NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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Mr. Kenneth Fineberg
Special Master
U. S. Department of the Treasury
MPRA Office
1500 Pennsylvania Avenue NW., Room 1224
Washington, DC 20220

Re: TREAS-DO-2015-0009 Multiemployer Pension Plan Application To Reduce Benefits
Central States, Southeast and Southwest Areas Pension Plan

Dear Mr. Fineberg:

I am writing on behalf of The National Coordinating Committee for Multiemployer Plans ("NCCMP") to express support for the application (the "Application") submitted to the U.S. Department of the Treasury by the Board of Trustees of the Central States, Southeast and Southwest Areas Pension Plan ("Central States") for the reduction of benefits under the *Multiemployer Pension Reform Act of 2014* ("*MPRA*").

A nonprofit, non-partisan organization, with members, plans and contributing employers in every major segment of the multiemployer plan universe, including in the airline, agriculture, building and construction, bakery and confectionery, entertainment, health care, hospitality, longshore, manufacturing, mining, retail food, service, steel and trucking industries, the NCCMP"s purpose is to assure an environment in which multiemployer plans can continue their vital role in providing economic security through these collectively bargained benefits to working men and women. The NCCMP is the only national organization devoted exclusively to protecting the interests of the over 10 million active and retired American workers and their families who rely on multiemployer plans for defined benefit retirement and other benefits.

It was the NCCMP that convened the Retirement Security Review Commission, a consortium of more than 40 distinct groups of labor unions, employer associations, large employers, plan and advocate stakeholders from across the economy to assess the strengths and weaknesses of the multiemployer system. The Commission met for approximately 18 months and produced a comprehensive set of reform recommendations published in its report "Solutions Not Bailouts." This body of work formed the framework for the *MPRA* upon which the proposed actions described in the aforementioned application are based.

Summary

For the multiemployer plans that are eligible to use them, the remediation provisions of *MPRA* represent an opportunity for plans that are certified by the plan actuary to become insolvent within prescribed time frames, to voluntarily adopt a plan of remediation to both remain solvent and preserve benefits above the level that would otherwise be provided by the Pension Benefit Guaranty Corporation ("PBGC") at such time as the plan were to become insolvent. By the explicit terms of the statute, these are plans which, despite having taken all reasonable measures to avoid insolvency, in the absence of benefit reductions, will fully exhaust their assets and all benefits will be cut to or below the PBGC guarantee level. *MPRA* provides these plans with the option of voluntarily reducing benefits today if doing so will (a) eliminate the projected insolvency of the plan and (b) keep all participant benefits at least 110% above the PBGC guarantee level. While implementing reductions today is a difficult step to take, it enables plans that face inevitable insolvency to survive and maintain long-term benefit levels at a higher level than would be possible if they were to become wards of the PBGC.

Since 2004, Central States has dramatically reduced the benefits that active participants are earning, while requiring contributing employers to rapidly increase their contribution rates. These steps have taken a large toll on the future benefit security and, therefore, the support that active participants have for the plan. It has also had an adverse effect on the ability of the contributing employers to remain competitive in their industries. Unfortunately, in the wake of a shrinking base of contributing employers and two severe financial market downturns, these funding improvement measures have proven to be insufficient to return the plan to financial health, and the Trustees have no options remaining. Reducing benefits under *MPRA* requires painful sacrifices today, but it is the only way to prevent the greater benefit losses that would occur if benefits are cut all the way to the PBGC guarantee level.

Not only would the insolvency of Central States cause participants in this plan to receive greater benefit cuts than the Trustees have proposed under MPRA, it would also have far-reaching consequences for all 10 million multiemployer plan participants. Many employers who contribute to Central States also contribute to other multiemployer plans. The failure of Central States could drive hundreds of these companies into bankruptcy, which in turn would place the benefits payable from other multiemployer plans at risk. Additionally, the PBGC multiemployer insurance program itself has a very large funding shortfall, and it is difficult to imagine how it could survive if it has to support Central States. The failure of PBGC would force Congress to either bail out the agency at a cost that could reach $100 billion, or allow more than a million workers to lose their retirement benefits nearly in their entirety, including all of the participants in Central States. In its FY 2013 Projections Report, PBGC stated… *If and when the program becomes insolvent, the only funds available to support benefits would be the premiums that continue to be paid by remaining plans; this would result in benefits being cut much more deeply, to a small fraction of current guarantees.* The turmoil of this situation could cause the entire multiemployer pension system to unravel, to the great detriment of the millions of participants who currently participate in healthy plans where the benefits are not in jeopardy.

How MPRA Benefit Reductions Preserve Benefits

When a multiemployer pension plan exhausts its assets, it receives financial assistance from the PBGC. This assistance allows the plan to continue to pay benefits, but those benefits are reduced in accordance with the PBGC guarantee formula. The amount that is covered by the PBGC guarantee depends on the size of the benefit that the plan provides, with smaller benefits eligible for greater protection than larger benefits. For example, a participant who worked for 25 years in a plan that provides very low benefits (*e.g.* $250 per month) would have his entire benefit guaranteed under the statutory formula, but those with greater benefits (*e.g.* $3,000 per month) would see that benefit reduced to less than $900 per month if the plan were to exhaust its assets and be forced to rely on PBGC assistance.

Not only are the benefits covered by the PBGC very low, there is the additional concern that the PBGC's multiemployer insurance program lacks the financial resources to support its obligations. Analyses by the PBGC and by other organizations all agree that the assets of the multiemployer insurance program are likely to be depleted in approximately 10 years. Under current law, the PBGC is funded entirely by premiums paid by the plans it covers with no support from the US Treasury or backing from the full faith and credit of the United States government. While some observers have postulated that Congress will rescue the PBGC we believe it is instructive to note that in 2009, legislation was introduced in the House by Congressmen Pomeroy and Tiberi - the *"Protect Benefits and Jobs Act of 2009"* – that would have provided an additional backstop to the PBGC by converting the agency's status to one backed by the full faith and credit of the U.S. government. A companion bill – the *"Create Jobs and Save Benefits Act of 2010"* was introduced in the Senate by Senator Casey. Despite the large Democrat majorities in both Houses of Congress (and a Democratic Administration), neither bill was even able to warrant a hearing in its respective body and both were aggressively attacked in the media as being nothing more than a "union bailout." Furthermore, in 2012 Congress passed the "*Moving Ahead for Progress in the 21st Century Act*" (aka "*MAP 21")* which, in addition to increasing the multiemployer guaranty fund premiums, went one step further in ensuring that taxpayers would not become the source of additional PBGC funding by repealing their $100 million line of credit with the US Treasury that had been in ERISA since the inception of the guaranty program in 1974. Given that history, we must conclude that despite the best intentions of those who would like to believe the contrary, it is highly unlikely and, indeed, foolhardy if not intentionally misleading to place the well-being of both the participants of Central States and of the millions of other participants in multiemployer plans in jeopardy, hoping that an alternative reality will replace existing law.

When the multiemployer insurance program exhausts it assets, and unless Congress steps in with a massive bailout, the financial assistance that the PBGC pays to multiemployer plans will be reduced to the meager level that it can afford from premiums on a pay-as-you-go basis. Returning to the example of the participant who started with a $3,000 benefit that is reduced to $900 under the PBGC guarantee formula, this benefit would likely be further reduced to less than $100 per month when the assets of the PBGC multiemployer insurance program are depleted.

Prior to the passage of *MPRA*, and for multiemployer plans that do not qualify for the relief measures provided in that statute, plans that were/are headed towards insolvency had no option other than to pay current benefits and wait for their assets to run out. Once that occurs, all participant benefits are cut to the PBGC guarantee level, which can represent cuts of 70% or more. Unlike the protections contained in *MPRA* for vulnerable populations (disabled participants and those over age 80) the trustees of plans that become insolvent have no discretion in these cuts and no ability to protect any category of participants from them. Further, these participants will now be exposed to the possibility that the PBGC might be unable to support its guarantee, which would cause their benefits to be further reduced by 90% or more.

If certain conditions are met, *MPRA* provides multiemployer plans that face inevitable insolvency with the option of maintaining a higher benefit level than the PBGC will provide by voluntarily adopting lesser reductions now. The first condition is that the plan must have first taken all other reasonable measures to improve its funding before applying for these reductions. Second, after the benefit reductions take effect, each and every participant must receive a higher benefit than he or she would receive under the PBGC guarantee formula. Third, participants over age 80 must be fully exempted from the voluntary reductions and those over age 75 must be partially exempted, and disability benefits paid by the plan must also be exempted from the reductions. The final criteria is that the benefit reductions must be projected to be sufficient to prevent the insolvency of the plan, while not materially exceeding the level that is necessary to accomplish this goal.

For plans such as Central States that are able to reduce benefits under *MPRA*, these reductions provide several advantages over allowing the plan to reach insolvency. By utilizing the tools provided under *MPRA*, all benefits will remain above the level provided by the PBGC guarantee, resulting in greater benefit preservation for participants. At a minimum, benefits must remain at least 10% above the PBGC guarantee, and many participants will experience significantly greater benefit preservation than this minimum. *MPRA* requires that certain categories of vulnerable participants such as older retirees and those receiving disability benefits be protected from the reductions, while these groups would receive no protection at all if the plan exhausts its assets. Under the *MPRA* provisions, the trustees also have the option of providing additional protections for vulnerable groups, such as participants with many years of service in the plan who depend on those benefits more heavily than participants who worked in the plan for only a few years.

Once a plan becomes insolvent, it is likely that all employers will exit the plan in a "mass withdrawal". While these employers would be assessed withdrawal liability in this event, the plan is highly unlikely to collect as much from these withdrawn employers as it would have received from them if they had continued to contribute to the plan as active employers. For this reason, preventing insolvency increases the long-term financial resources of the plan, which helps to minimize the cuts and protect participant benefits. Preventing insolvency also extends the investment horizon of the plan's assets, allowing greater time for them to recover and produce returns.

Once a plan becomes insolvent and receives assistance from the PBGC, there is no hope that any of the lost benefits will ever be restored in the future. In contrast, when a plan prevents insolvency through *MPRA* benefit reductions, future positive experience could allow the trustees to restore some of the benefits that were previously reduced. In addition, a plan that avoids insolvency through reductions can continue to provide additional benefit accruals to those currently active employees who have borne the full burden of benefit reductions and contribution increases imposed over the past decade and will provide benefits to future generations of workers, while a plan that exhausts its assets does not provide any future benefit accruals to any of these employees.

For all of these reasons, the difficult and painful sacrifices that are contained in Central States application to reduce benefits under *MPRA* will serve to protect and preserve the benefits in this plan to the greatest extent possible. In the absence of these reductions, the plan will run out of money, and the sacrifices imposed at that time will be even more difficult for participants to bear. As difficult as it is to fathom the extent of the reductions that would be imposed on all classes of participants under the current proposal and what those reductions will mean to the standard of living for those affected, it must be noted that the order of priority of reductions imposed on Central States by the explicit language of *MPRA* which is specific to that plan and the numbers of participants in protected classes have further narrowed the discretion of the Trustees to moderate the extent of benefit reductions to the remaining participants.

Impact on the Multiemployer System

Multiemployer pension plans currently cover over 10 million workers, retirees, and beneficiaries. These plans have provided invaluable retirement income to millions of retirees who would not have had any access to employer-sponsored pension plans if these plans did not exist. While recent public attention is understandably focused on the plans that are in serious distress, the vast majority of multiemployer pension plans are either in good health, or are in the process of recovering from the recent financial turbulence. Despite this outlook, there is a substantial risk that if Central States were to become insolvent, it could destabilize the entire multiemployer system to the point of collapse.

The PBGC currently has roughly $1.9 billion in assets, and receives approximately $250 million in premium revenue annually. In contrast, the benefit payments from Central States are currently approximately $3 billion annually. While it is possible that Congress will raise the PBGC multiemployer premium rate in the coming years, it is very unlikely that it can be raised high enough to allow the PBGC to support both Central States and the other plans that will require financial assistance without driving the remaining employers out of the system. In effect, if Central States exhausts it assets, the PBGC multiemployer program will also become insolvent.

The insolvency of the PBGC multiemployer program would be a catastrophe. If Congress does not step in to bail out the agency -- and for the reasons detailed above, the likelihood that would happen appears remote-- then all participants in insolvent multiemployer plans would lose their retirement benefits nearly in their entirety. This would affect all 400,000 participants in Central States, and an estimated 1 million participants in other plans. If Congress does provide PBGC with a taxpayer bailout, it could end up costing the taxpayers as much as $100 billion.

Many employers that contribute to Central States are also contributing employers in other multiemployer plans. If Central States fails, these employers will be assessed withdrawal liability amounts that will jeopardize their ability to remain in business. This in turn will lead to the loss of hundreds of thousands of jobs. Since many plans, including Central States, cover employers in multiple industries, this effect is not limited to the trucking and transportation industry. Construction, retail food, and other industries will also be directly affected. As these employers become bankrupt, or suffer significant financial losses as a result, it will push additional multiemployer plans into financial distress, placing more participant benefits at risk.

The failure of the PBGC and the cascading effect of employer bankruptcies that will result from the insolvency of Central States will place enormous pressure on the entire multiemployer system. Plans that are currently in good health will see an erosion of their contributing employer bases and exacerbate concerns among active participants that their benefits are not protected by a safety net. The fallout from the failure of Central States could very easily cause the entire multiemployer system to fall apart. Congress recognized this possibility when it included a provision in *MPRA* that directs the Treasury Department to override a participant vote against the enactment of reductions for plans that are deemed to be 'systemically important.'

While the financial turmoil and recession of the past decade have been so severe that some multiemployer plans such as Central States will be unable to pay all of the benefits that are due to participants, the vast majority of plans has been able to withstand this crisis and is on a path towards recovery. The benefits that these plans pay to retirees provide them with financial security that they could not obtain in any other way. It would be a tragedy if these plans are unable to continue this vital mission because Central States was allowed to fail, especially when it is possible to prevent this failure while providing Central States participants with benefit protection above what the PBGC is able to provide.

Conclusion

We believe that the application filed on behalf of Central States meets the statutory requirements for Treasury approval under *MPRA*. No one minimizes the pain that reductions in current and future pension benefit payments will be inflicted on the individuals and families affected. Nevertheless, the application accurately reflects the reality of the current financial state of the plan and the statutory and regulatory environment under which the plan finds itself. Having taken all reasonable measures to avoid insolvency, the Trustees of the plan have carefully studied their options and obligations and have put forth a plan that will provide participants with greater long-term retirement income security than is available under any of the existing alternatives.

On behalf the NCCMP and the broad multiemployer plan community, we urge you to approve the Central States application for benefit reductions under MPRA. Rejecting this application will expose the long-term benefits of Central States participants to unnecessary risk, and will cause serious harm to millions of participants across the multiemployer system.

Respectfully submitted,

Randy G. DeFrehn

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