<u>Multiemployer Retirement Security Review Commission</u>

Introduction

As you know, multiemployer defined benefit pension plans have been the primary source of regular and dependable monthly retirement checks for generations of workers who work in industries characterized by mobile workers.

The American system of employer sponsored retirement benefits primarily came into existence during and shortly after World War II. The wage controls enforced during the war, coupled with the competition for talent during the period that followed the war, caused companies providing retirement benefits to their employees to proliferate. Although numerous laws were passed that affected how they operated and their tax treatment, not the least of which being the Labor-Management Relations Act of 1947, more commonly known by the names of the two primary sponsors of the legislation as the Taft-Hartley Act, these benefit plans were loosely regulated until the passage of ERISA in 1974. ERISA codified the previous fiduciary rules as they apply to employee benefit plans and established a clear framework for how these plans must be designed, administered, and funded.

In the 37 years since the passage of ERISA, there have been significant changes to the funding of retirement plans. The concept of withdrawal liability was introduced in the Multiemployer Pension Plans Amendments Act of 1980 (MPPAA) as a means of shielding participants and the remaining contributing employers from the practices of unscrupulous employers who before MPPAA, were able to gain a double competitive advantage over their competitors who remained with the plan by simply walking away from both their ongoing contribution obligations and their portion of the plan's accumulated liabilities. Plan settlors and fiduciaries addressed the related funding concerns by adopting prudent plan designs and conservative investment strategies.

In the intervening years positive economic growth in both employment and investment experience enabled plans to grow and benefits to be increased. Plans sponsors have taken on correspondingly more risk in their investments to meet those obligations, while the government made it more difficult to modify benefit plans once adopted through the expansion of the anti-cutback rules and minimum contribution rules have changed to require more rapid funding of liabilities. At the same time, the design and administration of these plans have remained largely unchanged. Furthermore, while there has been extensive discussion about hybrid (defined benefit/defined contribution) alternatives, the only two trends in plans design of any significance have been the development of cash balance plans, and the migration to defined contribution plans.

Interestingly, both of these innovations are tied to the rigidity rather than flexibility of ERISA's rules. The sponsors of cash balance plans have consistently struggled to comply with ERISA's design requirements, and the migration to defined contributions plans primarily among single-employer plan sponsors was largely due to employers' desire to escape the volatility generated by the rules governing defined benefit plans, avoid the complexity of compliance with those rules, and reduce costs to the employer. However, these approaches have only exacerbated the problems of ensuring the retirement income security of long-term employees. In contrast to this trend in the single-employer world, a study conducted by the Department of Labor in 2009 showed that the only surveyed group that had greater participation in defined-benefit plans than defined contribution plans was union workers, including those who participate in multiemployer plans. The defined-benefit plan participation rate was 67 percent for union workers, more than triple the average rate of all private industry workers.

Scope of the Workforce Affected

Many of us take for granted that when we speak of multiemployer plans we know what employees are covered. We know there are 10.4 million participants in about 1,500 plans. We think of construction workers, coal miners and truck drivers, but all too often that perception is limited by our own experience in industries with which we are most familiar. What we often miss, however, is how pervasive these plans are and how many members of our families, friends, neighbors and acquaintances in our own communities are covered by multiemployer plans and how important they are to sustaining a meaningful standard of living. We may not realize that workers who do a diverse array of jobs are served by multiemployer plans; workers who are a vital and important part of the multiemployer community. We know them as employees, union members and others; all of whom are plan participants who spend their careers learning, practicing and perfecting a trade, skill, craft, or profession in their chosen field. Workers who are willing and able to provide a ready source of skilled employees to employers in these fields and are able to protect their families' economic security because of the portability inherent in a system that enables them to work for a variety of employers without having to establish pension and health benefits eligibility with each new employment opportunity.

They include, but are not limited to:

- people who build, maintain and repair our nation's buildings, roads, bridges, tunnels, pipelines, refineries and water systems, including building and construction tradesmen and women, and manufacturing workers;

- people who grow, process, package and distribute our food, as well as those who stock the shelves and run the cash registers in our local grocery stores;

- people who deliver the goods we all need and use – truckers, ship and barge captains and the maritime, longshore and warehouse workers who man, unload and ship those goods to us;

- people who clothe us including garment workers who produce the goods and those men and women who work in wholesale and the retail stores in which we shop;

- people who manufacture products essential to our way of life including paper, chemicals, pharmaceuticals, automobile parts, motorcycles, toys, cement and nuclear materials;

- people who dig the coal and work in the nuclear plants that generate the power and those who maintain the power plants and the distribution lines that provide the energy on which our highly technologically dependent society increasingly relies;

- people who care for us all, including our children and our aging parents – doctors and nurses, therapists of all types, health care aides in hospitals, nursing homes and in the community, teachers' aides and school bus drivers;

- people who make our business and leisure travel possible in the hotel and hospitality industries including housekeepers, bellmen, bartenders, waiters and waitresses and other restaurant workers;

- people who keep our commerce flowing efficiently – the technical, office and professional employees and the building service employees who keep them clean;

- people who make our lives more enjoyable – professional athletes, professional models, people who work in museums and other cultural venues, entertainers (stage, television and motion picture actors), and those whose efforts are less visible but just as essential, working behind the scenes including writers, directors, produces, musicians, ushers, stage hands, and the craftsmen who build the sets;

- people who keep us moving, including truckers, taxi and bus drivers, airline mechanics, flight attendants, gate agents, baggage handlers, automobile salespeople and mechanics, and parking garage attendants; and

- people who keep us informed working as newspaper and magazine employees, print and all other media journalists and reporters and those who support their work.

All of these and more are workers who understand that a portion of their wages is going to provide secure monthly retirement checks from their multiemployer plans when they can no longer face the demands (physical or other) of work; health care while they are actively employed and into retirement; training and apprenticeship, safety, housing and other benefit plans through the multiemployer plan system.

Shared Pain

Anyone involved in multiemployer plans, as participants, fiduciaries, sponsors or advisors, is acutely aware of the pressures on plan sponsors to increase the funding levels of these plans arising from the passage of stronger funding rules required by the Pension Protection Act of 2006. These pressures have been compounded by two "once-in-a-lifetime" economic contractions in less than a decade. The continuing sluggish economy that has stagnated recovery has only made matters worse by keeping hours of contribution well below historically normal levels and by prolonged government intervention to keep interest rates that are meant to stimulate the economy artificially low, but which have only exacerbated the funding problems of many plans.

These developments have caused plan fiduciaries, sponsors and contributing employers to become understandably more risk-averse as they have crafted a response to the economic crisis. Additionally, the increasing contribution requirements needed by many struggling plans to meet mandated funding improvement and rehabilitation plan targets, are severely straining contributing employers' ability to remain competitive in an increasingly tight economy.

While employers are facing increasing competitive pressures, economic pressure and uncertainty are by no means the exclusive domain of the employer community. Actions taken by plan trustees to reduce future accruals and in some instances, reduce previously earned early retirement benefits, have caused countless active workers to think twice about their retirement plans, while the negotiated nature of contribution increases has resulted in many workers having their wages reduced even further as they are being asked to pay some or all of the increases from existing wage packages.

No Silver Bullet

The trend among many, but certainly not all, single-employer plan sponsors to abandon defined benefit plans in favor of a defined contribution model presents problems of its own. Whereas the traditional defined benefit plan places full responsibility for investment risks entirely with the employer, defined contribution plans simply transfer it to employees who are historically less well equipped to handle such risks. Additionally, the individual account construct of the defined contribution model also adds costs, thereby reducing assets available for benefits. The increased costs are due to both the much higher fees paid by defined contribution plan participants for everything from investment management, administration, recordkeeping, and other assorted services; and, because individuals that do not participate in pooled benefit plans must also account and fund for their own "mortality risk". A recent study by the National Institute for Retirement Security found that it is 46% less expensive to fund the same benefit through defined benefit than defined contribution plans[1].

While there is not universal agreement, most industry experts believe that defined contribution plans are dramatically less effective at providing true retirement income security than defined benefit plans. In each of the two recent market contractions, employees whose only source of retirement savings was through these defined contribution "savings accounts" found themselves facing a new dilemma. This shift has been characterized as a "failed experiment," whose victims' account values plummeted not once, but twice during this period, wiping out not only investment gains, but in some cases eroding principal contributions made since 2000. This has substantially delayed, if not made it virtually impossible, for huge numbers of employees who had planned to retire to do so and at a time in their careers when it is impossible to recover the lost assets through the so called "miracle of compound interest."

Crossroads

Retirement plans in America are at a crossroads. When ERISA became law defined benefit plans dominated the scene. As the volatility of these plans became evident, especially following the passage of the single-employer rules of the PPA, employers felt they had no choice but to transition to defined contribution plans. On the political front, Congress recognizes that the multiemployer funding rules face sunset at the end of 2014, and has already taken steps to decide the most appropriate course of action by expediting a study to learn the effectiveness of those rules which is due to be issued by the Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation by the end of 2011.

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[1] See <u>A Better Bang for the Buck</u>, Beth Almeida and William Fornia, FSA, National Institute for Retirement Security, August 2008.[1]

In the coming months there is a unique opportunity for the retirement plan community to use the lessons learned in the past 60 years to redesign a system that continues to meet the needs of both employers and employees. This project represents our response to this opportunity, through assembling a group that will evaluate the strengths and weaknesses of the current system, consult with experts from inside and outside of the traditional retirement plan community, and develop recommendations and proposals for change.

Composition of Retirement Security Review Council

The Retirement Security Review Council will consist of representatives from all of the major industries that participate in multiemployer pension plans, and will be equally balanced between employers and employee organizations. A preliminary list of industries to be included is as follows:

- Aerospace
- Bakery & Confectionary
- Building Services
- Construction
- Entertainment
- Farming
- Food production, distribution and sales
- Health Care
- Hospitality & Restaurant
- Longshore & Maritime
- Mining
- Nursing
- Office and Professional
- Printing
- Trucking and Transportation
- Wholesale and Retail Sales

We welcome additions to this list to ensure that the entire community of plans is represented.

The time commitment for most Commission members will be approximately one day per quarter, but for others may be more significant. Formal meetings of the full Commission will be held approximately quarterly. To provide for the efficient completion of this work, it is anticipated that the Commission will appoint a smaller, working group (a "Development Committee" (Committee)) from among its members. Ideally, the Committee will consist of approximately 10 members, but it is important to ensure that the views of all industries are represented, so this number is not fixed.[2] These members will lead and facilitate the work of the Commission between meetings. In addition the Committee will conduct research, interview experts, and document findings, and will meet approximately monthly to ensure steady progress. The initial drafts of any documents produced by Commission will be drafted by NCCMP staff for review

[2] It is envisioned that the Committee will include representative members from the range of industries that sponsor multiemployer plans, but in order to avoid having these meetings digress into a discussion or negotiation over any particular plan, that no specific trade (or industry where there is only one nation-wide plan) will have both labor and employer representatives who serve on the same Board participate on the smaller group.

and revision by the Committee members, prior to review, discussion, editing, and ultimately adoption by the entire Commission.

Sources of Information

The members of the Development Committee will draw upon several sources of information. In addition to their own experience (as each member of the Commission will have served on either the labor or management side of the existing retirement plan community), Committee members will use interviews, published articles and research to enhance their understanding of the issues and leverage the work that has already been done in this area.

The Development Committee will conduct interviews with various professionals to gain further insight and perspective and to review design alternatives and innovations already available or in the development stage. In addition to the professions traditionally associated with the retirement industry, the Committee will meet with professionals that are not normally involved with retirement systems. The objective of this approach is to ensure that the members consider new ideas and approaches that have not previously been implemented.

A recommended list of professions with which the Committee will meet is as follows:

- Academics – In recent decades the academic community has performed considerable research related to retirement systems. However, among the community of practicing retirement professionals, there is often little awareness of the ideas developed by the academic professionals. Similar to risk managers and economists, academics can provide the committee with perspectives that cannot be gained without the involvement of people from outside of the current retirement professional community.

- Actuaries –As the leading experts on retirement plan funding and budgeting, actuaries will provide the committee with an understanding of the costs associated with various retirement plan designs.

- Attorneys – Their input will be important in considering and evaluating any changes that will be required to the current law to implement changes considered or recommended for adoption by the Commission.

- Economists – Our economy has undergone profound changes in the last 60 years. Developments such as dual income households, global business competition, longer life expectancies, and increased career mobility have affected the role that retirement benefits play in people’s lives. As plans have matured, the massive assets accumulated provide both the greatest source of private investment capital in the country as well as contributing significantly to the economies of the communities in which pensioners live, pay taxes and help drive the economy. Economists can contribute to the evaluation of how retirement plans can respond to these changes to ensure that they continue to meets the needs of both individuals and society as a whole.

- Investment Managers – The performance and volatility of the assets held by retirement plans has a profound impact on both the retirement security of the participants, and the business success of the plan sponsors. The committee will look to the investment management community for an understanding of the available asset classes, trends, assessing the adequacy of the traditional “Modern portfolio theory” and, together with input from the actuarial community, the “liability driven investment” and other potential approaches and the advantages and disadvantages of investing in each. This perspective will be useful in evaluating proposals that would require plans to value liabilities using “risk-free” rates of return that have been introduced in the public employee pension debate and which has been suggested by some to be worthy of consideration for all defined benefit plans.

- <u>Risk Managers</u> – The one word that best sums up the challenges facing the retirement community is risk. As businesses have come to focus more on the risks inherent in their enterprises, the risk management profession has evolved to meet this need. Since risk managers have not generally been a resource for multiemployer pension plans, this profession will provide the committee with an outsider’s perspective on pension plan risks.

In addition to the various professions listed above, the Development Committee will gain additional perspectives by video conferencing and other discussions with retirement plan professionals from outside of country. The NCCMP has a formal tri-partite agreement with AEIP (the European Association of Paritarian Institutions of Social Protection) and MEBCO (the Multi-Employer Benefit Plans Council of Canada), which are our counterpart organizations in Europe and Canada to share information of common interest to multiemployer advocacy organizations, and the respective legislative and regulatory bodies. Just as professionals from outside of the traditional retirement plan community will be a valuable resource to the committee, so too will be professionals and advocates from outside of the country.

Timeline and Deliverables

The ultimate objective of the Retirement Security Review Council will be to develop a comprehensive analysis of the strengths and weaknesses of the current retirement plan system, and reach consensus on recommendations for changes to the existing system and/or components of a new system, by mid-2012.

<u>July 2011</u>

- Appointment of Retirement Security Review Commission Members

<u>August 2011</u>

- Initial Council Meeting
    - Review and agree upon initial Development Committee composition:
        - Timetable and deadlines
        - Statement of objectives
        - List of interview professions
    - Selection of Development Committee Members

- Initial monthly meeting of Development Committee
    - Development of meeting schedule
    - Prioritize order of interviews and expectations from each
        - Assess need for and assign sub-committees as needed

<u>September 2011</u>

- Monthly meeting of Development Committee
    - First set of interviews

<u>October 2011</u>

- Monthly meeting of Development Committee
    - Second set of interviews
    - Interim assessment of process
- Second meeting of Full Commission
    - Oral report on progress and plans

<u>November & December 2011</u>

- Monthly meeting of Development Committee
    - Interviews continue
    - December – review of draft six month progress report

<u>January 2012</u>

- Second Full Council Meeting - Six month progress report
    - Review and approve deliverables of Development Committee
    - Discussion of / suggestions for course correction, if needed
- Monthly meeting of Development Committee
    - Interviews continue

<u>February & March 2012</u>

- Monthly meetings of Development Committee
    - Interviews continue
    - March - Discussion of draft final report with preliminary recommendations to Commission

April 2012

- Third Full Commission Meeting
    - Review and discuss draft final report with preliminary recommendations

April – June 2012

- Monthly meeting to reconsider feedback from Full Commission discussion
    - Follow-up on specifics
    - Discussions to achieve consensus on recommendations

June 2012

- Fourth Meeting of Full Commission
    - Review final recommendations
    - Discuss content and finalize Commission Report