Myths vs. Facts

DISPELLING MISINFORMATION SURROUNDING THE MULTIEMPLOYER COMMUNITY'S PENSION REFORM PROPOSALS

Myth 1: *There is no need to take action to support deeply troubled multiemployer plans because the Pension Benefit Guaranty Corporation (PBGC) will ensure that benefit payments to participants will continue after plans become insolvent.*

Fact: The PBGC does pay benefits to the participants of insolvent plans, but this guarantee only applies to benefits below a very low dollar threshold. The formula fully protects only the lowest amounts of benefit – 100% of the first $11 and 75% of the next $33 of accruals. For a participant with 30 years of service retiring at age 65, the maximum benefit amount that the PBGC will pay is $12,870 per year. Any benefits that participants have earned over this amount are completely forfeited.

Making matters worse, the ability of the PBGC to support even this minimal benefit level is in doubt. The PBGC has stated they now expect the multiemployer program itself will be insolvent within 10 to 15 years and GAO has projected that were one of the two largest at-risk plans fail, the current assets of the PBGC guaranty fund would be quickly depleted. If that were to happen and the agency were forced to pay benefits from the cash flow produced by premium payments, the maximum amount payable could be reduced to below $125*.

<u>Solutions Not Bailouts will allow many troubled plans to remain solvent and ensure that participants receive higher benefits than provided by the PBGC</u>.

**Statement of GAO Director Charles Jeszeck, March 5, 2013 to the Subcommittee on Health, Employment, Labor and Pensions.*

Myth 2*: The provisions for deeply troubled plans in Solutions Not Bailouts represents a fundamental departure from ERISA.*

Fact: The belief that ERISA prohibits benefit reductions in deeply troubled multiemployer plans is completely false. **<u>Under current law, ERISA not only permits, but actually requires reductions in accrued benefits for all participants when a multiemployer plan becomes insolvent.</u>** The recommendations contained in "*Solutions Not Bailouts*" would

provide trustees with the **<u>option</u>** to intervene earlier **<u>if</u>** such intervention would result in the plan remaining solvent **<u>and</u>** the resulting benefits would be preserved above those provided under current law. Only plans projected to be insolvent will be permitted to use these tools.

Furthermore, due to the extensive deliberations of both the labor and management representatives on the Commission, additional safeguards would be required, including: limiting the maximum amount of reductions to not more than the amount required to preserve the plan's solvency; the ability of plans to voluntarily protect the most vulnerable participants (retirees of advanced age, disabled participants and those who had been receiving benefits for extended periods) from the effects of such reductions; and a requirement that any such action would be subject to government approval. Such approval would require that the actions could be taken only after all reasonable measures to avoid insolvency were taken and that the interests of all participants were equitably considered.

In essence, trustees would be permitted, but not required to accelerate an existing provision of ERISA, provided they can show that taking this action will result in the preservation of the plan and higher long-term benefits to participants than are available under current law.

***Myth 3**: If we can find a way to adequately fund the PBGC, the "Deeply Troubled Plan" recommendations of the Solutions Not Bailouts proposal are unnecessary.*

Fact: **<u>The central theme of the Solutions Not Bailouts proposal for deeply troubled multiemployer plans is to give trustees the tools necessary to preserve plans that can remain solvent and preserve benefits above the PBGC guarantee level.</u>** It limits access to such relief if and only if such action would result in the long-term solvency of the plan.

Even if we assume that the PBGC had the assets necessary to support its guarantees, if adopted the proposal has the potential to minimize the benefit reductions that participants experience by allowing troubled plans to avoid going to the PBGC in the first place; an action which by definition requires the plans involved to fail. Additionally, allowing plans to remain solvent will enable them to provide higher future benefits to both current retirees and active employees who expect to receive the benefits in the future that they have earned throughout their careers; reduce the likelihood of employer withdrawals; lower the amount of premium increases required to provide the safety net for participants whose plans do not qualify for the optional relief; and reduce the exposure of the PBGC to insurmountable liabilities.

***Myth 4:** Solutions Not Bailouts looks to benefit reductions as the first alternative rather than exploring alternative solutions.*

Fact: The recommendations of the Retirement Security Review Commission that are expressed in the Solutions Not Bailouts report represent the collaborative efforts of

representatives of dozens of labor unions and employer organizations, large employers, large plans and advocacy organizations.

The recommendations were arrived at through nearly eighteen months of intensive discussions to determine solutions that are both feasible for all stakeholders and which will produce the greatest likelihood that the system survives to serve multiemployer plan participants for decades to come. During this period of analysis and deliberation, numerous proposals were put forth, vetted and either advanced or set aside for lack of sufficient consensus.

For those who did not participate in the process to say that the Commission opted to choose the path to reduce benefits rather than explore other alternatives simply reflects a lack of understanding of the extensive process or the resource commitment to problem solving for the long-term survival of the plans and protection of their participants' benefits.

The Commission's work included an assessment of recent legislative history which included the failure of a legislative proposal previously endorsed by the NCCMP with the title "Protect Benefits and Jobs Act*" that was advanced during the 2009 Congressional session. That proposal included expanded partition authority for the PBGC; clear authority for PBGC's facilitation of mergers; creation of similar structures known as alliances; and to modify the funding source of the PBGC to provide for the agency to be backed by the "full faith and credit" of the federal government. Neither the House nor Senate legislative proposal received sufficient support within their respective legislative bodies to be advanced. The Commission also acknowledged clear and unambiguous bipartisan statements by Subcommittee leadership that no bailouts would be forthcoming to the multiemployer system, in gaining an understanding of the legislative and regulatory environment into which the proposals would be considered.

**See HR 3936 "Preserve Benefits and Jobs Act of 2009" introduced by Representatives Pomeroy and Tiberi and companion Senate legislation S 3157 "Create Jobs and Protect Benefits Act of 2010" sponsored by Senator Casey.*

Myth 5*: The Solutions Not Bailouts proposal sacrifices pensioner benefits instead of looking to active participants as a way to improve plan funding*

Fact: The language of the proposal is clear and unambiguous. Trustees may only access the ability to suspend accrued benefits after all reasonable measures for improving plan funding have already been taken.

These actions include reducing the rate of future benefit accrual, allocating additional contributions to the pension plan out of the wage package, and reducing or eliminating early retirement subsidies and other ancillary benefits. Each of these actions represents an enormous sacrifice on the part of active participants in the plan. **

The benefit suspension ability in the Solutions Not Bailouts proposal is available only after the sacrifices imposed on active and terminated vested employees under the PPA have proven to be insufficient to prevent the plan from becoming insolvent.

***In evaluating actions taken by plans to address funding issues arising from the 2008 recession, it was determined that approximately 73% of all plans increased contributions, 36% reduced benefit accruals, 35% reduced ancillary benefits and 44% both increased contributions and reduced benefits, all of which affected active employees. – See <u>Road to Recovery: 2010 Update to the NCCMP Survey of the Funded Status of Multiemployer Defined Benefit Plans</u>.*

Myth 6*: The Solutions Not Bailouts proposal allows employers to avoid funding the benefits the plan has promised.*

Fact: The Pension Protection Act (PPA) contains a provision that effectively requires employers in deeply troubled plans to contribute the maximum amount that they can reasonably afford. The Solutions Not Bailouts proposal would not alter this provision in any way, nor does it provide any contribution relief to the employers in these plans.

<u>**While the trustees would have the ability to adjust the benefits only to the level that will allow the plan to remain solvent (and pay benefits at least 10% above the statutory PBGC guarantee level), the value of these adjustments are not permitted to flow through to the employers in the form of reduced contributions.**</u>

Myth 7*: The Solutions Not Bailouts proposal does nothing to protect the interests of the oldest and most vulnerable retiree populations.*

Fact: <u>**The Solutions Not Bailouts proposal gives explicit discretionary authority to trustees to implement any benefit suspensions in a manner that protects (exempts) the most vulnerable segments of the population from the benefit reductions to the greatest extent possible**</u>. This means that younger retirees with higher benefit levels will shoulder more of the burden, while older retirees with lower benefit levels will receive greater protection.

As with all other aspects of the Commission's recommendations, this authority is also optional in recognition of the fact that many plans provide benefits that are only marginally higher than the PBGC guaranty. Were this option strictly imposed as a requirement, fewer plans could take advantage of the relief as some plans may fail to meet the minimum threshold qualification (110% of the PBGC insurance guaranty) to access the relief, thereby condemning the plan to insolvency.