NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

815 16TH STREET, N.W., WASHINGTON, DC 20006 • PHONE 202-737-5315 • FAX 202-737-1308

The United States House of Representatives
Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor and Pensions

June 12, 2013

Strengthening the Multiemployer Pension System: What Reforms Should Policymakers Consider?

Testimony of:

Randy G. DeFrehn, Executive Director
National Coordinating Committee for Multiemployer Plans (NCCMP)

Introduction:

Chairman Roe, Ranking Member Andrews and Members of the Committee, it is an honor to appear before you today on this important topic. My name is Randy DeFrehn. I am the Executive Director of the National Coordinating Committee for Multiemployer Plans (the "NCCMP")[1]. The NCCMP is a non-partisan, non-profit advocacy corporation created in 1974 under Section 501(c)(4) of the Internal Revenue Code, and is the only such organization created for the exclusive purpose of representing the interests of multiemployer plans, their participants and sponsoring organizations.

For over 60 years, multiemployer plans have provided a mechanism for generations of employees of tens of thousands of predominantly small employers in industries with very fluid employment patterns to receive modest but regular and dependable retirement income[2]. They are the product of collective bargaining between one or more unions and at least two unrelated employers that are obligated to contribute to a trust fund that is independent of either bargaining party and whose benefits are distributed to participants and beneficiaries pursuant to a written plan of benefits. While most often associated with the building and construction and trucking industries, multiemployer plans are pervasive throughout the economy including the agricultural; airline; automobile sales, service and distribution; building, office and professional services; chemical, paper and nuclear energy; entertainment; food production, distribution and retail sales; health care; hospitality; longshore; manufacturing; maritime; mining; retail, wholesale and department store; steel; and textile and apparel production industries. These plans provide coverage on a local, regional, multiple state, or national basis and can cover groups of several hundred to several hundred thousand participants. By law, these plans must be jointly and equally managed by both employers and employee representatives.

---

1 The NCCMP is the premier advocacy organization for multiemployer plans, representing their interests and explaining their issues to policy makers in Washington since enactment of ERISA in1974.

2 The median benefit paid to participants of plans surveyed was $908 – See DeFrehn, Randy G. and Shapiro, Joshua, "The Road to Recovery: The 2010 Update to the NCCMP Survey of the Funded Position of Multiemployer Plans", The National Coordinating Committee for Multiemployer Plans, 2011.

According to the PBGC's 2012 Annual Report, approximately 10.37 million people are covered by the approximately 1450 insured multiemployer defined benefit pension plans[3]. Generally speaking, the majority of plans have been slowly, but surely recovering from the back-to-back economic shocks of the past ten years, despite the continuing sluggish economic recovery, with more than 60 percent of plans having once again attained "green zone status."

When I last appeared before the Committee on February 2, 2012, it was in the context of your hearing titled "*Examining the Challenges of the PBGC and Defined Benefit Pension Plans*." We recall your very explicit statements that no government bailout should be expected and have proceeded on that basis to craft very specific private sector solutions that, if enacted, will go far towards addressing those challenges.

It is unnecessary to dwell on the specifics of those challenges. It is significant, however, to note that the passage of time has only sharpened the focus on the need for attention. Based on the information you gathered at that time and through subsequent hearings including the release earlier this year of the PBGC's own forecast in its *2012 Exposure Report,* the multiemployer guaranty fund's current economic trajectory forecasts a 91% probability of insolvency by 2032. Notwithstanding those sobering estimates, the stark reality appears even more dire as conveyed to you by GAO Director of Workforce, Education and Income Security Issues, Charles Jeszeck at your hearing on March 5, 2013. He reported that "In the event that the multiemployer fund is exhausted, participants relying on the guarantee would receive a small fraction of their already reduced benefit[4]." He went on to describe an example that showed even the modest benefit guaranty provided under the current statutory formula would likely be further reduced by 90% or more. Clearly, the prospects of such reductions are evidence that what the tens of millions of multiemployer plan participants are being told in their statutorily mandated annual funding notice about the guarantees to be provided by the PBGC in the event of plan insolvency is more illusory than reality.

For the small, but significant minority of plans and participants whose plans are facing ultimate insolvency, these predictions only underscore the need for bold and decisive Congressional action sooner, rather than later.

We commend the Committee for having spent considerable time in evaluating the need for prompt attention to strengthen the system which provides approximately one in every four private sector defined benefit pensions. As the next step in that process we are pleased that you have chosen to focus today on solutions to achieving that end.

Retirement Security Review Commission

In your February 2012 hearing I reported to you on the creation by the NCCMP of a group known as the "Retirement Security Review Commission" (or "Commission") comprised of representatives from over 40 labor and management groups from the industries across the multiemployer community which rely on multiemployer plans to provide retirement security to their workers. Beginning in August 2011, the group deliberated over a period of approximately

[3] Pension Benefit Guaranty Corporation FY 2012 Annual Report, p. 33.
[4] See Statement of Charles Jeszeck, March 5, 2013 to the Committee re: "Private Pensions – Multiemployer Plans and PBGC Face Urgent Challenges," Page 17.

eighteen months evaluating their collective experience with current laws and regulations in the course of developing a comprehensive set of recommendations for reforms to strengthen the system.

The recommendations which fall into three broad categories: preservation, remediation and innovation, are described in a report titled ***"Solutions not Bailouts – A Comprehensive Plan from Business and Labor to Safeguard Multiemployer Retirement Security, Protect Taxpayers and Spur Economic Development."*** They include recommendations for technical corrections to the Pension Protection Act (PPA) designed to strengthen those plans that are recovering or have recovered from the 2008 recession, largely by building on the tools provided in the PPA and subsequent legislation. These recommendations are described under the provisions for preservation. The report also includes recommendations for remediation measures to address the problems of, and provide solutions for, the limited number of plans which, despite having taken all reasonable measures, are projected to become insolvent within specified time parameters. Finally, the recommendations include provisions that encourage the creation of innovative alternative designs to eliminate many of the current incentives for employers to exit the system and reverse the trends which, unless addressed, will only exacerbate the current decline in the pool of continuing employers. These include alternatives that will permit the adoption of alternative plan designs to significantly reduce or eliminate the unpredictable and unacceptable residual costs associated with the current system of withdrawal liability.

The following pages provide a brief description of the process under which the Commission conducted its deliberations and some of the specifics of the proposed reform measures.

P**rocess**

For decades, the multiemployer system provided modest yet secure retirement benefits for generations of workers without jeopardizing the ability of the contributing employers to remain financially viable. With the sunset of the multiemployer funding rules contained in the PPA approaching at the end of 2014, the re-emergence of significant unfunded liabilities following the market collapse of the Great Recession in 2008, and the expanded disclosures imposed by the financial services community which adversely affect the ability of many contributing employers to access the credit markets, the time has come to revisit the labyrinth of existing rules which have evolved over the past 40 years in order to restore stability to the system The Commission was created as a vehicle to facilitate the development of a consensus among stakeholders across the multiemployer community on elements of funding reform that are necessary to achieve that stability.

Because multiemployer plans are the product of the collective bargaining process, any proposal for reform requires the active engagement of both labor and management. The composition of the Commission reflected a broad cross-section of both constituencies from the aerospace, bakery and confectionery, building and construction, entertainment, healthcare, mining, retail food, building services and trucking industries. The diversity of interests and perspectives ensured that the proposals for reform were representative of the wide variation among plans and participants. Despite their differences, Commission members remained focused throughout the process, conscientiously engaging in a cooperative spirit of problem solving that was both respectful and often vociferous as they worked toward consensus on a range of issues.

Preservation

As the majority of plans regain sound financial footing, the Commission recommends a number of technical amendments be made to the PPA that are designed to address a number of issues which have surfaced during the first years of its implementation. These include, but are not limited to:

- permitting elective "critical status" (red zone) certification by plans which are determined by the plan actuary to headed for such status within the next five years, allowing earlier action in order to reduce the magnitude of expected benefit adjustments and/or contribution increases required to meet their funding obligations under the Act;
- removing any contribution increases that are the direct result of the adoption of approved funding improvement or rehabilitation plans from the determination of what is to be taken into consideration when calculating an employer's withdrawal liability. Under the current rules, such additional contributions provide a strong incentive for many contributing employers to choose to abandon their current relationship with the fund rather than see the 20 year "cap" on withdrawal liability increase substantially[5]; and
- harmonizing the protections available to employers who adopt an approved rehabilitation plan when a plan encounters a funding deficiency so that those who adopt an approved funding improvement plan when in endangered (yellow zone) status receive similar protections from additional contribution and excise tax requirements were the plan to experience a funding deficiency.

Remediation

Under current law, the anti-cutback rules require plans that are heading for insolvency (referred to by the Commission as "Deeply Troubled" plans) to maintain accrued benefits and pay such benefits at current levels until the plan depletes the plans' assets to the point of insolvency. At that time the plan fiduciaries are ***required to reduce benefits to the statutory guarantee levels*** under the PBGC multiemployer guaranty fund. They currently have no authority to intervene at an earlier point even if the plan could remain solvent while preserving benefit levels above the statutory guaranty levels. The net result under current law is that the plan would then cease to provide future accruals to active workers, most likely result in having employers assessed withdrawal liability either because of their having elected to withdraw from the plan or due to the plan's experiencing a mass withdrawal, and increasing the liability to PBGC (thereby possibly exposing taxpayers to greater exposure in the event the agency itself becomes insolvent with liabilities owed to participants far in excess of any amounts which could reasonably be funded through the existing premium structures).

[5] Furthermore, such treatment is consistent with the provisions contained in the PPA that prevent an employer from benefiting from a plan's adoption of adjustable benefits in the determination of its withdrawal liability in order to encourage its continued participation in the plan.

For the estimated six to ten percent of all multiemployer plans that, despite having taken all reasonable measures, are projected to be unable to avoid insolvency, the Commission recommends that the plan fiduciaries' current authority be accelerated to permit intervention while the plan may still be preserved rather than waiting until the plan has depleted its assets to the point where it must cut benefits to levels which, by the PBGC's own estimates, are unsustainable for the future and would be subject to even more draconian reductions, provided that:

- after the adoption of such measures, the plan is expected to remain solvent;
- benefits may be reduced only to the extent necessary to achieve continued solvency;
- benefits may not be reduced below 110 percent of the stated statutory guaranty levels under the current PBGC multiemployer guaranty program[6];
- plan fiduciaries are required to design any plan changes in an equitable manner;
- the PBGC certifies that plan fiduciaries have exercised due diligence in making such determinations and in designing the plan; and
- when the plan recovers sufficiently to permit benefit improvements, those whose benefits were reduced must participate in any such improvements through the restoration of such benefit reductions on an equal dollar value to those provided to active participants.

While some have incorrectly characterized this recommendation as a proposal to cut accrued benefits, in reality *this is a proposal to **preserve** benefits above the levels provided under current law* and applies only to those plans which are otherwise required to make more severe benefit reductions.

Recognizing that taking earlier action could also impact the benefits of pensioners who would not otherwise be affected because they may be of sufficiently advanced age that they may not live until the plan were to exhaust its assets, the plan fiduciaries are specifically authorized to take the interests of such vulnerable populations into consideration when designing their plan of intervention. It is expected that most would take advantage of this authority and exclude them from the reductions, especially since the costs associated with those expected to draw benefits for a limited period would have only a modest impact on the plan's long-term funded position. Only those plans which currently pay benefits that are marginally above the PBGC guaranty that might only qualify for the relief if such benefit reductions were necessary to meet the ongoing solvency requirement might be expected to apply these reductions across the board to allow the plan to survive.

[6] Due to the relatively low benefits provided by many plans, the 110% level was chosen so as to provide access to the relief for many plans that would otherwise be effectively precluded from utilizing this valuable tool.

Innovation

In its desire to make the system sustainable for the future, the Commission recommends that the current law be broadened to encourage greater creativity in designing plans to meet employees' ongoing income requirements while reducing the exposure of contributing employers to residual liabilities beyond their initial contribution. In doing so, the Commission recognizes that the shortcomings of both the current defined benefit and defined contribution systems need to be addressed. While some innovative designs are possible within the current statutory framework, there is a general recognition that the current structures are not sufficiently responsive to the evolving needs of workers and employers alike.

The Commission report describes two specific types of innovative plan designs that are considered to be illustrative of the kinds of flexibility required for the future. One is a variable defined benefit plan which has recently been adopted by several groups and appears to be permissible under the current Code definition of a defined benefit plan. The other, a so-called "target benefit" plan, contains a benefit formula that appears similar to a defined benefit plan, but is designed to address many of the shortcomings of the current defined contribution system. The design elements include limiting an employer's liability to its negotiated contribution. It requires higher funding requirements than current defined benefit plans, imposes self-adjusting benefit features when those higher funding requirements fail to be met, addresses longevity risk by paying benefits only in an annuity form from a pooled account, and enhances benefits payable by reducing fees and providing greater asset diversification through professional management of plan assets. Creation of such a plan would require a change to the existing code as it is neither defined benefit nor defined contribution as currently defined.

Conclusion

The multiemployer community is unified behind this set of proposals. They represent a consensus of a diverse yet representative group of stakeholders from across the multiemployer community. As with any such endeavor, consensus does not imply unanimous support for every aspect of the proposals and there will be those who would prefer that some provisions were different. Some of those differences simply reflect views by groups whose parochial interests differ from those of the Commission which attempted to place the good of the multiemployer community first, recognizing that a strong retirement program will both meet the needs of covered participants and facilitate retention of a skilled workforce.

We appreciate this opportunity to share our comments with you on the recommendations of the Commission and on the importance of taking prompt action to preserve this system which has served both participants and contributing employers so well. We look forward to responding to your questions.

Respectfully submitted,

Randy G. DeFrehn

Randy G. DeFrehn
Executive Director