January 14, 2020

The Honorable Charles Grassley, Chairman
The Honorable, Ron Wyden,
Ranking Member
Committee on Finance
United States Senate Washington, D.C. 20510

The Honorable Lamar Alexander, Chairman
The Honorable Patty Murray,
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate
Washington, D.C. 20510

[Submitted via MultiemployerReform2019@finance.senate.gov]

RE: Joint UA/MCAA Labor/Management Comments on the *Multiemployer Pension Recapitalization and Reform Plan*

Dear Chairman Grassley and Chairman Alexander and Ranking Members Wyden and Murray:

The following comments on the *Multiemployer Pension Recapitalization and Reform Plan* (the "Proposal"), are submitted jointly by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO ("UA") and the Mechanical Contractors Association of America ("MCAA"). The UA and the MCAA are industry partners and they and/or their affiliates jointly sponsor 143 multiemployer defined benefit plans across the country.[1] (For brevity, those UA/multiemployer plans are hereinafter referred to as UA plans.)

[1] See *UA/MCAA Analysis of the Cost Impact of the Grassley/Alexander Proposal*, December 2019.

We appreciate the thoughtfulness of the Proposal and agree with many of the provisions in concept. There are also some provisions with which we wish to express our concern, our reasons for concern and possible alternatives. We do believe that this Proposal may form the basis for further discussion and a solution to the financial crisis overtaking many multiemployer plans.

Restructuring Pension Insurance

A. Special Partitions. We generally support the Proposal's expansion of partition to support the recovery of failing plans. We support the provision that requires plans to engage in restructuring discussions with PBGC to identify options for plans to remain solvent.

The UA and the MCAA support mergers and believe that provisions that facilitate mergers are to be encouraged. However, the merger provisions of the Proposal are confusing. PBGC may require a partitioned plan to merge with another plan as a condition of approval of the partition. The Proposal notes that such mergers will be between plans in the same industry and will be designed to reduce ongoing expenses related to plan administration. There is no information, however, regarding how the merger partner will be selected; but, it would seem that aspect of the merger will have to be voluntary since PBGC will not control the other partner to the merger via partition approval.

The Proposal requires future benefits to be reduced to the actuarial equivalent of 1% of contributions. It is unclear if the 10% benefit suspension will be required in all cases. We anticipate further detail as the Proposal evolves.

We do not oppose the limitation on future accruals in the immediate aftermath of the partition. However, we believe that the provisions regarding a future benefit increase is unnecessarily restrictive. Constraining an Original Plan once it emerges from declining status, or a stronger plan with which an Original Plan merges does not encourage actions that improve plan funding. After a reasonable period of time, a partitioned plan should be subject to the same benefit improvement restrictions that apply to other plans under the Proposal.

Plans eligible for special partition must file applications within one year of enactment. However, no applications may be filed until PBGC issues guidance and PBGC has 180 days in which to issue guidance. This reduces the period in which to file to 6 months if PBGC issues the guidance timely. Given the importance of the special partition to the survival of the multiemployer system, we urge that the period for filing a special partition application be 1 year from the date of PBGC guidance.

The Proposal provides that for purposes of the partition application, PBGC guidance will require the applicant to provide projections for the Original Plan after partition and a projection of the funding status of the Successor Plan. PBGC guidance will include assumptions and factors. If the applicant uses the assumptions prescribed by PBGC, the assumptions will be considered reasonable. If an applicant uses any assumptions that differ from the prescribed assumptions, PBGC must expeditiously review and determine whether any are unreasonable. PBGC must issue a written notice within 90 days of application identifying the unreasonable assumption and stating the alternative assumption that PBGC considers reasonable. The applicant will have 90 days to modify and resubmit the application.

We are concerned about this provision for PBGC setting actuarial assumptions. As you may recall, Central States Pension Fund among others filed MPRA suspension applications that were denied by IRS in part because of what many believe to have been the overly conservative application of assumptions by IRS. We cannot afford a reprise in which conservative assumptions by an agency ensure the failure of a plan the law was enacted to save. It appears that PBGC will be able to similarly reject plans because PBGC staff believes that multiemployer plans should use much more conservative assumptions. We submit that an administrative review standard should apply to PBGC analysis, and that the professional standards that govern actuaries' selection of assumptions will apply to discipline proper assumptions.

B. Increase in PBGC Guarantees for Participants in Multiemployer Plans. We believe that the guarantee should be increased. However, as the Proposal currently provides for an increase in premiums at a level that we believe will force plans into insolvency that could have otherwise survived, we do not feel that this increase is affordable at this time. This should be phased in over time with the premium increase moderated to avoid the burden to plans discussed below.

In addition, PBGC reports show that the current guarantee still covers a relative high percentage of multiemployer plan benefits.[2]

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[2] The Proposal cites the statistic that through 2015 about 80% of participants in insolvent multiemployer plans received their full vested benefit.

C. Accelerating the PBGC Insurable Event for Multiemployer Plans. This Proposal would change the definition of insurable event for multiemployer plans so that the point at which PBGC steps in is the first plan year for which the plan is projected to become insolvent in any of the next five plan years. Such a plan must be amended to terminate (cease crediting service for any purpose under the plan) and to reduce benefit payments to the guarantee level. Employers may not be compelled to withdraw. There is a transition rule for plans meeting the new insolvency definition as of the date of enactment.

We support this provision that preserves plan assets and reduces the premium burden for other plans. As discussed later, we believe the premium burden as proposed is unsupportable and will force plans that would otherwise have recovered into insolvency.

D. PBGC Premiums for Multiemployer Plans. While we agree that a significant increase in PBGC premiums is needed -- we do not agree with either the amount, timing or the structure of the premiums in the Proposal. The Proposal creates a plan premium structure that resembles the single employer premium structure with a flat rate and variable premium. There are a number of problems with the proposed amount and structure.

The rationale for the change to flat rate plus variable is that the current structure does not reflect the risks against which PBGC insures. The single employer system has flat rate plus variable premiums. The difference is that the single employer plan sponsor can also determine to fund the plan at a higher level and thus reduce the variable premium. Over time, through bargaining, the bargaining parties could also determine to fund the plan at a higher level. But in the case of multiemployer plans, significant contribution changes are difficult to make over a short time period. The contributions are bargained and collective bargaining agreements, which typically extend several years to provide stability in industries, may not be able to be reopened.[3] Implementing a variable rate premium when PBGC was established might have created the incentive to fully fund benefits. However, imposing variable rate premiums after plans have successfully operated in good faith under existing funding rules is punitive. As in the case of single-employer plans, it is likely to lead to plan failure; not to better funded plans.

In the report *UA/MCAA Analysis of the Cost Impact of the Grassley/Alexander Proposal* (“UA/MCAA Analysis”) which we had prepared by Horizon Actuarial Services, LLC in

[3] It is important for many industries and particularly in construction for costs to be fixed by multiyear collective bargaining agreements. Large jobs may be bid well in advance and fluctuating costs will make it even more difficult for contributing employers to compete for work thus driving employers out of plans or out of the market.

December 2019, we noted several significant concerns with the burdensome impact of the premium provisions in the Proposal:

- Only a very few UA Plans are in danger of failing, but the Proposal would increase the total annual premiums paid by the 143 UA multiemployer plans from approximately $13.8 million to an estimated $169.3 million. This premium increase would require an increase in contributions or a decrease in benefits (in addition to such contribution increases and benefit reductions already made to stabilize these plans). This may push additional UA plans into insolvency.

- In addition to the increased plan premiums, retirees in UA plans would be required to pay an additional estimated $25-$50 million in co-payments – on top of the $169.3 million increase.

- Variable rate premiums imposed after plans have properly funded based on existing rules is not appropriate- as discussed above.

- The premium proposal combined with the discount rate proposal forces most plans into a lower zone/higher premium status and will result in higher and significantly detrimental premiums for most plans.

- Administering the stakeholder payments is yet another significant administrative cost imposed on plans.

We believe that significant consideration should be given to phasing in many of these provisions. If, for example, the purpose of the variable premium is to incentivize better plan funding, plans could be given an extended period of time to meet funding targets. Or, the new premiums and discount rate provisions should only be applied to liabilities created after enactment of the Proposal. We wish to emphasize that we believe that the premium provisions as Proposed, particularly when combined with the discount rate provisions, will significantly harm multiemployer plans and will result in the failure of plans that would not otherwise have failed. We do not believe this is the intent of the Proposal. Therefore, further detailed discussion, review and material changes are necessary if the ultimate goal of the reform is to be achieved – stabilizing the multiemployer defined benefit system overall for the long term.

Changes in Funding Requirements

A. Discount rate. The Proposal's mandated discount rate for valuing plan liabilities would make plans prohibitively expensive. The UA/MCAA Analysis estimates that a discount rate cap of 6% is expected to more than double aggregate unfunded liabilities for UA plans from $5.4 billion to $12.2 billion. The funded percentage of plans would then drop from the current overall 87% for all UA plans to 75%.

The UA/MCAA Analysis estimates that contribution requirements for UA plans will increase from 20% to 75% based solely on the proposed discount rate. It is expected that two UA plans would have contribution requirements increase 100% or more.[4]

Comments submitted by the American Academy of Actuaries ("AAA") concerning this aspect of the Proposal also expressed concern regarding the substantial impact on plans of a move to the proposed rates and noted that the result could adversely impact plans.[5]

We agree with the comments of the AAA that an effective reform structure must balance the competing objectives of ensuring that contribution levels are high enough to adequately fund benefits while not imposing contribution increases and/or benefit reductions that encourage employers and employees to stop supporting the plans.

Some ideas to consider are to apply current assumptions for funding and zone status but to permit a plan to make benefit increases or to reduce contributions only if the plan qualifies for "unrestricted" status that is determined using a lower mandated discount rate. Another alternative would be to phase in the lower mandated discount rates over an extended period of time.

B. Zone rule changes. Although we believe several features of the proposed zone rules are not clear, generally, we support the proposed changes provided that zone status, with one exception discussed below, is not determined using a low mandated discount rate. As previously noted, using the low mandated discount rate for zone status determinations would force many plans that have already made substantial benefit reductions and contribution increases and have recovered to go through that process again.

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[4] UA/MCAA Analysis, page 1.

[5] Comments on the Multiemployer Pension Recapitalization and Reform Plan submitted by the American Academy of Actuaries, December 23, 2019.

We would agree that the low mandated discount rate could be used to determine when a plan is in “unrestricted” status and thus permitted to make benefit improvements or reduce contributions.

Withdrawal Liability

While some changes to the withdrawal liability rules might be appropriate, we do not support the proposed changes. We believe these proposed changes would cause confusion for plans, contributing employers, and those companies that do business with contributing employers— with no significant benefit for plans, sponsors or plan beneficiaries. We are willing to discuss appropriate changes that we believe would be beneficial to plans and employers.

We wish to point out that one of the most serious impediments to plans’ collection of withdrawal liability is the current bankruptcy law that allows an employer to reorganize and completely avoid withdrawal liability. Several of the largest declining multiemployer plans are failing largely because employers used the bankruptcy laws and courts to avoid their obligations to plans. A serious examination of the ability of employers to discharge withdrawal liability in bankruptcy is warranted particularly when this Proposal calls for plans, retirees, unions and employers still fulfilling their plan obligations to pay for those liabilities discharged in bankruptcy.

Plan Mergers

We strongly support plan mergers as a means to save failing plans. Large UA plans are very experienced with mergers. Therefore, we generally agree with the provisions of the Proposal regarding plan mergers.

The Proposal eliminates the MPRA requirement to restore benefit suspensions in a merger between a Stable or Unrestricted plan and a Critical Plan**.** We agree that suspended benefits should not have to be restored in a merger. The benefit suspension makes the declining plan a more attractive merger candidate. However, we do not agree that the provision in the Proposal should be limited to a merger between a Stable or Unrestricted plan and a Critical plan.

Under the Proposal, trustees of merging plans are provided fiduciary protection by a PBGC determination that a merger between a declining plan and a Stable or higher plan satisfies certain safe harbors. The fiduciary protection should apply to all mergers since case law seems to support that position

Plan Governance, Disclosure, Other Reforms for Multiemployer Defined Benefit Pension Plans

A. Partition Program Plan Governance Conditions. Generally, we agree with the proposed "term limits" for the leadership of partitioned plans. We do not agree with the provisions for PBGC appointment of an independent trustee and for the special powers of the independent trustee because this conflicts with the requirements of the Taft-Hartley Act.

B. Funding Notices to Participants in Multiemployer Plans. We support the Proposal to streamline the Annual Funding Notice and provide more targeted information in a Zone Status Notice. Participant Notices are confusing because the rules are complicated. Anything that can be done to make the information more understandable is good for participants.

MPRA Reforms -- Voting Procedures. We do not support the proposed changes to the MPRA voting procedures. MPRA benefit suspensions have been and will continue to be crucial to the survival of plans. These proposed changes will mean that few if any benefit suspensions will be approved even if they benefit participants. This change does not benefit participants or the other premium payers that will be required to pay for the failed plans that could have been saved by a benefit suspension.

Alternative Plan Structures – Composite Plans. The UA and the MCAA have been strong advocates for composite plans since the NCCMP first introduced the idea in *Solutions Not Bailouts.* Both the UA and the MCAA participated in the NCCMP's Retirement Security Review Commission that formulated this design. Our organizations strongly believe that a plan providing lifetime benefits is in the best interest of our participants and our industry. The typical employment patterns in construction do not permit most participants in defined contribution plans to accumulate sufficient assets for a secure retirement. At the same time, many employers often find operating credit difficult to obtain because of the concerns and misunderstanding of lending institutions regarding withdrawal liability. As a result, some employers are seeking to leave defined benefit plans to create defined contribution plans.

We believe that a composite plan is a much better alternative if employers feel compelled to leave the defined benefit plan. The composite plan provides a life time benefit and a path to the elimination of withdrawal liability. The composite plan also requires participating employers to continue to fund the legacy defined benefit plan.

Conclusion

The UA and the MCAA are encouraged by the thoughtfulness of the Proposal. Although we do not agree with some of the provisions, we believe the Proposal could form the basis for an acceptable solution to preserve the retirement security of multiemployer plan participants and retirees. We look forward to further discussions.

Sincerely,

Mark McManus General President United Association of Plumbers & Pipefitters (UA)	Brian Helm President MCAA

<u>Enclosures:</u>
<u>UA/MCAA Analysis of the Cost Impact of the Grassley/Alexander Proposal (December 2019)</u>
<u>UA/MCAA: Multiemployer Pension Plan Reform Policy Issues: Active Participants Face Higher Contributions and Lower Benefit Levels as Funding Challenges Mount and Are Left Unaddressed by Congress (June 2019)</u>

cc: The Honorable Mitch McConnell
The Honorable Charles E. Schumer