



June 2018

CENTRAL STATES PENSION FUND

Department of Labor
Activities under the
Consent Decree and
Federal Law

GAO Highlights

Highlights of [GAO-18-105](#), a report to congressional requesters

Why GAO Did This Study

Multiemployer plans are collectively bargained pension agreements often between labor unions and two or more employers. CSPF is one of the nation's largest multiemployer defined benefit pension plans, covering about 385,000 participants. Since 1982, the plan has operated under a court-enforceable consent decree which, among other things, requires that the plan's assets be managed by independent parties. Within 7 years, CSPF estimates that the plan's financial condition will require severe benefit cuts. GAO was asked to review the events and factors that led to the plan's critical financial status and the oversight DOL provides under the consent decree and under other federal laws.

GAO reviewed (1) what is known about the factors that contributed to CSPF's critical financial condition, (2) DOL's role in the administration of the 1982 CSPF consent decree and what actions the agency has taken under that role, and (3) what actions, if any, DOL has taken to oversee CSPF, beyond those required under the consent decree. GAO reviewed the consent decree and its amendments, relevant federal laws and regulations, agency guidance on plan management, and DOL protocols for investigating plans; interviewed CSPF representatives, International Brotherhood of Teamsters officials and members, federal officials, and industry stakeholders; and reviewed correspondence between DOL and CSPF and documents related to DOL investigations.

What GAO Recommends

GAO is not making recommendations in this report.

View [GAO-18-105](#). For more information, contact Charles Jeszeck at (202) 512-7215 or jeszeck@gao.gov.

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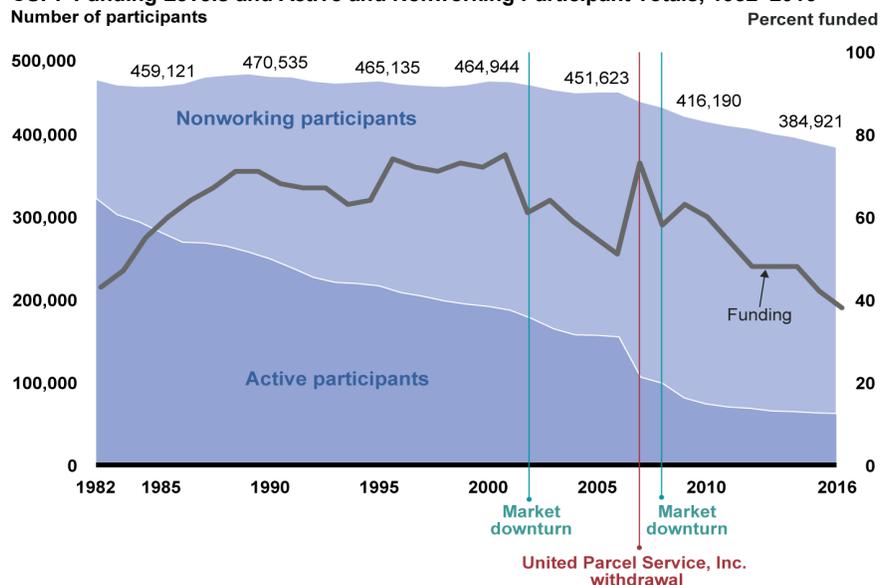
CENTRAL STATES PENSION FUND

Department of Labor Activities under the Consent Decree and Federal Law

What GAO Found

The Central States, Southeast and Southwest Areas Pension Fund (CSPF) was established in 1955 to provide pension benefits to trucking industry workers and is one of the largest multiemployer plans. According to its regulatory filings, CSPF had less than half the estimated funds needed to cover plan liabilities in 1982 at the time it entered into a court-enforceable consent decree that provides for oversight of certain plan activities. Since then, CSPF has made some progress toward achieving its targeted level of funding; however, CSPF has never been more than 75 percent funded and its funding level has weakened since 2002, as shown in the figure below.

CSPF Funding Levels and Active and Nonworking Participant Totals, 1982–2016



Source: GAO analysis of Central States, Southeast and Southwest Areas Pension Fund (CSPF) data. | GAO-18-105

Note: The most recent publicly available data were from 2016. End-of-year participant data and beginning-of-year funding data are presented at the closest year end.

Stakeholders GAO interviewed identified numerous factors that contributed to CSPF's financial condition. For example, stakeholders stated that changes within the trucking industry, as well as a decline in union membership, contributed to CSPF's inability to maintain a healthy contribution base. CSPF's active participants made up about 69 percent of all participants in 1982, but accounted for only 16 percent in 2016. The most dramatic change in active participants occurred in 2007 when the United Parcel Service, Inc. (UPS) withdrew from the plan. At that time, UPS accounted for about 30 percent of the plan's active participants (i.e. workers). In addition, the market declines of 2001 to 2002 and 2008 had a significant negative impact on the plan's long-term investment performance. Stakeholders noted that, while each individual factor contributed to CSPF's critical financial condition, the interrelated nature of the factors also had a cumulative effect on the plan's financial condition.

Key Parties to the Consent Decree

CSPF – The consent decree reiterates that the plan must comply with ERISA and seek input from DOL and approval from the court for certain proposed actions, including the appointment of trustees to its board and the selection of named fiduciaries.

DOL – The consent decree allows DOL to request certain plan documents and comment on or object to certain plan activities.

U.S. District Court for the Northern District of Illinois, Eastern Division – The court oversees and enforces the consent decree and must approve certain proposed plan activities before they take effect.

Court-Appointed Independent Special Counsel – The consent decree provides for an independent special counsel to assist the court in overseeing the plan, attending meetings of the board of trustees, and submitting quarterly reports on plan actions to the court.

Named Fiduciaries – Independent asset managers, known as named fiduciaries, are selected by the plan's trustees, subject to court approval, and have exclusive responsibility and authority to manage and control plan assets allocated to them.

The 1982 consent decree between the U.S. Department of Labor (DOL) and CSPF came about as a result of an investigation of alleged breaches of fiduciary duty and mismanagement of plan assets, and is intended to prevent their reoccurrence. In addition to reiterating the requirement that the plan comply with the Employee Retirement Income Security Act of 1974 (ERISA)—the primary law governing the treatment of private-sector pensions in the United States—the consent decree further outlines requirements for the plan to help ensure fiduciary controls and plan management, including seeking court approvals for the appointment of new trustees and changes to the plan's investment policy. The consent decree also delineates roles for DOL and other stakeholders. For example, it allows DOL to object to or comment on certain proposed plan actions, but does not require the agency to do so. GAO's review of plan documents found that the agency provided oversight and technical assistance in the areas specifically identified for its involvement under the consent decree, such as vetting proposed trustees prior to the court's approval.

DOL is primarily responsible for enforcing the reporting, disclosure, and fiduciary provisions of ERISA for all tax-qualified pension plans, including CSPF. ERISA sets forth a "prudent man standard of care" in the execution of fiduciary duties that, according to DOL, focuses on the process for making proper fiduciary decisions. Plan fiduciaries are responsible for selecting and monitoring investment managers, but are generally not liable for the individual investment decisions of those managers. To enforce ERISA, DOL conducts examinations and investigations. Since the consent decree was established, DOL officials reported that the agency has completed two investigations of CSPF. The two investigations—completed in 1998 and 2004—were closed without adverse findings against the plan. Beyond the agencies' oversight role, DOL collaborated with CSPF and others on steps intended to improve the plan's financial position, including contributing to discussions on proposed legislation and working with CSPF on its application to reduce benefits under the Multiemployer Pension Reform Act of 2014. The application was not approved by the U.S. Department of the Treasury.

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Abbreviations

BLS	Bureau of Labor Statistics
CSPF	Central States, Southeast and Southwest Areas Pension Fund
DOJ	U.S. Department of Justice
DOL	U.S. Department of Labor
EBSA	Employee Benefits Security Administration
ERISA	Employee Retirement Income Security Act of 1974
IRB	Independent Review Board
IRS	Internal Revenue Service
MPPAA	Multiemployer Pension Plan Amendments Act of 1980
MPRA	Multiemployer Pension Reform Act of 2014
NLRB	National Labor Relations Board
PBGC	Pension Benefit Guaranty Corporation
PPA	Pension Protection Act of 2006
Teamsters	International Brotherhood of Teamsters union members
Treasury	U.S. Department of the Treasury
UPS	United Parcel Service, Inc.
WRERA	Worker, Retiree, and Employer Recovery Act of 2008

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June 4, 2018

Congressional Requesters

Established in 1955 to provide pension benefits to trucking industry workers, the Central States, Southeast and Southwest Areas Pension Fund (CSPF) is one of the nation’s largest multiemployer pension plans, with \$15.3 billion in assets at the end of 2016. About 1,400 employers are obligated to contribute to CSPF, and the plan covers almost 385,000 participants.¹ Since 1982, the plan has operated under a court-enforceable consent decree² which, among other things, requires it to obtain approval from the U.S. District Court for the Northern District of Illinois, Eastern Division, for certain plan activities and allows for U.S. Department of Labor (DOL) input prior to the court’s approval.³ Currently, CSPF is projected to become insolvent within 7 years and is classified as a “critical and declining” plan under the Employee Retirement Income Security Act of 1974 (ERISA), as amended by subsequent laws, including the Multiemployer Pension Reform Act of 2014 (MPRA).⁴ In addition to causing financial hardship for hundreds of thousands of CSPF retirees who are at risk of severe benefit cuts, CSPF’s projected insolvency is also likely to coincide with the projected insolvency of the multiemployer insurance program managed by the Pension Benefit Guaranty Corporation (PBGC).⁵ The insolvency of PBGC’s multiemployer program would significantly impact the level of PBGC-guaranteed benefits to

¹Participants include “active” participants (currently working in employment covered by the plan; also referred to in this report as working participants); “separated vested” participants (former employees who worked long enough to earn vested benefits but who left covered employment and have not yet commenced receiving their retirement benefits); beneficiaries of deceased employees or former employees either currently receiving benefits or entitled to receive benefits in the future; and retired or separated participants currently receiving benefits.

²Unless otherwise clear from context, all references in this report to the consent decree include the original 1982 consent decree and all subsequent amendments to it.

³DOL is the primary federal agency responsible for ensuring that pension plans are operating prudently on behalf of participants and beneficiaries.

⁴MPRA made changes to the multiemployer pension system to address the status of poorly funded multiemployer plans. More information about MPRA is provided later in this report.

⁵For multiemployer plans, PBGC provides assistance to those that become insolvent (up to a maximum benefit established in law). Each multiemployer plan pays an annual insurance premium to PBGC based on the number of participants covered by the plan.

current and future beneficiaries in all multiemployer plans receiving PBGC assistance. In light of these issues, you asked us to review the events and factors that led to CSPF's critical financial condition, how it compares to similar plans, and the oversight DOL provides under the consent decree and under ERISA.

In this report, we reviewed (1) what is known about the factors that contributed to CSPF's critical financial condition; (2) DOL's role in the administration of the 1982 CSPF consent decree and what actions DOL has taken under that role; and (3) what actions, if any, DOL has taken to oversee CSPF, beyond those required under the consent decree.

To answer these questions, we used several methodologies. For all objectives, we reviewed CSPF and DOL documentation and available literature; reviewed relevant federal laws and regulations; and interviewed CSPF officials, federal officials, and other knowledgeable industry stakeholders. To describe the major factors that led to CSPF's critical financial condition, we conducted 23 semi-structured interviews with federal agency officials and other stakeholders knowledgeable about unions, participants and retirees, the trucking industry, collective bargaining agreements, and multiemployer pension plans. We also interviewed three stakeholders with actuarial expertise to specifically understand actuarial standards and procedures. In our semi-structured interviews we asked about key factors affecting the plan and the broader regulatory and financial environment in which multiemployer plans operate. We selected knowledgeable stakeholders based on a review of literature and prior GAO work, and recommendations from other stakeholders. Additionally, we selected stakeholders whose expertise coincided with the scope of our objectives and who would be able to provide a broad range of perspectives. We also collected actuarial, financial, and other data on current and historical measures of plan assets, liabilities, investment performance, and other factors, and performed our own analyses of this data. The data and documentation collected was generally from the plan or agencies that oversee pensions. We determined the information to be generally reliable for the purposes of our objectives.

To describe DOL's oversight role under the consent decree and under federal laws and regulations, we reviewed the consent decree and its amendments, relevant federal laws and regulations, multiemployer plan management guidance available to plans on DOL's website, and DOL's protocols for investigating and overseeing pension plans. We also reviewed correspondence between CSPF and DOL since 1982, when the

consent decree was put into place. Correspondence was provided by CSPF in response to our request for documentation of DOL oversight, and to our follow-up requests for additional documentation related to specific time periods and topics, such as investigations and steps taken to vet trustee candidates. DOL also provided documentation throughout the course of our engagement, including documentation it provided between September and October 2017 that it had not previously identified as being relevant to our review. We completed an on-site file review at DOL in September 2017, and DOL sent us additional electronic documentation in September and October 2017.⁶ Overall, we reviewed extensive documentation from DOL—spanning over 10,000 pages of paper-based and electronic files—and spent substantial time cataloging and categorizing it. However, DOL officials reported that certain documentation related to CSPF was no longer available because it had only been retained for the time specified in the records retention policy of the relevant office, and that many individuals at DOL and the plan who were involved in establishing the consent decree in 1982 and ensuring compliance in the intervening years were no longer available. However, we believe the information provided by CSPF and DOL was sufficient to determine the nature of DOL’s oversight.

We conducted this performance audit from March 2016 to June 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁶DOL identified additional documents located in federal records storage, but determined that these documents contained files pertaining to matters that preceded the establishment of the consent decree. As a result, we determined that these documents were outside the scope of our review, and we did not examine them.

Background

CSPF is a defined benefit multiemployer pension plan.⁷ Multiemployer plans are often created and maintained through collective bargaining agreements between labor unions and two or more employers, so that workers who move from job to job and employer to employer within an industry can continue to accrue pension benefits within the same plan over the course of their careers. Multiemployer plans are typically found in industries with many small employers such as trucking, building and construction, and retail food sales. In 2017, there were about 1,400 defined benefit multiemployer plans nationwide covering more than 10 million participants.

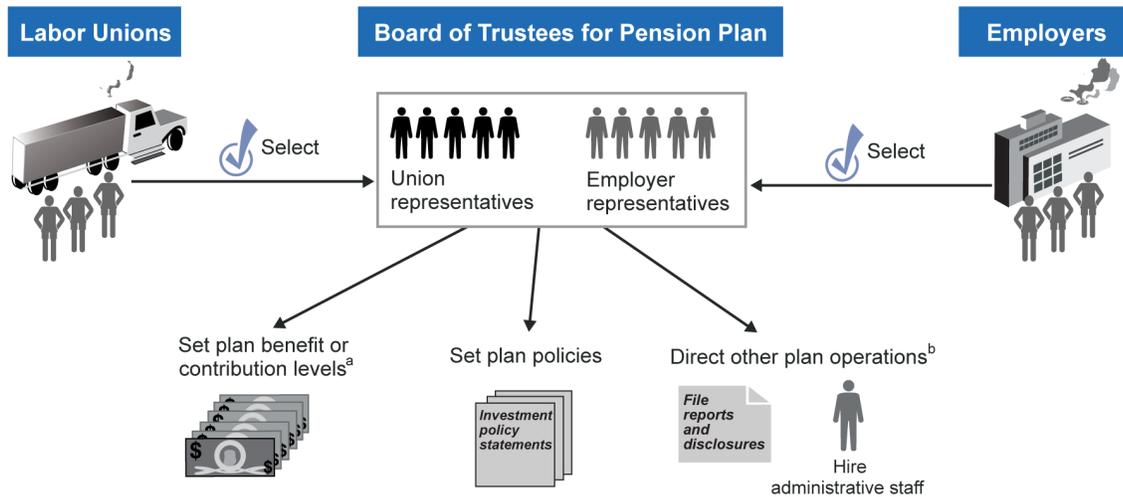
Multiemployer Plan Administration, Funding, and Benefits

Administration

Most multiemployer plans are jointly administered and governed by a board of trustees selected by labor and management. The labor union typically determines how the trustees representing labor are chosen and the contributing employers or an employer association typically determines how the trustees representing management are chosen. The trustees set the overall plan policy, direct plan activities, and set benefit levels (see fig. 1).

⁷In a defined benefit plan, pension benefits are typically set by formula, often based on the number of years worked while covered by the plan, the worker's age at retirement, and sometimes, the worker's average wages or salary level over some period of years prior to retirement. Multiemployer plans also can be defined contribution plans. Defined contribution plans have an individual account for each participant, with the account balance based on employer and employee contributions to the account and investment returns, with the participant bearing the investment risk. PBGC does not insure defined contribution plans. The term "multiemployer plan" will be used throughout this report to refer to defined benefit multiemployer plans.

Figure 1: Typical Multiemployer Defined Benefit Retirement Plan Administration



Source: GAO analysis. | GAO-18-105

^aBenefits are generally determined by the plan’s board of trustees. The bargaining parties negotiate a contribution rate and the trustees adopt or amend the plan’s benefit formulas and provisions. Decisions to increase benefits or change the plan are also typically made by the board of trustees.

^bOther plan operations can include appointing independent investment managers, hiring auditors, and paying Pension Benefit Guaranty Corporation premiums and plan expenses.

Funding

Multiemployer plans are “prefunded,” or funded in advance, primarily by employer contributions.⁸ The employer contribution is generally negotiated through a collective bargaining agreement, and is often based on a dollar amount per hour worked by each employee covered by the agreement.⁹ Employer contributions are pooled in a trust fund for investment purposes, to pay benefits to retirees and their beneficiaries, and for administrative expenses. Multiemployer plan trustees typically decide how the trust fund should be invested to meet the plan’s

⁸In a prefunded plan, contributions go into a trust fund, grow with investment returns, and eventually are paid out as benefits at a later date. Funding a plan in advance of benefit payouts improves the chances that some funds will be available to retirees if contributing employers are no longer able to fund the plan.

⁹Collective bargaining is a process through which the employers and the workers’ union come together to reach an agreement on a labor contract that includes wages, hours, and other terms and conditions of employment.

objectives, but the trustees can use investment managers to determine how the trust fund should be invested.¹⁰

A plan's funded percentage is its ratio of plan assets to plan liabilities.¹¹ Because the amount needed to pay pension benefits for many years into the future cannot be known with certainty due to a variety of economic and demographic factors, including the potential volatility of asset values, estimates of a plan's funded percentage may vary from year to year.¹² Defined benefit pension plans use a "discount rate" to convert projected future benefits into their "present value." The discount rate is the interest rate used to determine the current value of estimated future benefit payments and is an integral part of estimating a plan's liabilities. The higher the discount rate, the lower the plan's estimate of its liability.¹³ Multiemployer plans use an "assumed-return approach" that bases the discount rate on a long-term assumed average rate of return on the

¹⁰While the trustees may delegate certain duties, such as plan management, to other parties, ERISA generally requires trustees, as fiduciaries, to make prudent decisions solely in the interest of plan participants and beneficiaries and diversify the investments of the plan to minimize the risk of large losses, among other things. See 29 U.S.C. §§ 1002(21)(A) (defining "fiduciary"), 1104(a) (establishing a prudent man standard of care for fiduciaries), and 29 C.F.R. § 2509.75-8, D-3 (explaining that a trustee of an employee benefit plan is a fiduciary).

¹¹A pension liability generally includes two portions: (1) the present value of all projected future benefits for current retirees and former employees not yet retired who have a vested right to a future pension, plus (2) the present value of a portion of the projected future benefits for current employees, based on their service to date (with each additional year of service adding to the liability), such that the full cost of benefits is expected to be accrued when employees reach retirement. Liability measurements can vary with the choice of discount rate and actuarial cost method, and with whether they are determined on an ongoing plan basis or a plan close-out basis.

¹²There are many sources of variation in the year-to-year estimates of a plan's funded status. Some change is expected, such as the improvement associated with any employer contributions that exceed the cost of new benefit accruals. However, significant change can be associated with unpredictable events. For example, calculation of the funding target involves many demographic and economic assumptions about the future, such as how long participants will work in covered employment, how long participants will live, and how much income the plan's assets will generate. Due to their long-term nature, small changes to the assumptions can have a significant effect on the target. The funded status may also change from one estimate to the next due to differences between what was assumed to occur and what actually occurred. For example, a plan's asset returns for a single year may vary significantly from what was assumed, particularly when there is significant investment in assets with volatile patterns of returns.

¹³For more information on different approaches used to determine the discount rate see GAO, *Pension Plan Valuation: Views on Using Multiple Measures to Offer a More Complete Financial Picture*, [GAO-14-264](#) (Washington, D.C.: Sept. 30, 2014).

pension plan's assets. Under this approach, the discount rate depends on the allocation of plan assets.¹⁴ For example, a reallocation of plan assets into more stocks and fewer bonds typically increases the discount rate, which reduces the estimated value of plan liabilities, and therefore, reduces the minimum amount of funding required.¹⁵

Looking at the entire “multiemployer system”—the aggregation of multiemployer plans governed by ERISA and insured by PBGC—shows that while the system was significantly underfunded around 2001 and 2009, its funded position has improved since 2009.¹⁶ Specifically, analyses published by the Center for Retirement Research at Boston College and the Society of Actuaries used plan regulatory filings to calculate the funded status for the system and determined that it was approaching 80 percent funded by 2014 after falling during the 2008 market downturn.¹⁷ However, some observers have noted that while many plans are making progress toward their minimum targets, a subset of plans face serious financial difficulties.¹⁸

Benefits

Multiemployer retirement benefits are generally determined by the board of trustees. The bargaining parties negotiate a contribution rate and the trustees adopt or amend the plan's benefit formulas and provisions. Decisions to increase benefits or change the plan are also typically made by the board of trustees. Benefit amounts are generally based on a

¹⁴See [GAO-14-264](#).

¹⁵The potential implications of this approach to determining discount rates are discussed later in this report.

¹⁶The system's funded statuses were generally measured by comparing asset and liability values used to determine minimum contribution requirements under ERISA, specifically, the Actuarial Values of Assets and the Actuarial Accrued Liabilities.

¹⁷In a December 2017 special report, the Center for Retirement Research at Boston College reported that the system's funded status declined to lows of 69 percent and 72 percent in 2001 and 2009 respectively, and has since recovered to 78 percent based on actuarial regulatory filings for 2015. See Alicia H. Munnell, Jean-Pierre Aubry, and Caroline V. Crawford, *Multiemployer Pension Plans: Current Status and Future Trends* (Chestnut Hill, MA: Center for Retirement Research at Boston College, December 2017). The Society of Actuaries reported that the multiemployer system was 60 percent funded in 2009 and 76 percent funded in 2014. See Lisa A. Schilling, *Multiemployer Pension Plan System Overview* (Schaumburg, IL: Society of Actuaries, January 2017).

¹⁸PBGC noted that: “Over 100 of the multiemployer plans that PBGC insures, covering over 1 million participants, have declared that they will be unable to raise contributions sufficiently to avoid insolvency over the next 20 years.” See Pension Benefit Guaranty Corporation, *FY2016 PBGC Projections Report* (Washington, D.C.: 2017).

worker's years of service and either a flat dollar amount or the worker's wage or salary history, subject to further adjustment based on the age of retirement.

**The Central States,
Southeast and Southwest
Areas Pension Fund
(CSPF)**

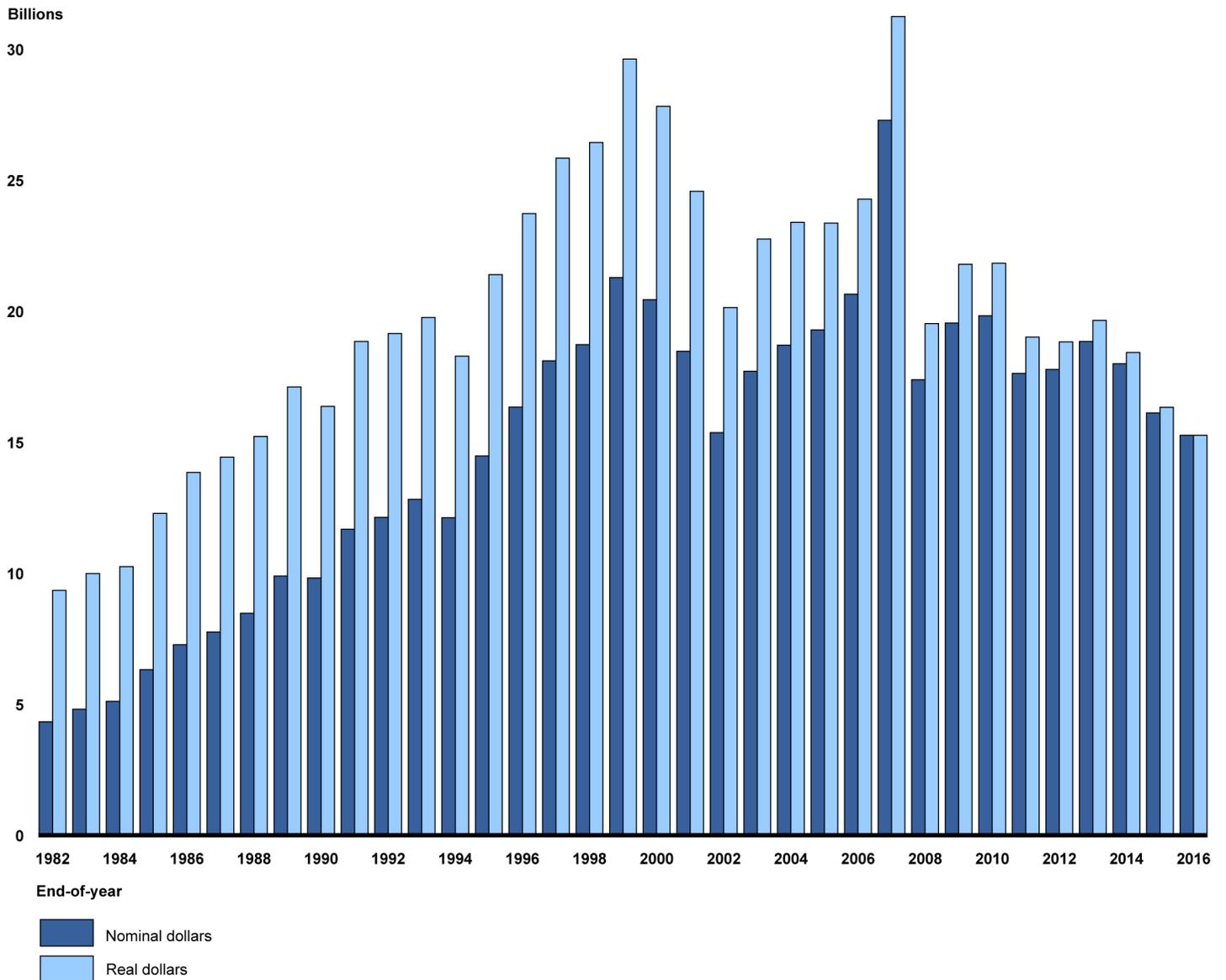
CSPF was established in 1955 to provide pension benefits to International Brotherhood of Teamsters union members (Teamsters) in the trucking industry and it is one of the largest multiemployer plans. In the late 1970s, CSPF was the subject of investigations by the IRS within the U.S. Department of the Treasury (Treasury), and by DOL and the U.S. Department of Justice (DOJ). The DOL investigation ultimately resulted in the establishment of a federal court-enforceable consent decree in 1982 that remains in force today.¹⁹ CSPF held more than \$4.3 billion in Net Assets at the end of 1982 after the consent decree was established. The plan's Net Assets peaked at nearly \$26.8 billion at the end of 2007 and declined to about \$15.3 billion at the end of 2016 (see fig. 2).²⁰ As of 2016, CSPF reported that it had about 1,400 contributing employers and almost 385,000 participants.²¹

¹⁹See a full discussion of the consent decree later in the background, as well as in appendix II.

²⁰These data were reported by CSPF in Schedule H of their annual Form 5500 filings.

²¹The average CSPF monthly benefit amount in 2016 was \$1,340 for pensioners. The average age of a CSPF pensioner in 2016 was 73.9 years.

Figure 2: CSPF Net Assets, 1982–2016



Source: GAO analysis of Central States, Southeast and Southwest Areas Pension Fund (CSPF) documentation. | GAO-18-105

Note: These data were reported by CSPF in Schedule H of their annual Form 5500 filings. Nominal dollars are also called current or then-year values, and have not been adjusted for inflation. Real dollars have been adjusted to 2016 for inflation using a calendar year chain-weighted gross domestic product price index.

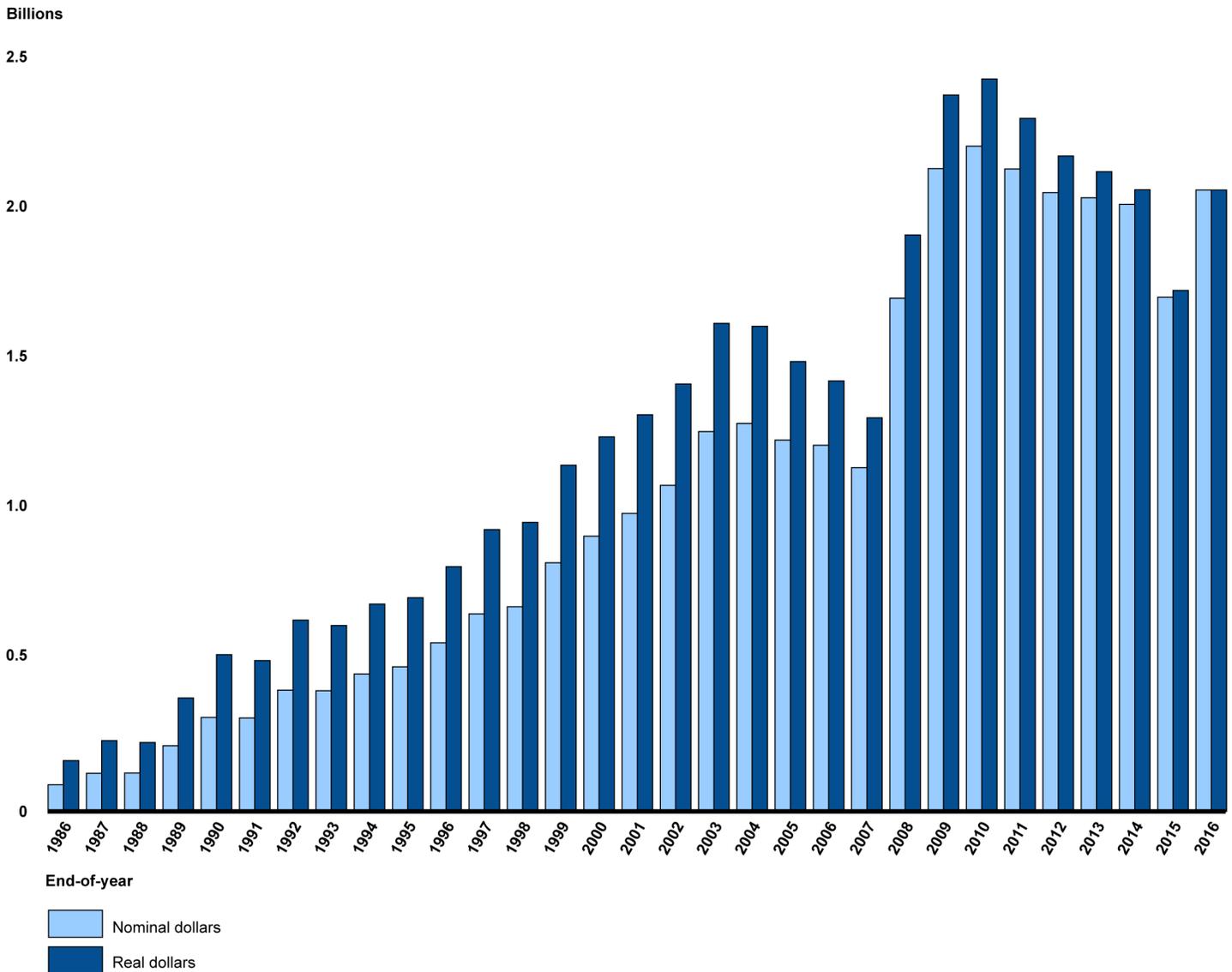
The number of active CSPF participants has declined over time. In 2016, 16 percent of about 385,000 participants were active, i.e., still working in

covered employment that resulted in employer contributions to the plan. In comparison, CSPF reported in 1982 that 69 percent of more than 466,000 participants were active participants. Since the 1980s, CSPF's ratio of active to nonworking participants has declined more dramatically than the average for multiemployer plans.²² By 2015, only three of the plan's 50 largest employers from 1980 still paid into the plan, and for each full-time active employee there were over five nonworking participants, mainly retirees.²³ As a result, benefit payments to CSPF retirees have exceeded employer contributions in every year since 1984. Thus, CSPF has generally drawn down its investment assets. In 2016, CSPF withdrew over \$2 billion from investment assets (see fig. 3.).

²²Nonworking participants include retired participants currently receiving benefits, separated vested participants (former employees who worked long enough to earn vested benefits but who left covered employment and have not yet commenced receiving their retirement benefits), as well as beneficiaries of deceased employees or former employees either currently receiving benefits or entitled to receive benefits in the future.

²³At the beginning of 2016, 61.6 percent of nonworking participants were receiving benefits.

Figure 3: Investment Assets Withdrawn by CSPF, 1986–2016



Source: GAO analysis of Central States, Southeast and Southwest Areas Pension Fund (CSPF) documentation. | GAO-18-105

Note: Nominal dollars are also called current or then-year values, and have not been adjusted for inflation. Real dollars have been adjusted to 2016 for inflation using a calendar year chain-weighted gross domestic product price index.

CSPF has historically had fewer plan assets than were needed to fully fund the accrued liability—the difference referred to as unfunded liability. In 1982, we reported that CSPF was “thinly funded”—as the January 1,

1980, actuarial valuation report showed the plan’s unfunded liability was about \$6 billion—and suggested that IRS should closely monitor CSPF’s financial status.²⁴ In 2015, the plan’s actuary certified that the plan was in “critical and declining” status. The plan has been operating under an ERISA-required rehabilitation plan since March 25, 2008, which is expected to last indefinitely.²⁵ As of January 1, 2017, the plan was funded to about 38 percent of its accrued liability.²⁶ In September 2015, CSPF filed an application with Treasury seeking approval to reduce benefits pursuant to provisions in the Multiemployer Pension Reform Act of 2014 (MPRA), which is fully discussed later in this section. The application was denied in May 2016 based, in part, on Treasury’s determination that the plan’s proposed benefit suspensions were not reasonably estimated to allow the plan to remain solvent.²⁷ In 2017, CSPF announced it would no longer be able to avoid the projected insolvency.²⁸ (See app. I for a timeline of key events affecting CSPF.)

²⁴See GAO, *Investigation to Reform Teamsters’ Central States Pension Fund Found Inadequate*, HRD-82-13 (Washington, D.C.: Apr. 28, 1982).

²⁵The Pension Protection Act of 2006 (PPA) amended ERISA to require plans certified to be in endangered status to adopt a funding improvement plan and plans certified to be in critical status to adopt a rehabilitation plan within 240 days of the required date of certification. These plans must consist of actions that will enable the plan to achieve certain targets in improved funding, generally over a 10-year period, i.e., increase contribution rates and/or decrease future benefit accruals or other benefits to the extent necessary to achieve the required improvement in the plan’s funding. These plans are generally adopted as part of the collective bargaining process.

²⁶This funded percentage is calculated by dividing the plan’s Actuarial Value of Assets by its Actuarial Accrued Liability as reported in the plan’s Form 5500. The Actuarial Value of Assets and Actuarial Accrued Liability are used to determine the plan’s minimum required contributions under ERISA.

²⁷In May 2016, Treasury rejected CSPF’s application to reduce benefits finding it failed to satisfy the certain MPRA requirements, including that the: (1) proposed benefit suspensions, in the aggregate, be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency, (2) proposed benefit suspensions be equitably distributed across the participant and beneficiary population, and (3) notices of proposed benefit suspensions be written so as to be understood by the average plan participant. CSPF officials said it was no longer possible to submit a renewed MPRA application because, in large part due to the passage of time, benefit suspensions under MPRA will not help the plan avoid insolvency.

²⁸As of March 2018, CSPF’s actuaries projected that the fund will be insolvent on January 1, 2025—having insufficient assets to pay benefits for that year. Beginning January 1, 2025, the plan expects to pay a reduced benefit level throughout the year. Beginning January 1, 2026, the plan expects to receive PBGC financial assistance and benefits would be reduced to the PBGC maximum benefit guarantee.

The Consent Decree

As previously mentioned, CSPF was the subject of investigations in the 1970s by IRS, DOL, and DOJ.²⁹ DOL's investigation focused on numerous loan and investment practices alleged to constitute fiduciary breaches under ERISA, such as loans made to companies on the verge of bankruptcy, additional loans made to borrowers who had histories of delinquency, loans to borrowers to pay interest on outstanding loans that the fund recorded as interest income, and lack of controls over rental income. As a result of its investigation, DOL filed suit against the former trustees of CSPF and, in September 1982, the parties entered into a consent decree, which remains in force today.³⁰ The consent decree provides measures intended to ensure that the plan complies with the requirements of ERISA, including providing for oversight by the court and DOL, and prescribes roles for multiple parties in its administration. For example, certain plan activities must be submitted to DOL for comment and to the court for approval, including new trustee approvals and some investment manager appointments.³¹ According to DOL, to prevent criminal influence from regaining a foothold of control over plan assets, the consent decree generally requires court-approved independent asset managers—called “named fiduciaries”—to manage CSPF's investments. CSPF's trustees are generally prohibited from managing assets; however, they remain responsible for selecting, subject to court approval, and overseeing named fiduciaries and monitoring plan performance. To focus attention on compliance with ERISA fiduciary responsibility provisions, the

²⁹In 1968 and 1975, IRS and DOL, respectively, began investigating alleged misconduct by CSPF trustees. DOL filed suit after mismanagement and breaches of fiduciary responsibilities were alleged to have caused large losses due to improper loans and investments related to CSPF's real estate assets and other businesses. DOL found apparent significant fiduciary violations and imprudent practices by the trustees with respect to many of the 82 CSPF real estate mortgage and collateral loans that were targeted for investigation. These loans totaled about \$518 million and more than half of them were made to owners or entities that controlled hotels and casinos in Las Vegas, Nevada. DOJ's investigation focused on criminal activities including possible links to organized crime. DOL and DOJ coordinated their investigations.

³⁰For a more complete discussion of the investigations and the implementation of the consent decree, see GAO, [HRD-82-13](#), and GAO, *The Department of Labor's Oversight of the Management of the Teamsters' Central States Pension and Health and Welfare Funds*, [GAO/HRD-85-73](#) (Washington, D.C.: July 18, 1985).

³¹While DOL may request information and comment on or object to certain proposed plan changes, it is not required to do so. The court is the final decision maker with regard to any covered action the plan proposes to take. For investment policy changes, DOL receives notice of proposed changes from the plan and any changes shall not remain in effect for more than 90 days without court approval.

consent decree provides for a court-appointed independent special counsel with authority to observe plan activities and oversee and report on the plan. (See app. II for additional detail on the key provisions of the consent decree.)

Legal Framework

Employee Retirement Income Security Act of 1974

In 1974, Congress passed ERISA to protect the interests of participants and beneficiaries of private sector employee benefit plans.³² Among other things, ERISA requires plans to meet certain requirements and minimum standards. DOL, IRS, and PBGC are generally responsible for administering ERISA and related regulations.

Department of Labor

DOL has primary responsibility for administering and enforcing the fiduciary responsibility provisions under Part 4 of Title I of ERISA, which include the requirement that plan fiduciaries act prudently and in the sole interest of participants and beneficiaries.³³

Internal Revenue Service

Treasury, specifically the IRS, is charged with determining whether a private sector pension plan qualifies for preferential tax treatment under the Internal Revenue Code.³⁴ Additionally, the IRS is generally responsible for enforcing ERISA's minimum funding requirements, among

³²See Pub. L. No. 93-406, 88 Stat. 829. Unless otherwise clear from context, when we refer to ERISA, we are referring to the law as amended by subsequent legislation.

³³Additionally, DOL has primary responsibility for administering the reporting and disclosure provisions under Part 1 of Title I of ERISA. The Employee Benefits Security Administration (EBSA) is the agency within DOL responsible for overseeing employee benefit plans. EBSA's mission is to ensure the security of the retirement, health, and other workplace-related benefits of workers and their families. EBSA seeks to accomplish this mission by developing regulations; assisting and educating workers, plan sponsors, fiduciaries, and service providers; and enforcing the law. For ease of reference, we refer to DOL in this report, although most activities are carried out by EBSA or by DOL's Office of the Solicitor.

³⁴To qualify for the preferential tax treatment accorded to qualified plans under the Internal Revenue Code, multiemployer plans must comply with rules established in ERISA, including rules pertaining to eligibility, vesting, benefit accrual, coverage and participation, integration with Social Security benefits, and plan termination, in addition to other Internal Revenue Code requirements. See 26 U.S.C. §§401(a) and 501(a).

other things. ERISA generally requires that multiemployer plans meet minimum funding standards, which specify a funding target that must be met over a specified period of time.³⁵ The funding target for such plans is measured based on assumptions as to future investment returns, rates of mortality, retirement ages, and other economic and demographic assumptions. Under the standards, a plan must collect a minimum level of contributions each year to show progress toward meeting its target, or the plan employers may be assessed excise taxes and owe the plan for missed contributions plus interest. Minimum contribution levels may vary from year to year due to a variety of economic and demographic factors, such as addressing differences between assumed investment returns and the plan's actual investment returns.³⁶

Pension Benefit Guaranty Corporation

To protect retirees' pension benefits in the event that plan sponsors are unable to pay plan benefits, PBGC was created by ERISA. PBGC is financed through mandatory insurance premiums paid by plans and plan sponsors, with premium rates set by law. PBGC operates two distinct insurance programs: one for multiemployer plans and another for single-employer plans.³⁷ Each program has separate insurance funds and different benefit guarantee rules.

The events that trigger PBGC intervention differ between multiemployer and single-employer plans. For multiemployer plans, the triggering event is plan insolvency, the point at which a plan begins to run out of money while not having sufficient assets to pay the full benefits that were originally promised when due. PBGC does not take over operations of an insolvent multiemployer plan; rather, it provides loan assistance to pay

³⁵See 26 U.S.C. §§ 412 and 431.

³⁶ERISA requires an aggregate minimum contribution for the plan, but individual employer contributions are determined by the collective bargaining agreement with the union, which may or may not include provisions for an annual adjustment, e.g., the minimum contribution level required by ERISA and contributions agreed to in collective bargaining may not be equal.

³⁷A single-employer plan is a plan that is established and maintained by a single employer. Single-employer plans can be established unilaterally by the sponsor or through a collective bargaining agreement with a labor union.

administrative expenses and benefits up to the PBGC-guaranteed level.³⁸ According to PBGC, only once in its history has a financial assistance loan from the multiemployer pension insurance program been repaid. In 2017, PBGC provided financial assistance to 72 insolvent multiemployer plans for an aggregate amount of \$141 million. For single-employer plans the triggering event is termination of an underfunded plan—generally, when the employer goes out of business or enters bankruptcy. When this happens, PBGC takes over the plan’s assets, administration, and payment of plan benefits (up to the statutory limit).

The PBGC-guaranteed benefit amounts for multiemployer plans and the premiums assessed by PBGC to cover those benefit guarantees are significantly lower than those for single-employer plans. Each insured multiemployer plan pays flat-rate insurance premiums to PBGC based on the number of participants covered.³⁹ The annual premium rate for plan years beginning in January 2017 was \$28 per participant and it is adjusted annually based on the national average wage index.⁴⁰ (See app. I for the PBGC premium rates that have been in effect since the consent decree was established in 1982.) When plans receive financial assistance, participants face a reduction in benefits. For example, using 2013 data, PBGC estimated 21 percent of more than 59,000 selected participants in insolvent multiemployer plans then receiving financial assistance from PBGC faced a benefit reduction. The proportion of participants facing reductions due to the statutory guarantee limits is expected to increase. About 51 percent of almost 20,000 selected

³⁸The PBGC maximum benefit guarantee for participants in a multiemployer plan is based on a formula prescribed by federal law. For plans that become insolvent after December 21, 2000, the maximum monthly amount is the product of a participant’s years of service multiplied by (1) 100 percent of the first \$11 of the monthly benefit accrual rate, and (2) 75 percent of the next \$33 of the accrual rate. For someone with 30 years of service, the guaranteed annual benefit limit is \$12,870.

³⁹Covered participants include active employees, former employees who worked long enough to earn vested benefits but who left covered employment without receiving a retirement benefit immediately, and retirees.

⁴⁰The national average wage index is determined by the Social Security Administration to index earnings used to compute benefits and index program amounts that are significant to Old-Age, Survivors, and Disability Insurance. The index is updated annually based on wages subject to federal income taxes and contributions to deferred compensation plans. PBGC uses the national average wage index to compute flat-rate premiums for PBGC-insured single-employer and multiemployer plans, as required by the Deficit Reduction Act of 2005.

participants in plans that PBGC believed would require future assistance were projected to face a benefit reduction.⁴¹

Since 2013, the deficit in PBGC's multiemployer program has increased by nearly 700 percent, from a deficit of \$8.3 billion at the end of fiscal year 2013 to \$65.1 billion at the end of fiscal year 2017. PBGC estimated that at the end of 2016, the present value of net new claims by multiemployer plans over the next 10 years would be about \$24 billion, or approximately 20 percent higher than its 2015 projections.⁴² The program is projected to become insolvent within approximately 8 years. If that happens, participants who rely on PBGC guarantees will receive only a very small fraction of current statutory guarantees. According to PBGC, most participants would receive less than \$2,000 a year and in many cases, much less.

We have identified PBGC's insurance programs as high-risk. This designation was made in part because multiemployer plans that are currently insolvent, or likely to become insolvent in the near future, represent a significant financial threat to the agency's insurance program. We designated the single employer program as high-risk in July 2003,

⁴¹PBGC identified almost 152,000 participants among 109 plans that were receiving financial assistance or had terminated and were likely to receive assistance in the future. PBGC selected the smaller representative sample of about 79,000 participants (59,000 plus 20,000) for whom it had sufficient data to determine how guarantee limits affect a participant's retirement benefit. Pension Benefit Guaranty Corporation, *PBGC's Multiemployer Guarantee* (Washington, D.C.: March 2015).

⁴²Projected new claims arise primarily, but not solely, from plans that are currently in poor financial condition. Uncertainty as to the probability and timing of future financial assistance reflects both the volatility of plan investment returns and the timing of potential mass withdrawal from the plan by contributing employers. Variability in fund earnings, contributions, and benefit accruals makes the date of insolvency and the amount of financial assistance uncertain. To account for this uncertainty, PBGC runs many projections of the present value of net new claims over the next 10 years, which averaged \$24 billion in their 2016 report and varied from \$10 billion to \$38 billion at the 15th through 85th percentiles, respectively.

Key Amendments to ERISA
Affecting Multiemployer Plans

and added the multiemployer program in January 2009. Both insurance programs remain on our high-risk list.⁴³

Multiemployer Pension Plan Amendments Act of 1980

Among other things, the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) made employers liable for a share of unfunded plan benefits when they withdraw from a plan, unless otherwise relieved of their liability, and strengthened certain funding requirements.⁴⁴ An employer that chooses to withdraw from a multiemployer plan may be required to continue to contribute if the plan does not have sufficient assets to cover the plan's current and known future liabilities at the time the employer withdraws; however, these payments may not fully cover the withdrawing employer's portion of the plan's liabilities.⁴⁵ In such cases, the employers remaining in the plan may effectively assume the remaining liability.

The Pension Protection Act of 2006

The Pension Protection Act of 2006 (PPA) was intended to improve the funding of seriously underfunded multiemployer plans, among other things.⁴⁶ It included provisions that require plans in poor financial health to take action to improve their financial condition over the long term and established two categories of troubled plans: (1) "endangered status" or "yellow zone" plans (this category also includes a sub-category of "seriously endangered"), and (2) more seriously troubled "critical status" or "red zone" plans.⁴⁷ PPA further required plans in the endangered and

⁴³See GAO, *High-Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, [GAO-17-317](#) (Washington, D.C.: Feb. 15, 2017). GAO's high-risk program focuses attention on government operations with greater vulnerabilities to fraud, waste, abuse, and mismanagement or in need of transformation to address economy, efficiency, or effectiveness challenges. The report notes that although significant and positive steps have been taken by Congress and PBGC to strengthen the agency over the past 3 years, concerns related to the multiemployer program and challenges related to PBGC's funding structure and governance persist. The report states that PBGC's financial future remains uncertain.

⁴⁴See Pub. L. No. 96-364, §§ 104 and 304, 94 Stat. 1208, 1217, and 1293-94.

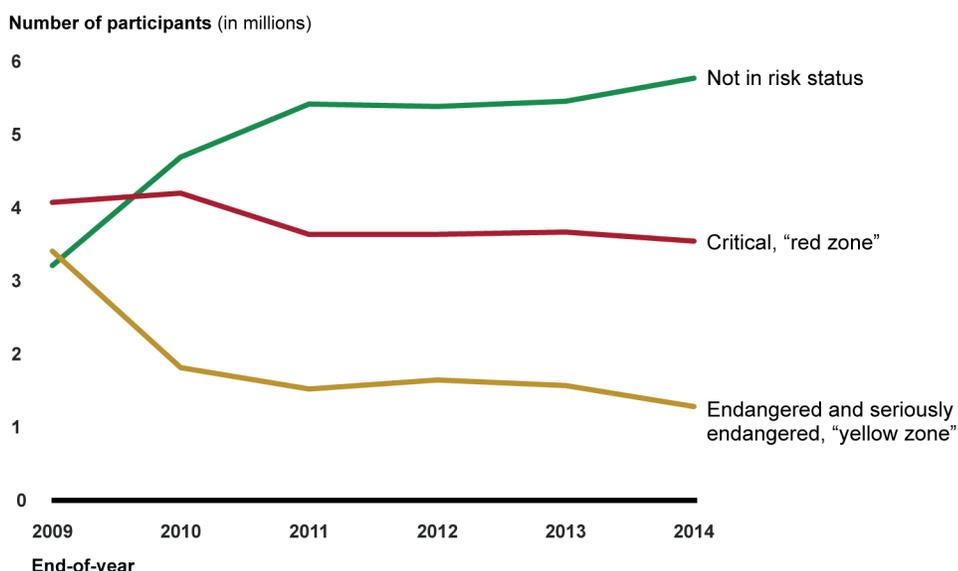
⁴⁵Withdrawal liability payments are intended to prevent employers from abandoning a plan without paying a share of the unfunded liability and to help protect participants and employers who continue to participate in the plan. See 29 U.S.C. §§ 1382 and 1391.

⁴⁶See Pub. L. No. 109-280, 120 Stat. 780.

⁴⁷See 26 U.S.C. § 432(a).

critical zones to develop written plans to improve their financial condition, such as by revising benefit structures, increasing contributions, or both, within a prescribed time frame.⁴⁸ Multiemployer plans in yellow or red zone status must document their remediation strategies in a written plan, notify plan participants, and report annually on whether scheduled progress has been made.⁴⁹ Since the 2008 market decline, the number of participants in endangered and critical plans has generally been decreasing (see fig. 4).

Figure 4: Multiemployer Retirement Plan Participants by Zone Status, 2009–2014



Source: GAO analysis of Pension Benefit Guaranty Corporation (PBGC) data. | GAO-18-105

Note: PBGC's most recently published data analyze Form 5500 filings through 2014 and cover more than 1,400 plans and 10 million participants. A prominent actuarial consulting firm for multiemployer plans reported more recent summary information for over 375 plans covering 3.8 million participants with combined assets of nearly \$185 billion as of spring 2016. Among all client plans with zone certification filing deadlines between April 1, 2015 and March 31, 2016, 64 percent were not in risk status, 11 percent were endangered, and 25 percent were in critical status. The firm reported its

⁴⁸While ERISA generally prohibits reductions in accrued vested benefits (see 26 U.S.C. § 411(b)), after PPA, plans in critical status were allowed to reduce or eliminate early retirement subsidies and other "adjustable benefits" to help improve their funded status. PPA also amended ERISA to provide relief to employers with plans in critical status from liability for minimum required contributions and excise taxes, if the employer has adopted a rehabilitation plan and is in compliance with that plan.

⁴⁹Plan trustees can offer bargaining parties multiple schedules of remediation actions from which to choose, but one must be designated as the "default schedule," which is to be imposed if the parties do not select a schedule within a specified time frame.

review of previous results for its clients and Form 5500 reports for all multiemployer plans indicated its clients' zone status are representative of the universe as a whole.

The Multiemployer Pension Reform Act of 2014

In response to the funding crisis facing PBGC and multiemployer pension plans, the Multiemployer Pension Reform Act of 2014 (MPRA) made changes to the multiemployer system that were intended to improve its financial condition.⁵⁰ Key changes included:

- **Creation of critical and declining status.** MPRA created a new category, “critical and declining,” for plans in critical status projected to become insolvent during the current plan year or within any of the 14 succeeding plan years, or in certain circumstances, within any of the 19 succeeding plan years.⁵¹ In 2017, PBGC reported that more than 100 multiemployer plans (more than 7 percent of plans) representing approximately 1 million participants (about 10 percent of participants) have been determined to be “critical and declining.”⁵²
- **Permitted reduction of accrued benefits.** MPRA permits plans to reduce participants’ and beneficiaries’ accrued retirement benefits if the plan can demonstrate such action is necessary to remain solvent. Plans apply to Treasury for the authority to reduce benefits. Treasury, in consultation with PBGC and DOL, reviews the applications and determines whether the proposed changes would enable the plan to remain solvent.⁵³

⁵⁰See Pub. L. No. 113-235, div. O, 128 Stat. 2130, 2773-822.

⁵¹See § 201(a)(2), (b)(2), 128 Stat. at 2798, 2810 (codified at 29 U.S.C. § 1085(b) and 26 U.S.C. § 432(b)). Specifically, the plan actuary must certify to Treasury and the plan sponsor that the plan is in critical status for the plan year. Under ERISA, if a multiemployer pension plan is determined to be in critical status (a plan in critical and declining status is considered to be a plan in critical status) or endangered status, the plan sponsor must provide notice of this status to participants, beneficiaries, the bargaining parties, PBGC, and DOL. If a plan is critical and declining, the plan sponsor may file an application with the Secretary of the Treasury requesting a temporary or permanent reduction of benefits to keep the plan from becoming insolvent. Pension plans in critical and endangered status are required to adopt a plan aimed at restoring the financial health of the pension plan.

⁵²PBGC, *FY2016 PBGC Projections Report*.

⁵³If Treasury approves a plan’s application, the proposed benefit reductions are subject to a vote by all plan participants. If a majority of participants vote to reject the proposed reductions and Treasury determines that the plan is a “systemically important” plan (one for which PBGC projects the present value of financial assistance payments to the plan will exceed \$1 billion (indexed to inflation) if the reductions are not implemented), the Secretary of the Treasury shall permit reductions to occur.

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- **Increased PBGC premiums.** MPRA also increased the PBGC premiums for multiemployer plans from \$12 to \$26 (per participant per plan year) in 2015 and from \$26 to \$28 in plan year 2017. The annual premium in subsequent years is indexed to changes in the national average wage index.
 - **Creation of new framework of rules for partition.** Partition allows a multiemployer plan to split into two plans—the original and a successor. Partitions are intended to relieve stress on the original plan by transferring the benefits of some participants to a successor plan funded by PBGC and to help retain participant benefits in the plans at levels higher than the PBGC-guaranteed levels.

CSPF's Critical Financial Condition Is a Result of Factors That Reflect Challenges Experienced by the Multiemployer System

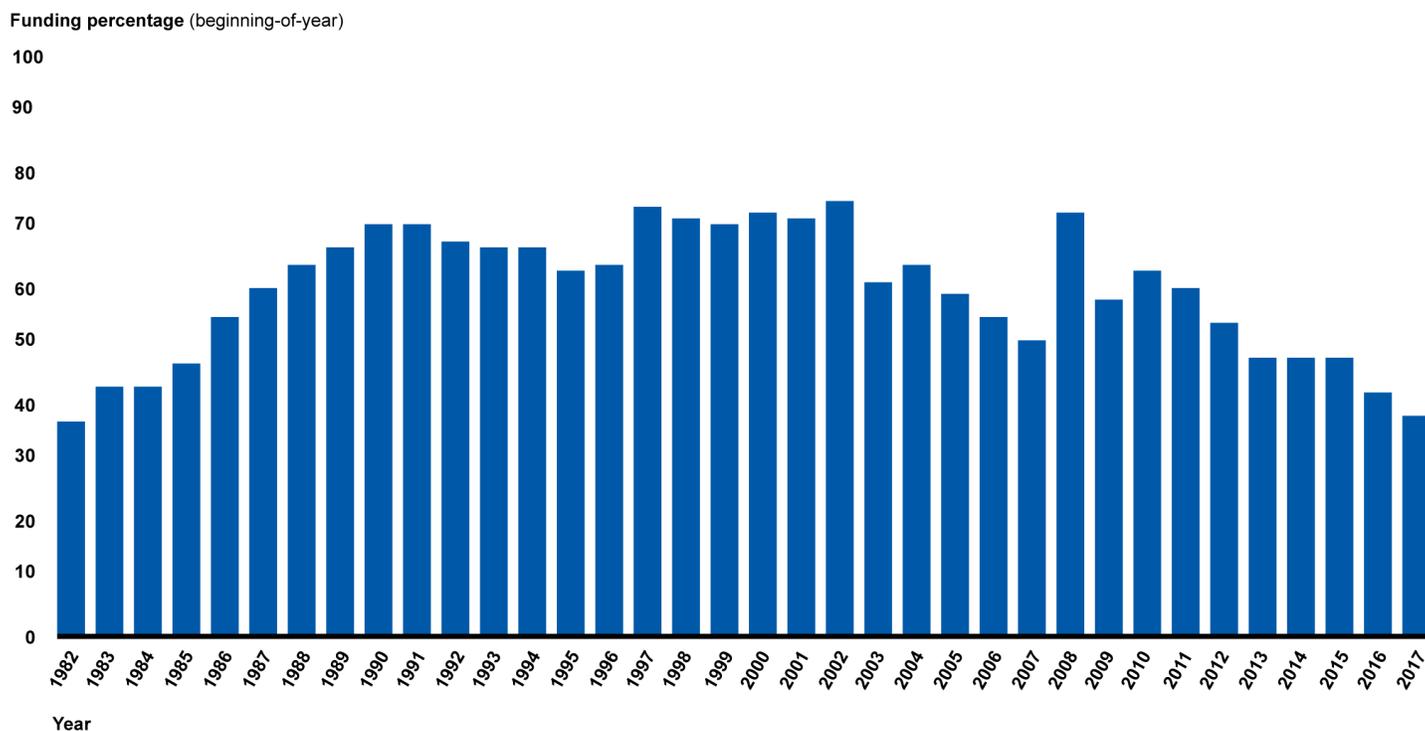
CSPF Has Been Underfunded Since the Consent Decree Was Established

At the time the consent decree was established in 1982, CSPF had less than half the estimated funds needed to cover plan liabilities (and to pay associated benefits over the lifetime of participants) and it has not attained 100 percent of its estimated funding need since then, according to regulatory filings. CSPF's 1982 Form 5500 we reviewed shows that the plan was less than 40 percent funded prior to the consent decree becoming effective. Over the next two decades, the plan generally made progress toward achieving its targeted level of funding but was never more than 75 percent funded, and funding has generally deteriorated since its 2002 filing (see fig. 5).⁵⁴ Overall, the plan's unfunded liability increased by approximately \$11.2 billion (in inflation-adjusted dollars)

⁵⁴The historical funded percentages for each year were calculated as the plan's Actuarial Value of Assets divided by its Actuarial Accrued Liability as of the beginning of the year. The Actuarial Value of Assets and Actuarial Accrued Liability were the basic measures of plan assets and liabilities used to determine the required minimum level of funding during those years.

between January 1983 and January 2016.⁵⁵ As a consequence, participant benefits were never fully secured by plan assets over this period, as measured by ERISA’s minimum funding standards, and the plan consistently needed to collect contributions in excess of those needed to fund new benefit accruals to try to make up for its underfunded status.

Figure 5: CSPF Funded Percentage 1982-2017



Source: GAO analysis of Central States, Southeast and Southwest Areas Pension Fund (CSPF) data. | GAO-18-105

Note: The funded percentage consists of the plan’s Actuarial Value of Assets divided by its Actuarial Accrued Liability as of the beginning of a plan’s fiscal year, the basic measures of plan assets and liabilities used to determine the required minimum contribution under ERISA for multiemployer pension plans. CSPF noted that the plan’s funded percentage, per actuarial valuations, was 3 percentage points higher (or 46 percent) in 1984 and 2 percentage points higher (or 49 percent) in 1985 than we derived from the plan’s originally reported Form 5500 Schedule B. Our analysis derived the funding values from the Form 5500 Schedule B (prior to 2008) and Schedule MB (2008 and later)

⁵⁵CSPF reported a \$9.8 billion Actuarial Accrued Liability and a \$4.2 billion Actuarial Value of Assets as of January 1, 1983, or \$5.6 billion in underfunding by these measures (\$11.4 billion when adjusted to January, 2016 for inflation). CSPF also reported a \$39.0 billion Actuarial Accrued Liability and a \$16.4 billion Actuarial Value of Assets, or \$22.6 billion in underfunding, as of January 1, 2016.

submissions. CSPF provided the plan's funded percentage for January 1, 2017, even though its 2017 Form 5500 was not yet publicly available.

Stakeholders Described Multiple Factors That Contributed to CSPF's Critical Financial Condition, Many of Which Have Been Experienced by Other Multiemployer Plans

CSPF officials and other stakeholders identified several factors that contributed to CSPF's critical financial condition and reflect the challenges faced by many multiemployer plans. For example, like CSPF, many multiemployer plans have experienced financial difficulties due to a combination of investment losses and insufficient employer contributions. In addition to being underfunded prior to the consent decree going into effect, stakeholders identified other specific factors that contributed to CSPF's critical financial condition, such as trends within the national trucking industry and its workforce, funding challenges and common investment practices of multiemployer plans, and the impact of market downturns on long-term investment performance. Stakeholders also described the effects of the 2007 withdrawal of a key employer, United Parcel Service (UPS), on CSPF's critical financial condition.

Key Industry Specific Workforce Trends

Stakeholders we interviewed said changes to the workforce, such as declining union membership rates and changes resulting from industry deregulation, affected CSPF and some other multiemployer plans by reducing the number of workers able to participate in their plans.⁵⁶ While the multiemployer structure distributes bankruptcy risk across many employers, for any particular multiemployer plan employers are often concentrated in the same industry, making the plans vulnerable to industry-specific trends and risks. For example, stakeholders noted the impact that the Motor Carrier Act of 1980 had on the trucking industry. Specifically, deregulation of the trucking industry reduced government oversight and regulation over interstate trucking shipping rates. The trucking industry became increasingly dominated by nonunion trucking companies resulting in the bankruptcy of many unionized trucking companies, according to stakeholders. New trucking companies typically did not join multiemployer plans because their labor force was not unionized and this, coupled with the bankruptcy of many contributing employers, contributed to a decrease in active participant populations for many plans serving the industry. As the total number of active participants in a plan declines, the resources from which to collect employer

⁵⁶Union membership has declined generally across the labor force. According to data from the Bureau of Labor Statistics (BLS), union membership accounted for 6.5 percent of the U.S. private-sector labor force in 2017. In contrast, in 1990, union membership accounted for about 12 percent, and in 1980, about 19 percent.

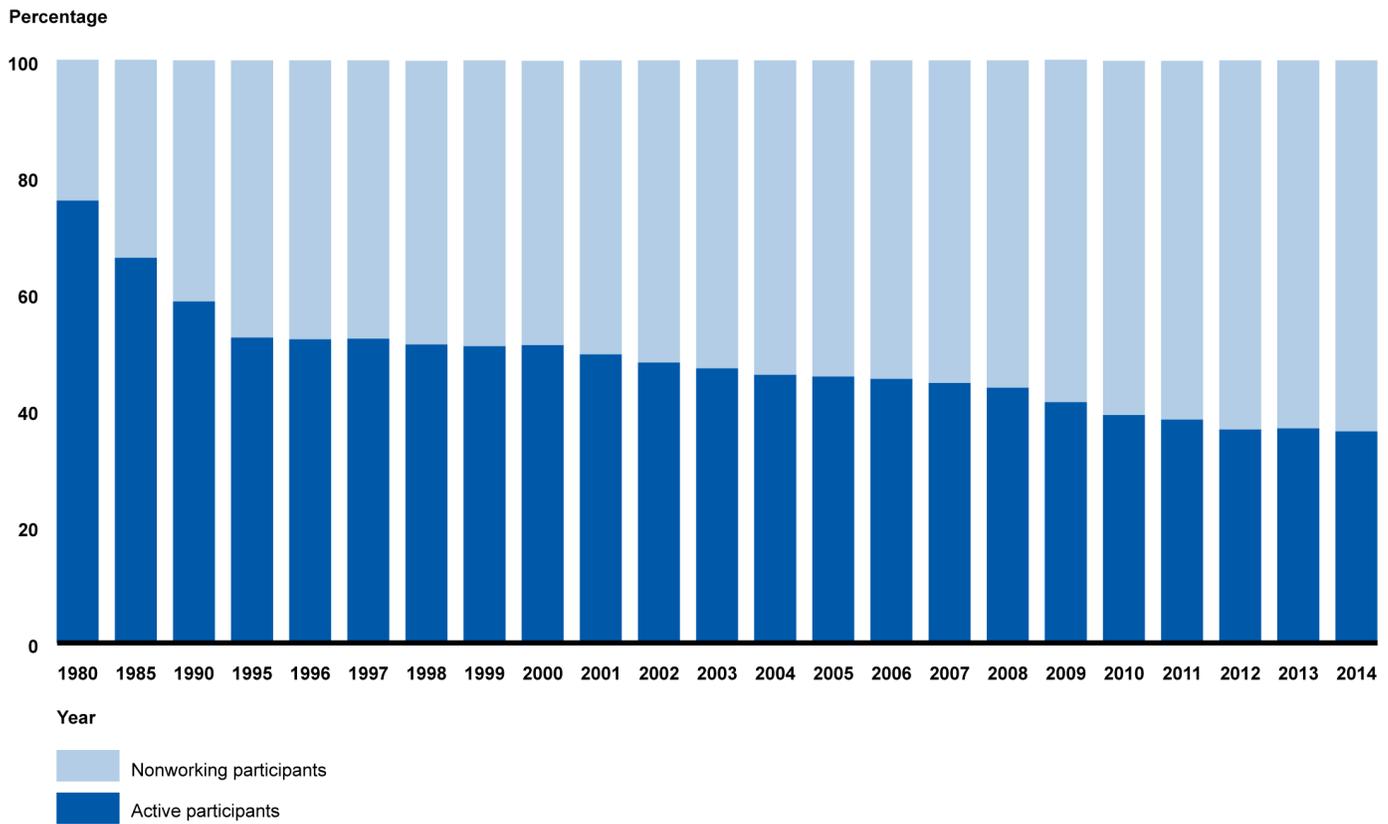
contributions declines proportionally.⁵⁷ Stakeholders also said these changes were unforeseeable. Limitations on a plan's ability to increase contributions mean that a plan has less capacity to recover from an underfunded position or to make up for investment returns that fall short of expectations.

A decline in the number of active workers can also accelerate plan "maturity," as measured by the ratio of nonworking to working participants.⁵⁸ Plan maturity has implications for a plan's investment practices and the time frame over which the plan must be funded. According to PBGC's data for the multiemployer plans it insures, there were approximately three active participants for every nonworking participant in 1980 (3:1); by 2014, the ratio was approximately one active worker for every two nonworking participants (1:2). Figure 6 shows the change in the percentages of active and nonworking participants for the multiemployer plans that PBGC insures.

⁵⁷A decline in the number of active participants results in a decline in employer contributions unless the amount of contributions per active worker can be increased enough to offset the impact of the decline in the number of active participants. As noted later in this section, in the case of CSPF, plan officials told us that they could not significantly increase the contribution rate because of the financial hardship it would cause for employers remaining in the plan. For more information, see Center for Retirement Research at Boston College, *The Financial Status of Private Sector Multiemployer Pension Plans*, September 2014.

⁵⁸Mature plans have relatively few active, working participants, which is why they have limited ability to draw higher contributions. Nonworking participants include both retired participants receiving benefits and separated vested participants not yet receiving benefits. For the ratios and percentages cited in this report, working participants will be referred to as "active" participants and retired and separated participants will be referred to as "nonworking" participants. Plan maturity is a general concept that can be measured in various specific ways for purposes of comparing plan maturity over time or plan maturity across plans. Other ways of measuring maturity include the ratio of active participants to participants in pay status, and the ratio of retiree liability to total plan liability; we use this latter metric when we look at investment returns across plans in *Central States Pension Fund: Investment Policy Decisions and Challenges Facing the Plan*. [GAO-18-106](#). Washington, D.C.: June 2018.

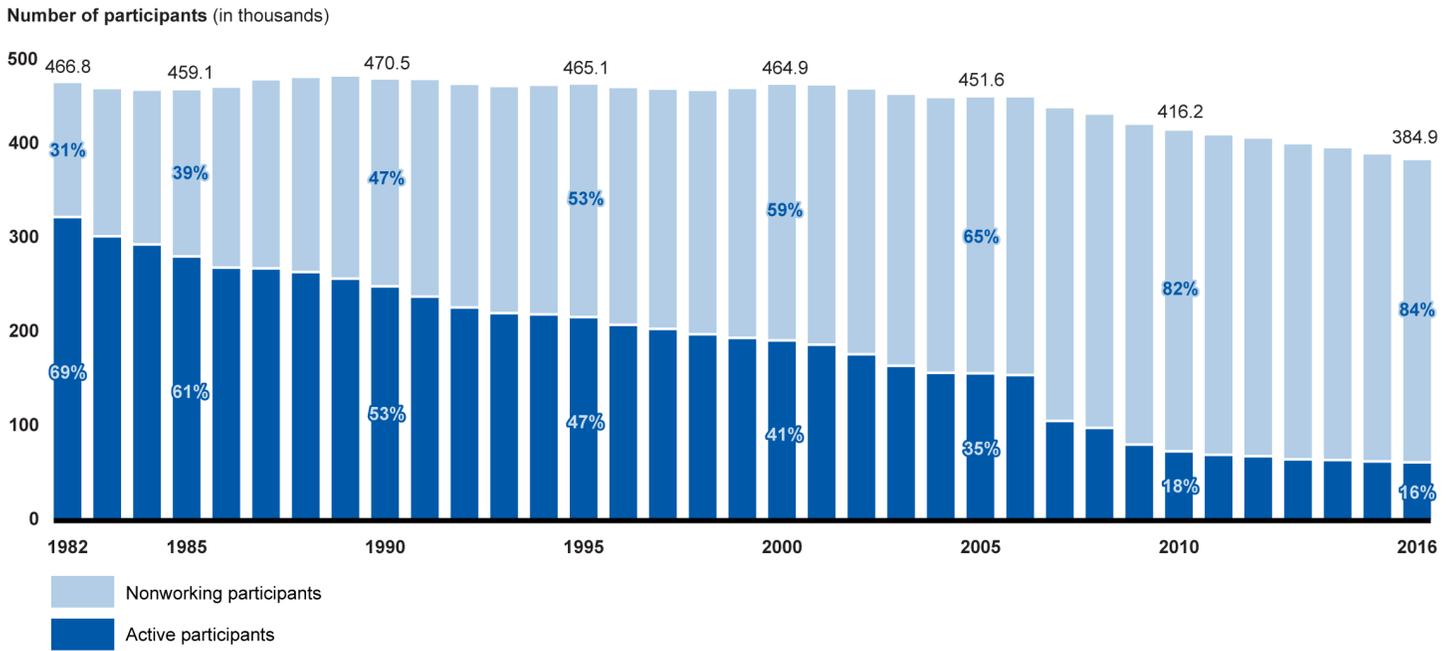
Figure 6: Percent of Active and Nonworking Participants in PBGC-Insured Multiemployer Plans, 1980-2014



Source: GAO analysis of Pension Benefit Guaranty Corporation (PBGC) data. | GAO-18-105

CSPF saw an even more dramatic change in its active to nonworking participant ratio from 1982 through 2015. In 1982, there were more than two active workers for every nonworking participant (2:1) and by 2016 that ratio had fallen to approximately one active worker for every five nonworking participants (1:5) (see fig. 7). Because CSPF’s contributing employers were largely trucking companies, stakeholders said this made the fund especially vulnerable to industry-wide shocks. Like the industry as a whole, CSPF was unable to attract new employers to replace exiting employers, in part because of the lack of new unionized employers.

Figure 7: CSPF Percent of Active and Nonworking Participants, 1982-2016



Source: GAO analysis of Central States, Southeast and Southwest Areas Pension Fund (CSPF) data. | GAO-18-105

CSPF officials said that changes to the trucking industry and its workforce also led to other challenges for the plan. For example, contributions to the plan declined with the shrinking number of active workers. CSPF officials told us they could not significantly increase the contribution rate paid by remaining employers because of the financial hardship it would cause, and as a result, the plan’s ability to recover from its underfunded position was limited. CSPF officials said that this increased the plan’s reliance on investment returns to try to close the gap between its assets and liabilities.

Funding Challenges and Investment Practices

Stakeholders we interviewed cited challenges inherent in multiemployer plans’ funding and investment practices, and described how the

challenges may have contributed to the critical financial condition of some plans, including CSPF.⁵⁹

Employer Withdrawals

Stakeholders said that CSPF and many other multiemployer plans have been challenged by employer withdrawals. An employer withdrawal reduces the plan's number of active worker participants, thereby reducing its contribution base and accelerating plan maturity. A withdrawing employer generally must pay a share of any unfunded benefits. Stakeholders identified several ways in which the withdrawal liability framework could result in a withdrawing employer underpaying its share of an unfunded liability.⁶⁰ We have previously reported on the challenges associated with withdrawal liability, including:

- withdrawal liability assessments are often paid over time, and payment amounts are based on prior contribution rates rather than the employer's actual withdrawal liability assessment;
- withdrawal liability payments are subject to a 20-year cap, regardless of whether an employer's share of unfunded benefits has been fully paid within this 20-year timeframe;
- plans often did not collect some or all of the scheduled withdrawal liability payments because employers went bankrupt before completing their scheduled payments; and
- fears of withdrawal liability exposure increasing over time could be an incentive for participating employers to leave a plan and a disincentive for new employers to join a plan.

⁵⁹In addition to the factors listed here, stakeholders provided examples of other factors that had an impact on some multiemployer plans but not CSPF. For example, stakeholders said that some plans increased benefits when asset valuations were high to avoid the penalties for exceeding statutory deductible limits on plan contributions. However, the benefit increases became unfunded liabilities when asset valuations receded. When asked, CSPF officials were not aware of being at risk of exceeding the maximum deductible limits and did not believe this factor to have been relevant for CSPF.

⁶⁰Withdrawal liability payments are intended to prevent employers from abandoning a plan without paying a share of the unfunded liability and to help protect participants and employers who continue to participate in the plan. ERISA provides a framework for calculating withdrawal liability shares. For more information on how withdrawal liability is calculated, see GAO, *Private Pensions: Timely Action Needed to Address Impending Multiemployer Plan Insolvencies*, [GAO-13-240](#) (Washington, D.C.: March 28, 2013).

Stakeholders we interviewed also added that the calculation used to determine withdrawal liability may use an investment return assumption that inherently transfers risk to the plan.⁶¹

When exiting employers do not pay their share of unfunded benefits, any remaining and future employers participating in the plan may effectively assume the unpaid share as a part of their own potential withdrawal liability as well as responsibility for the exiting employer's "orphaned" participants.⁶² Participating employers may negotiate a withdrawal if they perceive a risk that the value of their potential withdrawal liability might grow significantly over time.⁶³

In its MPRA application, CSPF cited employer withdrawals and bankruptcies as a significant challenge for the plan. CSPF reported that after deregulation, the number of contributing employers dropped by over 70 percent. While some of the drop could be due to the consolidation of trucking companies after deregulation, CSPF officials cited several cases in which employers went bankrupt or withdrew from the plan, which reduced the plan's contribution base and accelerated its maturity. Additionally, when employers went bankrupt, they often did not pay their full withdrawal liability. For example, CSPF said two of its major contributing employers left the plan between 2001 and 2003, and left \$290 million of more than \$403 million in withdrawal liability unpaid after they went bankrupt.

Funding Time Frames

Stakeholders identified funding timeframes as a factor that contributed to the challenges facing many multiemployer plans, including CSPF. ERISA's minimum funding standards have historically allowed multiemployer plans to amortize, or spread out the period of time for funding certain events, such as investment shortfalls and benefit improvements. For example, CSPF began a 40-year amortization of

⁶¹To the extent that an employer's withdrawal liability was calculated using an assumption about future investment returns, the plan—not the withdrawn employer—is liable for any future investment shortfalls.

⁶²Orphaned participants are generally those whose employers or former employers no longer contribute to the plan.

⁶³Mazo, Judith F. and Eli Greenblum "Multiemployer Pension Plans Respond to the Financial Crisis." *Reshaping Retirement Security; Lessons from the Global Financial Crisis* (2012), 188-213.

approximately \$6.1 billion in underfunding on January 1, 1981, giving the plan until the end of 2021 to fully fund that amount. Longer amortization periods increase the risk of plan underfunding due to the number and magnitude of changes in the plan's environment that may occur, such as a general decline in participants or deregulation of an industry. The Pension Protection Act of 2006 shortened amortization periods for single-employer plans to 7 years and the amortization periods for multiemployer plans to 15 years.⁶⁴ Shorter amortization periods provide greater benefit security to plan participants by reducing an unfunded liability more rapidly. In addition, shorter amortization periods can be better aligned with the projected timing of benefit payments for a mature plan. However, shorter periods can be a source of hardship for plans with financially troubled contributing employers because they may require higher contributions. According to CSPF officials, CSPF requested and received an additional 10-year amortization extension from the IRS in 2005 after relating that contribution requirements could force participating employers into bankruptcy. One CSPF representative said an amortization extension can also help avoid subjecting the plan's employers to IRS excise taxes for failing to make required minimum contributions.⁶⁵

Investment Practices

Stakeholders we interviewed said that certain common investment practices may have played a role in the critical financial condition of CSPF and other mature and declining plans. In general, multiemployer plans invest in portfolios that are expected, on average, to produce higher returns than a low-risk portfolio, such as one composed entirely of U.S. Treasury securities. Stakeholders also stated that these investment practices may have been too risky because returns can be more volatile, and the higher expected returns might not be achieved. In addition, the Congressional Budget Office has reported that if "plans had been required to fund their benefit liabilities—at the time those liabilities were accrued—with safer investments, such as bonds, the underfunding of

⁶⁴Plans can request extensions, as they could prior to PPA. Also, following the economic downturn in 2008, the Pension Relief Act of 2010 allowed plans that met a special solvency test to amortize investment losses incurred in either or both of the first 2 plan years ending after August 31, 2008 to be amortized over 29 years.

⁶⁵If a multiemployer plan fails to meet minimum funding requirements, employers could owe a tax of 5 percent of the accumulated funding deficiency or shortfall in minimum required contributions. Additional taxes may be imposed if the funding deficiency remains uncorrected. 26 U.S.C. § 4971. This tax could be significant for employers participating in a plan with a large funding deficiency.

multiemployer plans would have been far less significant and would pose less risk to PBGC and beneficiaries.”⁶⁶

Stakeholders also told us that for mature plans like CSPF, these investment practices can pose further challenges. Mature plans, with fewer active employees, have less ability to recoup losses through increased contributions and have less time to recoup losses through investment returns before benefits must be paid. Market corrections, such as those that occurred in 2001 through 2002 and in 2008, can be particularly challenging to mature plans and their participants, especially if a mature plan is also significantly underfunded. Mature plans could mitigate these risks by investing more conservatively, however, the resulting lower expected returns from more conservative investing necessitates higher funding targets and contribution rates, which could be a hardship for employers in an industry with struggling employers. Alternatively, a plan that invests more conservatively may provide lower promised benefits to accommodate the level of contributions it can collect. Lower investment returns from a more conservative investment policy would cost employers more in contributions and could potentially result in employers leaving the plan. Further, investing in a conservative portfolio would be relatively unique among multiemployer plans, and stakeholders said plan managers may feel they are acting in a prudent fashion by investing similarly to their peers. Underfunded plans like CSPF may not see conservative investment as an option if they cannot raise the contributions necessary to fully fund their vested benefits. Officials from CSPF told us that, because they lacked the ability to significantly increase revenue or decrease accrued benefits, the named fiduciaries sought incrementally higher investment returns to meet funding thresholds required by the amortization extension they received in 2005.

On the other hand, there are challenges associated with risk-bearing investments. In our prior work, we reported that multiemployer plans generally develop an assumed average rate of investment return and use that assumption to determine funding targets, required contributions, and the potential cost of benefit improvements.⁶⁷ Experts we interviewed for that report told us that using a portfolio’s expected return to value the cost of benefits increases the risk that insufficient assets could be on hand

⁶⁶Congressional Budget Office; *Options to Improve the Financial Condition of the Pension Benefit Guaranty Corporation’s Multiemployer Program* (August 2016).

⁶⁷See [GAO-14-264](#).

when needed. They also told us that using the portfolio's expected return to calculate liabilities could incentivize plans to invest in riskier assets and to negotiate higher benefit levels because the higher returns expected from riskier portfolios can result in lower reported liabilities.

Plan Terms Set through Collective Bargaining

Stakeholders we interviewed said that plan terms, such as contribution rates, which are set through the collective bargaining process, can create an additional challenge for multiemployer plans.⁶⁸ Employers in multiemployer plans generally are not required to contribute beyond what they have agreed to in collective bargaining, and these required employer contributions generally do not change during the term of a collective bargaining agreement.⁶⁹ CSPF officials said that up until the early 2000s, plan officials did not request modifications to collective bargaining agreements, such as reallocating contribution dollars, to respond to adverse investment returns.⁷⁰

Investment Performance and Market Downturns

Stakeholders highlighted the effects of market downturns on multiemployer plan assets as another contributing factor to CSPF's critical financial condition and that of other multiemployer plans. Failure to achieve assumed returns has the effect of increasing unfunded liabilities. For the multiemployer system in aggregate, the average annual return on

⁶⁸Unlike plans sponsored by single employers (with or without unionized participants), contributions to multiemployer plans are set in collective bargaining, typically as a certain amount of money per employee hour worked. Projected contributions thus become a function of the amount of expected business activity by participating employers for the duration of their contracts. If economic conditions change, future contributions could be greater or less than projected, with potential corresponding effects for plan provisions such as the negotiated level of future benefit accruals.

⁶⁹Mazo, Judith F. and Eli Greenblum "Multiemployer Pension Plans Respond to the Financial Crisis." *Reshaping Retirement Security* (2012), 188-213.

⁷⁰CSPF officials said they have increased contribution rate requirements in certain instances since 2000. For example, in order to submit a rehabilitation plan pursuant to the PPA, CSPF was required to demonstrate that it took reasonable measures to postpone insolvency, including increasing contribution rates.

plan assets over the 2002 to 2014 period was about 6.1 percent, well short of typical assumed returns of 7.0 or 7.5 percent in 2002.⁷¹

Many multiemployer plans were especially impacted by the 2008 market downturn. PBGC estimated that from 2007 to 2009, the value of all multiemployer plan assets fell by approximately 24 percent, or \$103 billion, after accounting for contributions to and payments from the plans.⁷² Although asset values recovered to some extent after 2009, some plans continued to be significantly underfunded, and stakeholders said this could be due to the contribution base not being sufficient to help recover from investment shortfalls.

CSPF's investment performance since 2000 has reflected performance similar to other multiemployer plans and the plan went from 73 percent funded in 2000 to about 38 percent funded in 2017. While the plan used an assumed rate of return of 7.5 to 8.0 percent per year between 2000 and 2014, our analysis of the plan's regulatory filings shows that the plan's weighted-average investment return over this period was about 4.9

⁷¹The market downturn that occurred during 2001-2002 is often referred to as the "bursting of the dot-com bubble," and coincided with a downturn in the U.S. economy. The market downturn in 2008 occurred during a period known as the Great Recession, which involved a sharp decline in economic activity throughout the United States. The 6.1 percent annual average return is a cash flow weighted calculation in which we used aggregate statistics disclosed in the DOL's historical Private Pension Plan Bulletins, which summarize Form 5500 filings from multiemployer plans. We calculated this return from 2002 to 2014 rather than from 2000 to 2014 because of data limitations affecting data for 2000 to 2001. CSPF's cash-flow-weighted return over this period was approximately 6.5 percent, while its return for the longer 2000 to 2014 period is discussed later in this section. The typical assumed rates were based on a summary of assumptions disclosed in multiemployer plan filings for the 2002 plan year. Of 1,407 plans that disclosed an expected return assumption, 359 used a 7.0 percent assumption, 621 used a 7.5 percent assumption, and 170 used an 8.0 percent assumption. Prior research by PBGC showed that plans with larger benefit liabilities tended to use higher expected return assumptions. Also, our analyses of investment returns extend through 2014 because it was the most current data available at the time of our analysis.

⁷²PBGC estimated that the vested benefit liabilities of multiemployer plans increased \$51 billion over the same time period. PBGC estimates were based on Form 5500 filings for plans that PBGC insures. Liabilities were adjusted to reflect the cost of purchasing an annuity at the beginning of the relevant year, and typically differ from the liabilities that multiemployer plans use to determine their minimum funding requirements.

percent per year.⁷³ CSPF officials said the 2008 downturn significantly reduced CSPF's assets and it was unable to sufficiently recoup those losses when the market rebounded in 2009. Plan assets declined from \$26.8 billion at the beginning of 2008 to \$17.4 billion at the beginning of 2009, with \$7.5 billion of the decline attributable to investment losses. Despite reporting a 26 percent return on assets during 2009, CSPF had only \$19.5 billion in assets at the end of 2009 because benefits and expenses exceeded the contributions it collected and because it had fewer assets generating returns for the plan. By the end of 2009, CSPF's funding target was \$35.9 billion but the fund had less than \$20 billion that could be used to generate investment returns.⁷⁴ If CSPF's portfolio had returned 7.5 percent per year over the 2000-2014 period, instead of the approximately 4.9 percent we calculated, we estimate that the portfolio value would have exceeded \$32.0 billion at the end of 2014, or 91 percent of its Actuarial Accrued Liability.⁷⁵

Effect of UPS Withdrawal

In addition to the factors mentioned that affected many multiemployer plans, stakeholders we interviewed also noted the unique effect of the UPS withdrawal on CSPF. In 2007, UPS negotiated with the International Brotherhood of Teamsters for a withdrawal from CSPF and paid a withdrawal liability payment of \$6.1 billion.⁷⁶ This payment was invested

⁷³The 4.9 percent annual average return is a cash flow weighted calculation based on data disclosed in CSPF's Form 5500 filings. Using the same data and methodology, the return over the 2000 to 2007 period was approximately 5.6 percent and the return over the 2008 to 2014 period was approximately 3.9 percent. As specified earlier, the cash-flow-weighted return over the 2002 to 2014 period was approximately 6.5 percent. For more information on CSPF's investments, see: [GAO-18-106](#).

⁷⁴This funding target was for purposes of determining the plan's s minimum required contributions under ERISA.

⁷⁵This estimate of a 91 percent funded percentage if the portfolio had returned 7.5 percent in each year over the 2000-2014 period is a hypothetical estimate assuming no other changes in cash flows into or out of the plan. In reality, higher returns may have resulted in different amounts of contributions into the plan, promised benefit levels, amounts of withdrawal liability assessments, and numbers of employers withdrawing from the plan or joining the plan. In addition, a 91 percent funded percentage would not necessarily have meant that plan benefits would have been secure, since the plan would still be a mature plan and the 91 percent measure is based on continued exposure to significant market risk. It is also worth noting that, due to the effect of net cash flows out of the plan, the funded percentage would differ if returns fluctuated over this period and merely averaged 7.5% on a time-weighted basis. For more information on CSPF's investments, see: [GAO-18-106](#).

⁷⁶This withdrawal liability was paid as a single lump sum, rather than as a series of annual payments.

just prior to the 2008 market downturn. Moreover, the loss of UPS, CSPF's largest contributing employer, reduced the plan's ability to collect needed contributions if the plan became more underfunded. A UPS official said that, following the market decline of 2001-2002, the company considered whether it should withdraw from all multiemployer plans because it did not want to be the sole contributing employer in any plan.⁷⁷ According to this official, UPS considered the large number of UPS employees in CSPF and the plan's demographics—such as an older population and fewer employers—in its decision to withdraw. CSPF officials said they did not want UPS to withdraw because its annual contributions accounted for about one-third of all contributions to the plan. CSPF officials also told us that, prior to the UPS withdrawal, they had expected the population of active UPS workers in the plan to grow over time.⁷⁸

UPS' withdrawal of 30 percent of CSPF's active workers, in combination with the significant market downturn just after UPS withdrew, reflected the loss of working members and investment challenges on a large scale. Additionally, stakeholders noted that although each of the factors that contributed to CSPF's critical financial condition individually is important, their interrelated nature also had a cumulative effect on the plan. Industry deregulation, declines in collective bargaining, and the plan's significantly underfunded financial condition all impaired CSPF's ability to maintain a population of active workers sufficient to supply its need for contributions when investment shortfalls developed. Given historical rules for plan funding and industry stresses, CSPF was unable to capture adequate funding from participating employers either before or after they withdrew from the plan. The plan's financial condition was further impaired when long-term investment performance fell short of expectations. For an underfunded, mature plan such as CSPF, the cumulative effect of these factors was described by some stakeholders as too much for CSPF to overcome.

⁷⁷According to a UPS official, in 1997, UPS attempted to withdraw from all Teamster multiemployer plans; however, after a 2-week strike, it renegotiated to stay in those plans.

⁷⁸In December 2017, another large employer, Kroger Co. withdrew from CSPF. According to CSPF officials, the infusion of the resulting withdrawal liability payment will extend the solvency of the plan by a few months.

DOL Has Provided Oversight in Its Role As Described in the Consent Decree

Roles and Responsibilities Identified in the Consent Decree

The consent decree describes roles and responsibilities for several parties, including CSPF, its trustees, and DOL. Generally, it reiterates the requirement that CSPF must comply with ERISA, and gives DOL the authority to provide input on certain actions proposed by the plan. Additionally, the consent decree requires CSPF to employ a named fiduciary to administer and manage the plan's investment assets, set investment policy, and select and supervise investment managers to create separation of plan trustees and staff from the management of plan investments.⁷⁹ The plan must seek court approval for certain actions, such as the appointment of new trustees and named fiduciaries, and DOL can raise objections to these proposed actions. The named fiduciary must also seek court approval for proposed changes to the investment policy. (Appendix II provides a more comprehensive description of roles and other key provisions of the consent decree and its amendments.) The consent decree also provides for a court-appointed independent special counsel to assist the court in overseeing the plan, attend meetings of the board of trustees, and submit quarterly reports on plan activities to the court (see table 1).

⁷⁹The consent decree states that the presence of a named fiduciary does not relieve plan trustees of their fiduciary responsibilities under ERISA. The trustees, who remain fiduciaries under ERISA, are obligated to monitor the performance of the investments, among other responsibilities, and remain liable for any breaches of their fiduciary duties. Between 1999 and 2010, the court approved a dual named fiduciary structure and the movement of 50 percent of the plan's assets into passively-managed accounts. Since 2010, one named fiduciary has managed 50 percent of the plan's assets. CSPF's deteriorating financial condition precipitated an investment policy change in early 2017 that will move plan assets into fixed income and cash equivalent investments ahead of projected insolvency. See appendix I for a timeline of selected events affecting CSPF.

Table 1: Roles of Parties in Selected Actions, as Provided under the Consent Decree for the Central States, Southeast and Southwest Areas Pension Fund (CSPF)

	CSPF ^a	Department of Labor (DOL)	Court	Named fiduciary
Appointment of independent special counsel (and replacements)	Recommends three candidates	Must agree to candidates	Selects from among candidates	No role specified
Appointment of trustees	Requests court approval of candidate	May provide objections to the court	Must approve before it may take effect	No role specified
Appointment of named fiduciaries	Requests court approval of successor	May provide objections to the court	Must approve before it may take effect	No role specified
Termination of named fiduciaries ^b	May terminate without cause with 6 months' written notice to named fiduciary and DOL	Receives notice of termination from CSPF but has no specified role	May terminate with cause with 60 days' notice to named fiduciary and DOL	Receives notice of termination from CSPF but has no specified role
Approval of investment managers	No role specified	No role specified	Need not approve	Has exclusive authority to appoint, replace, remove, and oversee
Approval of passively managed investment account managers ^c	Requests court approval of candidate	May provide objections to the court	Must approve before it may take effect	No role specified
Approval of investment policy	Provides input on policy to named fiduciary (prohibited from authorizing or requesting any acquisitions, investments, or dispositions)	Receives notice of proposed changes from CSPF	Must approve (shall not remain in effect for more than 90 days without court approval) ^d	Develops policy, after consultation with the board of trustees

The independent special counsel has the right to attend plan meetings, has access to documentation, and has full authority to examine the plan's activities. The independent special counsel may attend meetings of the board of trustees and must prepare quarterly reports to the court. The consent decree does not specify a role for the independent special counsel with respect to the actions outlined in this table.

Source: GAO analysis of the 1982 consent decree as amended | GAO-18-105

Note: The table is not intended to present all of the roles and responsibilities for each of the parties included in the table or all of the named parties that are outlined in the consent decree

^aThe consent decree generally describes the role of the "pension fund", however, in certain instances, the consent decree specifically mentions roles for the board of trustees and an internal audit staff. This column includes roles pertaining to the "pension fund" and the board of trustees.

^bReplacement must be appointed before the termination takes effect.

^cThe passively managed accounts include the passive domestic fixed income index account (created in 2003), the passive domestic equity index account (created in 2007), and the passive Europe, Australia, and Far East (EAFE) index account (created in 2010).

^dA July 2003 amendment to the consent decree removed the requirement for court approval to make changes to the investment policy statement. A November 2007 amendment reinstated the requirement.

Although certain stakeholders have stated that the consent decree has achieved its purpose, DOL and CSPF agree that it still provides valuable protections, and the consent decree remains in place.⁸⁰ The intent of the consent decree was to address alleged breaches of fiduciary duties under ERISA, including plan officials' roles in the mismanagement of assets that were identified during DOL's investigation of the plan in the 1970s.⁸¹ The former Assistant Secretary for the Employee Benefits Security Administration (EBSA) stated that the consent decree was primarily focused on preventing corrupt conduct and the influence of organized crime found during investigations prior to the consent decree's establishment.⁸² Stakeholders agreed the consent decree accomplished its objectives by requiring the plan to seek court approval for certain activities. In 2004, the presiding judge noted in a memorandum opinion and order that the "professional management guidelines" that arose from the consent decree had worked well.⁸³ In 2002, discussions arose between CSPF and DOL as to whether the consent decree should be dissolved. In 2011, the independent special counsel wrote in a letter to the court that he believed the plan was well-run and the role of the

⁸⁰The original terms of the consent decree allowed for its dissolution under certain circumstances. CSPF could petition the court to dissolve the consent decree for good cause after a period of 10 years (1992) and after providing notice to DOL. Further, after a period of 15 years (1997) CSPF was able to petition the court to dissolve the consent decree without cause, absent good cause shown by DOL that it should remain in effect. In 1987, the consent decree was amended to permit CSPF to petition to dissolve the consent decree at any time after September 22, 2007, absent good cause shown by DOL for why it should remain in effect.

⁸¹In the 1970s, CSPF was the subject of investigations by IRS, DOL, and DOJ. While IRS conducted an independent investigation, DOL and DOJ coordinated their investigations. DOL focused on numerous loan and investment practices that allegedly constituted fiduciary breaches under ERISA, such as loans made to companies on the verge of bankruptcy, additional loans made to borrowers who had histories of delinquency, loans to borrowers to pay interest on outstanding loans that CSPF recorded as interest income, and lack of controls over rental income. DOJ focused their investigation on criminal activities including possible links to organized crime. See GAO *Investigation To Reform Teamsters' Central States Pension Fund Found Inadequate* HRD-82-13. Washington, D.C.: Apr 28, 1982 and *The Department of Labor's Oversight of the Management of the Teamsters' Central States Pension and Health and Welfare Funds* GAO/HRD-85-73. Washington, D.C.: July 18, 1985.

⁸²Letter to US Representative Bob Goodlatte from Phyllis Borzi, Assistant Secretary for Employee Benefits Security Administration, time-stamped June 2, 2016.

⁸³See Memorandum Opinion and Order, *Chao v. Estate of Fitzsimmons*, Case No. 1:78-cv-00342, Document No. 778, (N.D. Ill. Oct. 21, 2004), available at https://www.gpo.gov/fdsys/pkg/USCOURTS-ilnd-1_78-cv-00342/pdf/USCOURTS-ilnd-1_78-cv-00342-0.pdf.

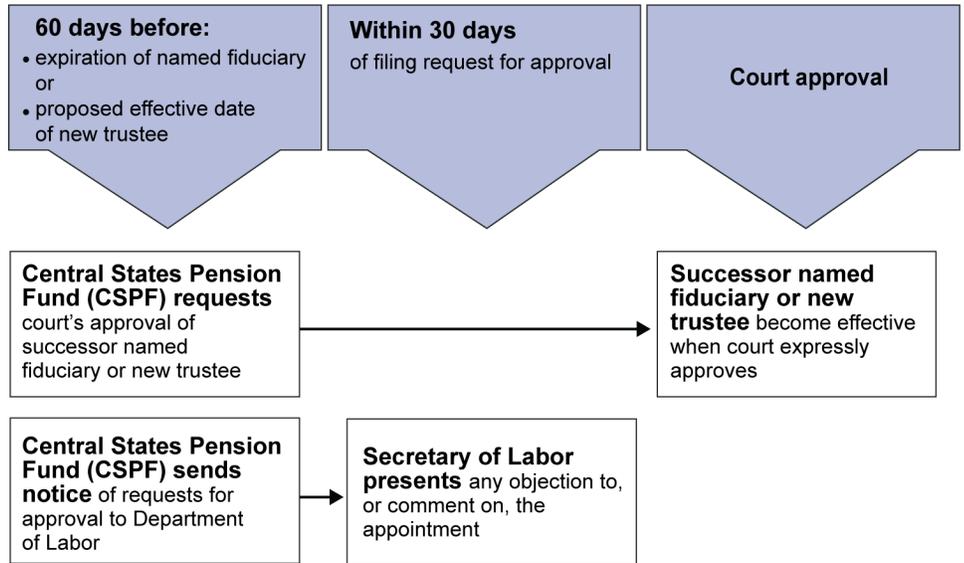
independent special counsel was no longer necessary. However, DOL officials stated that the provisions of the consent decree have created a strong incentive for ERISA compliance and have had a positive impact on the administration of the plan and the selection of trustees. Similarly, CSPF officials stated they had not requested the consent decree be dissolved because its requirements have provided valuable protection from stakeholder influence.

DOL Conducted a Number of Oversight Activities under the Consent Decree

In accordance with the requirements of the consent decree, DOL may provide input on and oversight to certain plan activities. For example, DOL may comment on or object to proposed board of trustee candidates and proposed named fiduciaries prior to court approval. CSPF must provide notice to the court and DOL within specific time frames when seeking court approval for such actions. The consent decree requires CSPF to submit trustee and named fiduciary candidates to the court and DOL 60 days before filing their request for court approval (see fig. 8). In addition, the consent decree states that CSPF must notify DOL of new trustee candidates, selected by union or employer processes, 60 days prior to the proposed effective date of the candidate's term and DOL may object to, or comment on, the approval of trustee candidates within 30 days.⁸⁴

⁸⁴The board of trustees consists of eight members: four to represent union membership and four to represent employers.

Figure 8: Steps for Approval of Named Fiduciary and Trustees under the Consent Decree for Central States, Southeast and Southwest Areas Pension Fund (CSPF)



Source: GAO analysis of the 1982 Central States, Southeast and Southwest Areas Pension Fund (CSPF) consent decree as amended. | GAO-18-105

Although the consent decree does not require DOL to take any specific actions in determining whether it will comment on or object to a trustee candidate, DOL officials reported that with the assistance of other agencies they have taken the following steps to review trustee candidates:

- *Requesting trustee candidate information.* DOL requests that CSPF provide information on prospective trustee candidates;
- *Providing questionnaires to trustee candidates via CSPF.* Responses to questionnaires are reviewed by DOL's Offices of Labor-Management Standards and Inspector General, the Department of Justice, the Federal Bureau of Investigation, and the Office of the Chief Investigator at the Teamster's Independent Review Board (IRB);
- *Compiling additional information.* DOL searches internal and external databases for information regarding the trustee candidates;
- *Assessing the information.* DOL reviews any findings identified by the attorney assigned to CSPF in DOL's Office of the Solicitor, officials in DOL's Plan Benefits Security Division, and EBSA management staff. A recommendation regarding whether to file an objection is discussed

and, if filing an objection is being considered, it is first discussed with the plan; and

- *Filing objections.* If any identified issues cannot be resolved, DOL files an objection with the court.

Documents submitted to the court by DOL also indicated the agency has sought input on trustee candidates from PBGC, IRS, and the National Labor Relations Board.⁸⁵ Several trustees we interviewed confirmed that DOL's process to vet them included background checks. Our review of correspondence and other documentation found DOL routinely took such steps to vet trustee candidates. CSPF and DOL provided documents associated with the appointment and approval process of the 21 trustees appointed to the board since 1982 and one additional trustee candidate who was not presented to the court for approval because DOL identified issues during the vetting process. Vetting trustees took from approximately 1 to 5 months for the cases we reviewed. Our review of documentation also found that DOL provided input and collaborated with CSPF in two cases where approved trustees were asked to resign post-approval.

The length of time for the process to vet trustee candidates (in advance of submitting them to the court) varied, but, in the cases we reviewed, took as long as 5 months. Correspondence showed various factors contributed to in the duration of DOL's vetting process prior to submitting candidates to the court for approval, including DOL officials' workload and vacation schedules, scheduling, and additional time spent clarifying any issues identified during the vetting process.

- In 2009, the vetting processes used by CSPF and DOL identified concerns with a trustee candidate before the candidate was presented to the court. During the 4-month vetting process, the candidate was found to be involved in two ongoing court cases in his role as a fiduciary for two other pension plans. Although the nominating employer association did not consider his involvement in the suit to be a problem, they eventually withdrew the nomination and proposed another candidate.

⁸⁵The National Labor Relations Board is an independent federal agency that protects the rights of private sector employees to join together, with or without a union, to improve their wages and working conditions.

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- In 2012, DOL's review of a candidate to fill a vacancy left by a trustee who died during his term in office was completed in approximately 1 month.
 - In 2015, DOL's vetting process for a trustee candidate identified and resolved a concern before the candidate was presented to the court.⁸⁶ DOL reported that they made inquiries to agencies and the Teamsters' Independent Review Board (IRB) about the candidate during the vetting process, and the IRB did not report any issues with the trustee candidate at the time of DOL's inquiry. More than 7 months after the candidate was approved, DOL received a report from the IRB that alleged lapses in financial controls and expense payment practices and procedures at a Teamsters' local union office when the then-trustee had served as president. The trustee resigned from CSPF's board 7 weeks later, but continued to serve as a trustee for an additional 5 months until a replacement was vetted by DOL and presented to the court for approval.
 - In 2007 and 2009, CSPF kept DOL apprised of trustees who resigned and were replaced because employers were leaving the plan.
 - The consent decree does not discuss court or DOL involvement in resolving issues with trustees already serving on the board, but in 1996, DOL assisted the CSPF board of trustees when they learned that one of their trustees, who had been on the board of CSPF for about 11 years, was accused of fiduciary misconduct in carrying out his duties for another pension plan. To assist the nominating board and the plan's board of trustees in determining the proper course of action, CSPF consulted with DOL and the court before filing a motion with the court to appoint a special counsel to investigate, and to authorize expenditures for the investigations.⁸⁷ Following the special counsel's report, the nominating board recommended that trustee be removed, and the trustee chose to resign.

Documents we reviewed also indicated DOL provided input to CSPF and the court on proposed amendments to the consent decree. For example, DOL assisted in writing a proposed amendment that would allow for the addition of a second named fiduciary and for named fiduciaries to act as

⁸⁶The candidate reported that he had never pled guilty to an offense, but DOL identified court records to the contrary. The candidate later reported that he believed he pled no contest to a misdemeanor charge of failing to properly check in or register a legally harvested deer obtained with a valid hunting license, but conceded that he may later have changed his plea to guilty in exchange for no fine or license suspension.

⁸⁷The consent decree limits how CSPF manages assets.

investment managers for the plan.⁸⁸ In addition, in 2007, a named fiduciary requested that CSPF assume responsibility for determining the plan's asset allocation and indemnify it for any losses it might incur in fulfilling its role. In response to the request, CSPF considered several approaches to insulating the named fiduciary from fiduciary risk, and whether they would be inconsistent with the consent decree; however, CSPF decided against requesting the consent decree be dissolved. CSPF officials consulted with DOL regarding the approaches they considered, including one that would allow for flexibility in the allocation of investment assets within prescribed bands. CSPF waited to file its motion to amend the consent decree until DOL had an opportunity to evaluate the proposals. CSPF decided not to proceed with the proposed amendments, and instead worked with the named fiduciary to make changes to the investment policy to reduce risk for the named fiduciary.⁸⁹ In our review of documents provided by CSPF, we also found that DOL regularly reviewed the quarterly reports from the independent special counsel, which included topics of discussion at the meetings of the board of trustees, a quarterly financial report, and other recent events of significance to the plan.

Our review of communication between CSPF and DOL showed the plan also provided updates and allowed for DOL's input on other actions. For example, CSPF responded to DOL inquiries about changes in the number of participants and the plan's funded status in 2011 and 2014, respectively. In 2009, CSPF also provided details about a possible arrangement to allow a contributing employer that was at risk of bankruptcy to defer its contribution payments instead of suspending its participation in the plan. CSPF received input from DOL on the employer's request to use real estate as collateral in place of cash contributions to the plan.

⁸⁸The consent decree was amended to allow for a second named fiduciary but, ultimately, no amendment to allow for fiduciaries to act as investment managers was made.

⁸⁹CSPF added three passively-managed accounts between 2003 and 2010 that had the combined effect of creating broad bounds within which the named fiduciary could set the plan's asset allocation. Since 2010, the plan's investment policy has allocated at least 30 percent of the plan's assets to two passively-managed equity accounts and at least 20 percent of the plan's assets to a passively-managed domestic fixed income account, demonstrating an intention to have a minimum and maximum equity exposure of 30 and 80 percent, respectively.

DOL Conducted Investigations of CSPF in Accordance with Its Role under ERISA

DOL Has Primary Responsibility for Enforcing ERISA's Fiduciary Provisions

Separate from its role under the consent decree, DOL has a primary oversight role over plans under ERISA, which it carries out through investigations and other activities. DOL is responsible for enforcing the reporting, disclosure, and fiduciary responsibility provisions of ERISA.⁹⁰ Additionally, ERISA grants DOL investigative authority.⁹¹ Title I of ERISA establishes responsibilities for fiduciaries, such as persons who are responsible for the administration and management of employee benefit plans, to ensure that they act solely in the interest of plan participants and beneficiaries, and gives DOL authority to examine and investigate plans to ensure they comply with the provisions.

ERISA sets forth a “prudent man” standard of care that requires fiduciary duties to be executed “...with the care, skill, prudence, and diligence...that a prudent man acting in a like capacity and familiar with such matters would use...”.⁹² According to a DOL compliance guide,

⁹⁰EBSA is the agency within DOL responsible for overseeing employee benefit plans. According to DOL's website, EBSA's mission is “to assure the security of the retirement, health and other workplace related benefits of workers and their families. EBSA seeks to accomplish this mission by developing regulations; assisting and educating workers, plan sponsors, fiduciaries and service providers; and vigorously enforcing the law.”

⁹¹ERISA includes requirements for pension plans to provide reports to DOL, IRS, and PBGC and disclosures to plan participants. DOL has primary responsibility for reporting and disclosure requirements and promulgates regulations and issues guidance related to reporting and disclosure, see GAO *Private Pensions: Clarity of Required Reports and Disclosures Could Be Improved*. [GAO-14-92](#). Washington, D.C.: Nov 21, 2013

⁹²Fiduciaries are required to act solely in the interest of participants and beneficiaries for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan; to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; to diversify the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and to act in accordance with the documents and instruments governing the plan. See 29 U.S.C. § 1104(a).

prudence focuses on the process for making fiduciary decisions, and the guide states that a fiduciary lacking needed expertise is encouraged to hire others with professional knowledge to carry out fiduciary function, including investing fund assets. The guide further notes that, if a plan appoints an investment manager that is a bank, insurance company, or registered investment advisor, the plan is responsible for selecting and monitoring the manager, but is not liable for the individual investments of that manager.⁹³ Further, in testimony, the former Assistant Secretary for EBSA stated that plan fiduciaries are not liable for plan losses merely because an investment lost money, but rather would be in instances where they acted imprudently in selecting and monitoring investments.⁹⁴ Beyond the requirements of ERISA, the consent decree requires that CSPF hire a named fiduciary with exclusive responsibility and authority to manage and control the assets allocated to them. The consent decree also requires the independent special counsel to provide quarterly reports to the court and DOL. The quarterly reports include topics of discussion at the meetings of the board of trustees, a quarterly financial report, and other recent events of significance to the plan.

Although stakeholders identified major factors contributing to the plan's critical financial condition those factors are not the focus of DOL's role under ERISA. DOL has provided assistance to the plan in identifying and assessing solutions to its financial condition. For example, in 2010, CSPF's executive director worked directly with the assistant secretary of Labor as the plan prepared a partition application for PBGC consideration. According to CSPF officials, the plan chose not to submit the application because it did not believe the application would be approved. In 2015, CSPF had discussion with the assistant secretary about MPRA before CSPF ultimately submitted its application to Treasury to reduce pension benefits under MPRA.

CSPF-provided documents show it also collaborated with DOL in developing strategies to improve the broader multiemployer plan system. For example, DOL contacted CSPF's executive director to participate in a meeting as a "thought leader" on PBGC investment policy. The plan also worked with the assistant secretary and DOL and other government

⁹³Meeting Your Fiduciary Responsibilities, February 2012, U.S. Department of Labor

⁹⁴Testimony of Phyllis C. Borzi, Assistant Secretary of Labor Employee Benefits Security Administration before the Special Committee on Aging, United States Senate, October 28, 2009.

officials on legislative proposals, including modifications to statutes concerning partitioning and how partitions are funded through PBGC. In 2010, the assistant secretary testified regarding changes to the partition process proposed by CSPF and others, stating DOL would continue to work with CSPF on the proposal.⁹⁵

IRS and PBGC also have roles under ERISA related to key factors that stakeholders identified as contributing to CSPF's critical financial condition. IRS is responsible for enforcing certain ERISA requirements, including minimum participation, vesting and benefit accrual which are generally requirements to qualify for favorable tax treatment and minimum funding standards. Plans certify their PPA funding (or zone) status to IRS annually. PBGC, in addition to collecting premiums and providing financial assistance to insolvent multiemployer plans to pay participants a statutorily guaranteed benefit for the rest of their retirement lifetimes, provides technical assistance to multiemployer plan professionals, monitors plans, and administers certain tools to help preserve plans, such as assisting with plan mergers, reviewing methods for alternative withdrawal liabilities, and providing possible relief through plan partitions.

Two Completed DOL Investigations Resulted in No Action Against CSPF

DOL has completed at least two investigations of the plan since the consent decree was established; neither of which resulted in adverse findings or action against CSPF. DOL carries out its ERISA enforcement through a wide range of activities, including civil and criminal investigations and the agency's enforcement priorities are set annually at the national level. DOL officials stated that to meet those priorities, the national and regional offices of DOL develop enforcement projects to focus enforcement activities on specific plan activities. Investigations based on enforcement projects or triggered by participant complaints are conducted by regional offices—DOL officials also stated that the Chicago Regional Office is primarily responsible for oversight of CSPF at the regional level. National and regional projects may be broadly applicable or may focus on specific types of plans. Since 2012, there have been seven national projects and five regional projects (two of the regional projects are currently underway). Currently, there is a Chicago Regional Office project focused on multiemployer plans.

⁹⁵Statement of Phyllis C. Borzi, Assistant Secretary of Labor, Employee Benefits Security Administration before the Committee on Health, Education, Labor and Pensions, United States Senate, May 27, 2010

DOL officials noted that field offices generally exercise broad discretion in determining when investigations will be opened and what entities or people will be investigated. During investigations, the field offices gather information and evaluate compliance with ERISA's civil and criminal provisions. Potential issues for investigation are identified through participant complaints, targeting based on computer-generated results of Form 5500 review and analysis, media, and referrals from federal, state, and local government, advocacy groups and service providers. For the period between 2007 and 2016, DOL opened an average of nearly 2,600 civil and criminal pension cases annually; about 5 percent of the cases were investigations of multiemployer plans. ERISA's fiduciary responsibility provisions are intended to ensure that plan fiduciaries act solely in the interest of plan participants. Accordingly, if investigators review the selection of investments, they generally focus on the fiduciaries' duty of prudence in the selection and monitoring of investments, rather than the ultimate performance of the asset.⁹⁶

DOL provided records related to CSPF from its case management database—an administrative tool used to track investigations—that includes some information about steps taken during an investigation.⁹⁷ Specifically, DOL identified two investigations of CSPF it has conducted since the consent decree was established: one conducted from June 1996 through November 1998 and the other from June 2001 through September 2004. DOL no longer had the case files for these investigations and the agency staff responsible for the investigations were no longer available. DOL's Chicago Regional Office conducted both investigations. Given the length of time that has passed since the investigations were conducted, DOL officials were only able to provide limited details about the investigations. Based on the documentation provided, we summarized the key points of both completed investigations as follows:

⁹⁶Testimony of Phyllis C. Borzi, Assistant Secretary of Labor, Employee Benefits Security Administration, before the Special Committee on Aging, U.S. Senate, October 28, 2009.

⁹⁷DOL's tracking system for investigations was converted to a new recordkeeping system in 1989. Records tracking investigations prior to that time were not retained. Due to EBSA's document retention policy, it generally destroys files related to investigations after the investigation has been closed for more than 7 years. Documents from CSPF suggest that there may have been other investigations of the plan prior to 1989; however, CSPF's records are incomplete and without its own documentation, DOL was unable to comment on those investigations.

Investigation 1 from DOL's Case Management System: Opened June 1996, Closed November 1998

- The investigation was opened based on a referral from DOL's Office of the Solicitor, the entity that coordinates DOL oversight of CSPF under the consent decree.
- The investigation centered on alleged breaches of fiduciary responsibility by the plan trustees in private litigation. The parties settled for a withdrawal liability of one-fifth of the alleged amount owed and did not pursue a malpractice claim against attorneys who represented CSPF in the litigation.
- DOL's Chicago Regional Office concluded that CSPF trustees were not in violation of ERISA. DOL's Office of Enforcement concurred.
- The investigation was closed without action.

Investigation 2 from DOL's Case Management System: Opened June 2001, Closed September 2004

- The investigation was opened based on a complaint from a former employee of the named fiduciary who alleged he was fired when he brought possible misconduct to the attention of the named fiduciary.
- DOL's investigation was centered on alleged securities violations by the named fiduciary.
- DOL's Chicago Regional Office concluded that no violations occurred.
- Because of incomplete documentation from DOL and because agency officials could not provide further information, we were unable to determine why the investigation was closed.

CSPF provided documents that indicated it had also been subject to earlier DOL investigations. For example, CSPF provided a June 1989 letter from DOL indicating the agency had investigated whether CSPF met its fiduciary duties through adequate procedures for monitoring legal services provided to the plan. In the letter, the DOL investigator noted that CSPF had written procedures for monitoring services and addressing disputes and that the plan provided reports showing activities surrounding the monitoring of legal fees. DOL concluded, based on available information, that CSPF had implemented monitoring procedures and DOL would take no further action. DOL did not provide further information about the letter or investigation.

Agency Comments and Our Evaluation

We provided a draft of the report to the U.S. Department of Labor, U.S. Department of the Treasury, and the Pension Benefit Guaranty Corporation for review and comment. We received technical comments from the U.S. Department of Labor and the Pension Benefit Guaranty Corporation, which we incorporated as appropriate. The U.S. Department of the Treasury provided no comments.

We will send copies to the appropriate congressional committees, the Secretary of Labor, the Secretary of the Treasury, Director of the Pension Benefit Guaranty Corporation, and other interested parties. This report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or jeszeckc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.



Charles A. Jeszeck
Director
Education, Workforce, and Income Security Issues

Congressional Requesters

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate

The Honorable Joni K. Ernst
United States Senate

The Honorable John Hoeven
United States Senate

The Honorable Jerry Moran
United States Senate

The Honorable John Thune
United States Senate

The Honorable Kevin Cramer
House of Representatives

The Honorable Vicky Hartzler
House of Representatives

The Honorable Kevin Yoder
House of Representatives

Appendix I: Selected Events Affecting the Central States, Southeast and Southwest Areas Pension Fund

Below is a list of selected events that have affected the Central States, Southeast and Southwest Areas Pension Fund (CSPF) as identified through a review of relevant documentation and interviews with stakeholders and agency officials.¹ It is not intended to be an exhaustive list of the events that have impacted CSPF, nor is it intended to include comprehensive descriptions of each event.

Table 2: Selected Events Affecting CSPF

Date	Event	Notes
1955	CSPF Established	CSPF is established to provide pension benefits to International Brotherhood of Teamsters members in the trucking industry.
1968	Internal Revenue Service (IRS) initiates investigation of CSPF	IRS focuses on prudence of loans and plan administration.
1974	Employee Retirement Income Security Act of 1974 (ERISA) enacted	ERISA sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans. ERISA requires plans to provide participants with information about plan features and funding; sets minimum standards for participation, vesting, benefit accrual and funding; provides fiduciary responsibilities for those who manage and control plan assets; requires plans to establish a grievance and appeals process for participants to get benefits from their plans; gives participants the right to sue for benefits and breaches of fiduciary duty; and, if a multiemployer defined benefit plan becomes insolvent, provides financial assistance to the plan to cover promised benefits (up to a service-based limit) through a federally chartered corporation, known as the Pension Benefit Guaranty Corporation (PBGC). ^a See Pub. L. No. 93-406, 88 Stat. 829.
	Pension Benefit Guaranty Corporation (PBGC) Flat-Rate Premium established	The flat-rate insurance premium that multiemployer plans pay to PBGC is established at \$0.50. Employers pay this annual insurance premium for each participant and, in exchange, PBGC insures benefits up to a service-based limit in the event a plan is unable to pay promised benefits.
1975	Department of Labor (DOL) initiates investigation of CSPF	DOL focuses on 82 of 500 real estate loans made by CSPF, more than half of which were made to owners or entities that controlled hotels and casinos in Las Vegas, NV.
	DOL meets with CSPF to advise them of investigation	CSPF offers voluntary cooperation and DOL accepts.
	Department of Justice (DOJ) joins DOL's investigation	DOJ focuses on criminal violations.

¹Additional information about the events leading up to and immediately following the establishment of the consent decree can be found in GAO, *Investigation to Reform Teamsters' Central States Pension Fund Found Inadequate* [HRD-82-13](#) (Washington, D.C.: April 28, 1982), and GAO, *The Department of Labor's Oversight of the Management of the Teamsters' Central States Pension and Health and Welfare Funds* [GAO/HRD-85-73](#) (Washington, D.C.: July 18, 1985).

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1976	IRS revokes CSPF's tax-exempt status retroactive to 1965	Some employers withhold contributions. Twelve trustees resign.
	Two weeks later IRS provides relief from the retroactive effect	IRS and CSPF negotiate regarding corrective actions.
1977	IRS requalifies fund's tax-exempt status	Under the Internal Revenue Code, plans must be designated as qualified plans in order to establish and retain their tax-exempt status. This status allows contributing employers to deduct payments made to the plan on behalf of employees.
	IRS and Labor set conditions for the restoration of the fund's tax exempt status, which CSPF agrees to meet	Four holdover trustees resign and the plan appoints independent investment managers.
1978	CSPF formally terminates voluntary cooperation with DOL's investigation	CSPF initially chose to voluntarily cooperate with an ongoing DOL investigation; however, in 1978, CSPF decided to end its voluntary cooperation leading DOL to pursue legal action.
	DOL files a civil suit against 17 former trustees	As a result of investigations, on February 1, 1978, DOL files a civil suit to recover losses resulting from alleged breaches of fiduciary duties identified in 15 transactions, including mismanagement of fund assets.
1979	CSPF stops complying with requalification terms and bars IRS from making onsite audit	CSPF, which had been meeting IRS' qualification terms set by IRS and Labor in 1977, chooses to stop adhering to the terms. Further, CSPF bars IRS from conducting onsite compliance audits.
	PBGC premium increase	The PBGC flat-rate premium for multiemployer plans is gradually increased from \$0.50 to \$1.00.
1980	Motor Carrier Act of 1980 enacted (deregulation)	The act "deregulates" the trucking industry by, in part, prohibiting interference with any carrier's ability to publish its own shipping rates. See Pub. L. No. 96-296, 94 Stat. 793.
	Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) enacted	MPPAA strengthens the pension protection program for multiemployer plans. The act establishes mandatory requirements for financially weak multiemployer plans in "reorganization" and imposes new financial requirements on employers dropping out of plans (i.e., withdrawal liability). Employers who cease to have an obligation to contribute to multiemployer plans are made generally liable to the plan for a share of the plan's underfunding. See Pub. L. No. 96-364, 94 Stat. 1208.
	PBGC Premium Increase	The PBGC flat-rate premium for multiemployer plans is increased from \$1.00 to \$1.40.
1981	DOL lawsuit expanded	Nine loan transactions are added to DOL's complaint.
	IRS provides a letter to the plan requiring them to follow certain actions to retain their tax qualification	IRS requires, with the exception of 1 month of administrative and benefit expenses, all assets be transferred to qualified independent asset managers.
1982	CSPF and DOL enter into consent decree	CSPF and DOL enter into a court-enforceable consent decree overseen by the Court with the help of an independent special counsel.
	Original named fiduciary under the consent decree	Equitable Life Assurance Society of the United States (Equitable) acts as the plan's initial named fiduciary. Equitable had been serving at the time the consent decree was established.
	Employee benefit at \$775 per month	At the time the consent decree was entered into, the CSPF maximum employee retirement benefit is \$775 per month. This benefit was available to participants who had 20 years of service and were at least 60 years old.

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1984	Change in named fiduciary and investment policy	Morgan Stanley succeeds Equitable as the plan's single named fiduciary in January, and adopts a new investment policy statement in April.
	PBGC premium increase	The PBGC flat-rate premium for multiemployer plans is increased from \$1.40 to \$1.80.
1985	"30 and Out" benefit introduced	Participants with 30 years of contributions paid on their behalf are eligible to retire at any age (\$1,000 per month at any age, up to \$1,250 per month at age 65).
1986	Contribution-based benefit introduced	Participants accrue a monthly retirement benefit payable at normal retirement age at 2% of future contributions made on their behalf. This new accrual based benefit is added to the participant's accrued benefit as of December 31, 1985. Retirement benefits are paid at the greater of the accrued benefit or the "scheduled" benefit.
	PBGC premium increase	The PBGC flat-rate premium for multiemployer plans is increased from \$1.80 to \$2.20.
1987	Consent decree amendment	The amendment permits CSPF to petition to dissolve the consent decree any time after September 22, 2007 absent good cause shown by DOL, and revises the procedures for the appointment of trustees.
1988	PBGC premium increase	The PBGC flat-rate premium for multiemployer plans is increased from \$2.20 to \$2.60.
1989	Most troubled real estate assets removed from portfolio	Nearly all troubled real estate assets had been sold.
1991	Employee retirement benefit increased	The "30 and Out" benefit is increased to \$2,000 per month at any age with a maximum benefit of \$2,500 per month at age 65.
1993	UPS employee benefit introduced	A new pension class is established for UPS participants only. In addition to the "30 and Out" benefit of \$2,000 per month, a "25 and Out" benefit becomes available at any age in the amount of \$1,500 per month.
	Investment policy statement revised	Morgan Stanley revises its investment policy statement.
1994	National master freight benefit introduced	A new pension class is established for National Master Freight participants. The "30 and Out" pension is increased to \$2,500 per month. Later that year, the same benefit becomes available to Car Haul participants.
1998	Consent decree amendment	The amendment provides for the appointment of a second named fiduciary.
	National Master Freight benefit increased	A new pension class is established for National Master Freight participants. The "30 and Out" benefit is increased to \$3,000 per month. The eligibility age for the Car Haul benefit for "25 and Out" is reduced from age 57 to age 55.
1999	Consent decree amendment	The amendment revises the dual named fiduciary arrangement and the authority of each named fiduciary over fund assets and approves JP Morgan and a second fiduciary to be appointed later pursuant to the amendment.
2000	Changes in named fiduciary and asset allocation become effective	Effective February 1, 2000, J.P. Morgan replaces Morgan Stanley. Goldman Sachs' is appointed as the second named fiduciary effective in November 2000. Plan assets are split equally between J. P. Morgan (Group A) and Goldman Sachs (Group B).
2001-2002	The "Dot Com Bubble"	The market downturn that occurs during 2001-2002, often referred to as the "bursting of the dot-com bubble," coincides with a downturn in the U.S. economy.

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2003	Consent decree amendment	The amendment provides for revisions to the appointment of named fiduciaries and investment managers and the establishment of a passively-managed domestic fixed income account.
	Change in asset allocation becomes effective	CSPF revises the plan structure to move 20% of the portfolio to a passively-managed domestic fixed income account. The remaining assets are split equally between J. P. Morgan (Group A) and Goldman Sachs (Group B).
2004	Contributory credit pensions accruals reduced	Future benefit accruals under the contribution based benefit “and Out” benefits are lowered from 2% to 1% on a prospective basis. ^b
2005	Consent decree amendments	The April 6, 2005 amendment provides for the appointment of a named fiduciary, and changes to the plan’s asset allocation. The May 10, 2005 amendment vacates part of the April 6 amendment and provides for the appointment of a named fiduciary and changes to the plan’s asset allocation.
	IRS grants amortization extension	CSPF requests and receives an additional 10-year amortization extension after relating that contribution requirements could force participating employers into bankruptcy.
	Change in named fiduciary becomes effective	Northern Trust replaces J. P. Morgan as the named fiduciary in charge of investments for the Group A assets. Northern Trust and Goldman Sachs each assume half of J.P. Morgan’s assets, resulting in the following allocation: Goldman Sachs 60 percent, Northern Trust 20 percent, and passively-managed domestic fixed income account 20 percent.
	Deficit Reduction Act of 2005 enacted	For plan years that begin after December 31, 2005, the act sets the PBGC flat-rate premium for multiemployer plans at \$8.00 and—for each plan year beginning after 2006—indexes future premium levels to the national average wage index. See Pub. L. No. 109-171, 120 Stat. 4.
2006	Pension Protection Act of 2006 (PPA) enacted	PPA requires certain underfunded multiemployer plans to develop strategies designed to improve their financial condition. See Pub. L. No. 109-280, 120 Stat. 780.
	PBGC premium increase	Based on changes enacted in 2005, the PBGC flat-rate premium for multiemployer plans is increased from \$2.60 to \$8.00.
2007	Consent decree amendment	The amendment authorizes the court to change all asset allocations at any future time; gives authority to the trustees to appoint, remove, or replace custodians subject to court approval; prospectively requires that named fiduciaries’ authority to adopt and amend investment policies be contingent on approval by the court; establishes a passively-managed domestic equity account; and authorizes the court to approve a transition from two named fiduciaries to one named fiduciary at any future time.
	Change in asset allocation becomes effective	In December 2007, CSPF revises the plan structure to move 20% of the portfolio to a passively-managed domestic equity account.
	UPS withdraws from CSPF	In December 2007, the United Parcel Service, Inc. (UPS) pays a negotiated \$6.1 billion to withdraw from the pension fund, and \$4.2 billion of this payment, as well as a transfer of \$1.2 billion from Goldman Sachs, helps the plan create the passively-managed domestic equity account. From the UPS withdrawal liability payment, \$1 billion is allocated to Northern Trust and the other \$0.9 billion is allocated to the passively-managed domestic fixed income account.

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2008	Change in asset allocation	On February 1, 2008, Goldman Sachs transfers \$2.5 billion to Northern Trust to equalize assets between the two named fiduciaries. As a result of the asset allocation changes in December 2007 and February 2008, as well as the receipt of UPS's withdrawal liability payment, the passively-managed domestic fixed income and domestic equity accounts each hold 20 percent of the plan's assets, and the remaining assets are split equally between Northern Trust (Group A) and Goldman Sachs (Group B).
	The "Great Recession"	The market downturn in 2008 occurs during a period known as the Great Recession, which involves a sharp decline in economic activity throughout the United States.
	PBGC premium increase	Due to indexation, the PBGC flat-rate premium for multiemployer plans is increased from \$8.00 to \$9.00.
	Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) enacted	WRERA makes several technical corrections to PPA and extends amortization schedules by allowing multiemployer plan trustees to "freeze" a plan's zone status for 1 year or to elect to extend the Funding Improvement Plan or Rehabilitation Plan period by 3 years. See Pub. L. No. 110-458, 122 Stat. 5092.
2010	Consent decree amendment	The amendment provides for an asset reallocation from Goldman Sachs to Northern Trust, changes the dual named fiduciary arrangement to a single named fiduciary, and establishes a passively-managed international equity account.
	Change in named fiduciary becomes effective	Goldman Sachs resigns and Northern Trust assumes the management of plan assets as the sole named fiduciary.
	Change in asset allocation becomes effective	With Goldman Sachs resignation, CSPF moves 5 percent of its portfolio to a passively-managed international equity account and adds 5 percent to the passively-managed domestic equity account. This results in a plan structure of 20 percent of CSPF's assets in the passively-managed domestic fixed income account, 25 percent in the passively-managed domestic equity account, 5 percent in the passively-managed international equity account, and 50 percent managed by Northern Trust.
2011	Minimum retirement age increased	CSPF Trustees approve a plan amendment establishing age 57 as the minimum retirement age for all participants retiring on or after June 1, 2011. This rule change applies to all participants regardless of benefit class and any "and Out" benefit provisions.
2013	PBGC premium increase	The PBGC flat-rate premium for multiemployer plans is increased from \$9.00 to \$12.00.
2014	Multiemployer Pension Reform Act of 2014 (MPRA) enacted	MPRA provides options for severely underfunded plans to take actions to reduce the possibility of insolvency and increased multiemployer plan premiums. MPRA also resets indexing of multiemployer flat-rate premiums to the national average wage index for plan years beginning after 2015. See Pub. L. No. 113-235, div. O, 128 Stat. 2130, 2773-822.
2015	CSPF submits MPRA application	CSPF applies under MPRA to suspend (or reduce) participants' accrued benefits.
	PBGC premium increase	Before the enactment of MPRA, PBGC had announced the flat-rate premium for multiemployer plans would be increased to \$13.00 due to indexation. As a result of premium changes in MPRA, the PBGC flat-rate premium for multiemployer plans is increased from \$12.00 to \$26.00.

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2016	Treasury denies MPRA application	CSPF's MPRA application is denied because Treasury determines that it fails to satisfy statutory criteria for approval of benefit suspensions—not reasonably expected to avoid insolvency, not equitably distributed across participant and beneficiary populations, and notices of proposed benefit suspensions are not understandable by an average participant.
	PBGC premium increase	Due to indexation, the PBGC flat-rate premium for multiemployer plans is increased from \$26.00 to \$27.00.
2017	Consent decree amendment	The amendment changes the court-authorized asset allocation to gradually move assets into fixed income and cash equivalents ahead of insolvency, approves asset transfers to implement new asset allocations, and approves changes to the investment policy statement of the passive fixed-income account.
	Change in asset allocation becomes effective	The court approves an investment policy change to allow the fund to gradually move assets into fixed income and cash equivalents ahead of insolvency.
	PBGC premium increase	Due to indexation, the PBGC flat-rate premium for multiemployer plans is increased from \$27.00 to \$28.00.
2025	Projected insolvency	CSPF projects that, all else being equal, the fund will be insolvent on January 1, 2025—having insufficient assets to pay benefits for that year. Beginning January 1, 2025, the plan expects to pay a reduced benefit level throughout the year. Beginning January 1, 2026, the plan expects to receive PBGC financial assistance and benefits would be reduced to the PBGC maximum benefit guarantee.

Source: GAO analysis of Central States, Southeast and Southwest Areas Pension Fund (CSPF) documentation and information from stakeholders and agency officials. | GAO-18-105

Notes: While many of these events are unique to CSPF, some events affected all multiemployer pension plans.

^aERISA provides separate rules for plans sponsored by one employer (single-employer plans), which are not discussed in this report.

^bCSPF benefits are sometimes referred to as “and Out” benefits—such as “25 and Out” or “30 and Out.”

Appendix II: Key Provisions of the Central States, Southeast and Southwest Areas Pension Fund's Consent Decree

Brief History and Current Status of Consent Decree

On September 22, 1982, the Department of Labor (DOL) entered into a court-enforceable consent decree with the Central States Southeast and Southwest Areas Pension Fund (CSPF) to help ensure the plan's assets were managed for the sole benefit of the plan's participants and beneficiaries as required by the Employee Retirement Income Security Act of 1974 (ERISA). The consent decree has been amended several times and currently remains in effect, as amended, under the jurisdiction of the Federal Court for the Northern District of Illinois, Eastern Division.¹ Below is a description of the key parties to and their primary responsibilities under the consent decree.

Key Parties and Their Primary Roles under Consent Decree

The consent decree defines roles and responsibilities for its parties, including the court, the court-appointed independent special counsel, DOL, the plan and its Board of Trustees, and the independent asset manager, which is called the named fiduciary.

Court

The primary role of the court is to oversee and enforce the consent decree. Specifically, the court:

- appointed an independent special counsel to assist it in administering the consent decree;
- has approval over the appointment of named fiduciaries and trustees;²
- has approval over the appointment of investment managers of the passively-managed accounts;³
- may, for good cause shown, remove a named fiduciary after 60 days' notice provided to the named fiduciary and DOL; and

¹Unless otherwise clear from context, all references to the consent decree include the original 1982 consent decree and all subsequent amendments to it.

²At least 60 days before the proposed effective date of the appointment of a new trustee or named fiduciary, the plan is required to request the court's approval.

³In 2003, 2007, and 2010, the consent decree was amended to require a certain percentage of plan assets be placed in passively-managed accounts. At least 30 days before the proposed effective date of the appointment of any passively-managed account managers, the plan is required to request the court's approval. The 2003 amendment created the passively-managed domestic fixed income account; the 2007 amendment created the passively-managed domestic equity account; and the 2010 amendment created the passively-managed international equity account.

- may, upon request by the plan, dissolve the consent decree absent good cause shown by DOL why the consent decree should continue in effect.⁴

Independent Special Counsel

The court-appointed independent special counsel is intended to serve the court by assisting in identifying and resolving issues that arise in connection with the plan's compliance with the consent decree and Part 4 of Title I of ERISA, and to report on the plan to the court. Specifically, the independent special counsel:

- has full authority to examine the plan's activities and oversee and report on the plan's performance of the undertakings of the consent decree;
- may, with court approval, employ attorneys, accountants, investigators, and others reasonably necessary and appropriate to aid him in the exercise of his responsibilities;
- has full access to all documents, books, records, personnel, files, and information of whatever type or description in the possession, custody, or control of the plan;
- may attend meetings of the plan, including meetings of the board of trustees and any meetings at which plan-related matters are discussed or considered;
- can petition the court to compel the plan to cooperate with the independent special counsel in the performance of his duties and responsibilities;⁵
- may consult with DOL, the Internal Revenue Service, and other agencies, as appropriate, but must provide access to DOL upon its

⁴Under the original terms of the consent decree, the plan was able to petition the court to dissolve the consent decree for good cause shown after a period of 10 years and after providing notice to DOL. After a period of 15 years, CSPF was able to petition the court to dissolve the consent decree without cause, absent good cause shown by DOL for why it should remain in effect. In 1987, the consent decree was amended to permit CSPF to petition the court to dissolve the consent decree any time after September 22, 2007, absent good cause shown by DOL for why it should continue in effect.

⁵Additionally, administrators, fiduciaries, officers, trustees, custodians, counsels, agents, employees, advisers, providers of goods and services, consultants, representatives in any capacity, and all persons who serve in any capacity that involves decision-making authority or custody or control of the moneys, funds, or assets of the plan, as a condition of maintaining their relationships with the plan, are required to cooperate fully with the independent special counsel.

request to any documents prepared by the independent special counsel within the exercise of his power;

- is required to file quarterly reports, as well as any other reports the independent special counsel deems necessary or appropriate, with the court, and provide copies to DOL and the plan;
- may have other powers, duties, and responsibilities that the court may later determine are appropriate; and
- cannot be discharged or terminated during the duration of the consent decree except for leave of court, and upon the termination, discharge, death, incapacity, or resignation of an independent special counsel, the court will appoint a successor.⁶

Department of Labor

Under the consent decree, DOL has an oversight role and may object to certain proposed plan changes. Specifically, DOL:

- may request and review certain reports provided by the plan and any documents prepared by the independent special counsel in the exercise of his authority;
- may object to the appointment of proposed trustees, named fiduciaries, investment managers of the passively-managed accounts, and asset custodians;
- receives notice of proposed changes to the plan's investment policy statements from the plan; and
- may object to the dissolution of the consent decree.⁷

CSPF (including Board of Trustees and Internal Audit Staff)

The plan must operate in full compliance with the consent decree, with ERISA, and with any conditions contained in determination letters it receives from the Internal Revenue Service.⁸ Specifically, CSPF, its

⁶The court chooses a new independent special counsel from a list of three individuals recommended by the plan.

⁷DOL has the right to object within 30 days of the plan filing a request for court approval of a new trustee or named fiduciary and within 20 days of the plan filing a request for court approval of an investment manager of one of the passively-managed accounts. The court is the final decision maker with regard to any covered action the plan proposes to take.

⁸Specifically, the plan must comply with any Internal Revenue Service determination letters concerning the status of the plan as a qualified pension plan under 26 U.S.C. § 401 or the exemption of the trust from tax under 26 U.S.C. § 501.

board of trustees, and its internal audit staff must meet certain requirements.⁹

CSPF

- is required to use an independent asset manager known as the named fiduciary;
- must rebid the named fiduciary role at least once within every 6 years, with the option to extend the appointment for one calendar year;
- may remove a named fiduciary without cause shown on 6 months' written notice to the named fiduciary and DOL;¹⁰
- must cooperate with the independent special counsel in the performance of his duties and responsibilities and with DOL in its continuing investigation and enforcement responsibilities under ERISA;
- is required to recommend to the court three replacement candidates, agreeable to DOL, to replace an outgoing independent special counsel; and
- is required to maintain a qualified internal audit staff to monitor its affairs.

Board of Trustees

- is required to appoint, subject to court approval, the investment managers of the passively-managed accounts;
- is prohibited from authorizing any future acquisitions, investments, or dispositions of plan assets on a direct or indirect basis unless specifically allowed by the consent decree;¹¹ and

⁹The consent decree generally describes the role of the "pension fund"; however, in certain instances, as described more fully below, the consent decree specifically mentions roles for the board of trustees and an internal audit staff.

¹⁰At least 60 days before the termination of a named fiduciary's appointment, the plan is required to select another independent asset manager to serve as a named fiduciary and request the approval of the court, and the appointment becomes effective immediately upon the removal of a then current named fiduciary.

- is required to comply with ERISA fiduciary duties, such as monitoring the performance of the assets of the plan, under Part 4 of Title I of ERISA.¹²

Internal Audit Staff

- is required to review benefit administration, administrative expenditures, and the allocation of plan receipts to investments and administration;¹³ and
- is required to prepare monthly reports setting forth any findings and recommendations, in cooperation with the executive director of the plan, and make copies available to the independent special counsel and, upon request, to DOL and the court.

Named Fiduciaries

The independent asset managers, known as named fiduciaries, are appointed by the plan's trustees, subject to court approval, and have exclusive responsibility and authority to manage and control all assets of the plan allocated to them.¹⁴ Specifically, the named fiduciaries:

¹¹This prohibition applies to any administrator, officer, trustee, agent, or employee of the plan, as well as the board of trustees. Moreover, persons convicted of certain crimes are subject to immediate removal and may not serve the plan as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, adviser, provider of goods or services, consultant, representative in any capacity, or in any capacity that involves decision-making authority or custody of control of the moneys, funds, or assets of the plan for at least 10 years after the conviction or resulting term of imprisonment, whichever is later.

¹²Although the named fiduciary has a monitoring function under the consent decree, its role does not diminish the fiduciary obligations of the board of trustees under Part 4 of Title I of ERISA or relieve any trustee of any liability.

¹³The plan may retain to pay benefits and administrative expenses only those assets that it has determined are reasonably necessary to pay benefits and administrative expenses in a particular month. All assets received by the plan and not retained to pay benefits and administrative expenses must be transferred to the named fiduciary and the passively-managed investment managers as allocated in the consent decree.

¹⁴Under the consent decree, each independent asset manager must be a "named fiduciary" as defined in section 402(a)(2) of ERISA and qualified as an investment manager under ERISA section 3(38). See 29 U.S.C. §§ 1102(a) and 1002(38). The consent decree provides additional requirements for a named fiduciary that is a bank, insurance company, broker or dealer, or certain investment adviser. At its inception, the consent decree provided for a single named fiduciary, but in 1998 it was amended to allow for two separate named fiduciaries. Subsequently, in 2007, the consent decree was amended to allow the court to enter an order transitioning to a single named fiduciary at any time, and in 2010 it was amended to provide for a single named fiduciary, but the court retained discretion to require the use of more than one named fiduciary.

Appendix II: Key Provisions of the Central States, Southeast and Southwest Areas Pension Fund's Consent Decree

- may allocate plan assets among different types of investments and investment managers;
- have exclusive authority to appoint, replace, and remove those investment managers;
- have responsibility and authority to monitor the performance of their allocated investments; and
- are required to develop, in consultation with the Board of Trustees, and implement investment policy statements for the assets they manage, giving appropriate regards to CSPF's actuarial requirements.¹⁵

¹⁵The investment policy statement is intended to set forth the principal considerations and policies that will govern the investment of plan assets. The named fiduciary may change the investment policy statement after it consults with the board of trustees and provides notice of any changes to the court, the independent special counsel, the Secretary of Labor, and the plan, but any change will not remain in effect for more than 90 days without court approval.

Appendix III: GAO Contacts and Staff Acknowledgments

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Staff Acknowledgments

In addition to the individual named above David Lehrer (Assistant Director), Margaret J. Weber, (Analyst-in-Charge), Laurel Beedon, Charles J. Ford, Jessica Moscovitch, Layla Moughari, Joseph Silvestri, Anjali Tekchandani, Frank Todisco, and Adam Wendel made key contributions to this report. Also contributing to this report were Susan Aschoff, Deborah K. Bland, David M. Chrisinger, Helen Desaulniers, Ted Leslie, Sheila McCoy, Mimi Nguyen, and Walter Vance.

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