MULTIEMPLOYER COALITION LEGISLATIVE PROPOSAL FOR MULTIEMPLOYER DEFINED BENEFIT PENSION PLAN FUNDING RELIEF

A. General Relief for Challenged but Solvent Plans

1. Allow multiemployer plans that meet stated solvency standards (to assure that the plan is expected to have enough cash-flow during the extended period) to elect a one-time fresh-start of the Funding Standard Account, with the sum of all of the current outstanding balances amortized over a single 30-year period, effective starting with the plan year beginning after either September 30, 2009 or September 30, 2010.

2. As an alternative that the trustees may select instead of option one, provide an option to isolate the investment losses suffered during the period of two plan years beginning on and after September 1, 2008 and ending by September 30, 2010 and amortize them over 30 years.

3. At the option of the trustees, extend the Rehabilitation or Funding Improvement Periods by 5 years, offset (if applicable) by the 3-year extension elected by some plans pursuant to WRERA. The election to use this extension could be made at any time that the Rehabilitation or Funding Improvement Plan is being developed or updated, provided that it could only be elected once with respect to each period that such plan is in the Yellow Zone and once with respect to each period that it is in the Red Zone.

4. Extend the automatic amortization extension period from 5 to 10 years with an additional 5 years available with IRS approval, and set time limits for IRS review of automatic amortization extension submissions, so that, if the actuary has properly certified that the standards are met, the extensions can be adopted on a timely basis.

4A. Provide that the 2008-2009 investment losses will not cause multiemployer plans that received amortization extensions from IRS before enactment of PPA to lose the benefit of those extensions, despite IRS's requirement, when granting the extensions, that the plans' funded levels improve each year by at least 1%.

5. To temper the immediate and dramatic impact of the recent plunge in investments, widen the acceptable corridor for purposes of actuarial smoothing to 30% to mitigate the initial impact on increased employer contributions and/or benefit modifications attributable to the precipitous drop in asset values for 2008 and 2009; and extend the acceptable smoothing period to 10 years to phase in the losses of 2008 and 2009 only.

B. For Troubled Plans That Need Special Help

6. Help multiemployer pension plans support one another by –

a. Recognizing a new type of plan called an "alliance", through which multiemployer pension plans can be combined for purposes of investment, administration, fiduciary accountability, prospective service credit for benefits and eligibility and retroactive vesting credit, but maintain separate accounting for purposes of the funding requirements (including the special funding requirements for endangered and critical-status plans) and withdrawal liability associated with benefits earned prior to the effective date of the alliance,

b. Specifically authorizing the PBGC to encourage and facilitate fund mergers and alliances, including by providing financial assistance from the multiemployer guaranty fund if the agency determines that that assistance is reasonably expected to reduce the PBGC's likely long-term loss with respect to the funds involved, and

c. Modifying the fiduciary rules and standards to remove unnecessary impediments to multiemployer pension fund mergers, including alliances, by:

    1) Providing that the trustees approving such a merger or alliance are deemed to meet the "exclusive benefit" standards of sections 403 and 404 of ERISA if they determine that the merger is not reasonably likely to be adverse to the long-term interests of the participants in the pre-merger plan for which they are responsible, and

    2) Specifically adding multiemployer plan mergers that are alliances to the types of mergers that, under existing law, are deemed not to be prohibited transactions under sections 406(a) and 406(b)(2) of ERISA, if the PBGC finds that the transaction meets the standards in section 4231 of ERISA; and

    3) Confirming that the fiduciaries of the combined plan are accountable to all of the participants of the merged plans in the alliance.

7. Reinvigorate the multiemployer plan partition option under ERISA §4233, to meet special industry needs. Specifically, amend the partition rules in ERISA §4233 as follows:

    a. The provisions in ERISA Section 4233 would be revised to include a new subsection entitled "Qualified Partition upon Election By Certain Plans."

    b. The new subsection would include the following provisions:

        1) Multiemployer pension plans that meet the requirements of ERISA Section 4233(b)(1) – (4) (as modified as described in b. 2) below), as well as the other criteria described in b. 2) below, could elect to transfer to the PBGC responsibility for the vested benefits attributable to service of participants with non-contributing employers that either have become bankrupt or otherwise have

gone out of business without paying their proportionate share of the plan’s full withdrawal liability. If an election is made, the PBGC would be required to assume the responsibility with respect to those benefits by the first day of the first month that begins at least 90 days after the date of the plan’s election.

2) To be eligible for a Qualified Partition, a Plan would have to meet the following criteria:

a) The plan has been certified to be in Critical (“Red Zone”) Status at the time of the Automatic Partition request;

b) The plan has suffered a substantial reduction in the amount of aggregate contributions under the plan that is attributable to employers that either have previously become bankrupt or otherwise gone out of business without paying their proportionate share of the plan’s full withdrawal liability;

c) The trustees certify, based on actuarial projections, that the plan is likely to become insolvent and a significant increase in contributions would be necessary to prevent insolvency;

d) As of the end of each of the immediately preceding two plan years, the plan had a ratio of inactive participants (retirees, beneficiaries and terminated vested participants) to active participants of at least 2 to 1;

e) In each of the immediately preceding two plan years, had a ratio of benefit payments to legally-required contributions of at least 2 to 1, and

f) The trustees certify that, based on actuarial projections, partition would significantly reduce the likelihood of insolvency.

3) For each plan year after a Qualified Partition, the plan sponsor will determine whether aggregate employer contributions have declined 10 percent or more as a result of employers’ becoming bankrupt or otherwise going out of business without paying their proportionate share of the plan’s full withdrawal liability and, if so, shall transfer responsibility to PBGC for non-forfeitable benefits attributable to service with those employers.

4) In the case of a Qualified Partition, the PBGC's partition order described in ERISA Section 4233(d) will provide for the transfer of vested benefits attributable to service of participants with respect to non-contributing employers that either have become bankrupt or otherwise have gone out of business without paying their proportionate share of the plan’s full withdrawal liability, and

the transfer of plan assets attributable to withdrawal liability payments collected from such non-contributing employers and any earnings thereon but reduced by the amount of benefit payments actually made to such participants.

5) The PBGC would guarantee the non-forfeitable benefits transferred pursuant to a Qualified Partition.

6) Any net unfunded costs or liabilities incurred by the PBGC in connection with Qualified Partitions will be disregarded in determining the financial condition of the guaranty funds under ERISA § 4005 and premiums payable under ERISA § 4006.

8. Encourage continued participation by employers facing additional pension contribution stress by:

   a. Authorizing a "*pension support tax credit*" equal to the eligible increase in the amount of employer contributions paid to a multiemployer plan that is seriously endangered or in critical status, pursuant to a collective bargaining agreement adopting a schedule of contributions acceptable to the Trustees and consistent with the plan's Rehabilitation or Funding Improvement Plan, provided that the plan is not terminated or frozen for future accruals during any of the plan years for which the increased contributions are paid.

   b. An increase in contributions is eligible under this provision to the extent it is attributable to an increase in the rate of contributions (including an increase due to a change in the basis on which contributions are made) required under the Trustee-approved schedule.

   c. The tax credit will be available for up to three consecutive years, beginning with the year in which the increased contributions are first paid.

C. For All Plans

9. Increase the generally applicable PBGC multiemployer guarantees prospectively, by adding a third level of guaranteed accrual rate, to a maximum of 100 percent of the accrual rate up to $11, plus 75% of the next $33, **plus 50% of the next $40**. This would produce a maximum guarantee of roughly $20,000 a year for a participant with 30 years of service for a pension (compared with less than $13,000 under current law).

10. Back PBGC obligations with respect to Qualified Partitions with the full faith and credit of the United States to more appropriately reflect the magnitude of benefits guaranteed and to enable the agency to carry out its objectives to protect all defined benefit plans as set forth in ERISA §4002(a), with due consideration to avoiding crippling increases in the applicable premium structure.

11. Authorize employers to issue "PPA Compliance Bonds" that would be guaranteed by the US Treasury, subject to certain risk management conditions, the proceeds of which would be contributed to the plan.

12. Make technical corrections to sections 202 and 212 of the PPA, which added the special funding rules to ERISA and the Internal Revenue Code for multiemployer plans in endangered or critical status. For example,

    a. eliminate the possibility that IRC § 432(c)(4)(C)(ii) could subject plans that shift from endangered to critical status to overlapping, inconsistent standards during the Rehabilitation Plan Adoption Period,

    b. streamline the rules for seriously endangered plans by providing that the benchmarks in IRC § 432(c)(3)(B) and (4)(B) apply to all such plans, and

    c. confirm that, if an endangered plan meets the applicable statutory benchmarks before the end of its Funding Improvement Period but the actuary certifies that it still fails the tests in § 432(b)(1), the original Funding Improvement Period and Funding Improvement Plan remain in effect until the plan is no longer certified to be in endangered status.