



**Testimony to the Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor and Pensions**

Hearing on

**“Strengthening the Multiemployer Pension System: How Will Proposed Reforms
Affect Employers, Workers, and Retirees?”**

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Submitted by:

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Chairman Roe, Ranking Member Andrews, and Members of the Committee:

My name is Sean McGarvey. As President of the Building and Construction Trades Department of the AFL-CIO and Chairman of the Board of Directors of the National Coordinating Committee for Multiemployer Plans (NCCMP), I appreciate the opportunity to appear before the Subcommittee today to urge Congressional action on a comprehensive set of self-help recommendations to reform and strengthen the rules governing the multiemployer retirement system.

These recommendations, which appear in the report titled ***“Solutions not Bailouts: A Comprehensive Plan from Business and Labor to Safeguard Multiemployer Retirement Security, Protect Taxpayers and Spur Economic Growth”*** are the product of well over a year of intensive analysis of the strengths and weaknesses of the current system by over forty stakeholder organizations across the multiemployer community who were part of a group known as the Retirement Security Review Commission (or Commission). They include representatives of labor and employer organizations, plans, major contributing employers and advocacy organizations whose objectives were clear and concise: that any recommendations for change to the existing system must still provide regular and reliable lifetime retirement income to multiemployer plan participants; and that any changes to the existing system be structured to reduce or eliminate the financial risks to contributing employers.

The genesis of the Commission was borne of several contributing factors:

- the need to respond to new funding requirements of the Pension Protection Act of 2006 (PPA) and the sunset of such funding requirements for multiemployer plans at the end of 2014;
- unprecedented cost pressures brought about by the precipitous asset losses caused by the Great Recession and exacerbated by the prolonged sluggish economic recovery; and
- dramatic new financial disclosures that jeopardize contributing employers’ ability to access essential credit markets.

These factors prompted the stakeholders to face the realities confronting the continuation of the present multiemployer system. While the majority of plans have recovered to so-called “Green Zone” status,¹ most stakeholders have been sensitized to the realities of their respective situations and the need to evolve if their long-term objectives are to be realized:

¹ Recent studies show that the more than 60% of all multiemployer plans have regained Green Zone status (above 80% funded and not facing a funding deficiency within the next seven years or less).

- current contributing employers often contemplate ways to exit without being assessed withdrawal liabilities that can literally overwhelm the entire net worth of their companies and move to a system without residual exposure;
- that same concern over withdrawal liability has made recruiting new contributing employers nearly impossible, leaving a continually shrinking contribution base that threatens the long-term viability of many plans;
- active employees have seen their accrual rates decline to a mere fraction of their previous levels while contributions have risen to multiples of their previous levels, giving rise to intergenerational resentment; and
- a rapidly growing number of plans face inevitable insolvency under current law, eventually requiring them to reduce benefits to the meager levels provided by the PBGC multiemployer guaranty fund without the ability to take early action, even if such action could ultimately provide higher long-term benefits and avoid insolvency.

The Commission's recommendations are designed to address technical corrections to the Pension Protection Act of 2006, preserve benefits above those provided under current law for participants in "deeply troubled" plans headed for insolvency and encourage new plan designs that will enable the continuation of multiemployer plans for decades to come. A complete recitation of those recommendations here is unnecessary as the document stands on its own. Nevertheless, we welcome the opportunity provided by this hearing to underscore the broad support of those recommendations by members of the multiemployer community, including both the labor and employer communities who engaged in this process of self-help to enable this private sector system to continue to provide modest, but important retirement benefits to future generations.

For reasons described more precisely in the following pages, the Commission's recommendations for enactment of all aspects of the proposal provide the greatest opportunity to preserve benefit security for all participants.

North American's Building Trades Unions

We are an alliance of 13 national and international unions that collectively represent over 2 million skilled craft professionals in the United States and Canada.

Due to the nature of the construction industry, whereby the vast majority of our members move from project to project, and from employer to employer, our health and pension benefit plans are structured as local, regional or industry-wide plans that are maintained pursuant to collective bargaining agreements which require contributions from more than one employer. These are known as multiemployer plans and have been the dominant structure for plans in industries characterized by mobile work forces since World War II. Such plans enable workers to move from employer to employer throughout the year – or their career – and retain their eligibility for benefits by remaining in the same benefit plans. Multiemployer retirement plans have been providing retirement income security to tens of millions of Americans for over 60 years. Traditionally, such plans have been conservatively managed and well-funded. In fact, over the 35-year history of the Pension Benefit Guaranty Corporation, only 74 multiemployer funds have ever received financial assistance from the agency. During the late 1980s and 1990s over 75% of such plans were so well funded they had to raise benefits to increase plan costs sufficiently to preserve the current deductibility of contributions that employers were contractually required to make.

Even after the market losses suffered during the first years of the 21st century, as recently as 2007, over 75% of multiemployer funds were more than 80% funded. However, the investment losses incurred as a result of the 2008 global financial disaster now threaten the financial viability of a small, but significant minority of multiemployer plans.

In addition, the impending sunset of the multiemployer funding provisions of the Pension Protection Act of 2006 presents an opportunity for more fundamental re-structuring of some basic precepts of ERISA law in order to reduce or eliminate the drastic financial risks being incurred by contributing employers.

This restructuring, including the elimination of withdrawal liability for future service, would remove many of the disincentives to retaining current contributing employers while providing an opportunity to attract new contributors, thereby strengthening the long-term financial health of such plans for both the current and future generations.

The recommendations set forth in that report describe a variety of additional tools developed by the Commission to meet the varied needs of the nearly 1,450 multiemployer defined benefit plans that provide retirement plan coverage to over 10 million current, former and retired employees served by the multiemployer system. Together, these proposals will ensure that working men and women will continue to receive the modest but dependable retirement income they have earned during their working career by removing many of the existing obstacles to the long-term solvency of many plans.

We need to maintain the delicate balance between the needs and desires of plan participants with the economic realities of the marketplace so that the contributing employers can remain competitive and profitable.

Informed Recommendations from Affected Stakeholders

Since publishing its report in February, a number of groups have raised concerns over the Commission's recommendations and their likely effects on current and future pensioners. The process whereby the consensus recommendations were derived was specifically designed to ensure that concerns over participant protections could be aired and addressed. We recognize, however, that observers outside the process may not understand this specific dynamic of the process and therefore, offer the following observations for your consideration in response to such concerns.

You have heard from some groups outside the multiemployer community that the Commission's recommendations abandon a sacred promise enacted in ERISA that accrued benefits may never be reduced. We commend those groups for their unwavering commitment to the individuals served by our and other employer sponsored plans; however, we must point out both the factual inaccuracies of that statement and the more fundamental notion that in order for individual pensioners to receive benefits from our plans, the plans themselves must be preserved. We would remind them that the existing rules enacted by Congress when creating the multiemployer guaranty plan *require* the reduction of accrued benefits to the statutory guaranty level for all participants in insolvent plans² as well as the rollback of benefit improvements adopted in the past five years. We would also remind them that trustees of financially distressed plans that fall into "Critical Status" as defined in the Pension Protection Act of 2006 (PPA) are permitted to roll back certain subsidized benefits for active and recently retired employees, including early retirement benefits, joint and survivor benefits and benefit improvements adopted in the past five years. These, too, were accrued benefits which had

² Plans whose assets drop below the level where they can pay one year of benefits will receive financial assistance from the PBGC multiemployer guaranty fund in the form of a loan.

previously been subject to anti-cutback rules, but which were considered by Congress and by the multiemployer community to be necessary measures for severely distressed plans to regain their financial stability.

Contrary to what these groups would have you believe, the Commission recommendations are clearly designed to **preserve higher benefits** for participants whose benefits would otherwise be subject to more drastic reductions under current law by enabling those same trustees who are required to act when the plan becomes insolvent³, to take action when, after having taken all reasonable actions to avoid insolvency, their plans are projected to become insolvent. Where that is demonstrated, the Commission recommends that those same trustees be authorized, within specified conditions to protect participants⁴, to take pre-emptive action rather than spending down the plans' assets, so that the plan can avoid insolvency and ensure that benefits paid are higher than those which would be payable had the plan experienced insolvency and become wards of the PBGC.

Another point made by those same groups is that some participants who would never experience reductions under current rules because they would die prior to the date of insolvency, would be adversely affected under this proposal. While no one can determine specifically who might fall into that category, the Commission recommendations specifically address the ability of trustees to exclude certain "vulnerable populations" (e.g. including those of advanced age or whose payment effective dates were prior to certain dates) in formulating their action plan to avoid insolvency, provided the other conditions – preserving plan benefits above the statutory guarantee levels while preserving the plans' long-term solvency – are satisfied.

Finally, another group would have you believe that the solution is simply to inject cash into the PBGC. We have heard directly from you, the leaders and members of this subcommittee and others that no such bailout would be forthcoming. The Commission's recommendations are designed to **avoid plan failures** by plans that meet the specified requirements. Rather than providing an easy way for plans to balance their books by reducing pension benefits, the protections built into the Commission's recommendations will preserve plans and the benefits that will be paid to participants of those plans. We in the multiemployer community recognize the agency will need additional resources to address their commitments to participants of plans

³ The Commission's recommendations do not represent a broad expansion of the ability to reduce benefits to plans that are not facing insolvency, however, they would empower those plans to intervene earlier, provided the plan had exhausted all reasonable measures to avoid insolvency, the reductions are only as deep as required to avoid insolvency (but may not reduce benefits below 110% of the current statutory guaranty levels provided by the PBGC multiemployer guaranty fund), and after the application of such reductions, the plan will avoid insolvency.

⁴ Protections include government oversight of plans designed to avoid insolvency to ensure that due diligence was exercised in determining the need for such action and designing the plan of reform.

which become insolvent. Nevertheless, ***by definition, an insolvent plan is a failed plan.*** We believe that any methodology for revising the premium structures must be coupled with, and recognize the cost savings to the agency by enabling significant numbers of plans, including some of the largest in the country, to avoid insolvency by enactment of the other tools included in the Commission's report. To do otherwise would be to drive other plans into the very insurance system which is unable to meet its current obligations.

In concluding its deliberations, the group confirmed its consensus on the complete set of recommendations. We recognize that with the passage of time, others may choose to refuse to face the grim realities of some of the most deeply challenged plans in their own industries hoping that simply saying they disagree will somehow either forestall the inevitable, or eventually force the government to intervene prior to the day of reckoning. The Commission believes such an approach is little more than wishful thinking and is neither advisable, nor constructive and urge prompt Congressional action to adopt the set of recommendations in its entirety.

Conclusion

In conclusion, we applaud the Committee and Subcommittee on its interest and active engagement with this issue. You have taken numerous opportunities to engage the community to learn the concerns and proposed solutions developed by those closest to the system and most directly affected by its long-term health and, most of all, have done so in a spirit of cooperation and problem solving. As leaders of the multiemployer community and its stakeholders, we appreciate your concern and thank you for your efforts.

As your deliberations enter the next phase, we hope that you will be able to maintain the same level of commitment to resolving the problems facing this important aspect of our nation's retirement income security so that it can continue to provide these important benefits. We welcome your continued inquiries and offer our continued support to the process.

I look forward to your questions and thank you for the opportunity to be with you here today.

Respectfully submitted,

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Chairman
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