PENSION RIGHTS CENTER

PROTECTING AND PROMOTING RETIREMENT SECURITY
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STATEMENT OF
THE PENSION RIGHTS CENTER
ON
"STRENGTHENING THE MULTIEMPLOYER PENSION SYSTEM:
HOW WILL PROPOSED REFORMS AFFECT EMPLOYERS,
WORKERS AND RETIREES?"

BEFORE THE
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE
UNITED STATES HOUSE OF REPRESENTATIVES

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The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to protect and promote the retirement security of American workers, retirees, and their families. We commend the Subcommittee for the interest it has shown in the topic of multiemployer plans and for holding this hearing today.

Multiemployer pension plans provide an essential source of retirement income to millions of Americans and will provide retirement income to many million more current workers after they retire. The benefits paid by these plans, combined with Social Security benefits, have allowed hard-working Americans to retire with the confidence that they will be able to maintain a reasonable standard of living throughout their retirement years.

Despite the success of the multiemployer system for so many people, there are now a number of multiemployer plans, including several large plans, that face substantial financial issues that must be addressed. Some of these plans were considered adequately funded less than a decade 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 potentially calamitous economic consequences of plan insolvency to current and future retirees.

The National Coordinating Committee on Multiemployer Plans (NCCMP) has produced a report that has jumpstarted a dialogue on this difficult and important subject and for that we commend it. The report itself, *Solutions not Bailouts,* includes many innovative ideas relating to the future of multiemployer plans, including the idea for alliances and clarifying PBGC authority to facilitate mergers; the possibility of discontinuing a 13th check in certain industries; a proposal to help certain widows who have been unfairly denied survivor's protections; and recommendations to foster new types of innovative pension plan design structures to provide secure benefits while sensibly allocating market and actuarial risks among participants and plan sponsors. These aspects of the NCCMP report help make possible new thinking about the future of multiemployer plans.

But we are deeply troubled by the document's suggestions for deeply-troubled plans, which endorse the unprecedented and dangerous step of empowering plan trustees in ongoing and still solvent plans to slash benefits of men and women who are already in retirement and who have no opportunity to replace lost benefits.

The NCCMP contends that its proposals will result in shared sacrifice, but we are concerned that most of the true sacrifice will be borne by those who are already retired or are close to retirement. Multiemployer plans should not balance their books on the backs of retirees, particularly given that many of these plans were adequately funded when current retirees left the workforce.

Pension policy and pension law has long recognized that pensioners deserve the strongest protections. Retired 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. The NCCMP proposal abandons this key and sacred principle of pension policy, which would have very much surprised the Congress that enacted ERISA in 1974.

There are three crucial points relating to the NCCMP proposal that are not well understood but deserve attention before Congress makes decisions about how to address multiemployer funding issues, particularly as this proposal affects retirees.

First, 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. 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. 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. And in all or almost all cases, no retiree will fare better under the NCCMP proposal than they would under current law.

Second, multiemployer plan guarantees are already much lower than guarantees for single-employer plans, which generally will not reduce normal retirement benefits if they are below the maximum guarantee level, currently $57,477 for a single-life benefit. In contrast, the maximum guarantee for a retiree with 30 years of service in a multiemployer plan is only $12,870 and the guarantee for the many retirees, who have fewer years of service and lower monthly benefits, will be still lower. Only very modest monthly accruals are fully guaranteed.[1]

The NCCMP proposal would give trustees the discretion to cut a retiree's benefit to 110% of the PBGC guarantee. How would that affect retirees? As a *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 $23,012 a year. But the NCCMP would also allow plan trustees to cut smaller benefits. For example, a retiree who earned a $12,000 benefit after working 10 years could see her benefit by more than 50 percent. And a retiree who earned a $12,000 benefit after working for 20 years could see his benefit cut to under $9,500. Giving the trustees the power to cut benefits of this size by this much, when the plan may be capable of paying full benefits for another 15 or 20 years, is grossly unfair to retirees. Yet the NCCMP would allow the trustees almost unreviewable authority to do just that.

[1] The PBGC fully guarantees only the first $11 monthly annual benefit accrual and guarantees only 75% of the next $33 of monthly accrual. The PBGC does not guarantee any portion at all of benefit accruals in excess of $44 per month.

Third, the NCCMP proposal would permit trustees to slash retiree benefits more severely than they cut benefits for active employees and would permit them to cut retiree benefits without cutting benefits for active employees at all. Moreover, even seemingly across-the-board cuts would impact retirees far more severely than active employees on a present value basis.

The proposal does ask trustees to consider the impact of any reductions on "vulnerable populations," but provides no guidance on the definition of this group. Instead, it leaves decisions about whose benefits to cut and how much 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 or even protecting older retirees or retirees with modest benefits.

Moreover, the NCCMP proposal will undermine the confidence of active workers in their retirement plan. We have talked to younger workers who are appalled at the notion that the trustees could slash the benefits of those who are already retired. They apparently understand what the NCCMP proposal does not seem to acknowledge: retirees generally do not have the option to go back into the workforce and make up their losses. One young truck driver told us "How can we trust anything if it's okay to start breaking pension promises to the guys who came before us?" The NCCMP says worker confidence in the system will be undermined if plans cannot cut benefits, but the reality is that allowing trustees to cut retiree benefits will destroy faith in the system.

As we already observed, 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 we need more information about the extent of the problems and there should be far more serious exploration of alternatives before the trustees of such plans are licensed to slash the benefits of retirees, the most vulnerable group of participants in a plan and the participant group to which Congress extended the greatest protections.

To that end, there is a need for greater understanding of the problem:

1. How many plans are truly deeply troubled? How many active and retired participants are in these plans?

2. How many plans are expected to become insolvent over the next 10 years? 15 years? 20 years? And how large are the benefits in such plans? How deeply would these benefits likely be cut under the NCCMP proposal?

3. Are there industry-specific solutions that would shore up some of these plans?

4. How many of these plans improved benefits within the last five years and how many are now paying so-called 13th checks? Would reducing or eliminating these benefits address the financial problems of some plans? If so, how many? And how many active and retired participants would be affected?

5. Could plan partitions and mergers relieve funding stress from some plans? If so, how many plans and how many participants would benefit? Which industries would benefit from these approaches?

And we should consider solutions other than benefit cuts, such as:

1. Identifying new sources of revenue to improve the funding status of troubled plans. In many cases, plans have become underfunded because of unforeseen circumstances, such as the move away from coal to cleaner energy sources and the deregulation of the trucking industry. Would Americans who have benefited from these changes as consumers be willing to pay a small fee to protect the benefits of retirees who helped build this country's economy? Another approach would be to recognize that plans are facing funding stresses in large measure because of the actions of financial institutions that caused the recession. Our country infused money into those institutions. Should consideration be given to assisting troubled pension plans that are facing problems not of their own making?

2. Increasing PBGC's premiums, both to strengthen its ability to meet its guarantee commitments and to increase guarantee levels for multiemployer plans. Current PBGC premiums for multiemployer plans are only $1 per month for each participant, or $12 a year. Would participants in deeply-troubled plans be willing to contribute additional amounts as special "retiree/worker premiums" to stave off much more extreme cuts to their pensions?

3. Developing industry-specific solutions such as giving the PBGC greater authority to help certain trucking industry plans through partition (recognizing that additional revenue would have to accompany this strategy), facilitating mergers in manufacturing plans, eliminating 13th checks in the construction industry plans, and providing government guaranteed loans for certain plans.

Finally, we note that the NCCMP proposal itself is procedurally flawed, offering retirees virtually no protections other than the good will of the plan trustees and imposing no meaningful objective standards for how plan insolvency is projected or how plan rehabilitation is to occur.

There is no one magic bullet to address the situation but we must as a nation, and as responsible citizens, try to find ways of meeting basic promises to retirees. If we allow cuts in retiree benefits of multiemployer plans, what is to stop future cuts to retirees in single-employer plans and in public plans, and then where does this lead? If these promises are broken, the very foundation of our nation's retirement system will inevitably crumble.

The Pension Rights Center is committed to helping preserve multiemployer pension plans and we, our board of directors, and our advisors are happy to work with this Subcommittee to develop alternatives to the retiree benefit cuts that are currently under consideration.