been insufficient to undo the significant losses since 2000. To illustrate, the market value of the Plan's assets was $1.3 billion as of December 31, 2000, rising to $1.6 billion as of December 31, 2007 and falling to $1.2 billion as of December 31, 2015.

Even with annual investment returns averaging 7.65% from January 1, 2003 through December 31, 2017 and 11.12% from January 1, 2009 through December 31, 2017, these healthy returns were insufficient to reverse the effects of the recessions and permanent loss of contributing employers.

III. Legal Framework Impacting the Plan's Financial Status

a. The Plan Was Encouraged to Increase Benefits by the Tax Reform Act of 1986

The Plan was fully funded in the late 1990s and because its investments were performing well, it was in danger of becoming overfunded. Preventing overfunding was important to Plan Trustees because at the time the Tax Reform Act of 1986 limited the tax deductibility of employer contributions to plans that were fully funded[1] and subjected employers to an excise tax on the non-deductible contributions. The contributing employers had obligations to contribute to the Plan in fixed amounts based on their collective bargaining agreements with the local unions[2]. If the contributions to the Plan were not tax deductible, contributing employers would have been subjected to unexpected, unavoidable taxes. In order to avoid imposition of the excise tax on contributing employers and risk the loss of those employers' participation in the plan, most multiemployer plans, including this one, were compelled to spend plan surplus on increased benefits. For example, for retirements commencing in 1999, the Plan retroactively increased accrual rates to 5% on contributions for all prior years of service, granted a 2% monthly benefit

[1] The full-funding limitation was repealed beginning in the 2004 plan year by the passage of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), P.L. 107-18.

[2] In single employer plans, the employer might be able to shift some of the money from its pension plan to some other form of compensation, such as wages or health care spending, in order to avoid the tax consequences. Here, the employer pays a specific monthly amount to the Plan as part of a broad collective bargaining agreement negotiated between the union and the employer, covering everything from employment conditions to wage rates. These collective bargaining agreements are typically in effect for 3 or more years and the terms are rarely renegotiated in the middle of the agreement. Moreover, each of the employers in the Plan has a separate collective bargaining agreement with its local union, which expires at different times. So having the local unions and employers renegotiate all of the collective bargaining agreements at the same time to deal with an unexpected pension surplus would have been a herculean task.

increase, issued an additional bonus benefit check and increased the subsidies for survivor benefits available to married participants. Throughout the late 1990s, the Plan actuaries projected the Plan to remain fully funded even while increasing its benefits.

b. ERISA Anti-Cutback Rules Prevented the Plan from Reducing Accrued Benefits

ERISA's anti-cutback rule prevents retirement plans from reducing benefits to participants that have already accrued. This longstanding rule provides certainty to participants so that they can rely on a specific benefit amount when they reach retirement. However, it means that when the Plan reduces benefits, it can only affect future benefits earned by active participants, and not benefits already earned.

When the recessions occurred, the anti-cutback rules prevented the Plan from reducing benefits that were granted when the Plan was on a solid financial footing. Thus, in response to the Plan's worsening financial outlook after the 2001 recession, the Trustees could only reduce future accrual rates.

c. The Pension Protection Act of 2006 Provided Limited Tools to Restore Plan Funding

The Pension Protection Act of 2006 ("PPA") requires a pension plan in critical status to adopt a rehabilitation plan aimed at restoring the financial health of the plan. The Plan was initially certified to be in critical status as of January 1, 2008. On March 21, 2008 as required by the PPA, the Trustees adopted a rehabilitation plan which was later revised in 2012. The PPA permits pension plans in critical status to reduce or eliminate "adjustable benefits" as part of a rehabilitation plan. In its Rehabilitation Plan, the Trustees eliminated virtually all of the Plan's "adjustable benefits", including, but not limited to: early retirement subsidies, future disability benefits, 36-months of pension payments for beneficiaries of participants who pass away prior to retirement, a subsidy connected with benefits available to married participants and early retirement benefits for inactive vested participants.

The PPA also allows for decrease in the accrual rate and increases in employer contributions. Accordingly, the Trustees decreased the accrual rate to 1% for active participants and required contributing employers to adopt a default schedule which included non-benefit bearing contributions designed to improve the Plan's funding status, called "supplemental contributions". The Trustees carefully considered the amount of supplemental contributions that employers could bear without risk of a mass withdrawal from the Plan due to the employer's inability to make such contributions. The supplemental contributions have increased over time and are scheduled to reach a level of over 40% beginning in 2019, so employers will pay an additional $40 on every $100 they are required to contribute to the Plan. The PPA also prevents employers from reducing their contributions per employee, ensuring that an employer cannot reduce the amount of its supplemental contributions.

Even with the aforementioned actions taken, beginning in 2012, the Plan has not been projected to emerge from critical status and is only able to forestall its insolvency through these measures.

d. Pension Liabilities Accrue on Unpaid Contributions

ERISA requires that the Plan provide retirement benefits to the participant even if the participant's employer does not fulfill its payment obligations to the pension plan. In cases where an employer is unable to pay due to its' own insolvency, the Plan has recovered little to no money from the employer but is still responsible for paying pension benefits to those employees.

e. Withdrawal Liability

ERISA also imposes withdrawal liability against an employer that leaves an underfunded pension plan, essentially acting as an exit fee in an approximate amount of the employer's share of the plan's unfunded vested liabilities. However, ERISA provides for several reductions in the amount payable by a withdrawing employer such that the Plan is not able to recoup the employer's full share of the unfunded vested liabilities.

Under the 20 year cap on payments, an employer's withdrawal liability is reduced if the period required to amortize the liability in accordance with the statute exceeds 20 years (essentially forgiving payments due beyond 20 years). If an employer withdraws pursuant to a sale, the plan may only recover a percentage of the employer's liquidation value after the sale. An employer contributing on behalf of only a few employees may have its liability eliminated or reduced under the de minimis rule.

Moreover, as discussed above, many withdrawn employers have become insolvent themselves, such that the Plan has been unable to collect the full amount of the withdrawal liability assessment despite diligent collection efforts.

IV. The Plan's Poor Financial Condition Leads to Further Problems

Pension benefits are poor for active participants, who often advocate the Union to leave the Plan. Contributing employers, including several of the largest employers, have openly contemplated withdrawing from the Plan in order to alleviate the economic burden imposed by the Rehabilitation Plan's supplemental contributions, eliminating the withdrawal liability reported on an employer's financial statements and taking advantage of the 20 year cap currently imposed on the withdrawal liability calculation. The supplemental contributions makes employers less competitive in the marketplace, as they must either charge more for the same services, resulting in less business, or endure smaller profit margins. Many employers only remain in the Plan because they would be subjected to a multi-million dollar assessment of withdrawal liability upon exiting the Plan. Prospective employers refuse to join this Plan due to the supplemental contributions and risk of withdrawal liability. The declining employer and participant base leads to a downward spiral, as the burden on remaining employers and participants increases every time an existing employer exits the Plan.

V. The Multiemployer Pension Reform Act

a. The Plan's Application

The passage of the Multiemployer Pension Reform Act (MPRA) in 2014 gave a new avenue for the Plan Trustees to remedy the Plan's financial situation by allowing the Plan to cut vested benefits already earned by Plan participants, including retired participants. The Trustees filed an application under MPRA with the Treasury Department on September 27, 2016.

When designing the benefit cuts (technically, benefit "suspensions"), the Trustees were faced with the limitations imposed by MPRA. MPRA prevents benefit cuts to certain protected classes, including retirees older than age 80 (and proportionally between age 75 and 80), disability pension retirees and those whose benefit amount was under 110% of the amount of the PBGC guarantee.

After considering various options, the Trustees decided to reduce the maximum accrual rate for each year to 1.96%. This mainly affected participants who had earned benefits in the 1980s and 1990s when accrual rates were the highest (up to 5%).

About 21% of the Plan's participants fell into one of MPRA's legally protected classes. With such a high number of participants being fully or partially protected, it meant that any cuts had to fall even harder on those who were not protected by MPRA. While the average benefit cut was 38%, the actual reduction per participant ranged from 0% to 61%. The average monthly pension was worth $974 prior to the benefit cut and $601 after the benefit cut.

b. Participants Response to MPRA Application

After filing the application and informing participants about the proposed cuts, the Trustees set up a series of meetings with retirees and active participants to explain the Plan's application and hear their concerns. Participants also filed comments on the Treasury's MPRA website and retirees shared their concerns with the Retiree Representative (a position required by MPRA applicants for plans with 10,000 or more participants).

Hundreds of retirees shared their heart wrenching stories. They described a future in which some would potentially have to sell their homes or be unable to afford their medication due to the pension cuts. Many found it impossible to meet their current financial obligations should the Plan's MPRA application be approved and would have to file for bankruptcy or go on public assistance.

A small number of retirees could return to work, mostly those who have recently retired and are in good physical health. But for most participants, the hard physical labor performed during their working career has taken its toll, and they are unable to return to work.

The Plan's modest pension benefit plays an important role in the retirees' financial security as well as that of their families (many participants are married while other recipients are the spouses of deceased participants). The retirees have to pay for mortgages, utilities, food, health care and other fixed expenses and have no way to make up the shortfall. Many will have to rely on public assistance.

Once the Trustees explained the Plan's financial situation, participants generally understood the reasons for filing the application and were willing to accept some benefit cuts. Most felt that they could cope with a cut within the 10-15% range and adjust to a different lifestyle, but more than that would be difficult and cause substantial hardship.

c. The Retiree Representative Did Not Support the Plan's Application

The Retiree Representative, who had been attending Board of Trustee meetings during the months-long process when the MPRA application was under consideration, stated that he would be unable to support the Plan's application. He observed a disparate impact on the retiree population. Some retirees with larger cuts, including himself, would be better off if the MPRA application was rejected, since they would continue to receive their full pensions until the Plan became insolvent in approximately 2030. Other retirees with no (or small) pension cuts would be better off if the MPRA application were approved.

The Retiree Representative also criticized MPRA, finding that its statutory scheme pits participants against each other because persons are unable to age into protected status. He also found MPRA's voting process fundamentally unfair because participants who do not vote are automatically counted towards the number that vote in favor of a benefit suspension. The Plan Trustees share these criticisms of MPRA.

d. The Government Agencies Responsible for MPRA Make it Unreasonably Difficult to Obtain Approval

The Trustees were frustrated with their interactions with the agencies responsible for MPRA, the Department of Treasury, Department of Labor and the PBGC (collectively, "Agencies"). There was no opportunity to discuss the proposed cuts prior to the submission of the MPRA application. The lack of communication became critically important when combined with the Agencies' interpretation of MPRA's so-called "Goldilocks Rule," which prevents benefits from being suspended materially (5%) more than required for solvency. The Goldilocks Rule limits the range of acceptable cuts to a very narrow range and results in projections that are heavily dependent upon assumptions set by the Plan's actuary.

During its review of the Plan's application, the Agencies challenged the reasonableness of several of the Plan actuary's assumptions. Plan data was provided to the Agencies and the Plan actuary was able to revise assumptions in light of Agencies' concerns. Ultimately, the Agencies determined several of the actuaries assumptions used to satisfy the Goldilocks test not to be reasonable, showing no deference to the Plan's actuaries, and rejected the Plan's application on this basis. The Agencies actions appear contrary to the MPRA rule that the Agencies shall accept the Plan's determinations in the application unless they are clearly erroneous.

The difficulty of obtaining approval from the Agencies is shown both in the low number of approved applications (only 5 applications have been approved, 7 have been denied or withdrawn and not resubmitted and 7 remain in review) and that only 19 different plans have submitted applications under MPRA, even though relief has been available for over 2 years.

The Agencies require a newly submitted application to formally review the revised assumptions and projections. Filing a new application only adds to further delay and Plan expense.

The Trustees are considering filing a new MPRA application, but only because there are no other options yet available.

VI. Recent Proposals to Fix the Multiemployer System

The Plan reviewed the legislative solution presented by UPS, "Curing Troubled Multiemployer Pension Plans," which provided low-interest loans to cover plans' cash flow shortages coupled with benefit reductions of up to 20%. This would allow plans to continue investing assets and earn their way out of the funding shortfall.

The Plan's actuary reviewed the UPS proposal and concluded that the Plan would eventually become over 100% funded after 3 five-year loans. In addition, the Trustees believe the plan participants will be more supportive of a solution where everyone is subject to up to a 20% reduction as opposed to MPRA, which fully protects some participants but reduced other participants' benefits by over 60%.

The Plan's actuary has not yet reviewed other recent proposals, such as Senator Brown's and Representative Neal's Butch-Lewis Act or the recent proposal from the National Coordinating Committee for Multiemployer Plans.

The Trustees in general support solutions that include low-interest loans to Plans and limit the financial burden borne by the Plan participants. The solution must find a way to restore Plans to full funding without significantly reducing pension payments that will cause retirees hardship and ultimately increase government spending on the social safety net.

The Trustees note that the federal government provided financial assistance to General Motors and Chrysler when they were on the verge of insolvency. The Plan's participants and retirees are also victims of the downsizing of the automotive industry and are deserving of the same financial investment to preserve their pensions, as are other participants and retirees in multiemployer pension plans of similarly downsized industries.

VII. Conclusion

The need for congressional action is clear. The convergence of unfavorable economic conditions and limitations of federal laws have adversely impacted the multiemployer pension system, including the Automotive Industries Pension Plan. Without revisions to the law or financial assistance, the Automotive Industries Pension Plan will continue to decline and ultimately become insolvent and unable to pay benefits in about 10 years. At that point, the only relief for participants would be that offered by the PBGC, which is scheduled to become insolvent a few years prior to the Plan's insolvency, such that participants may not even receive the amount supposedly guaranteed by the PBGC. The impact of this insolvency will result in severe financial hardship for Plan participants, their spouses and families, along with an increase in the need for public assistance to help these participants and their families.

The Plan Trustees appreciate the work performed by the Joint Select Committee on Solvency of Multiemployer Pension Plans and its efforts in crafting solutions to the problem. The Plan Trustees appreciate the opportunity to review any proposals under consideration and anticipate providing additional feedback once the Committee members have coalesced around specific proposals.

Sincerely,

James H. Beno
Chairman, Automotive Industries Pension Plan

Thomas Dillon
Secretary, Automotive Industries Pension Plan