

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: [Federal Register Notice](#) Multiemployer Pension Plan Application To Reduce Benefits
Ironworkers Local 17 Pension Fund

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 Ironworkers Local 17 Pension Fund for the preservation of benefits under the *Multiemployer Pension Reform Act of 2014* (“MPRA”). We believe that by characterizing these tools as available for the **reduction** of benefits, the objective of the *MPRA* is missed; specifically, to provide voluntary tools to fiduciaries of plans certified as heading towards insolvency, to intervene earlier than had been permissible under prior law in order to enable them to **preserve** benefits. While this action involves advancing the date at which Trustees would be required to reduce benefits, the end result is that the plan will otherwise survive for current and future generations of retirees and the benefits they will receive will be greater than are otherwise payable if the plans are permitted to become insolvent.

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 statutory 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.

As a result of market losses suffered in the two major market corrections dating back to the beginning of the millennium and a fundamental shift in the industrial employment base in northern Ohio, the Ironworkers Local 17 Pension Fund has dramatically reduced the benefits that active participants are earning, while requiring contributing employers to more than double their contribution rates in recent years. 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 the construction industry. Unfortunately, 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 much greater benefit losses that would occur if benefits are cut all the way to the PBGC guarantee level.

In the case of the Ironworkers Local 17 Pension Fund, the Trustees, the union leadership and the industry are to be commended for their diligence in actively engaging plan participants at every step in the process. Their leadership has produced a result that is quite different from that of other, similarly situated plans. By continually engaging participants in education programs to explain the developing financial difficulties and the limited options available prior to *MPRA*’s passage, participants are well aware that *MPRA* represents their last, best chance to preserve benefits for current and future generations of pensioners. Other plans which have been less actively engaged in such an educational process, or which have had groups with no fiduciary obligations, including some union representatives and so-called advocacy organizations, operating at cross purposes with those who have such legal obligations, have confused the message; suggesting without basis that there has been malfeasance or worse that has caused the plan’s current financial dilemma, or convincing participants that a bailout is a virtual certainty if the reform proposal is rejected. Their efforts only further threaten the long-term financial security of plan participants. The contrast between such plans, as demonstrated by the difference in the sheer number of comments filed by participants of Ironworkers Local 17 Pension Fund

who have been regularly informed with the thousands of comments filed by participants in such other plans, makes the actions taken by Ironworkers Local 17 Pension Fund a case study in effective, responsible leadership.

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 and the same service (*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 the agency's \$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 it is highly unlikely that an alternative reality will replace existing law.

When the multiemployer insurance program exhausts its 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 trustees of 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; 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 Ironworkers Local 17 Pension Fund that are able to adjust 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 most 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 and receives assistance from the PBGC, there is no hope that any of the lost benefits will ever be restored in the future. By 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 the Ironworkers Local 17 Pension Fund 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.

The application for relief under the *MPRA* filed by the Ironworkers Local 17 Pension Fund contains great detail about steps that have been taken by the Trustees and the bargaining parties to address the funding problems encountered over nearly 20 years. It chronicles actions taken in response to forces that were largely beyond the control of plan trustees and administrators and describes their best efforts to address the devolving fortunes of a declining industrial base and consecutive national recessions. It also carefully details a cautious and consistent process to comply with the Board's fiduciary responsibilities to comply with the both the explicit and implicit requirements of *MPRA* and to make sure they act only for the "sole and exclusive benefit" of plan participants under ERISA and the Labor Management Relations Act of 1947 (aka the Taft-Hartley Act).

Conclusion

We believe that the application filed on behalf of the Ironworkers Local 17 Pension Fund meets the statutory requirements for Treasury approval under *MPRA*. No one minimizes the pain that reductions in current and future pension benefit payments will inflict 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 Ironworkers Local 17 Pension Fund application to take advantage of the tools for benefit preservation under *MPRA*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randy G. DeFrehn". The signature is written in a cursive style with a large initial "R".

Randy G. DeFrehn
Executive Director