

**OUTLINE OF ORAL COMMENTS OF THE  
NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS  
BEFORE THE  
COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON OVERSIGHT  
ON PENSION ISSUES**

**March 23, 1999**

My name is Judith F. Mazo and I am appearing today on behalf of the National Coordinating Committee for Multiemployer Plans. The NCCMP is the only national organization devoted exclusively to protecting the interests of the approximately ten million workers, retirees, and their families who rely on multiemployer plans for retirement, health and other benefits. Our purpose is to assure an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women. The NCCMP is a nonprofit organization, with member plans and plan sponsors in every major segment of the multiemployer plan universe.

The NCCMP endorses and heartily supports The Comprehensive Retirement Security and Pension Reform Act (H.R. 1102) (the "Bill"). Legislation to promote retirement income security, especially through defined benefit pension plans, is long overdue. Enactment of the Bill would be a major step toward simplifying many of the complex pension rules in the Internal Revenue Code that have had the effect of discouraging retirement savings.

While there are many provisions in the Bill that would affect multiemployer plans, my comments today focus only on provisions to amend certain rules under Code section 415 that are forcing reductions in the benefits of workers covered by multiemployer pension plans. The NCCMP will submit a comprehensive written comment on the Bill separately.

**Multiemployer Pension Plan Exemption from Code Section 415 100  
Percent of Compensation Limit**

Section 512(a) of the Bill would exempt workers covered by multiemployer pension plans from the Code section 415(b) compensation-based limit, from which government employees are already exempt.

The Code section 415 limits are designed to prevent high-paid individuals from using pension plans as tax avoidance schemes to shelter excessive pension benefits. This does not happen in the context of multiemployer plans.

However, due to the distinctive benefit structure in most multiemployer plans, the work patterns of their participants and the manner in which the contribution streams that fund them are negotiated, a participant's pension benefit may exceed the 100 percent of compensation limit. Where this happens, the participants who are hurt by the limit are the lowest paid rank and file

workers covered under the plan -- the exact opposite of the type of participants these rules were designed to impact.

Multiemployer plans typically provide the same annual retirement benefit to all participants who have the same amount of service, regardless of what they are paid. It is quite rare for a multiemployer plan benefit formula to be based on compensation. Multiemployer plan benefit formulas are therefore very advantageous to lower paid workers. As a percentage of compensation, the more money a participant makes the smaller is his benefit. The effect of these formulas is to provide an adequate retirement benefit even to the lowest paid of these workers, by, in effect, subsidizing those benefits by providing relatively lower benefits to the higher paid workers, even though they may generate a greater volume of employer contributions.

Ironically, it is this very antidiscriminatory aspect of multiemployer plans that creates much of their problem under the 100 percent of compensation limit. The level of plan benefits is set by the trustees with one eye towards what the contribution stream funding the plan can support and the other eye towards the reasonable retirement needs and expectations of the average plan participant. This benefit may, however, be higher than the wages of plan participants who were paid significantly less than the norm, such as, for example, office secretaries in a plan that covers skilled tradespeople.

Another problem is created by the work patterns of many multiemployer plan participants. In a typical single employer plan, a plan participant is employed continuously with the employer that sponsors the plan, throughout his period of participation in the plan. Over time, due to inflation, that participant's compensation will increase. Because this employment is continuous, the three consecutive years in which compensation is the highest -- that is, the three years on the basis of which the 100 percent of compensation limit is computed -- will typically be the last three years. Thus, in effect, single employer plan participants get the benefit of cost of living adjustments to their 100 percent limit while they are working, because they get the full advantage of their compensation increases due to their continuous employment. Once they leave service, their 100 percent limit is also directly adjusted annually under section 415(d) to reflect increases in the cost of living.

In the context of multiemployer plans, the 100 percent of compensation limit sometimes shrinks, despite cost of living increases in pay rates. As multiemployer plan participants grow older, they may find it more difficult to secure continuous employment, or to work the same high number of hours. The gaps between their periods of employment may become more frequent and more prolonged. This is especially true in industries characterized by hard, physical work, especially outdoors, or work in extreme climates. Even though the negotiated hourly pay rate may have gone up, a reduced number of hours worked during some portion of any period of three consecutive years may prevent that period from being used as the base for computing the 100 percent limit. If an earlier group of three years is used, the worker is deprived of the automatic inflation adjustment to this limit that the typical single employer plan participant would obtain through a salary increase. In addition, because the participant has not yet retired, no direct inflation adjustment to the limit is allowed. This shrinking of the limit is particularly pronounced in declining industries where work has become more scarce in general.

Plan trustees recognize that multiemployer pension benefits are, in effect, paid for by the plan participants, since plan contributions are negotiated as alternatives to higher wages. In some declining industries, to prevent participants from losing their benefits due to inability to find continuous employment, trustees have reduced the number of hours per year necessary to earn a pension credit. For some participants this can increase the severity of the impact of the 100 percent of compensation limit, as their actual pay may decline -- even if hourly wage rates

go up -- because they are working fewer hours. Although it looks as though they are earning additional pension benefits, these participants hit the 100 percent limit and lose their pension benefits anyway.

It is important to note that it is not possible to adjust plan contributions to deal with this problem. Multiemployer plan contribution rates are set through collective bargaining. The rate set for any particular collective bargaining unit is uniform, typically because the hourly wage package is uniform. There is no practical way to provide different contribution rates for different workers depending on the number of hours they work or to vary wages and pension accruals based on the way each person is affected by the section 415 limits, even if it were possible to know or to predict the number of hours a particular worker would work during a particular year or when the section 415 limits would hit. Contributions can only be reduced across the board, and if they are, wages or other benefit plan contributions would need to be increased across the board to maintain the equilibrium and follow through on the bargained-for compensation. So the majority would be denied an adequate pension to avoid having the pension of the lowest-paid among them exceed the 415 limits.

Ironically, the 100 percent of compensation limit is not generally a problem for highly-paid employees. Employers maintaining single employer plans typically provide benefits in excess of the Code section 415 limits for executives through unfunded excess benefit plans. This is not a workable solution for many multiemployer plans. As the Taft-Hartley Act requires multiemployer plan benefits to be provided through a trust, potentially catastrophic tax consequences pose a serious challenge to the creation of a funded plan that does not comply with section 415.

To understand the harshness of the impact of the 100 percent limit on plan participants, it is important to note that, from the worker's perspective, this limit is imposed retroactively. Plan participants ordinarily compute their benefits using the formulas they find in the summary plan descriptions and with reference to their years of service. They make plans for retirement based on the benefits so computed. They usually do not realize the amount of reduction in their benefit that will be made due to the 100 percent limit until they actually retire and make a claim for benefits.

### **Exemption from Code section 415 Reductions in Pension Benefits on Early Retirement**

Section 101(a)(4) of the Bill would provide for multiemployer plans the same early retirement treatment as is provided under current law to plans maintained by governments and tax exempt organizations.

Many multiemployer plans provide pensions that can be taken on an unreduced basis after a certain number of years of service, e.g., 30. These are referred to, for example, as "30 and out pensions" or "service pensions." In industries that involve hard, physical labor, it is often not feasible for participants to work past their early or mid-50s. For someone who has been working at these backbreaking jobs since high school, "early" retirement represents a well-earned chance to stop working so hard. These special service pensions are reasonably designed to address the income needs of such workers. Yet the section 415 dollar limit could restrict such workers to receiving little more than \$40,000 or so a year.

To prevent this dollar limitation from becoming so low that it interferes with the ability of multiemployer plans, like plans maintained by governments and tax exempt organizations to provide adequate retirement benefits to early retirees, the Bill would raise the floor applicable to early retirement benefits under those plans from \$75,000 to \$130,000 at age 55. The Bill also

increases the section 415 dollar limits for all plans from \$130,000 at Social Security retirement age to \$180,000 at age 62, and allows plans to actuarially increase benefits commencing after age 65.

### **Administrative Relief in Applying the 415 Limits**

Section 512(e) of the Bill would make the section 415 tests much simpler for multiemployer plans to administer, an important step to conserve plan assets (which are the only source of funding for operating multiemployer plans, as well as paying their benefits). Under existing Treasury regulations, multiemployer plans do not have to be combined or aggregated with other multiemployer plans when applying section 415. Given the large number of contributing employers for which a participant may have worked under other plans throughout the country, this recognizes the difficulties and expense multiemployer plan sponsors would encounter if they had to search them all out in order to be satisfied that their benefits meet section 415. As a further reduction in red tape, the Bill codifies this rule and extends it to single employer plans. One result of enactment of this change will be to make it easier for multiemployer pension plans to avoid 415 testing for very small benefits – those under \$10,000 a year – since it would no longer matter under the 415 *de minimis* rule whether the participant had ever been covered by any 401(k) plan (or other defined contribution plan) sponsored by a contributing employer.

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We appreciate this opportunity to provide testimony on H.R. 1102 and the need for relief for multiemployer plan participants from the Code section 415 rules. We would be pleased to provide additional information at the Committee's request.