Testimony of
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Committee on Education and Labor
Subcommittee on Health, Employment, Labor, and Pensions

Hearing on "The Cost of Inaction: Why Congress Must Address The Multiemployer Pension Crisis"

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TESTIMONY OF MARY MOORKAMP
SCHNUCK MARKETS, INC.
HOUSE COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

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Chairwoman Wilson, Ranking Member Walberg, and members of the House Education and Labor Subcommittee on Health, Employment, Labor, and Pensions ("Committee"). I am Mary Moorkamp, the Chief Legal and External Affairs Officer at Schnuck Markets, Inc., from St. Louis, Missouri. Thank you for the opportunity to appear today to discuss the looming crisis facing not only Schnuck Markets, but the more than 5,400 employers that contribute to multiemployer pension plans that are projected to be insolvent in less than 20 years.[1]

My message today is that the multiemployer crisis already affects businesses today. Therefore, Congress must solve the multiemployer funding crisis as quickly as possible. Employers understand and fully appreciate the enormous challenges facing this Congress, but further delay is not an option. Eventually, the Pension Benefit Guaranty Corporation's multiemployer fund will have to be stabilized. Waiting for this inevitability accomplishes nothing and only adds to the cost – not only the economic cost, but the emotional cost of uncertainty on our employees, our retirees, and their families. As an employer, this uncertainty undermines our ability to grow our business, attract new workers, and plan for the future. The cost of inaction is too high to bear; Congress must act quickly.

I. <u>WHO IS SCHNUCK MARKETS?</u>

Schnuck Markets is a third-generation family-owned retail grocery chain. It was founded by Anna Donovan Schnuck in 1939 as a way to feed her family and neighbors during the Depression. She opened her first store in North St. Louis City to sell, among other things, the potato salad she made in her own kitchen. Back then, as today, she was seeking a way to nourish people's lives. From those humble beginnings, the company has grown to its current size of almost 15,000 teammates serving 119 grocery stores in five states: Missouri, Iowa, Indiana, Illinois and Wisconsin. More than 75% of our workforce is unionized. Our CEO is Todd Schnuck – a proud grandson of Anna Schnuck.

The Schnuck family believes deeply not only in providing a quality and competitive grocery experience, but also in giving back to the community – both near and far. Three examples highlight this commitment. First, we are proud to say that in each community in our five-state region, we partner with local food banks and pantries to ensure that the hungry in our communities are fed. In St. Louis alone, one out of every three meals served by Operation Food Search comes from Schnuck Markets. That is annually over $13 million in food donations. Second, when Hurricane Michael devastated the Florida Panhandle last October, we collected over $345,000 for the hurricane victims. Just to be clear, the closest Schnuck store to the Florida

[1] NCCMP Multiemployer Pension Facts and the National Economic Impact, slide 3 (Jan. 5, 2018)

Panhandle is in Cape Girardeau, Missouri – over 650 miles and nearly 11 hours away by car. Finally, we are proud to partner with Folds of Honor to provide scholarships to the children and spouses of fallen and wounded service members. We launched the program for the first time last Memorial Day through 4th of July, 2018 and raised over $1.1 million dollars for Folds of Honor. We look forward to making an even bigger impact this year. From 1939 to present day, our mission to nourish people's lives has been unwavering.

II. THE HISTORY OF SCHNUCK MARKETS AND CENTRAL STATES

A. Contribution History

Schnuck Markets entered the Central States Teamsters Pension Fund ("Central States") in 1958. The date is important, because it was many years before Congress enacted ERISA or the withdrawal liability rules. There was no "last man standing" concept or tax deduction limitation when we entered Central States. And there was no PBGC multiemployer fund. We did not "make a bad deal." These rules were forced upon us after-the-fact. We simply wanted to provide our drivers, mechanics and grocery warehousemen a retirement benefit for the work they did for Schnuck Markets.

Since 1958, we have made all of our required pension contributions. I want to emphasize this point, because Congress cannot get caught in the trap of trying to place blame for the crisis. Just like the participants who say – correctly so, I would add – that they are not to blame, nor are contributing employers to blame. Schnuck Markets has done everything we were supposed to do. No one is to blame, which is why everyone must share in the sacrifice to solve the crisis.

In 1958, our weekly contribution rate was $3 per week. At the time, this contribution was about 3% of our Teamster teammates' total compensation package (salary, retirement, and health and welfare benefits). There was no such thing as "withdrawal liability," and our liability was limited to funding our pension obligation for our teammates under our Collective Bargaining Agreement.

Fast forward to our situation today. Our contribution rate to Central States for 2019 is $342 per week. This contribution rate amounts to between 19% and 21% of our Teamster teammates' total compensation package. This compares to a compensation percentage of around 4% to 6% for our non-Teamster teammates' pensions. (In our industry, it is typical for a retirement contribution percentage to be in a 4 to 6% range or less. Anything above that puts a company at a significant competitive disadvantage.)

The $342 per week contribution level is 114 times the contribution rate in 1958. For some historical context, in 1958, a gallon of milk cost $1, a loaf of bread was 20 cents, and a gallon of gasoline was 25 cents. What would our customers and your constituents say today if they were paying $114 for a gallon of milk, $22.80 for a loaf of bread, and $28.50 for a gallon of gas? That is what has happened to our contribution rate in a "penny-margin" industry.

B. Unfunded Liabilities – the "Last-Man Standing" Rule

A major reason our contribution rate has increased so much is because of the unfunded liability rules. In effect, each employer in a multiemployer plan is jointly liable for a plan's unfunded liabilities. When an employer leaves a plan without paying its portion of the plan's unfunded liabilities (or if a plan suffers an investment loss following the employer's withdrawal), the responsibility for the unfunded liabilities not paid by the exiting employer shifts to the remaining employers. This is referred to as the "last-man standing" rule. The shift in unfunded liabilities drives up our contribution rates, and employers such as Schnuck Markets are forced to fund the retirement benefits of workers who never worked for us – and in fact may have worked for our competitors or, more likely, completely outside our industry and region in which we operate. What this also means is that the employers remaining in the plan, and who have followed all of the rules and have already fully funded the benefits of their employees, are the ones left holding the proverbial "bag."

This point is clearly illustrated by Central States. According to Central States, 59% of the retirees are orphans, meaning that their contributing employer is no longer paying into Central States. Moreover, most of our contribution dollars go to pay for the benefits of participants who never worked for Schnuck Markets.

It is not as though our Teamster teammates will enjoy a retirement benefit commensurate with our contribution rate. Given Central States' projected insolvency, our teammates will be fortunate to receive the maximum PBGC guarantee of $429 per year of service (or $12,870 per year for a teammate with 30 years of service) – which is only about 1/3 of the benefit they otherwise would have received. And this is only if the PBGC multiemployer program remains in existence – which, without legislative action, is projected to go insolvent in 2025. If the PBGC program goes insolvent, Central States participants will receive next to nothing.

It is for this reason that in 2017, out of concern that our Teamster warehouse teammates would have nothing at retirement – despite years of our pension contributions to Central States – we established a 401(k) plan on their behalf. The 401(k) is a 100% company match up to 4% of the teammate's salary. This is <u>in addition</u> to the weekly contributions we continue to make to Central States. We see this as a way for our Teamster warehouse teammates to accumulate some type of retirement income, in addition to their own personal savings – as there will be little to nothing for them if Central States goes insolvent. This is our only bargaining unit that has both a pension (albeit a potentially insolvent one) and a match feature to their 401(k). The Central States situation is unfair to our Teamster teammates and to all of our other teammates – and is untenable for Schnuck Markets in our highly-competitive, penny-margin business.

C. Withdrawal Liability

The unfunded liabilities not only affect our required contribution rate, but also create a staggering withdrawal liability.

Congress enacted the withdrawal liability rules in 1980. (As a reminder, we had been in Central States for 22 years at this point.) The withdrawal liability rules require employers that terminate their participation in a plan to make payments that cover their share of any unfunded

benefits. The payments are based on each employer's proportional share of a plan's underfunding.[2]

As I testified last year before the Joint Select Committee on the Solvency of Multiemployer Pension Plans ("Joint Select Committee"), our proportionate share of the plan's unfunded vested benefits at the end of 2016 exceeded $200 million. While we don't have an official estimate as of the end of 2018, we fully expect, based on a review of Central States' actuarial reports, that it will be at least 33% greater than it was at the end of 2016. Bear in mind that out of our 15,000 Schnuck Markets teammates, only about 230 are covered by Central States. For some context, our total Teamster payroll in 2018 was $16.8 million. While we expect to pay less than the ultimate liability (the liability is limited to 20 annual payments based on a formula that takes into account contribution base units and contribution rates during the 10 preceding years – referred to as the "20-year payment cap"), we are in unchartered waters given the magnitude of a Central States insolvency. From a policy perspective, it makes no sense that an employer whose contributions have increased 114-fold and has made all of its required contributions could have a withdrawal liability that even approaches this amount.

III. THE COST OF INACTION

A. Implications of Inaction on Businesses

Should Congress fail to stabilize the multiemployer system, significant financial harm will fall on all stakeholders – businesses, workers, retirees, taxpayers, and the U.S. economy. While a legislative solution may be costly, taking no action will be more costly.

Plan insolvencies will devastate contributing employers, leading to job losses across the country. A Chamber of Commerce report issued last June[3] provides a more complete explanation of the risks to businesses and jobs, but the bottom line is that plan insolvencies could severely harm employers. This is because for many employers (especially small employers), their withdrawal liability represents a significant portion of the business's value. Should a pension fund go insolvent and an employer withdraw, the withdrawal liability assessment could force the employer out of business. Even if the employer remains in the insolvent fund, the ongoing contributions would impose an insurmountable financial burden on the contributing employers.

Even more concerning is that the impact on businesses is occurring far earlier than when a pension fund becomes insolvent. Auditors and financial lenders are becoming increasingly aware of the pension funding crisis. I have heard of lenders having pulled lines of credit for employers with substantial withdrawal liability, and as the withdrawal liability amounts become "estimable and probable," auditors may require the withdrawal liability be reflected as a liability

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[2] By way of example, in general, if an employer's contributions to a plan comprise 10% of the plan's contributions, the employer's withdrawal liability is calculated as 10% of the plan's unfunded benefits.

[3] U.S. Chamber of Commerce Employment Policy Division, "*The Multiemployer Pension Plan Crisis: Businesses and Jobs at Risk,"* U.S. Chamber of Commerce, June 13, 2018.

on an employer's financial statements. This could devastate businesses (and harming other plans to which they contribute) years before the pension fund's insolvency.

B. <u>Immediate Implications for Schnuck Markets</u>

The combination of burdensome contribution requirements, the withdrawal liability rules, and the projected insolvency of Central States, has immediate implications for Schnuck Markets. We are feeling the effects right now.

This is not a "year 2025 problem." The Central States crisis already has an impact on our current operations and strategic long-term planning decisions. By our calculations, each new Central States participant increases our withdrawal liability amount by approximately $268,000—money the participant will never see at retirement. As a result:

1. Reluctance to expand into new markets. If we open a store in a new market, we would have to hire drivers to transport product to these stores. If the driver is covered by our Collective Bargaining Agreement with the Teamsters, that Teamster driver must become a participant in Central States. This adds to our Central States contribution base, which increases our withdrawal liability.

2. Significant cost associated with growth in current markets. In a recent transaction involving the acquisition of a number of retail grocery stores in our market, we immediately rejected an overture to purchase the seller's logistic operations that had employees in Central States. As the seller could not find any buyer, the seller closed these logistic operations.

3. Recruiting and retention problems. The Central States crisis has created recruiting issues for Schnuck Markets. Oftentimes, when we inform a prospective Teamster driver that his or her pension will come from Central States, they lose interest in the position. They know what's going on with Central States and don't want to depend on a withering fund for their retirement savings. Central States' uncertain future also hampers our ability to retain our employees. As previously mentioned, in 2017, we established a 401(k) plan on behalf of our Teamster warehouse teammates that includes a 100% company match up to 4% of the teammate's salary. This is in addition to the weekly contributions we make to Central States. We did this so that our Teamster teammates could accumulate some type of retirement income, but this adds significant cost in highly-competitive grocery business that is increasingly dominated by non-union retailers.

4. Impact on our capital structure and cost of capital. The April 18, 2018 submission by the NCCMP (at p. 27) notes how --

> "the insolvency of Central States and the liabilities that would be imputed to employers will be a topic for the accounting profession, including the FASB. Withdrawal liability has been a topic that many accountants have discussed with their employer clients, and those discussions become more real when you actually have a plan insolvency."

> Schnuck Markets has been required to make additional disclosures on our financial statements. And the financial accounting concerns could impact our capital structure. We rely on private placement debt and bank lines of credit to augment our cash flow. As Central States positions itself for insolvency, our lenders are becoming increasingly concerned about the impact of the insolvency on our financial statements. When assessing a company's financial strength, lenders and credit rating agencies factor potential pension withdrawal liabilities into their analysis, which affects our credit profile and our cost of capital. We do not know how our lenders and auditors will react when Central States becomes insolvent. But the uncertainty and the risks are too great.

In summary, Schnuck Markets is forced to continue making contributions to a plan that is projected to be insolvent within six years, from which our teammates will be fortunate if they receive any significant portion of their anticipated benefits. Already, the pending Central States insolvency is hampering our ability to expand our business, attract new drivers, and is causing us to assess our risk profile due to the overhang of the potential withdrawal liability. This is happening right now, not in year 2025.

IV. SCOPE OF THE LOOMING CRISIS

What I have described is the Schnuck Markets story. I am certain that employers in each of your Districts and States have similar compelling stories. The most recent PBGC Projections Report states that there are about 130 multiemployer plans that are projected to be insolvent in 20 years or less ("Critical and Declining Plans"); data collected by the NCCMP states that about 5,400 employers contribute to these plans. I have to think that the future of many of these employers is very uncertain if the 130 pension plans go insolvent.

In quantifying the insolvency impact of Central States and other similar plans, it is certainly reasonable to expect there will be a "contagion" effect. Economists and actuaries will have differing views as to the magnitude and extent of the effect; I can only speak for Schnuck Markets and the Association of Food and Dairy Retailers, Wholesalers, and Manufacturers ("Food Association"). Schnuck Markets contributes to a total of eight multiemployer plans. In three of these plans, we account for at least 25% of the contribution base. More broadly, the Food Association compiled plan information from its 15 member companies. The 15 Food Association companies contribute to a total of 102 multiemployer plans. Of the 102 plans, 39 plans (38%) are currently "Red Zone" (critical) plans. If Central States goes insolvent, no one, including the PBGC, can say with any certainty how this will impact other Red Zone plans. I certainly can't. But it won't be positive. And even "Green Zone" plans are not immune from this phenomenon.

In an August 2018 report by Matrix Global Advisors,[4] Alex Brill estimates that the failure of Central States alone will "lead to the loss of more than 55,000 jobs across the United States in 2025." Labor income would fall $3 billion, GDP by more than $5 billion, state and

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[4] Alex Brill, *The Crisis Facing Multiemployer Pension Plans: With a Macroeconomic Analysis of a Collapse of Central States Pension Fund,* Matrix Global Advisors, August 2018.

local tax revenue by almost $450 million, and federal revenue by $1.2 billion. While the impact would be most concentrated in the Midwest, especially in Ohio, Michigan, and Missouri, all 50 states are subject to harm. The report further acknowledges that it understates the magnitude of the economic impact as the analysis is limited to only a failure of Central States. Given the interconnected nature of MEPPs (where many employers contribute to more than one plan), there is a valid concern that the failure of one plan, especially one as large as Central States, could trigger the insolvency of many more plans through the devastating impact on businesses. Likewise, the analysis does not measure the exposure of federal safety net programs to the crisis.

The 2017 PBGC Projections Report begins its overview of the multiemployer program with the following statement: "The current multiemployer system, covering approximately 10 million participants in about 1,400 plans, remains under severe stress."[5] We agree. And the stress is bound to worsen with the insolvency of Critical and Declining Plans.

V. GUIDING PRINCIPLES

A comprehensive reform of the multiemployer system – addressing the shortcomings of the current system – offers the greatest opportunity to ensure the retirement benefits of participants, continued participation by employers, and the solvency of the PBGC. The American Action Forum (AAF) noted that "Congress has a clear history of committing federal funds to insolvent federal programs."[6] AAF Director Douglas Holtz-Eakin said that "It simply is not a choice of committing federal funds or not. For Congress, it is one of those 'pay me now or pay me later' moments, and the goal should be to minimize the necessary infusion."[7]

Congress must prioritize addressing the funding problems of those plans that are heading toward insolvency. Any realistic solution must necessarily involve Federal assistance, coupled with contributions and sacrifices by all other stakeholders. The Critical and Declining Plans face a math problem that can only be solved with more assets, fewer liabilities, or some combination thereof. On the asset side, the contribution rates to plans such as Central States are already straining the resources of employers such as Schnuck Markets. As to investment returns, Central States would have to earn in excess of 15.5% per year (every year) to avoid insolvency. No realistic, sustainable level of increased employer contributions, investment returns, and benefit reductions can solve the funding woes of a plan like Central States. The math just doesn't work.

In addition, the fundamental rules governing multiemployer plans date back nearly 40 years and have not kept pace with the new economy, changing demographics, and today's mobile workforce. The system needs to be overhauled so as to prevent a future funding crisis.

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[5] At pg. 7.

[6] Gordon Gray, *The PBGC, Multiemployer Pensions, and the Historical Record*, American Action Forum, December 12, 2018.

[7] Douglas Holtz-Eakin, *The Daily Dish: Eakinomics: A Cautionary Pension Lesson,* American Action Forum, December 13, 2018.

The Joint Select Committee heard from many experts and stakeholders regarding possible solutions, Rather than providing specific solutions, I wish to offer some guiding principles for your consideration as you pursue a legislative solution:

1. The solution must restore the Critical and Declining Plans that can be saved to solvency and stabilize the multiemployer pension system.

2. The solution must be one that can pass both chambers and be acceptable to the Administration. Solving this crisis requires difficult political, fiscal and policy decisions, and political compromise will be paramount. Political differences must be set aside, and members must work across the aisle and across the Capitol to develop a solution. This Committee has a cherished history in that regard, dating back to the Pension Protection Act of 2006, and more recently Committee Chairman Jon Kline and Ranking Member George Miller with the 2014 MPRA legislation.

3. The solution must be structured so that it can be implemented quickly and timely (i.e., an expedited implementation process and timetable). Delaying the relief not only increases the cost of the solution, but exacerbates the uncertainty for employers, workers and retirees.

4. The solution must necessarily require considerable Federal assistance. There is no realistic, sustainable level of increased employer contributions and participant reductions (or any combination thereof) that can stabilize a fund such as Central States or the United Mine Workers Pension Fund.

5. The cost must be spread among all the stakeholders in a fair and equitable manner. No single group bears responsibility, and yet all stakeholders – including retirees and taxpayers – stand to suffer if the multiemployer system is not stabilized. As a contributing employer, we struggle with automatic annual increases in pension contributions, while our Central States teammates essentially accrue a pension benefit equal to the PBGC guarantee amount. We have satisfied all of our contribution obligations, and our retirees did everything they were supposed to do. Yet we all now face a future of economic uncertainty. The only fair approach is for everyone to share in the cost.

6. The solution must include structural changes and safeguards to the multiemployer system to ensure this crisis doesn't happen again. Many of the economic decisions that led to this crisis are the result of well-intentioned but misguided federal law.

This is a very difficult issue. Developing a solution won't be easy, and if structured fairly, all stakeholders should dislike parts of it. But keep in mind that failure is not an option.

Schnuck Markets and the Food Association stand ready to work with you and do whatever we can to assist the Committee in these efforts.

Thank you again for the opportunity to share my views with you today.