SECTION-BY-SECTION SUMMARY OF THE DRAFT PROPOSAL TO MODERNIZE MULTIEMPLOYER PENSIONS

Section 1: Short Title

- *Multiemployer Pension Modernization Act*.

Section 2: Multiemployer Composite Pension Plans

Defining Multiemployer Composite Plans. Adds Section 801 to the *Employee Retirement Income Security Act* (ERISA) and Section 437 to the Internal Revenue Code (IRC) to:

- Establish "composite plans," a new type of multiemployer retirement plan that is neither a traditional defined benefit plan nor a defined contribution plan.

- Require that benefits under a composite plan be calculated pursuant to a formula set by the plan's trustees in order to provide annuities upon retirement.

- Require the trustees of a composite plan to take corrective actions in the current plan year if the plan is projected to be less than 120 percent funded in 15 years.

- Allow a composite plan to be established either as a stand-alone plan or a component of an existing multiemployer defined benefit retirement plan, unless the existing defined benefit plan is or will be in critical status for the plan year in which the new composite plan is established or for any of the succeeding five years.

Funding Requirements. Adds Section 802 to ERISA and Section 438 to the IRC to:

- Require annual actuarial certifications of both the current value of the plan's assets and liabilities ("current funded ratio") and a projection of the plan's assets and liabilities in 15 years ("projected funded ratio").

- Require the plan's actuary to explain any changes in assumptions on an annual disclosure.

Realignment Programs. Adds Section 803 to ERISA and Section 439 to IRC to:

- Ensure composite plans are well-funded and provide a stable retirement benefit by requiring the trustees of any plan projected to be less than 120 percent funded to adopt a corrective action strategy (a "realignment program") that will bring the projected funded ratio up to at least 120 percent.

- Establish a hierarchy of measures trustees may take to improve the plan's funding status.

    - Tier One includes:

        - Increasing the amount of incoming contributions.

        - Reducing future accruals by active participants, but trustees may not go lower than 1 percent of the contributions on which benefits are based.

        - Modifying or eliminating "adjustable benefits" such as early retirement subsidies or recent benefit increases.

    - Tier Two: If the measures in Tier One are insufficient to improve the plan's projected funded ratio to 120 percent, the trustees may consider measures including:

        - Reductions in accrued benefits of participants not yet in pay status.

        - Reductions in cost-of-living adjustments for retirees or post-retirement benefit increases.

    - Tier Three: If the measures in Tier One and Tier Two are insufficient to reach a projected funded ratio of at least 120 percent, the trustees may reduce future benefit accruals below 1 percent, and adjust benefits for retirees in pay status, until either:

        - The plan's projected funded ratio is at least 120 percent or

        - The plan's projected funded ratio is at least 100 percent and the plan's current funded ratio is at least 90 percent.

- Require a notice to be sent to the bargaining parties, plan participants, and the secretary of labor if a plan's projected funded ratio is less than 120 percent. The notice must include the current and projected funded ratios and explanations that the plan may require contribution increases or benefit reductions.

- Require a notice to be sent to the bargaining parties and plan participants once the trustees of a plan decide to adjust benefits in order to maintain a well-funded plan.

- Instruct the secretary of labor to provide model notices and to permit plans to send notices electronically, so long as participants are able to elect traditional paper delivery.

<u>Benefit Increases</u>. Adds Section 804 to ERISA and Section 440 to IRC to:

- Permit trustees of composite plans to improve benefits, subject to certain limitations.

- Allow trustees to increase benefits by 3 percent if (1) the plan's current funded ratio is at least 110 percent; (2) taking the benefit increase or new benefits into account, the current funded ratio is at least 100 percent and the projected funded ratio is at least 120 percent; and (3) the expected contributions for the current plan year cover at least 120 percent of the benefits earned that year, including the benefit increases or new benefits.

  - The 3 percent cap is lifted if, after taking the benefit increase or new benefits into account, the plan's current funded ratio is at least 140 percent and the projected funded ratio is at least 140 percent.

- The trustees may not increase benefits unless the benefit increases are equitably distributed and take into account the extent to which retirees experienced benefit reductions under a realignment program.

Preserving Legacy Plan Funding. Adds Section 805 to ERISA and Section 440A to IRC to:

- Provide that a multiemployer defined benefit plan becomes a "legacy plan" to the extent a class of participants no longer accrues benefits in the defined benefit plan and instead accrues benefits under a composite plan.

- Generally require parties contributing to a composite plan to also provide a "transition contribution" to the associated legacy plan in order to ensure the long-term health of the legacy plan. The transition contribution rate may never decrease after initially set.

- Require the trustees of a legacy plan to set the transition contribution rate annually in order to fund the normal cost of the current plan year and amortize any shortfalls over a period of 15 years. However, any underfunding present in the first year may be amortized over 25 years.

- Require, in certain circumstances, that at least 25 percent of incoming contributions are allocated to the composite plan.

- End transition contribution requirements when the plan, using conservative actuarial assumptions, is: (1) fully funded for at least three out of the immediately preceding five plan years; and (2) is projected to remain fully funded for at least the following four plan years.

Mergers of Composite Plans. Adds Section 806 to ERISA and Section 440B to IRC to:

- Permit composite plans to merge or transfer assets so long as neither the plans nor plan participants are worse off.

Section 3: Application of Certain Requirements to Composite Plans

Existing Disclosures and Notices. Amends various sections of ERISA and Section 6058 of IRC in order to:

- Clarify the treatment of composite plans with respect to certain existing disclosures and notices.

Section 4: Treatment of Composite Plans Under Title IV

PBGC Insurance Program. Amends various sections of ERISA to:

- Provide that composite plans are not subject to Pension Benefit Guaranty Corporation (PBGC) premium requirements or the PBGC guarantee.
- Provide that contributions to a legacy plan are not taken into consideration when determining an employer's withdrawal liability with respect to the legacy plan.
- Deem a legacy plan to have no unfunded vested benefits if a plan is fully funded under PBGC's "mass withdrawal" requirements and had no unfunded vested benefits for three of the last five years, and is projected to be fully funded for the next five years.

Section 5: Conforming Changes

Technical Changes and Tax Treatment. Amends various sections of ERISA and IRC to:

- Make various technical and conforming changes to relevant sections in ERISA and IRC relating to benefit vesting and accrual, employer obligations, and plan termination.
- Permit tax-deductible contributions to the composite plan to the extent that the plan's current funding does not exceed 160 percent.

Section 6: Effective Date

- Provides the amendments made by the Act shall take effect beginning the first plan year after the date of enactment.