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NCCMP Issues Paper

July 5, 2012 - On June 28, 2012, BNA published an article that contained a reference to Josh Shapiro's recent testimony before the House Subcommittee on Education and the Workforce. The article is titled *Orphan Retiree Liability Must Be Resolved, Speakers Argue at House Pension Hearing*, and it appears as part of BNA's Construction Labor Report. The placement of the article in the Construction Labor Report is misleading, as nearly the entire content of the hearing was in the context of multiemployer pension plans that primarily cover participants outside of the construction industry. Further, as discussed below, the concept of 'orphan liability' is not closely related to the funding challenges facing construction industry plans. While many construction industry plans do face serious funding challenges, they are different from the issues facing plans in other industries.

The unionized construction industry is characterized by an extremely high degree of employee mobility from company to company. It is not unusual for a participant to have five or more employers in a single year, and dozens throughout a career. Additionally, many of the employers in this industry are extremely small, often employing ten or fewer workers at any given time. It is also common for an employer to be created for an individual project. In contrast, in the trucking and retail food industries, which were the industries on which the hearing focused, the employers tend to be larger and the workforces less mobile. In these industries, a pattern of employer bankruptcies can create a large number 'orphan participants' who never worked for any company that currently contributes to the fund. These orphan participants have the potential to create funding challenges for plans, particularly following a sharp market decline like we experienced in 2008.

In the construction industry, the funding challenges facing plans are far more closely tied to the level of activity within the construction industry. In most parts of the country this activity has declined by more than 20% over the past few years, and in some areas the declines have been 50% or more. Just as solving the orphan liability problem would go a long way towards putting many troubled plans outside of the construction industry on the path to recovery, an increase in the level of construction activity would do the same for many plans within the construction industry.

The NCCMP believes that fundamental reform is necessary across all industries that participate in multiemployer pension plans. Even if the plans return to health in the near future, the recent funding crisis has resulted in few new companies being willing to consider joining multiemployer plans, and many that currently sponsor the plans would like to exit the system. For the plans to survive over the long-term, it is critical that we create new tools for the bargaining parties to use as they address the shortfalls present in both the current defined benefit and defined contribution models. These tools must allow for the design of plans that reduce the financial risk to sponsoring employers from the level currently present in defined benefit plans, while maintaining a level of retirement security for participants above what is currently available from defined contribution plans.