



# Pennsylvania Conference of Teamsters

## Strength in Numbers 95,000

William Hamilton, President & Eastern PA Legislative Coordinator – Joseph Molinero, Sec.-Treasurer & Western PA Legislative Coordinator – Tim O'Neill, Consultant – Dan Grace, Trustee & Legislative Advisor – Robert Baptiste, Esq. Legal Advisor

# LEGISLATIVE ACTION ALERT



## MEMORANDUM

# The Butch Lewis Act of 2017

**TO:** Principal Officers, All Teamster Affiliates  
**FROM:** James P. Hoffa, General President  
**DATE:** Nov. 16, 2017  
**RE:** The Butch Lewis Act of 2017

Today, Ohio Sen. Sherrod Brown and Massachusetts Rep. Richard Neal introduced a critical piece of pension legislation named the Butch Lewis Act of 2017. This legislation would establish a new agency within the U.S. Treasury Department called the Pension Rehabilitation Administration (PRA).

The PRA would sell Treasury-issued bonds on the open market to large investors and then loan the money from these sales to pension plans in financial distress.

Sen. Brown, Rep. Neal and the Teamsters pension taskforce led by International Vice

The attached documents include an FAQ, a legislative overview and a comprehensive explanation on why this plan is our best option. Also included are letters from UPS and the Central States Pension Fund expressing their support for the Butch Lewis Act of 2017.

Please share these documents with your active and retiree members.

President John Murphy, have worked tirelessly for nearly three years to draft this legislation. I truly believe that this legislation is our best path toward addressing the growing pension crisis and endorse it without reservation.

Attachments to this memorandum includes a FAQ document, a legislative overview and a comprehensive explanation on why this plan is our best option. Also included are letters from UPS and the Central States Pension Fund expressing their support for the Butch Lewis Act of 2017.





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## **An explanation of the Brown/Neal pension legislation**

### **Brown/Neal: Pension Rehabilitation Administration Summary**

#### **The problem:**

Some of the nation's largest multiemployer pension plans are on the verge of collapse because they don't have enough money to pay promised pensions to retirees and workers. These multiemployer plans are paying out more money each year in pensions than they're receiving through employer contributions and investment earnings.

Multiemployer pension plans are industry plans that cover unionized workers, pensioners, and their families. These pension plans are jointly run by employers and labor unions.

The biggest of these financially troubled pension funds is the Central States, Southeast and Southwest Areas Pension Plan which covers approximately 400,000 active and retired truckers. It expects to run out of money in eight years.

Central States and other financially troubled pension funds are considered to be in "critical and declining" condition.

#### **The solution:**

This legislation aims at financially supporting the pension plans so they don't fail. The bill would create the Pension Rehabilitation Administration as an agency within the U.S. Treasury Department. The PRA would sell Treasury-issued bonds in the open market to large investors such as financial firms. The PRA would then lend the money from the sale of the bonds to the financially troubled pension plans.

To ensure that the pension plans can afford to repay the loans, the PRA would lend them money for 30 years at low interest rates, around 3 percent. The 30-year loans would buy time for the pension plans so they may invest for the long term instead of worrying about coming up with money immediately to pay for the pensions of retired workers.

#### **How does borrowing enable plans to swap away the retiree payments?**

The pension plans borrowing from the PRA **must** set aside the money in separate investments that match the pension payments for retirees. The pension plans can do

this by buying annuities, cash matching with investment grade bonds, or duration matching with a suitable bond portfolio.

***Whichever approach is taken retirees and their families are guaranteed their promised benefits and the loan proceeds may never be invested in risky investments.***

### **How do active workers benefit?**

The legislation is a win-win for both retirees and active workers. The loans from the PRA will not only enable plans to secure the pensions promised to retirees and their families, but also free up remaining assets and all future contributions to fully protect benefits for active workers.

### **Will retirees get the full pensions they earned?**

Plans that received permission to cut benefits to pensioners will be able to restore full benefits, and plans that have already failed will be able to use the PRA loans to become financially stable and pay pensioners the benefits they earned.

### **How much is borrowed and on what terms?**

Pension plans may borrow as much money as they need to pay current retiree and beneficiary pensions over the next 30 years at low interest rates comparable to that on 30-year Treasury bonds. The interest rate the PRA will charge pension funds may be slightly higher than the interest rate the Treasury will pay to investors so it can cover its costs of operating the new agency.

During the first 29 years of the 30-year loans, the pension plans will pay only fixed interest rates on the money they've borrowed. In the last year, the pension plans will pay interest on the loans and repay all the money they borrowed.

### **Where does the money come from?**

The money comes from the sale of Treasury-issued bonds to financial institutions. These PRA bonds will be fully backed by the Treasury. The PRA will not have trouble raising the money because investors want long term bonds that carry little risk.

### **Is there oversight?**

Pension plans applying for loans to the PRA must submit detailed financial projections. The PRA will approve all the loans. Pension plans that have borrowed money must submit reports every three years to the PRA to show that the loans are working and to take steps if their financial condition begins to deteriorate.

### **Will this work for all troubled plans?**

The loans will not be sufficient to help all the financially troubled pension plans. Some failing pension plans will need additional help from the government. The bill proposes that the Pension Benefit Guaranty Corporation would provide that help. The bill requires Treasury to appropriate the necessary funds needed for PBGC financial assistance. The PBGC would support part of the pension plans' payments for retired and terminated vested workers, up to its usual guaranteed cap on benefits for deeply troubled plans.

***The amount of assistance needed is less than would be required if the troubled plans were left to go insolvent thus addressing PBGC's funding problem at a reduced cost. Our mathematical models demonstrate that the loans and PBGC assistance will save the deeply troubled Teamsters' Central States plan.***

## **Overview of the Multiemployer Proposal**

**Establishing the PRA:** The proposal establishes the Pension Rehabilitation Administration (PRA), a new agency within the Department of the Treasury authorized to issue bonds in order to finance loans to “critical and declining” status multiemployer pension plans, plans that have suspended benefits, and some recently insolvent plans currently receiving financial assistance from the PBGC. The PRA is headed by a Director appointed by the President. The term of office of the Director will be 5 years. The Director will have the power to appoint deputy directors, officers and employees. The Director may contract for financial and actuarial services. In general, the PRA shall be funded from within Treasury’s appropriated budget including administrative and operating expenses.

**PRA Bonds:** The Secretary of the Treasury is authorized to issue bonds and use the proceeds to make loans to multiemployer defined benefit plans that have been approved to receive a PRA loan. The PRA is authorized to issue bonds in such amounts as it anticipates are needed to fund loans in a given twelve-month period. Bond proceeds will be kept in a separate Treasury fund, the Pension Rehabilitation Trust Fund (PRTF), and eligible uses for the bond proceeds include funding PRA loans. Loan repayments and interest paid on the loans by the pension funds will also go into the fund, from which payments on the bonds will be made. PRTF funds may also be used for PRA operating expenses.

**PRA Loans:** The PRA is authorized to make loans from the PRTF to multiemployer DB plans in “critical and declining” status as defined in IRC section 432(b)(6), plans that have suspended benefits under MPRA, and insolvent ongoing plans already receiving financial assistance from the PBGC (“plan”). The loan terms will require the plan to make interest payments for 29 years with final interest and principal repayment due in year 30.

The amount of the loan is the amount of cash needed to fund the plan’s obligations for the benefits of participants and beneficiaries in pay status at the time the loan is made, as identified in the loan application. Plans that receive a loan must fund the plan’s obligations to those in pay status in one of the following ways:

- (1) Annuity purchase: purchase commercial annuity contracts to provide the identified benefits from an insurance company with a credit rating of A or better by a nationally recognized statistical rating organization and the purchase must meet the fiduciary standards under Title I of ERISA and the pertinent Department of Labor regulations (“safest available”);
- (2) Cash Matching or Duration Matching Portfolio: must consist of fixed income investments (bonds) that are investment grade (as rated by a nationally recognized statistical rating organization) including U.S. dollar-denominated public or private debt obligations issued or guaranteed by the U.S. or foreign issuers, which are tradeable in U.S. currency and are issued at fixed or zero-coupon rates or

- (3) Some other portfolio prescribed by the Secretary of the Treasury in regulations which has a similar risk profile as Cash Matching and Duration Matching and is equally protective of participants' and beneficiaries' interests.

If a portfolio described above is implemented, it must be maintained until all liabilities to retirees and beneficiaries in pay status at the time of the loan are satisfied.

**Portfolio Oversight:** Except in the case of annuity purchase, the PRA maintains oversight over all loan proceeds used to fund retiree liabilities. Such assets remain in the plan asset pool, but are segregated from all other plan assets in terms of accounting and investment performance measurement. Such oversight shall include a mandatory triennial review of the adequacy of the portfolio to fund retiree benefits. If such review determines that there is an inadequacy, the plan must take remedial actions to cure such deficiency within five years. Such oversight will also include approval (within a reasonable period of time) of the plan sponsor's decision to change the investment manager overseeing the fixed income portfolio.

Current law (the fiduciary provisions of Title I of ERISA) will govern the plan sponsor and the investment managers, who must acknowledge that they are plan fiduciaries under ERISA.

The loan proceeds are considered plan assets and the retiree liabilities remain liabilities of the plan. The plan's other assets will be available to satisfy the retiree liabilities in the event the dedicated portfolio does not generate sufficient income to satisfy the retiree liabilities due to adverse actuarial experience.

Retirees whose liabilities are covered by the dedicated portfolio or annuity purchase remain plan participants under ERISA. Such participants will have an Ombudsman, who shall be the Participant and Plan Sponsor Advocate appointed under Section 4004 of ERISA.

**PRA Loan Application:** In order to obtain a loan, the plan sponsor must apply to the PRA. The application must demonstrate that:

- (1) Receipt of the loan will enable the plan to avoid insolvency during the loan term;  
and
- (2) The plan is reasonably expected to be able to pay benefits and interest during the term of the loan and accumulate sufficient funds to repay the principal when due.
- (3) The plan will be able to meet these obligations while meeting the following obligations:

- (1) Not increasing benefits or accepting a bargaining agreement that provides for reduced contribution rates during the term of the loan,
- (2) Avoidance of Code/ERISA violations that result in large costs from plan assets, and
- (3) Meeting such other conditions as the Administrator prescribes.

The PRA has 90 days to review and decide whether to approve any loan application or it is deemed approved.

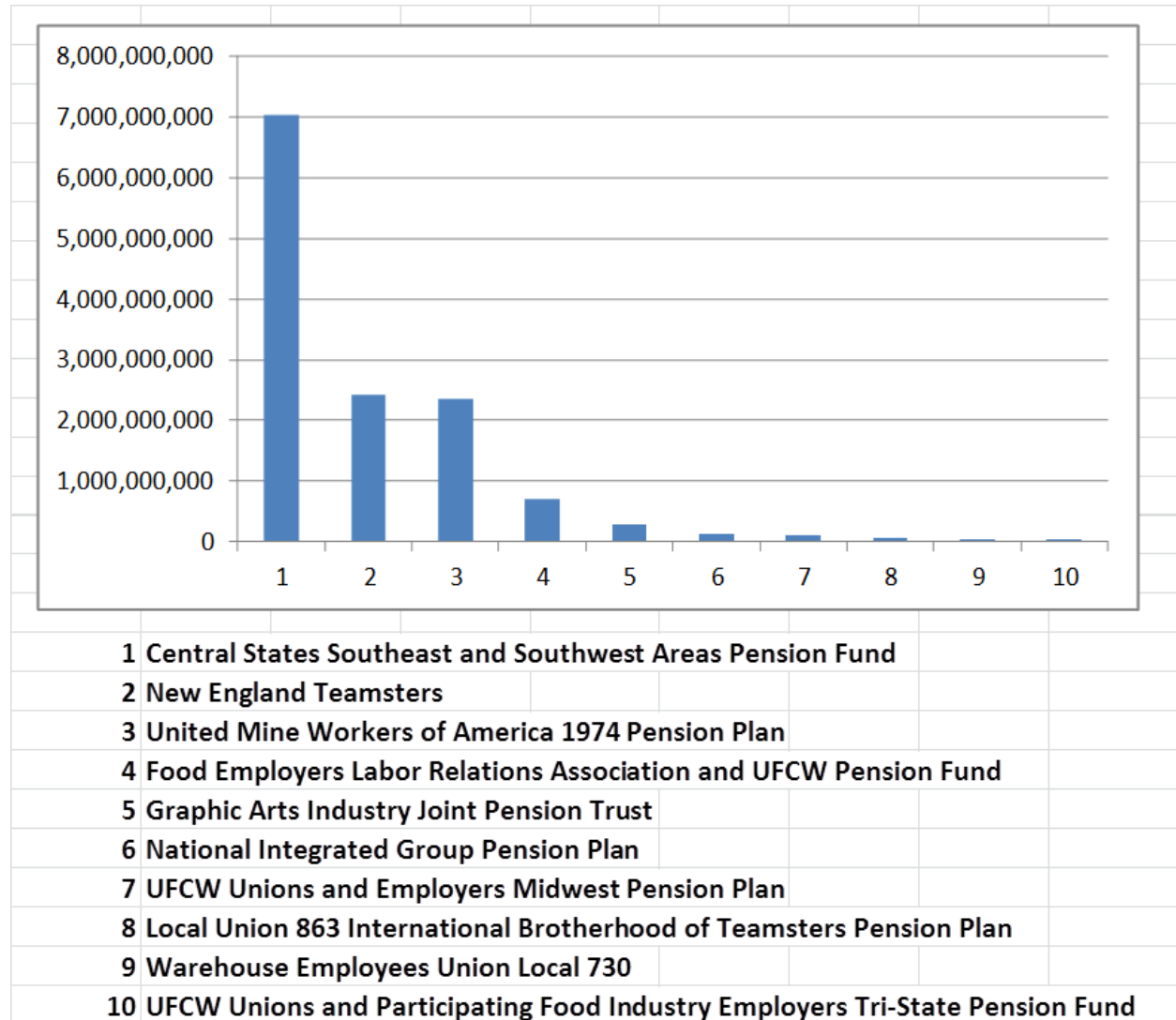
**Effect of PRA Loans on Funding and Withdrawal Liability:** The annuity contracts and fixed income portfolios purchased with the loan proceeds and the benefits covered by the annuity contracts or portfolios are not taken into account in determining minimum required contributions, but remaining payments due on the loan (interest and principal) are, as well as benefits not covered by the annuity contracts or portfolios. The IRC and ERISA provisions relieving employers from liability for minimum required contributions (and the related excise tax) when a plan is in critical continue to apply. The annuity contracts and fixed income portfolios purchased with the loan proceeds are not taken into account in determining an employer's withdrawal liability, but the benefits covered by the annuity contracts are (or, if greater, the remaining payments due on the loan are).

If an employer withdraws from the Plan during the term of the loan, withdrawal liability of such employer will be determined as if in the case of a mass withdrawal. Specifically, the provisions of ERISA section 4219(c)(1)(D) would apply, eliminating the 20-year cap on the number of withdrawal liability payments and requiring the withdrawing employer to pay its share of "reallocation" liability. Furthermore, PBGC single-employer plan termination actuarial assumptions should be used to value benefits as prescribed in regulations under section 4281 of ERISA.

**PBGC Assistance for Retirees from Certain Critical and Declining Status Plans:** A plan can apply for PBGC financial assistance in conjunction with a PRA loan only if that plan can demonstrate that a PRA loan alone will not allow the plan to maintain solvency or become solvent. A plan may apply for a PRA loan in conjunction with PBGC support. The application would demonstrate that with assistance from the PBGC would make a PRA loan viable, based on projections by the plan actuary. If these projections indicate that the plan will become insolvent within 30 years, then the actuary will determine what percentage of the plan liabilities, if covered by PBGC assistance payments, as opposed to the loan proceeds, would result in the plan maintaining solvency throughout the thirty years. PBGC financial assistance shall not exceed the value of PBGC guarantees for retirees and workers (including beneficiaries).



According to an estimate developed by Cheiron, a prominent actuarial consulting firm, approximately 50 of the 110 plans in critical and declining status would need to use this PBGC assistance approach if they were to take advantage of a PRA loan. Cheiron estimates that this would cost \$16-20 billion in outlays. The \$16-20 billion estimate is for assistance to all 50 of the critical and declining status plans. Cheiron estimates that \$13 billion of that cost is concentrated in the ten largest critical and declining status plans:



## FAQs

**QUICK SUMMARY:** This legislation aims at financially supporting troubled multiemployer pension plans so they don't fail. The bill would create the Pension Rehabilitation Administration as an agency within the U.S. Treasury Department. The PRA would sell Treasury- issued bonds in the open market to large investors such as financial firms. The PRA would then lend the money from the sale of the bonds to the financially troubled pension plans. For plans that need additional assistance, PBGC would provide financial assistance to make up the difference.

### **1. How does borrowing enable plans to ensure retirees get their full benefit?**

The pension plans borrowing from the Pension Rehabilitation Administration (PRA) must set aside the money in separate investments that match the pension payments for retirees. The pension plans can do this by buying annuities, cash matching with investment grade bonds, or duration matching with a suitable bond portfolio. Whichever approach is taken retirees and their families are guaranteed their promised benefits and the loan proceeds may never be invested in risky investments.

### **2. How much is borrowed and on what terms?**

Pension plans may borrow as much money as they need to pay current retiree and beneficiary pensions for life at low interest rates comparable to that on a long term Treasury bonds as long as they can show they can remain solvent during the loan period and that they can reasonably pay it back (see question 5 for what happens if they can't show this). The interest rate the PRA will charge pension funds may be slightly higher than the interest rate the Treasury will pay to investors, so it can cover its costs of operating the new agency.

During the first 29 years of the 30-year loans, the pension plans will pay only fixed interest rates on the money they've borrowed. In the last year, the pension plans will pay interest on the loans and repay all money they borrowed.

### **3. Is there oversight?**

Pension plans applying for loans to the PRA must submit detailed financial projections. The PRA will have to approve all the loans before they can be issued. Pension plans that have borrowed money must submit reports every three years to the PRA to show that the loans are working and take steps if their financial condition begins to deteriorate.

### **4. Who can apply for the program?**

The following types of plans may apply for PRA loans: Critical and Declining plans (within the meaning of section 305(b)(6)), recently insolvent but non-terminated plans, and plans that have suspended benefits under MPRA.

## **5. Will this work for all troubled plans?**

The bill is meant to provide assistance to all plans covered by the program but the loans alone will not be sufficient to help all the financially troubled pension plans. Some plans will need additional help from the government. The bill proposes that the Pension Benefit Guaranty Corporation (PBGC) would provide that help and that would require Congress to provide funding to the PBGC. The PBGC would support part of the pension plans' payments for retired and terminated vested workers, up to its statutory guaranteed cap on benefits for deeply troubled plans.

## **6. When would a plan get PBGC assistance?**

When a plan is preparing their application for a PRA loan and has determined that it cannot maintain solvency with the loan alone, the plan would also apply to the PBGC for PBGC assistance. Plans cannot apply for PBGC assistance if they cannot demonstrate that they would need it in addition to a loan.

## **7. What happens to withdrawal liability?**

There are two considerations for withdrawal liability: first, how to calculate withdrawal liability as it relates to the annuity purchases for participants in pay status and, second, how new withdrawal liability requirements under the bill affect total withdrawal liability amounts.

While some plan annuity purchases are akin to a partial termination and, therefore, are excluded from liability calculations, this is not the case with annuities purchased under the provisions of this bill. A plan participating in the PRA loan program must still count the benefits covered by the annuity contracts (or, if greater, the remaining payments due on the loan) when determining an employer's withdrawal liability.

The bill also includes a new rule for calculating withdrawal liability. If an employer withdraws from the Plan during the term of the loan, withdrawal liability of that employer will be determined as if it were a mass withdrawal. Specifically, the plan must eliminate the 20-year cap on the number of withdrawal liability payments and require the withdrawing employer to pay its share of reallocation liability (see ERISA 4219(c)(1)(D)). Furthermore, PBGC single-employer plan termination actuarial assumptions must be used to value benefits when calculating withdrawal liability.

## **8. What happens if a plan cannot pay back the loan?**

If a plan has difficulty paying back its loan, the PRA must negotiate revised terms for repayment. These terms may include installment payments over a reasonable period and, if the PRA deems necessary to avoid any suspension of the accrued benefits of participants, forgiveness of a portion of the loan principal.

### **9. What is the interest rate for the loan?**

Loans will need to be paid back at a rate equal to the rate for long term treasury bonds at the time the money was borrowed. Currently, long term Treasury bonds are trading at 2.71%.

### **10. What kind of annuity can be purchase?**

While we think it is important to give plans the flexibility to choose the best vehicle for them, and the kinds of annuity vehicles grows every day, plans should purchase annuities that function similar to a fixed income annuity—that is a fixed (as opposed to variable) annuity that provides fixed payments over the term.

### **11. What is a cash-matching portfolio?**

The bill permits plans to segregate PRA Loan proceeds into cash-matching portfolios. A cash matching investment portfolio allows an investor to invest in securities with a certain expected return so that the investor will be able to pay for future liabilities. Cash matching portfolios are often recommended for retirees living off the income they make from the portfolio because they guarantee stable continuous payments similar to a fixed income annuity.

### **12. What is the government guarantee of the loan?**

The loans are paid for with the proceeds from the sale of Treasury Bonds. The bonds will be backed by the full faith and credit of the United States. The PRA will not have trouble raising the money because investors want long term bonds that carry little risk.

### **13. Do retirees lose PBGC protection?**

No. The plan will still pay premiums to PBGC for all participants including retirees. And while the bill makes plan insolvency for non-terminated plans very difficult, if a plan were to go insolvent, PBGC would provide their guaranty for all participants in the plan.

### **14. How can the PBGC afford to provide financial assistance?**

PBGC would not be required to pay financial assistance from its normal funding source. Instead, the bill includes a provision to provide PBGC with appropriated funds equal to the amounts as may be necessary for each fiscal year to provide the financial assistance described in the bill.

### **15. What are the criteria for approval?**

To be approved for a PRA loan a plan must, at a minimum demonstrate that the loan will enable the plan to avoid (or emerge from) insolvency for at least the 30 year loan period and that the plan is reasonably expected to be able to pay benefits and the interest on the loan during such period and to accumulate sufficient funds to repay the principal when due. The PRA may request that the plan provide additional demonstrations prior to approval.

**16. How long does the PRA have to review the applications?**

The PRA must approve or deny an application within 90 days after the submission of such application. An application will be deemed approved unless, within those 90 days, the Director notifies the plan sponsor that the determinations or demonstrations in the application are clearly in error.



**EMPLOYEE TRUSTEES**  
CHARLES A. WHOBREY  
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MARVIN KROPP  
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GARY F. CALDWELL  
RONALD DeSTEFANO  
GREG R. MAY

**EXECUTIVE DIRECTOR**  
THOMAS C. NYHAN

November 15, 2017

**ALL LOCAL UNIONS WITH PARTICIPANTS IN THE  
CENTRAL STATES, SOUTHEAST AND SOUTHWEST  
AREAS PENSION FUND:**

On Thursday, November 16, Senator Sherrod Brown is scheduled to introduce legislation to address the Pension Fund's financial status. Central States was asked to model the effects of this legislation. Our actuary has concluded that the legislation, if enacted, would in fact prevent the Fund's insolvency.

This legislation contains no pension reductions to actives or retirees and would prevent the Fund's insolvency through a combination of loans and PBGC assistance. The loan amount would be from \$11 to \$15 billion and the PBGC assistance would total \$20 to \$25 billion. The loan would need to be repaid at the end of 30 years, with interest payments made annually. The PBGC assistance would not be repaid.

We have previously modeled several IBT proposals which did not solve the Fund's financial difficulties. The direct financial assistance provided by the PBGC, with an appropriation from Treasury, enables Senator Brown's legislation to prevent the Fund's insolvency.

Attached is a statement from the Fund regarding the proposed legislation.

Sincerely,

Thomas C. Nyhan  
Executive Director

TCN:lam  
Enclosure

## **Holding Statement: Inquiries Regarding the “Butch Lewis” Act**

Central States Pension Fund’s actuary has reviewed legislation proposed by Senator Brown and Congressman Neal, intended to assist multiemployer pension funds that are in “critical and declining” status.

The proposed legislation would create a new federal agency, the Pension Rehabilitation Administration (PRA), that would be authorized to issue loans sufficient to permit these troubled plans to meet their pension obligations for an extended period. These loans would be repaid with interest-only payments for 29 years, with a final payment of principal and interest in the 30th year.

However, if a pension fund is projected to be unable to pay all benefits due during the loan term and make all required loan repayments, it would, under a provision of this proposed legislation, be able to apply to the Pension Benefit Guaranty Corporation (PBGC) to receive additional financial assistance.

According to our actuary’s analysis, the federal loan program, on its own, would not be sufficient for the Fund to remain solvent indefinitely, and it would not be sufficient to enable the Fund to repay the loan at the end of the 30-year term. The Fund would therefore require assistance from the PBGC of \$20 to \$25 billion, as provided for in the proposed legislation, in addition to a PRA loan of \$11 to \$15 billion.

If Congress passes this proposed legislation, and Central States begins to receive both the loan and financial assistance by July 1, 2018, then our actuary has projected that the Fund would not become insolvent, based on reasonable assumptions at this point in time. The Fund would then be projected to be able to repay the \$11 to 15 billion federal loan, and to continue paying benefits to all participants and beneficiaries. However, under the proposed legislation, the Fund would not be expected to repay the PBGC assistance of \$20 to \$25 billion.

If no legislation is passed that provides adequate financial assistance to Central States, then the Fund is projected to become insolvent within eight years. Our more than 400,000 participants and beneficiaries would, at that time, lose virtually all of the benefits they’ve earned through their hard work.



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November 15, 2017

The Honorable Sherrod Brown  
United States Senate  
713 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Richard Neal  
United States House of Representatives  
341 Cannon House Office Building  
Washington, D.C. 20515

Dear Senator Brown and Congressman Neal:

I want to thank you for introducing legislation that addresses the multiemployer pension crisis. This is an important first step in working towards a solution that protects the pensions of millions of Americans and ensures solvency for the multiemployer system.

I applaud you for your leadership on this issue. UPS hopes that other lawmakers will follow your lead and work in earnest to address this important issue before the end of the year.

Sincerely,

A handwritten signature in cursive script that reads "Laura Lane".

Laura Lane  
President  
UPS Global Public Affairs