PENSION RIGHTS CENTER

PROTECTING AND PROMOTING RETIREMENT SECURITY
1350 Connecticut Ave., NW, Suite 206 | Washington, DC 20036-1739
P: 202-296-3776 | F: 202-833-2472 | www.pensionrights.org

**STATEMENT OF**
**THE PENSION RIGHTS CENTER**
**ON**
**"STRENGTHENING THE MULTIMEMPLOYER PENSION SYSTEM: WHAT REFORMS SHOULD POLICYMAKERS CONSIDER?"**

**BEFORE THE**
**THE SUBCOMMITEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS**

**COMMITTEE ON EDUCATION AND THE WORKFORCE**
**UNITED STATES HOUSE OF REPRESENTATIVES**

**JUNE 12, 2013**

The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to promote and protect the retirement security of American workers and their families. We commend the Subcommittee for holding this hearing. Multiemployer pension plans provide an essential source of retirement income to millions of Americans. The benefits paid by these plans, combined with Social Security benefits, have allowed hard-working Americans to enter retirement with the confidence that they will be able to maintain a reasonable standard of living for the remainder of their lives.

Despite the success of the multiemployer system for so many people, there are now a small but significant number of multiemployer plans that face substantial financial issues that must be addressed. Some of these plans were adequately funded not long ago and some of them may find themselves in improved financial shape at some point in the future simply because of changes in the economic climate. But the issue today is how to shore up these plans to minimize the calamitous economic consequences of plan insolvency to current and future retirees.

The National Coordinating Committee on Multiemployer Plans (NCCMP) has produced a document that has started a valuable dialogue on this important subject. Their report, *Solutions not Bailouts*, includes many innovative ideas relating to the future of multiemployer plans, including the idea for alliances and clarifying PBGC's authority to facilitate mergers; the possibility of discontinuing a 13$^{th}$ check in certain industries; a proposal to help certain widows unfairly denied survivor's protections; and recommendations to foster innovative plan designs.

But we are deeply troubled by the document's suggestions for deeply-troubled plans, which endorse the unprecedented and dangerous step of allowing plans to slash the benefits of men and women already in retirement and who have no opportunity to replace lost benefits. This proposal would surprise the 1974 Congress that wrote ERISA and thought that in doing so had put a permanent end to broken promises and disappointed expectations for retirees.

The NCCMP contends that its proposal will result in shared sacrifice, but we are concerned that most of the true sacrifice will be borne by those who have already retired. Multiemployer plans should not balance their books on the backs of their retirees.

The rationale underlying the NCCMP proposal for deeply-troubled plans is that cutting some retiree benefits now will prevent the necessity of larger reductions later should the plan fail.[1] This is not, however, necessarily true for all retirees. Under current law, the plan would pay every dollar of promised benefits to those retirees who die before plan insolvency, which might not occur for 15 or 20 years, or more.[2] Retirees who are 80 or 85 years old will simply not be able to pay for utilities, medical expenses, and other daily necessities if their benefits are cut. For such retirees, the NCCMP proposal is all pain and no gain.

Pension policy and pension law has long recognized that retirees deserve the strongest protection. Such individuals typically cannot go back into the job market to make up lost pension income. Benefit reductions would force many retirees into impoverishment. And the law reflects this. Under Title IV of ERISA, plan assets are effectively paid first to those who have already retired (or could have retired), both in single and multiemployer plans. Moreover, long before ERISA, orthodox plan design generally allocated the assets of insolvent plans first to the benefits of people in pay status, recognizing their particularly vulnerable status. The NCCMP proposal abandons this key principal of pension policy.

The proposal refers to vulnerable populations, but does not adequately protect retirees. It leaves the decision to cut benefits to the discretion of the trustees, who often will have their primary allegiance to active workers, contributing employers, and the long-term continuation of the plan. Moreover, although the factors the trustees are directed to consider include “compensation level of active participants relative to the industry, competitive factors facing sponsoring employers, and the impact of benefit levels on retaining active participants and bargaining groups,” these standards say nothing directly about protecting retirees.

Even worse, the proposal provides that the trustees’ decision will be final unless the PBGC affirmatively rejects the decision within a 180-day period, and that the PBGC can only reject the decision if the trustees have failed to use “due diligence.” In judging whether the trustees have used “due diligence,” the PBGC must grant deference to the trustee’s decision to reduce benefits “in the absence of clear and compelling evidence to the contrary.” This is an unacceptably inadequate standard of review. There is the further fact that the PBGC itself has an institutional interest in approving benefit reductions to lessen the likelihood that it will be required to provide financial assistance to the plan.

[1] The NCCMP proposal would allow the trustees of a plan, subject to minimal review, to cut benefits to 110% of PBGC guarantee levels. The maximum guarantee for a retiree with 30 years of service is $12,870 a year. As a recent *Wall Street Journal* article noted, a retired truck driver now receiving a pension of $36,268 a year, would have his benefit reduced to $13,200, a loss of $23,028 a year. Kris Maher, “Union-Employer Proposal Would Hit Some Retirees,” April 12, 2013.

[2] Under current law, benefits are not cut to PBGC guarantee limits until plan insolvency.

There is no question that a number of multiemployer plans are in serious financial trouble, and we very much appreciate the hard work of NCCMP's Commission members in developing their recommendations to address this issue. However, we also believe that there should be exploration of alternatives to the severe retiree benefit cuts that would be allowed under the Commission's proposal. We are currently working with our Retired Fellows (who include former top PBGC officials), our board of directors, and advisors to develop new ideas that would protect retirees – as well as their multiemployer plans, and the long-term health of the PBGC. Once we have completed our deliberations, we will be pleased to share our ideas with the Subcommittee.