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Subcommittee on Health, Employment, Labor and Pensions

Hearing on Retirement Security: Strengthening Pension Protections

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Testimony of the National Coordinating Committee for Multiemployer Plans

Chairman Miller, Subcommittee Chairman Andrews, my name is Judy Mazo. I am pleased to appear today on behalf of the National Coordinating Committee for Multiemployer Plans – the NCCMP. I am a Senior Vice President of The Segal Company, a national actuarial and employee benefits consulting firm, and, since 1980, a member of the NCCMP's Working Committee.

The NCCMP, working through the broad group of employers, business associations, multiemployer pension plans and labor unions that came together in the past few years as the Multiemployer Coalition, supported and advocated for the general design – and many of the particulars – of the multiemployer funding provisions of the Pension Protection Act of 2006 (PPA). That Act made significant changes to ERISA's multiemployer pension plan funding rules, changes that will ultimately result in stronger, better funded defined benefit pension plans for the approximately 10 million active and retired American workers and their families who depend on these plans for their retirement security.

A major achievement of the PPA was its recognition of the special context in which multiemployer pension plans operate and the importance of accommodating the collective bargaining arrangements that support the plan. The distinctive funding rules for multiemployer plans established by the PPA will, we think, allow our plans to flourish. The opposite would have been the case if multiemployer plans had been simply swept into the new single-employer pension funding regime. Chairman Andrews provided invaluable leadership and support with this, and we are profoundly grateful.

Before talking about specifics, I want to cite one overriding principal that we think should guide policymakers concerned with strengthening pension protections: preserving defined benefit plans. Their demise in many sectors of our economy has been widely noted. Indeed, yesterday I heard an especially apt adjective for the posture of defined-benefit plan sponsors: "treacherous."

However, in the multiemployer community the commitment to defined benefit plans is still strong. We urge the Congress to be vigilant not only to overt threats to the vitality of DB plans, such as the proposal by the Department of Energy to refuse to cover contractors' defined-benefit plan costs, but to the much more common subtle threats, which are the unintended result of the thousand tiny nicks of regulatory detail OR of well-meaning attempts to promote retirement saving by adding special inducements for defined contribution plans that make defined benefit plans less attractive by comparison.

Turning to specific ideas for statutory improvement, we have put together a comprehensive list of technical adjustments to the multiemployer funding provisions of the PPA that would make it work more smoothly, consistent with the core intent. There will undoubtedly be additional issues that are identified as plans and the parties dig into the implementation. In fact, since the Multiemployer Coalition finalized our list about a month ago, I've already identified 3 or 4 more – and the rules don't even go into effect until next year. Our current full list is appended to my written statement. We believe that they all require careful attention. I am going to mention a few of them, just to give you a flavor. We are citing these as illustrations, not to suggest that they take priority over any of the other items included in the more comprehensive list.

Frankly, because these are technical corrections their details can be difficult to follow and their impact is not profound. Also, to all but the most intense benefits-groupie, their description is likely to be boring. Let me take a stab at trying to overcome these problems in giving you a picture of what we're talking about.

1. The **<u>"Revolving Door" for Critical Status Plans</u>** – The key rules that apply to Critical Status plans (known popularly as "Red Zone" plans) look at when the plan is expected to have a funding deficiency. In testing whether a plan is ***in*** the Red Zone, the actuary is supposed to ignore any help the plan is getting in the funding calculations from a special relief provision that allows the plan to stretch out its payments (an

"amortization extension"). But, in deciding whether the plan qualifies to ***exit*** the Red Zone, the actuary takes the impact of that relief into account. The result can be a revolving door, if the effect of the extension is what takes the plan out of critical status. We suggest this be fixed, by ignoring the extension only the first time the determination is made.

2. **Rules governing benchmarks for Endangered Status Plans create confusion and require streamlining**. The law sets specific benchmarks that a plan that is in "Endangered Status" – the Yellow Zone – must strive to achieve. The benchmarks are based on the plan's funded status and potential for a funding deficiency for a given year. A plan that trips ***both*** distress measures – that is, it has a funded percentage below the 80% threshold and projects a funding deficiency within 7 years – is "Seriously Endangered" ("deep yellow"). Its benchmarks may be different from those of a

> plain old endangered plan. Or they may not be different, depending on financial measures. And how a plan measures up on these metrics can change from year to year, so the plan's benchmarks can fluctuate from year to year. Under these circumstances, it could be virtually impossible for the Trustees to produce meaningful plans to hit such a moving target. These and other anomalies in the technical requirements for yellow-zone plans need to be cleaned up.

We have an alternative suggestion for clearing out the underbrush on yellow-zone plans that would, we believe, make the yellow-zone rules much more useful by limiting their application to the plans that really need the special scrutiny: those that are facing a potential funding deficiency within 7 years.

We believe that using a single-year snapshot of the plan's funded percentage yields way too many false positives – plans that are well on their way to financial recovery but, for example, have not yet completely phased in the recognition of the recent investment gains. Those plans have to waste time and money coming up with essentially empty and potentially disruptive “recovery” programs – empty because the plans are already en route to recovery, disruptive because the statute may require the trustees to propose switching course and following a different recovery path, while hoping that no one takes them up on it.

If we dropped the funded-percentage test we could also drop the distinction between endangered and seriously endangered plans, with their potentially volatile recovery benchmarks. The seriously-endangered rules would apply to all yellow-zone plans. If you take that route, we suggest adding the measure for full recovery that now applies to red-zone plans, so that a plan would not leave endangered status unless it had no funding deficiency projected for 10 years.

This suggested redesign of the yellow-zone rules could be compared to the new categories of cancer drugs, which target the bad cells and minimize the harm to the rest of the patient. In candor, I can see why some might classify this change would be substantive, not technical, although it would not be a change in the law's basic policy.

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The NCCMP looks forward to working closely with the Committee and Subcommittee as you work to resolve these and the other issues we have identified that require attention so that the intent and full potential of the Pension Protection Act can be realized for multiemployer plans. While I am not appearing here today as their official representative, I am confident that that is true for the Multiemployer Coalition generally.

I am happy to answer any questions you may have.