Statement of

Stephen E. Sandherr

on behalf of

The Associated General Contractors of America

to the

U.S. House of Representatives

Education & the Workforce Committee
Subcommittee on Health, Employment, Labor, and Pensions

For a hearing on

"Examining Reforms to Modernize the Multiemployer Pension System"

April 29, 2015

AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.

The Associated General Contractors of America (AGC) is the largest and oldest national construction trade association in the United States. AGC represents more than 26,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, site preparation/utilities installation for housing development, and more.

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Statement of Stephen E. Sandherr
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Education & the Workforce Committee
Subcommittee on Health, Employment, Labor, and Pensions
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Thank you, Chairman Roe, Ranking Member Polis, and members of the Subcommittee, for the opportunity to testify on behalf of the Associated General Contractors of America for a hearing on the "Examining Reforms to Modernize the Multiemployer Pension System."

My name is Stephen E. Sandherr and I am the Chief Executive Officer of the Associated General Contractors of America (AGC), the leading association for the construction industry. AGC represents more than 26,000 firms, including over 6,500 of America's leading general contractors, and over 9,000 specialty-contracting firms. More than 10,500 service providers and suppliers are also associated with AGC, all through a nationwide network of chapters. These firms, both union and open shop, engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities, and other improvements to real property. Most are small and closely held businesses.

I would first like to thank the Committee and Congress on passage of the Multiemployer Pension Reform Act of 2014 (MPRA) last year. The law included a series of long overdue and necessary reforms designed to protect and improve multiemployer retirement programs, and they track closely with a joint labor-management reform proposal AGC helped craft in 2013, in *Solutions Not Bailouts*. Reaching a private-sector consensus was far from easy, but after three long years of discussions, consensus was reached and key reforms were included that only a few years ago would have been unthinkable for most groups. The law should go a long way in helping to protect the investments of our members and the retirement security of retirees.

Specifically, MPRA will provide certainty and better facilitate long-term plans to protect retiree benefits. It will help keep thousands of employers competitive and ensure that the broader economy continues to benefit from the billions of dollars that pension funds invest each year. Among the most important changes included in the law is making the Pension Protection Act (PPA) permanent. The law also included a number of technical changes to the multiemployer system that were badly needed. One of the most significant authorized plans to elect to be in critical status early, allowing them to significantly reduce liabilities and recover sooner. The law also provides employers and employees with the flexibility to voluntarily act to shore up multiemployer retirement plans. Without these new measures, thousands of retirees would likely have been forced to accept the savage cuts to their retirement benefits that come when the Pension Benefit Guaranty Corporation (PBGC) is forced to step in. Also important to note, the law does not require additional federal funding. To the contrary, it raises funds by including a significant (100 percent) increase in PBGC premiums paid by the plans.

Now that we have the law in place, AGC and Congress need to make sure that the administration implements the new measures in a way that is truly helpful for employers and employees. That is why we continue to work closely with officials from the Labor and Treasury Departments and the PBGC to make sure they get the details right as they craft the new rules required by the new law, and keep the congressional intent of the law intact.

AGC has had concerns regarding the fiscal viability of multiemployer plans for decades. However, the back-to-back economic collapses in the 2000s, followed by the industry's greatest downturn, really exacerbated the funding status of many plans and previous legislative remedies proved insufficient. That is why over 40 groups came together to form the National Coordinating Committee of Multiemployer Plans' Retirement Security Review Commission to develop the *Solutions Not Bailouts* proposal. This private-sector proposal and recommendations to Congress would not have been possible without the groups negotiating and compromising in good faith. One of the fair and honest parties throughout the multiyear process was the North America's Building Trades Unions, which has one of their trades represented here today. Neither management nor labor representatives thought this process would be easy. Tough choices were made on both sides, followed by tough votes and legislative action by Congress, but we can all agree that the reforms are in the best interest for all stakeholders. Without the support of the labor organizations, these reforms would not have been possible, and AGC thanks them for their support. Continued labor support will be a prerequisite for additional reforms to the system, and we hope to continue to work closely with labor to demonstrate to Congress the presence of sufficient stakeholder support to enact a key element of the *Solutions Not Bailouts* proposal left unresolved by MPRA.

Looking forward, AGC encourages Congress to act on an important component of the *Solutions Not Bailouts* proposal that was not included in last year's law: changing the law to recognize a new "composite plan" design. Congress needs to give management and labor the voluntary option to select new, more flexible and pragmatic retirement plans for the future. In particular, we think Congress should allow collective bargaining parties or plan trustees the option to decide whether to adopt the composite plan model, which more equally distributes some of the risks associated with retirement plans so employers don't have to shoulder the entire burden. The current defined benefit ("DB") plan system puts employers otherwise in business to build and construct our nation's vital infrastructure in the antiquated and unfair position of insuring against losses in the equity market. The new plan design is essential to the shared goal of protecting both those who earn benefits and those employers that contribute retirement benefits to them.

The composite plan design can facilitate the modernization of strong plans that will not be taking advantage of MPRA's tools, but are still far from fiscal sustainability. Enacting a composite plan design option will not directly change how the construction industry operates, but will facilitate change and allow plans to voluntarily adapt in the future. Under the current DB system, the creation of contingent withdrawal liability makes the employer liable for the ups and downs of investment returns and the size of the asset base. Historically, two-thirds of a plan's assets are based on investment returns rather than on employer contributions over the life of a plan. This model creates a system that imposes crippling withdrawal liability and little remedies for employers to account for their exposure.

MPRA still leaves uncertainty and concern for contractors regarding their withdrawal liability, and the new plan design, if enacted, could provide immediate benefits. In fact, the current pension rules can impose withdrawal liability that can exceed the value of a company despite an employer acting in good faith. This prospect of withdrawal liability can discourage a potential buyer from acquiring a construction business when its current owners want to sell or retire. These liabilities also raise concerns from project owners and financiers on a company's long-term liabilities, neither of which have any bearing on a contractor's ability to perform the construction work they are being contracted to perform, which is an unfortunate liability unique for union contractors. In most cases, under the current rules, an employer will never be able to pay down its liabilities.

The composite plan design that we are advocating would limit an employers' liability to the hourly contributions that the employer makes. These contributions would be negotiated during collective bargaining and incorporated into collective bargaining agreements, similar to how today's DB plans are funded. The risk for the employers under the new composite plan design would be limited to ensuring their hourly contributions are sufficient given the volatility of market returns and other factors. This design change gives trustees more flexibility on a year-to-year basis by evaluating if current contribution rates are sufficient.

In a composite plan, plan participants would shoulder some of the risk as their benefits would be tied to the plan's performance and the ability of the plan to meet the promised benefits levels, similar to a traditional 401(k) model. However, a significant improvement over the 401(k) model is that the composite plan would provide the benefits as a lifetime annuity rather than a lump sum. The composite plan model also pools the assets, expenses, and actuarial projections just like a DB plan, limiting the individual expenses that a plan participant is subjected to under the 401(k) model.

The plan's structure would require first-year employer contributions to be 120 percent of the first-year liabilities. Employers will work with plan actuaries in the collective bargaining process to determine what these contributions will be. Thereafter, the trustees must maintain a fully-funded plan level or better. If the plan were to fall below 100 percent, then the benefits would drop accordingly. If this were to occur, it would provide an opportunity for the bargaining parties to restore those benefits during the next collective bargaining process. The plan is more financially responsible by using assumed rate of returns for investments that are more reasonable and conservative, thus avoiding potential crippling unfunded liability. This design change also eliminates statutory requirements that employers potential withdrawal liability increases if the plan lacks the assets to pay the benefits, including those in pay status. The design change would bring along regulatory guidelines to try and keep plans solvent, dictate contribution rates, and contain protections for vulnerable populations.

The composite plan structure is innovative but not untested. It is similar to the model that is in practice throughout much of Canada and that mimics the U.S. design prior to enactment of the Employee Retirement Income Security Act (ERISA). A review of the history of these Canadian plans shows very few incidents of a reduction in benefits.

Let me point out that the adoption of a composite plan design would not eliminate legacy liabilities under existing DB plans. Accrued liability for unfunded vested benefits will remain, and they will continue to be the employer's responsibility and to be subjected to PPA funding rules. Employees who are covered under such DB plans would continue to receive benefits under those plans, and the combination of those benefits and the new plan would be virtually the same. The employers would continue to make contributions to the pension trust where a portion of the contribution would pay down legacy costs and a portion would go towards the new plan.

AGC urges Congress to quickly enact legislation that creates the new plan design concept. Despite MPRA, some plans will still pass a tipping point where the issues of a deficit plan, increasing retirements, reduced numbers of new employees under the plan, and withdrawal of employers will occur in a coincident manner that will accelerate the failure of an otherwise healthy plan. Such convergence of factors could precipitate failure of plans and of contributing employers.

Construction contractors that are signatory to collective bargaining agreements requiring contributions to DB multiemployer plans are increasingly deciding to wind down and close their businesses rather than endure mounting unfunded liability and risk collapse, or possible mass withdrawal from the plans. Employees who are fully vested and have the opportunity to take early retirement are doing so in record numbers out of fear that plans may fail before their normal retirement age and their benefits will be lost. We would love to keep these valuable seasoned workers in the industry.

Additionally, the reports of a worker shortage and problems recruiting and retaining a skilled workforce cannot be understated. Addressing the skills gap is another priority for AGC and one component to training the next generation of skilled workers is the union apprenticeship model. Fewer employees of signatory contractors will cause a further decline and weakening of pension funds, and will have ripple effects throughout the industry and across the country. This will lead to employees missing out on some of the other benefits that can be provided to them including the training provided through union apprenticeship training programs, in addition to other sources.

The ability for employers to choose from a broader variety of retirement plan models, including the composite plan model, will minimize employer and PBGC liabilities in the future and provide more certainty for workers. The timing of this legislation is important because the industry has finally begun to expand again, giving employers and employees their best chance to add new plan participants in over a decade. But without the greater tools, the industry will have a hard time securing a stronger future for their plans. If this current growth window is missed, there is no telling how long it will be before the industry has such a prime opportunity to shore up their plans again. The vast majority of construction industry plans are returning to the green zone; this is a perfect opportunity to adopt these changes and would provide limited disruption of benefits for participants. Absent new plan design, workforce age demographics and mass retirements will put further strains on the funding status of a plan and jeopardize the viability of an otherwise healthy plan. This could push even further liabilities onto the PBGC, which is woefully unprepared to take on additional exposure.

The PBGC has reported significant budget shortfalls in their multiemployer pension fund. However, the effects of last year's doubling of PBGC premium increases need to be fully reviewed and the reforms in MPRA need to be allowed to take place before any future debilitating increases are leveled on the plans again. Our contractors who will be entering their next round of collective bargaining agreements can be assured that discussions on these plan fees will be a major topic of negotiations. If the plans cannot absorb the increased premiums, then the labor parties will look to employers to increase their contributions, which will in some cases cause the employers to become uncompetitive and ultimately have an even further negative impact on a plan due to decreased work hours by the remaining contributing contractors of the plan.

Additionally, as the Committee knows well, employers contributing to multiemployer pension funds backed by the PBGC are still bracing for equally devastating fee increases imposed by the Affordable Care Act on their health care benefits. While these issues are not directly related, this is certainly a further expense that signatory contractors will be facing in the coming years. Given the potential harm that further premium increases will have on plans and contributing employers, Congress should not impose any further hike in premiums without waiting for a proper assessment of 2014 reforms and a determination of the need for such further increases.

Congress should likewise wait for the enactment of the proposed new plan design measure and wait to see how that affects PBGC's needs before increasing premiums. Because the composite plan design eliminates future withdrawal liability, future exposure to the PBGC would be reduced and, over the long-term, shore up PBGC assets.

In conclusion, MPRA was a step in the right direction and provides many needed reforms to the multiemployer system. AGC is also calling on Congress to enact additional reforms to the pension system that allows multiemployer plans to modernize by choosing from additional retirement plan models, including the composite plan concept. The new plan design is essential to the shared goal of protecting those who earn benefits and the employers who contribute retirement benefits to them. The proposed amendments to the law are not a union bailout. They would remain completely voluntary and ensure employers and the pension system are fiscally viable in the future. Finally, the design change further alleviates future financial strains on the PBGC.

I would be pleased to answer any question that the members of the Subcommittee may have.

Thank you.