Committee on Education and Labor
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Subcommittee on Health, Employment, Labor and Pensions

Hearing on

Retirement Security: Strengthening Pension Protections

May 3, 2007

Testimony of the National Coordinating Committee for Multiemployer Plans

Chairman Miller, Subcommittee Chairman Andrews, my name is Judy Mazo. I am pleased to appear today on behalf of the National Coordinating Committee for Multiemployer Plans – the NCCMP. I am a Senior Vice President of The Segal Company, a national actuarial and employee benefits consulting firm, and, since 1980, a member of the NCCMP's Working Committee.

The NCCMP, working through the broad group of employers, business associations, multiemployer pension plans and labor unions that came together in the past few years as the Multiemployer Coalition, supported and advocated for the general design – and many of the particulars – of the multiemployer funding provisions of the Pension Protection Act of 2006 (PPA). That Act made significant changes to ERISA's multiemployer pension plan funding rules, changes that will ultimately result in stronger, better funded defined benefit pension plans for the approximately 10 million active and retired American workers and their families who depend on these plans for their retirement security. Some of these provisions were controversial, yet without bold action, the retirement benefits of millions of these participants as well as the future financial viability of their contributing employers would have been placed in dire jeopardy.

In this regard, a major achievement of the PPA was its recognition of the special context in which multiemployer pension plans operate and the importance of accommodating the collective bargaining arrangements that support the plan. The distinctive funding rules for multiemployer plans established by the PPA will, we think, allow our plans to flourish. The opposite would have been the case if multiemployer plans had been simply swept into the new single-employer pension funding regime.

While the PPA set the proper framework, the intricacies of establishing any new legislative structure in such a massive piece of legislation almost inevitably include unintended consequences and inadvertent technical errors which must be addressed if those charged with its implementation are to be able to carry out their responsibilities. As you know, we have spent a great deal of time analyzing the law in conjunction with a variety of plan administrators and other professional advisors as they attempt to understand the new responsibilities this law places on them and on the plan fiduciaries and settlors whose roles have changed in many ways that are far from inconsequential.

Although there will undoubtedly be additional issues that are identified as plans and the parties assume these new responsibilities, we have identified a reasonably comprehensive list of such issues that need to be clarified and corrected expeditiously if the reforms intended in the PPA are to be fully realized. The full list is appended to this statement, and we believe that they all require careful attention. Nevertheless, it is unnecessary to set forth in this document a point-by-point explanation of each item to reasonably convey why it is necessary to take timely action in this matter. We have listed several illustrations here. It is important to note, however, that the inclusion of any of the following examples should not be construed to imply any priority over any of the other items included in the more comprehensive list.

Examples of Issues Requiring Clarification, Correction or Revision:

1. The **<u>"Revolving Door" for Critical Status Plans</u>** – The rules that apply to Critical Status plans (known popularly as "Red Zone" plans) require that any amortization extension the plan has received[1] be disregarded by the plan's actuary in making the determination of the plan's funded status for purposes of determining whether the plan is in Critical Status. Those rules further require that when the actuary makes a subsequent determination certifying that the plan has met the requirements of deferring a funding deficiency for at least ten years in the future required to exit Critical Status, any such amortization extension must be taken into consideration. The problem is that when the next annual certification is conducted after a plan's emergence from Critical Status, the present language would require that that same extension be disregarded, possibly throwing the plan back into Critical Status; hence the reference to a "Revolving Door". We suggest that the language be modified to disregard any amortization extension only for purposes of the first determination of whether a plan is in Critical Status and to take it into account in any subsequent determination, to break the revolving door cycle. (See item 5 of more extensive list).

2. **<u>Rules governing benchmarks for Endangered Status Plans create confusion and require streamlining</u>**. In particular, it is essential to clarify that the Endangered Status benchmarks are based on the plan's funded status at the time it enters Endangered Status (often called the "Yellow Zone") rather than at the beginning of the Funding Improvement Period (a year or more later). The plan's funded position upon which the Funding Improvement Plan is based may be sufficiently different at that later date that a more aggressive benchmark would apply (*e.g.*, one-third improvement over 10 years, rather than one-fifth over a fifteen year period), thereby rendering the Funding Improvement Plan itself useless and discouraging early corrective actions. It should also be clarified that once a plan is determined to be "Seriously Endangered" and therefore subject to the one-fifth improvement over fifteen years benchmark, that standard should remain in effect until the plan emerges from Endangered Status rather than have

[1] A related comment would clarify that the references to amortization extensions under PPA include extensions granted under pre-PPA ERISA Section 412(e). Clarification of this point is essential if a plan is to determine whether it is, in fact, in Critical Status. (See item 4 of the more extensive list.)

the plan potentially move back-and-forth from one standard to another based on fluctuations in its funded percentage. Such movement would make it virtually impossible for the Trustees to produce meaningful plans to hit such a moving target. (See especially items 7 and 8 of more extensive list).[2]

3. **Rules governing the prohibition of trustees' acceptance of bargaining agreements that permit reductions in contribution rates, contribution holidays or exclusion of new hires in Endangered and Critical Status should be harmonized and the prohibition against exclusion of new hires should be made a permanent exclusion while plans are in either status.** Exclusion of new hires is a virtual death sentence for a multiemployer plan and is inconsistent with the intent of the PPA to encourage continuation and secure the funding for plans on an ongoing basis. (See item 10 of the more extensive list). On the other hand, once a Funding Improvement Plan is underway for an Endangered Status plan, there is no reason to impose tighter restrictions on the bargaining parties' ability to negotiate over contribution levels than those that apply to Critical Status plans.

4. **The rules governing payment of Social Security level income option benefits by multiemployer plans must be made consistent with those for single employer plans.** Plans making such payments to retirees at the time a plan enters Critical Status should be permitted to continue paying out benefits in that form (which typically only lasts until age 65 or 66), but no new awards in this form – a type of partial lump-sum distribution – should be permitted. (See item 18 of the more extensive list).

The NCCMP looks forward to working closely with the Committee and Subcommittee as you work to resolve these and the other issues we have identified that require attention so that the intent and full potential of the Pension Protection Act can be realized for multiemployer plans.

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[2] Alternatively, PPA should be amended to eliminate the 80% trigger and rely solely upon a projected funding deficiency within the next 7 plan years in determining which plans are in endangered status. A projected funding deficiency within 7 years is a much more meaningful marker of financially-troubled status in a multiemployer plan as compared to basing such status solely on the plan's funding percentage. The 15-year/20% benchmark would apply to all plans in endangered status – there would be no seriously and non-seriously endangered distinction. (See item 8 on the more extensive list, which proposes other requirements and safeguards for this streamlined approach .)