NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

815 16TH STREET, N.W., WASHINGTON, DC 20006 • PHONE 202-737-5315 • FAX 202-737-1308

The United States House of Representatives

Committee on Education and the Workforce

Subcommittee on Health, Employment, Labor and Pensions

February 2, 2012

***Examining the Challenges of the PBGC and Defined Benefit Pension Plans***

Testimony of:

Randy G. DeFrehn, Executive Director
National Coordinating Committee for Multiemployer Plans (NCCMP)

## Introduction:

Chairman Roe, Ranking Member Andrews and Members of the Committee, it is an honor to speak with you today on this important topic. My name is Randy DeFrehn. I am the Executive Director of the National Coordinating Committee for Multiemployer Plans (the "NCCMP")[1]. The NCCMP is a non-partisan, non-profit advocacy corporation created in 1974 under Section 501(c)(4) of the Internal Revenue Code, and is the only such organization created for the exclusive purpose of representing the interests of multiemployer plans, their participants and sponsoring organizations.

For over 60 years, multiemployer plans have provided a mechanism for employees of tens of thousands of predominantly small employers in industries with very fluid employment patterns to receive modest but regular and dependable retirement income[2]. They are the product of collective bargaining between one or more unions and at least two unrelated employers that are obligated to contribute to a trust fund that is independent of either bargaining party whose benefits are distributed to participants and beneficiaries pursuant to a written plan of benefits. While most often associated with the building and construction and trucking industries, multiemployer plans are pervasive throughout the economy including the agricultural; airline; automobile sales, service and distribution; building, office and professional services; chemical, paper and nuclear energy; entertainment; food production, distribution and retail sales; health care; hospitality; longshore; manufacturing; maritime; mining; retail, wholesale and department store; steel; and textile and apparel production industries. These plans provide coverage on a local, regional, multiple state, or national basis and can cover groups of several hundred to several hundred thousand participants. By law, these plans must be jointly and equally managed by both employers and employee representatives.

---

1 The NCCMP is the premier advocacy organization for multiemployer plans, representing their interests and explaining their issues to policy makers in Washington since enactment of ERISA in1974.

2 The median benefit paid to participants of plans surveyed was $908 – See DeFrehn, Randy G. and Shapiro, Joshua, "The Road to Recovery: The 2010 Update to the NCCMP Survey of the Funded Position of Multiemployer Plans", The National Coordinating Committee for Multiemployer Plans, 2011.

According to the PBGC's 2011 Annual Report, approximately 10.3 million people are covered by the approximately 1459 insured multiemployer defined benefit pension plans. This represents a slight decline from the prior year's report which showed 10.4 million participants in approximately 1500 plans. This decline is primarily a function of the impact of the recession on employment patterns, the magnitude of the market contractions and the sluggish nature of the recovery for many covered industries. It also reflects the fact that a few plans have had to avail themselves of the multiemployer guaranty fund of the PBGC.

I would like to direct my comments today to an examination of that fund, the infrequent number of multiemployer plans that have had to take advantage of its protections since its inception, its importance to specific troubled industries, and the multiemployer community's ongoing commitment to jointly address the evolutionary challenges that threaten the continuation of this system as evidenced by the recent creation of a "Retirement Security Review Commission."

**The Multiemployer Guaranty Fund**

Unlike the single employer guaranty fund which became effective with the passage of the *Employee Retirement Income Security Act* (ERISA) in 1974, the implementation of the multiemployer guaranty fund was originally discretionary[3], becoming mandatory only with the enactment of the *Multiemployer Pension Plans Amendments Act* (MPPAA) in 1980. While sharing the common objective of providing retirement security for American workers whose employer based defined benefit plans have failed, these two funds have fundamental differences. First and foremost, the single employer system acts as the ***insurer of first resort***, assuming responsibility to pay benefits when the corporate sponsor is no longer able to meet its obligations; whereas the multiemployer system presents a much lower risk of claims as the ***insurer of last resort***, stepping in only when the all of the employers that contribute to a multiemployer plan are unable to meet their collective funding obligations. This risk is directly mitigated by the pooling of liabilities and by the existence of withdrawal liability (also a creation of MPPAA) which imposes an "exit fee" on employers that cease to participate or no longer have an obligation to participate in a multiemployer plan with unfunded vested benefits. This exit fee represents either the departing employer's proportionate share of the overall plan underfunding, or, under certain methods, liabilities that are directly attributed to that employer. It was enacted to stem the departure of employers from plans who realized they could transfer their liabilities to their competitors without penalty in the period immediately following the passage of ERISA.

The risk characteristics of the two guaranty funds was reflected from inception in much lower guarantee levels and corresponding premium structures for multiemployer plans. The adequacy of this structure for the multiemployer fund was evidenced by the fact that it operated at a surplus from 1982 until 2002, (corresponding with the end of the first of the two "once-in-a-lifetime" market contractions in the past decade and the doubling of guaranteed benefits to their current levels) and the fact that only 23 plans had ever received funding assistance from the PBGC through that time. The increase in 2001 marked the only time benefits had been raised since the guaranty fund's inception, bringing the maximum guaranty level to its current modest level. The current PBGC multiemployer plan benefit is a function of a formula based on the participant's accrual rate and years of service, providing 100% of the first $11 of the accrual

[3] Until 1980 the PBGC only provided assistance to 10 plans.

and 75% of the next $33. For a participant with 30 years of service, the maximum guarantee is $1,072.50 per month ($12,870 per year), or approximately one-fourth of the current single employer guaranteed amount.

It is also important to note that unlike in a single employer plan failure, the PBGC does not assume the operation of a multiemployer fund; rather, the fund continues to operate as it had in the past, paying benefits and performing normal administrative functions until the plan becomes insolvent. At that time the plan is required to reduce benefits to the statutory guarantee levels and receives a "loan" from the agency to continue to make required benefit payments to remaining plan participants.

In relative terms, the number of plans that have received assistance from the guaranty fund has remained low when compared with the single employer system. While the number of multiemployer plans has decreased from 2,244 in 1980 to the current level, the vast majority of plans that are no longer free-standing were merged into plans that were significantly larger or stronger (especially plans with 5,000 or more participants), generally producing plans that are stronger, with an expanded contribution base of employers and reduced administrative overhead created through the greater economies of scale. Nevertheless, with the onset of the "Great Recession" of 2008, many plans that had entered the year well funded (see below) were faced with significant funding challenges, with some passing beyond the point where they could be expected to recover. In the latest (2011) annual report, the PBGC deficit has increased from $1.4 to $2.8 billion with assistance being paid to **49** plans totaling $115 million in FY 2011. Furthermore, they forecast future liabilities for plans that are "reasonably probable" to need the assistance of the Guaranty Fund to reach $23 billion. While one might assume this large increase would imply widespread plan failures, the fact of the matter is that these liabilities are essentially attributable to two large plans that exist in industries that have been adversely affected by public policy decisions with unintended consequences that were severely impacted by the market failures. These plans and efforts to address their situation will be discussed in greater depth below.

**The Funded Position of Multiemployer Plans**

As a rule, multiemployer funds have been very well funded, in part in response to the parties' desire to eliminate unfunded vested benefits that would result in assessment of withdrawal liability. Comparisons with the funded status of single employer plans often misinterpret that fact when observing that multiemployer plans had typically been funded at levels that were significantly lower than single employer plans. What is missed in drawing that conclusion is the fact that contributions to single employer plans are set by the employer and when they became overfunded (or even funded above the minimum funding requirements) as was common during the late 1980s and 90s, the employer simply made no further contributions. Conversely, multiemployer plans are funded as a result of contributions negotiated in binding collective bargaining agreements. In most cases, the plan fiduciaries that are responsible for determining benefit levels do not have the authority to waive or adjust the required contributions. Therefore, plans that reached their maximum deductible contribution levels had no alternative than to raise the plans' benefit levels (and corresponding liabilities) in order to protect the current deductibility of the employers' contributions. It has been estimated that upwards of 70% of all multiemployer plans were required to take that action in the years leading up to the millennium.

This conflicting public policy objectives (ensuring adequate funding of pension plans, but preventing the tax sheltering of income above full funding) failed to recognize the underlying premise of long-term funding assumptions: that in order for a long-term assumption to work it is necessary to be able to set aside gains in years that exceed that assumption in order to make up for years in which the markets underperform. This shortcoming was addressed in the Pension Protection Act of 2006 (PPA), but unfortunately, the action came too late for most plans.

By the time the situation was corrected, many plans had taken on liabilities that, due to the anti-cutback provisions of ERISA, could not be rescinded and are now a part of the plans' costs. While the market downturn that led to the passage of the Pension Protection Act of 2006 (PPA) resulted in significantly increased contributions and reduced future benefit accrual reductions in anticipation of its implementation, most plans entered 2008 well funded with an average market and actuarial value of assets of approximately 90%.[4] When the first required "Zone Certifications" were completed at the beginning of 2008, 80% of all plans reported they were in the 'Green" zone. One year later, their fortunes had reversed, with only 20% reporting Green Zone status, direct casualties of market declines.[5]

In response to the uncertainty of the depth and duration of the recession, Congress passed limited relief in the form of the *Worker, Retiree and Employer and Relief Act* of 2008, followed by additional reforms in the *Preservation of Access to Medicare and Pension Relief Act* of 2010. These measures, coupled with direct action by plan sponsors (70% of which had increased contributions, approximately 35% had reduced future accruals, or adjustable benefits and over 40% that did both) enabled many plans to begin the climb back to the Green Zone. In 2010, approximately 48%[6] had done so and by 2011, according to a survey by the Segal Company, that number had increased to approximately 66%. While certainly encouraging, and a sign of improving strength across the majority of plans, the sluggish recovery continues to depress contribution income, offsetting much of the strength of the investment returns of 2009 and 2010.

**Severely Troubled Plans**

While many plans were able to benefit from the relief, a few had suffered a fatal blow due to fraud (Madoff and other similar situations), or simply because the industry could no longer survive. As noted above, two specific plans requiring relief have suffered from unintended consequences of other public policy decisions: in one, the deregulation of the trucking industry in 1980 resulted in the decline and demise of virtually all of the major contributing commercial carriers; in the other, the *Clean Air Act* caused the cessation of a large portion of the bituminous coal mining industry that previously contributed to the plan, resulting in an active employee population that is a small fraction of the previous number and a retiree to active ratio of 12:1. In both instances, the plans had managed to remain well funded until the unprecedented market collapse imposed irrevocable harm on the plans' investments.

---

[4] Entering 2008, the average multiemployer plan was approximately 90% funded on both a market and actuarial value of assets basis. (See DeFrehn, Randy G. and Shapiro, Joshua; "Multiemployer Pension Plans: Main Street's Invisible Victims of the Great Recession of 2008"; National Coordinating Committee for Multiemployer Plans; April 2010; Page 18.)
[5] Ibid, page 20.
[6] See "Road to Recovery…", page 8.

In response to demonstrations of the need for additional, targeted relief by the multiemployer community, companion proposals were introduced in both the House (the "Preserve Benefits and Jobs Act") and the Senate that would have provided much needed assistance to these severely troubled plans while preserving a portion of the plan that could remain viable for future participants, primarily by reducing the exposure of contributing employers and to the PBGC by modifying the existing rules governing partition; however, these particular provisions were not included in the final relief measures.

Similarly, we had strongly advocated for extending the authority previously exercised by and acknowledged by the PBGC, to facilitate mergers of weaker plans into stronger ones in the same industry to achieve the same objectives of the hundreds of mergers which took place since 1980, but which have become more problematic under the current fiduciary constraints imposed by the *Pension Protection Act*.

In looking to the future, we would encourage Congress to reconsider each of these measures as a way to reduce the potential financial exposure to all stakeholders and ensure that the safety net available through the multiemployer guaranty fund is preserved.

**Meeting Future Challenges**

The Pension Protection Act of 2006 contains funding provisions for multiemployer plans that are scheduled to sunset at the end of 2014. In our collective experience with the existing rules it has become apparent that they are not sufficiently adaptable to the level of volatility plans have experienced in recent years and that they will need to be modified going forward. We have welcomed the interest shown by your Committee staff and that of the other Committees of jurisdiction, as well as the regulatory agencies in learning how the Act could be modified to better meet the needs of plan participants, sponsors and the plans themselves.

In the course of reviewing proposals for modifications, we have come to the conclusion that now is an appropriate time to consider taking a more fundamental assessment of the rules governing the multiemployer defined benefit system. We recognize that the body of law and regulations that has evolved over the past 60 years has become unwieldy and in many ways runs counter to the original intent of providing affordable worker retirement security with predictable costs and minimal administrative burdens for the contributing employers.

**Retirement Security Review Commission**

In order to ensure that the interests of all stakeholders are reflected in this evaluation, the NCCMP has convened a "Retirement Security Review Commission" comprised of representatives from over 40 labor and management groups from the industries which rely on multiemployer plans to provide retirement security to their workers. The group began its deliberations in August and meets monthly to evaluate their collective experience with current laws and regulations. The group has adopted a methodology that reaches out to a variety of disciplines to systematically review current and potential plan design, funding, economic, investing and regulatory environments to identify what currently works and any statutory and regulatory impediments to achieving its objectives.

The group has limited its objectives to two:

1. Ensuring that any recommendations to modify the existing laws or regulations provide regular and reliable retirement income; and

2. Reducing the risks to employers that provide an incentive to existing employers to withdraw from the system and present impediments to new contributing employers from joining.

The Commission has established an ambitious time table for its deliberations with a target of developing legislative recommendations by this summer. We look forward to providing periodic briefings as the project evolves and to extensive collaboration to achieve needed modifications that will enable multiemployer plans to survive and provide affordable, reliable and secure retirement income to future generations of American workers and employers.

**Conclusion**

We appreciate this opportunity to share our comments with you on the future of multiemployer defined benefit pension plans and on the importance of preserving the existing safety net for participants of plans that can no longer provide such security on their own and look forward to your questions.

Respectfully submitted,

Randy G. DeFrehn
Executive Director