

...Pension crisis sparks reform debate

From Page 2

have either recovered or are on track to recover. But the remaining tenth are in a death spiral, and not because of anything the trustees did or didn't do. Looking back, it's clear that policies set by Congress created the crisis.

The failing pension plans all have an important feature in common: Retired and inactive (formerly employed but vested, i.e., entitled to future benefits) participants came to greatly outnumber "active" working participants whose employers are still contributing. There were many contributing causes to those upside-down demographics. U.S. trade policies smoothed the way for offshoring, downsizing and plant closures. Deregulation of trucking and other industries led to volatility and business failures. Decades of union-busting reduced the number of unionized firms. Advances in automation and computer technology meant fewer workers were needed.

In 1975, active participants made up 83 percent of participants across all multi-employer pension trusts. By 2014, the share of active participants in multi-employer pension trusts had fallen to 39 percent overall. Among the pension trusts that are headed for insolvency, actives make up just 16.2 percent.

It's actually normal and healthy for long-established pension trusts to pay out more in benefits to retirees each year than they take in from employer contributions — because the investment returns from all those past contributions are supposed to make up the difference. Chuck Mack's Western Conference of Teamsters pension is a good example: In 2017, it took in \$1.8 billion in employer contributions, and paid \$2.7 billion in benefits, while earning over \$5 billion on its investments.

But the more lopsided the inactive-to-active ratio is, the more vulnerable a pension trust is to severe financial shock.

The key thing to know about the failing pension trusts is that they have too few employer contributions coming in for it to be possible to recover from severe financial market losses. Their remaining assets continue to earn returns, but they're now paying out more in benefits than the combination of employer contributions and investment returns. They don't have enough assets to meet their future liabilities, and their total assets are shrinking year by year.

What makes all this particularly painful is that most of the 100 or so funds that today are headed for insolvency were fully funded or close to



Chuck Mack, co-chair of the Western Conference of Teamsters pension — America's largest multi-employer pension — is sounding the alarm about the need for Congress to do something about pensions that are headed for insolvency.

fully funded as late as the year 2000. To be fully funded means they had enough assets on hand to pay all of their future pension promises. Many multi-employer pension trustees might have liked to let boom-market investment returns pile up as a cushion against future downturns, but the rules set by Congress wouldn't let them. Instead, when the plans became fully funded, the rules required that they increase benefits, or decrease employer contributions, or both. If they failed to do that and became overfunded, their employer contributions would no longer be a tax-deductible business expense — under the Tax Reform Act of 1986. Since the employer contributions were spelled out in three- to five-year union contracts, reducing employer contributions during the financial market boom wasn't feasible in most cases. So pension trusts started giving retirees bonus "13th" checks. They reduced penalties for early retirement and in effect offered subsidies to workers to take earlier (and more expensive for the trust) retirement.

Then the 2000 tech stock bubble burst, proving that some of that asset value had been temporary or illusory. But now, a rule against "cutbacks" contained in the 1973 law known as ERISA prevented the pension trusts from scaling back benefits. Congress changed that rule with the Pension Protection Act of 2006, which allowed trusts to scale back those "extra" benefits they'd given, but it was too late for some, because a vicious cycle had begun.

When multi-employer pensions are healthy, they produce a generous benefit at an affordable cost to employers, and are often the pride and joy of their sponsoring unions. But

when they get into trouble, the dynamics caused by pension regulation can create a vicious cycle, in which new employers are reluctant to come in, and participating employers are eager to get out. That vicious cycle results in still fewer active employees, which makes it that much harder to recover from sudden funding shortfalls.

The features of pension law that create that effect are withdrawal liability and rehabilitation surcharges.

Withdrawal liability for multi-employer pensions was created by Multi-employer Pension Plan Amendments Act of 1980. The idea is that all employers in a multi-employer pension are collectively responsible for paying the promised benefits. If the assets shrink and there's unfunded liability, employers can't leave the pension trust unless they pay the amount it would take to keep the promises for their own employees. That amount is known as withdrawal liability. The rule is designed to prevent employers from leaving the pensions, but it has often had the effect of preventing new employers from entering.

Rehabilitation surcharges, meanwhile, come from the Pension Protection Act of 2006. That law requires pension trustees to take action to reduce unfunded liability, including the imposition of employer "rehabilitation" surcharges which ramp up over time. For example, Daimler Trucks North America had been paying \$4.45 an hour into the multi-employer Automotive Machinists Pension Plan. But to catch up after the financial market meltdown decimated its investments, trustees imposed mandatory rehabilitation sur-

How Congress created the pension crisis

1 The Employee Retirement Income Security Act — 1974 ERISA regulated pensions heavily, and created the Pension Benefit Guaranty Corporation (PBGC) as a federally sponsored insurance program to pay benefits if pension trusts fail. But unlike with bank depositor insurance (FDIC) and home loan guarantees (FHA), Congress didn't back the PBGC with the full faith and credit of the U.S. government. ERISA's "anti-cutback" rule also said pension trustees could increase benefit promises, but could not later scale them back.

2 The Motor Carrier Regulatory Reform and Modernization Act — 1980 deregulated the trucking industry. It ended shipping cost controls, which led to ruinous price competition, decimation of union trucking, and the closure of as many as 10,000 trucking firms that were contributing to multi-employer pensions.

3 The Tax Reform Act of 1986 said that if multi-employer pensions became fully funded, employer contributions would no longer be tax-deductible.

4 North American Free Trade Agreement — 1993 U.S. companies were already shifting manufacturing assembly to Mexico's tariff-free maquiladora zone. But by making Mexico safe for investors, NAFTA greased the skids for even more offshoring. It was followed by PNTR, DR-CAFTA, KORUS, and many more. Over a million American manufacturing jobs were lost, many of them union, and the threat of offshoring became the most effective threat in employer campaigns to keep workers from unionizing.

5 The Financial Services Modernization Act — 1999 repealed the Glass-Steagall Act, which had kept commercial and investment banking separate for 70 years. That paved the way for banks to make riskier investments.

6 The Commodity Futures Modernization Act — 2000 prevented regulation of new classes of complicated financial products known as "over-the-counter" derivatives, such as the credit default swap. Combined with the repeal of Glass Steagall, it laid the groundwork for a housing bubble to inflate amid systemic fraud. Banks and Wall Street firms securitized and traded sub-prime mortgages, so-called "liar loans," which bond rating agencies lied and labeled as AAA-rated investment grade securities. These were then hedged with exotic derivatives like "debt-equity" swaps.

7 The Pension Protection Act — 2006 Many pension trusts were rocked by the 2000 collapse of the dot-com stock bubble. To stop pensions from going off a cliff and taking the PBGC with them, PPA required severely underfunded pension trusts to come up with rehabilitation plans to recover from the asset losses by cutting expenses and increasing contributions. For the first time since ERISA, pensions would be allowed to cut back "extra" benefits they'd been forced to give out during the stock run-up. PPA also required trusts to impose surcharges on participating employers, extra charges not tied to any new benefits, which would ramp up over time. And recognizing that PBGC was at risk of failure, it increased PBGC premiums. But it was too little, too late.

8 Troubled Asset Relief Program — 2008 With the collapse of the giant financial firms Bear Stearns and Lehman Brothers, a financial panic ensued, wiping out more than a quarter of the value of pension fund assets. Instead of confiscating Wall Street's ill-gotten gains, Congress authorized up to \$700 billion to bail out the banks that were holding the tarnished securities.

9 The Multi-employer Pension Reform Act — 2014 In a lame-duck session of Congress, MPPRA was inserted into the omnibus spending bill. It allows multi-employer pension funds to prevent the slide to insolvency by cutting benefits to current and future retirees (but not for those over 80, and less for those 75 to 80).

Turn to Page 5