NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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EXECUTIVE DIRECTOR

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The Honorable Chuck Grassley
Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510-6200

The Honorable Lamar Alexander
Chairman
U.S. Senate Committee on Health, Education, Labor and Pensions
428 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley and Chairman Alexander:

On behalf of the Board of Directors of the National Coordinating Committee for Multiemployer Plans ("NCCMP"), I have been asked to provide you with feedback on the Multiemployer Pension Recapitalization and Reform Plan that you issued on November 20, 2019.

Since 1974, the NCCMP is the only national organization devoted exclusively to protecting the interests of the job-creating employers of America, their unions, and the more than 20 million active and retired American workers and their families who rely on multiemployer retirement and welfare plans. The NCCMP's purpose is to assure an environment in which multiemployer plans can continue their vital role in providing retirement, health, training, and other benefits to America's hard-working blue-collar workers.

The NCCMP is a non-partisan, nonprofit, tax-exempt social welfare organization established under Internal Revenue Code Section 501(c)(4), with members representing plans, unions, and contributing employers in every major segment of the multiemployer universe.

The multiemployer system is an incredible economic engine for the U.S. Government and the American economy. In 2015 alone, the multiemployer system and the job creating employers of America and labor that jointly sponsor these plans paid more than $158 billion in taxes to the U.S. Government and $82 billion to state and local governments[1]. They also provided $41 billion in pension income to our retirees and paid more than $203 billion in wages to our 3.8 million active

[1] See The National Coordinating Committee for Multiemployer Plans, Multiemployer Pension Facts and the National Economic Impact, January 5, 2018, http://nccmp.org/wp-content/uploads/2018/01/Multiemployer-Pension-Facts- and-the-National-Economic-Impact-Jan-5-2018.pdf.

workers. Combined, the pension and wage income supported 13.6 million American jobs and generated $1 trillion in GDP.

A small but systemically important subgroup of these pensions are heading toward insolvency. In 2011, NCCMP established the Retirement Security Review Commission, which brought together more than 40 unions, employers, employer associations, plans, and plan professionals to address the fallout of the 2008 financial crisis on multiemployer pension plans. After an 18-month review process, NCCMP developed and advocated for the passage of the Multiemployer Pension Reform Act of 2014 ("MPRA") in an attempt to provide trustees with self-help tools to fix plans that were in financial distress. Unfortunately, the Central States Pension Fund, which is the largest and most systemically important plan heading toward insolvency, was denied the ability to use the self-help tools of MPRA by the Department of the Treasury in May 2016. The resulting delay has now made it impossible for Central States and a significant number of other plans in similar circumstances to resolve their problems without federal support.

Today, if Congress fails to enact bipartisan reforms, approximately 1.3 million Americans will lose between 94 percent and 98 percent of their pension income and be forced onto the federal government's poverty safety net programs. These plan insolvencies will cause the federal government's Pension Benefit Guaranty Corporation ("PBGC") to become insolvent. The ripple effects will result in thousands of businesses being forced into bankruptcy or liquidation, which in turn will lead to tens of thousands of active workers losing their jobs.

Failure will also cost the U.S. taxpayer at least $17 billion annually in lost tax revenue and increased safety net spending[2]. This follow-on impact to the U.S. taxpayer is consistent with then Senate Finance Committee Ranking Member Orrin Hatch's analysis of the impact of potential benefit reductions to state and local government pensions in his January 2012 report titled "State and Local Government Defined Benefit Pension Plans: The Pension Debt Crisis that Threatens America."[3] Whatever crisis America would face from state and local government pensions will pale in comparison to those in the multiemployer system, where the PBGC is the only guarantor and itself will be insolvent.

This is why 2019 is a critical year to enact reform legislation to rescue the plans and participants facing insolvency and modernize the multiemployer pension system. The issues facing troubled multiemployer pensions are complicated as are the solutions for them. While the White Paper and Technical Explanation bring forward a number of very positive and constructive ideas, the

[2] See The National Coordinating Committee for Multiemployer Plans, Testimony to the United States House of Representatives, Committee on Education and Labor, Subcommittee on Health, Employment, Labor, and Pensions, Hearing on *The Cost of Inaction: Why Congress Must Address the Multiemployer Crisis*, March 7, 2019, https://nccmp.org/wp-content/uploads/2019/03/Testimony-to-House-Ed-and-Labor-HELP-Subcommittee-March-7-2019.pdf, pages 10-12.

[3] United States Senate Committee on Finance, State and Local Government Defined Benefit Pension Plans: The Pension Debt Crisis that Threatens America, A Report by Ranking Member Orrin Hatch (R-Utah), https://www.cafsti.org/wp-content/uploads/briefingroom/Hatch-Report-The-Pension-Debt-Crisis-that-Threatens-America.pdf, see page 4.

proposal seems to reflect an inaccurate view of the capabilities and responsibilities of system stakeholders. The employers, unions, participants, and the plans that they sponsor are not, nor could the afford to be, responsible for the financial health of the entire multiemployer system. The proposal imposes a number of requirements on plans, participants, employers, and unions that would in fact be quite punitive and result in great damage to them and the 85 percent of the multiemployer system that are successfully meeting their obligations. The first order of business in bipartisan multiemployer pension reform should be to "do no harm."

The NCCMP and its constituents have been consistent and fact-based advocates for multiemployer pension reform, using our deep knowledge of the unique attributes of multiemployer pensions to provide data and structural ideas to Congress and the Administration. We share and support your clear intent, and that of the Congress, to rescue the distressed plans, to rescue the PBGC, and to reform the multiemployer system in a manner that provides greater security to participants and the taxpayers.

With this in mind, it is important to recognize that multiemployer pensions are part of a voluntary system between employers and unions, and that the actions of the U.S. Government can drive employers and their active participants (the lifeblood of any pension system) away from the system. Actions that drive employers and participants from the system will fundamentally destabilize pension plans, the PBGC, and the retirement security of hard-working, blue-collar Americans.

The following discussion identifies the most significant provisions that are quite punitive to the job creating employers of America, their labor partners, plans, and participants, and that will do great damage to the 85 percent of multiemployer pensions that are successfully meeting their obligations.

Catastrophic PBGC Premium Increases

The proposal raises the amount of PBGC premiums 15-fold, from $310 million (2019) to between $4.6 billion and $4.9 billion annually. Today, plans pay a fixed PBGC premium directly. The proposal imposes higher fixed premiums on plans, new variable premiums on plans, and new premiums in the form of taxes on employers, unions, and participants. PBGC premiums are an administrative expense of the plans, and as contemplated, would constitute a new direct tax on hard-working participants, employers, and unions. Given that the only money that the multiemployer system has is that which is negotiated through the collective bargaining process, these new premiums would either seriously erode the competitiveness of the 200,000 employers in the system or be taken out of the wage package that is bargained for the employees. The retiree "co-payments" represent an additional 3 percent to 7 percent federal tax on the limited income of retirees.

To put the proposal in perspective, it represents a 1,400% increase in PBGC premiums, raises PBGC premiums from 1.1% of contributions to 16.5% of contributions (2015), and increases system-wide plan administrative expenses from $1.94 billion to $6.25 billion. These increases, to the extent that they do not bankrupt companies, will drive employers and their workers out of the multiemployer pension system.

The rescue of distressed plans, which we support, is estimated to cost $4.7 billion annually (PBGC estimate). While the eligible plans will encompass approximately 140 plans, the largest 12 plans account for $3.7 billion annually. It is simply not economically possible to fund the rescue of a small number of plans on the backs of the rest of the multiemployer system, which invariably will result in the collapse of the employers and the multiemployer system itself.

It has been suggested that all stakeholders need to participate in the solution. However, it is important that Congress recognize that employers and the active workforce HAVE participated in making their plans financially secure and the multiemployer system safer. They have had their future accrual rates cut dramatically while at the same time seeing their contribution rates skyrocket in order to restore their plans' financial health and to pay the full benefits of prior workers. This is true of plans that would be eligible for the special partition program as well as for those in plans in other zones that have seen their future accrual rates slashed and contributions increased for the better part of 18 years.

Yet, the U.S. Government is the one stakeholder that singlehandedly pockets the most money from the system (more than $158 billion annually in federal taxes paid) and has the most to lose (more than $17 billion annually) in the event of a failure of these plans and the PBGC. The government was excluded from materially contributing to the proposed solution. This is appalling given the fact that the U.S. Government established the laws, regulations, and policies that directly contributed to the current state of affairs and failed to implement the self-help tool of MPRA for the largest, most systemically important plan whose failure will crash the PBGC's multiemployer program. Thus, not only are the proposed premium increases untenable and counter-productive, they are fundamentally unfair.

The simple fact is that a solution for the distressed plans that protects retirees and reforms the system going forward will save the U.S. Government and taxpayers more than $12 billion annually. The U.S. Government must participate substantially, consistent with its own financial interests, in a bipartisan solution.

Proposed Changes to the Discount Rate

The proposal establishes an upper limit cap on the discount rate used to value plan liabilities at 6 percent or a lower amount determined by the 24-month average of high-quality corporate bonds plus 2 percent. This would be phased in over 5 years. It would also provide a 30-year amortization of the increase in liabilities due to the change in the discount rate.

While slightly different from the Joint Select Committee's draft version, the economic impact of this proposal on plans, employers and the active workforce would be extremely negative. It would drive up plan liabilities; put plans into lower zones; subject them to a highly volatile benchmark discount rate, which would have very real impacts on the collective bargaining process; drive the employers and their active workforce from these plans; and increase the risk of a complete system failure.

The proposal suggests that the PBGC's discounting of multiemployer pension liabilities for its reporting purposes at the rate that it could purchase an annuity for these liabilities imparts a "risk free" status on these liabilities (the proposal mistakenly identifies the "current liability" rate, which is higher than the annuity rate that the PBGC actually uses). In the real world, there is no economic foundation for this approach. These obligations are not risk-free, however. As we know, at the PBGC's current guarantee level, a participant in an insolvent plan receives an average benefit cut from the PBGC of 53 percent. At the proposed guarantee level, the cut would still exceed 26 percent. This compares to an average cut in plan benefits under the single employer program of less than 5 percent, and even this modest reduction is principally driven by the high benefit airline plans assumed by the PBGC in the 2001-2010 time period. Mandating discount rates does nothing to change the underlying risk of the plan to participants, but it can, and will, drive employers and plans out of existence.

This proposal is also inconsistent with the fiduciary duty of trustees established under the Employee Retirement Income Security Act of 1974 ("ERISA"), which mandates that trustees invest in a diversified portfolio of assets. The diversified asset allocation supports the assumed rate of return assumption that plans currently use to discount their liabilities as ongoing entities, and which historically have produced returns over multi-decade time frames in excess of the current assumed rates of return. In the case of the Central States Pension Fund, with their insolvency date becoming more certain, the trustees made the decision to reallocate their return seeking assets into high-quality fixed income securities in order to match their cash outflows in a manner that extends the period of certainty for benefit payments. The new asset allocation has predictably resulted in a lower assumed rate of return.

Finally, as opposed to the blunt and volatile instrument of mandated discount rates, NCCMP and others have supported new tools for trustees and new zone requirements, like those proposed in the "Additional Funding Rules for Multiemployer Plans" section with some minor modifications. These tools will allow trustees to have much earlier warning of future funding challenges and enable plans to proactively manage the financial health of their plan, all in time frames that make any necessary changes a minor inconvenience as opposed to a life-altering event.

Changes to Withdrawal Liability

The proposed changes to withdrawal liability will create litigation chaos and expense for withdrawing employers and plans, increase the costs to the current employers, and further reduce the already diminished ability of the multiemployer system and plans to attract new employers. All of this without changing the financial outcomes for plans. While the current system is not ideal and was statutorily imposed on employers and plans in 1980 under Multiemployer Pension Plan Amendments Act ("MPPAA"), it currently functions in a way that maximizes the ability of trustees to protect their plans. These proposed withdrawal liability changes are simply counter-productive.

Special Partition Program and Plan Governance

We support the proposed special partition program as a way to rescue the eligible distressed plans (which includes the eligibility criteria identified in H.R. 397, aka "Butch Lewis Act") and to protect the retirees and participants in these plans. The structure of this program provides very high certainty of plan eligibility and successful execution. As the vast majority of eligible plans have already adopted "all reasonable measures" to avoid insolvency, we do not believe that the participants should be subjected to additional benefit suspensions above the special partition retiree co-payment fee that will go to the PBGC.

We also do not believe that the PBGC should have the authority to require plan mergers given the unique employer and union relationships in their collective bargaining agreements and the liability issues associated with multiemployer plans. The provisions of any pension reform plan should help to ensure that employers and the active workforce have the proper incentives to remain in the plan and that it is attractive to new employers. These proposed governance measures, however, would have the opposite effect.

The plan governance provisions that apply to plans that access the special partition program should be considered in the larger context of multiemployer pension plan governance. The intent of the special partition program is to put these plans in a position to remain solvent indefinitely, and the trustees will play a critical role in successfully achieving this outcome. The reality is that most trustee positions are not compensated, nor are they highly sought after, particularly for plans facing the difficult decisions associated with plan insolvency. The very real difficulty in attracting qualified trustees who understand the collective bargaining process and its importance and interaction with the multiemployer plan suggests that term limits might be self-defeating. Similarly, it is unclear when it would ever be appropriate for one trustee to ever override the judgment of the majority of the board.

New PBGC Guarantee Level

We support raising the guarantee for the eligible plans in the special partition program as a means of achieving the intended rescue for these plans, their participants, and the PBGC.

As mentioned above in the discount rate discussion, we also support the new tools proposed in the "Additional Funding Rules for Multiemployer Plans" section with some minor modifications. These tools will enable the plans that do not participate in the special partition program to proactively manage the financial health of their plan in ways that ensure that they never get to the PBGC in the first place. It is for this reason that it is not clear that increasing the guarantee outside of the special partition program would do anything but increase demands for higher PBGC premiums and make the multiemployer system even less attractive to current and new employers and their active workers.

MPRA Reforms

MPRA was an important self-help tool for trustees in an environment in which the U.S. Government was not willing to involve itself in the restructuring of plans, many of whose financial problems are directly attributable to the unintended consequences of federal laws, regulations and policies. We do not believe that the proposed changes to MPRA are constructive. We also note that the proposed increase to the PBGC guarantee would make it much less likely that a plan would be able to satisfy the requirements of MPRA. Nevertheless, once we have addressed the currently distressed plans through the special partition program and added the new tools for trustees to proactively manage their plans to avoid future insolvencies, the need for MPRA should indeed be very rare.

Alternative Plan Structures

Alternative plan structures are a critical option for the future of the multiemployer system. We support the idea advanced in the Technical Explanation, understanding that the legislative details are very important to a new structure. Further, we believe that technical changes to the existing statutory authority for variable defined benefit plans would allow this type of plan to be an important and credible option for trustees and plan sponsors.

Conclusion

The NCCMP and the multiemployer community that we represent are deeply interested in achieving bipartisan multiemployer pension reform this year. We know that the House is also very interested in reform through their passage of H.R. 397. As discussed above, the proposal that you released advances a number of very positive and constructive ideas and builds on the eligibility proposed in H.R. 397. However, unresolved, the issues identified above represent serious impediments to bipartisan reform and an existential threat to the job creating employers of America and their labor partners, to the jobs of hard-working blue-collar workers, and to the multiemployer system itself.

We look forward to working with you and your Democratic colleagues in the coming days to reach a bipartisan agreement on reform legislation that rescues these failing plans, rescues the PBGC, and reforms the entire multiemployer system. Effective and balanced reform is needed to ensure that the job creating employers of America and their active workforce can continue to be the powerful economic engine for the nation and their families while providing lifetime pensions for blue-collar workers.

Sincerely,

Michael D. Scott
Executive Director

cc: The Honorable Mitch McConnell
The Honorable Rob Portman
The Honorable Charles E. Schumer
The Honorable Ron Wyden
The Honorable Patty Murray
The Honorable Sherrod Brown
The Honorable Nancy Pelosi
The Honorable Kevin McCarthy
The Honorable Richard Neal
The Honorable Kevin Brady
The Honorable Robert C. “Bobby” Scott
The Honorable Virginia Foxx