TO: William P. Hite

FROM: James R. O'Connell, Joyce A. Mader and Sally M. Tedrow DATE: December 16, 2014

RE: Multiemployer Pension Reform Act of 2014

In a weekend session, the Senate approved the $1.1 trillion spending Bill that included the Multiemployer Pension Reform Act of 2014 passed by the House. The Bill has been sent to the President for signature. The United Association strongly supported the Multiemployer Pension Reform Act because its reforms are necessary to protect and preserve the multiemployer defined benefit pension system.

There has been a great deal of misinformation about the Reform Act spread by its opponents and by certain misleading press reports. Although there are a number of important provisions in the Reform Act, the information in the press focuses on the provisions that permit failing multiemployer plans to reduce retiree benefits. Some of your members may be unnecessarily worried that their pensions will be reduced as a result of this legislation.

To address the misinformation, respond to the concern of members and provide additional information about the Reform Act we recommend that the United Association advise its Local Unions of the following provisions of the Reform Act.

Tools to Save Failing Multiemployer Plans

The principal provisions of the Reform Act provide additional tools for the Trustees of failing multiemployer defined benefit plans to use to save those plans. In every case these tools are available on a **voluntary** basis, meaning that the Trustees themselves must make an affirmative decision that the use of these tools is necessary and in the best interests of the plan participants. Nothing about these tools is mandated, nor does the Reform Act change longstanding law that Trustees must act only for the "sole and exclusive benefit" of plan participants. Under the law before the Reform Act if a multiemployer plan was projected to become insolvent, the steps that Trustees of that plan could take to save the plan were limited to those available to any other critical status ("Red Zone") plan. The Trustees could reduce some benefits of active employees but the plan was required to pay full benefits of retired employees until the plan literally ran out of money.

When a plan did run out of money, preexisting law **required** the Trustees to reduce benefits for all participants to the levels provided by the multiemployer guaranty fund which was funded by a loan from the Pension Benefit Guaranty Corporation (PBGC)multiemployer guaranty fund. . The maximum benefit that could be paid based on 30 years of service is $12,870 per year. But the PBGC multiemployer program itself is nearly broke. The deficit reported by the PBGC for its multiemployer program was $8.2 billion in the 2013 Annual Report. When PBGC recently issued its 2014 Annual Report the deficit in the multiemployer program had increased to more than $42 billion because some very large multiemployer plans were expected to fail within 10 years (the federal "budget" window covered by the projection in the Annual Report). If that had happened, the retirees in those plans would not have received the $12,870 maximum guaranty—instead, it has been estimated that their benefits would be reduced by 95% paid for only by the incoming premiums from healthy plans, possibly reducing the maximum guarantee to no more than $125 per month.

The most controversial part of the Reform Act permits Trustees of "critical and declining" multiemployer plans (those plans which, despite having taken all reasonable measures to prevent insolvency are, nonetheless, projected to become insolvent), to take action to intervene before spending all of the plans' assets, if such action can prevent insolvency. Such action includes the ability to reduce or "suspend" (as described in the Reform Act) retiree benefits as well as active employee benefits if and only if such a reduction will prevent the plan from failing. Benefits reductions are restricted to no more than necessary for the plan to remain solvent and in no event below a benefit that is at least 10% higher than the PBGC guaranteed amount. <u>Only Trustees of critical and declining plans (the criteria for which are defined in the Reform Act) may apply to suspend retiree benefits.</u> The Reform Act contemplates that the benefits may eventually be restored when the plan recovers financially and the Reform Act includes rules for restoring suspended benefits.

The Trustees of a failing plan must formulate a benefit suspension proposal considering specific factors stated in the Reform Act. The Trustees then submit an application with the suspension proposal to the Secretary of the Treasury. For large plans, a "retiree representative" from current retirees is appointed to represent the interests of retirees and work with the Trustees as they formulate the benefit suspension proposal. The plan is required to provide legal and actuarial support to the retiree representative.

Notice of an application for benefit suspension must be given to all plan participants including retirees. Treasury will publish a notice in the Federal Register asking for comments on the proposal. The Secretary of the Treasury will coordinate with the Secretary of Labor and the PBGC to review and determine whether to approve the Trustees' application for benefit suspensions. If the application is approved, it is submitted to a vote of all participants with the vote to be administered by the agencies (Treasury, Labor, PBGC).

If more than 50% of the participants vote against the proposal, it is overturned. For very large plans (with $1 billion or more in potential claims against the PBGC multiemployer guaranty fund), a participant vote overturning the benefit suspension will mean that the plan will ultimately fail and the liability will be assumed by the PBGC. Because of the large deficit in the PBGC multiemployer program, the Reform Act does permit the agencies to disregard an adverse participant vote and proceed with the benefit suspension, in order to protect the overall multiemployer guaranty program and other plans that may not be able to avoid insolvency by using the provisions in the Reform Act.

As noted above, a suspension of retiree benefits under the rules in the Reform Act is required to provide a benefit greater than that which would be provided by the PBGC if the plan were to fail. In addition, certain retirees are fully or partially protected from suspension.

Benefits are fully protected from suspension starting at age 80 and these protections are phased in for pensioners that begin at age 75.. Disability pensions are also fully protected.

There are other provisions of the Reform Act to save financially troubled multiemployer plans. The Reform Act expands the authority of the PBGC to provide financial and other assistance to merging plans when one plan is headed for insolvency. The PBGC has done this in the past when the multiemployer program was in a stronger financial position. PBGC can provide financial aid to make it possible for a failing plan to be accepted as a merger partner.

The Reform Act also expands the PBGC's partition authority. In a partition, the PBGC divides the plan into its healthy and unhealthy portions. PBGC assumes financial responsibility for the unhealthy portion allowing the healthy portion of the plan to continue. Before the Reform Act, PBGC could only partition plans in limited circumstances involving the withdrawal of an employer in a Chapter 11 Bankruptcy. The Reform Act removes that limitation. There are still restrictions on partition related to the poor financial position of PBGC's multiemployer program but, as that improves, partition will likely become a more frequently used tool to save plans.

Finally, the Reform Act increases the multiemployer PBGC premium from $13 per participant to $26 per participant per year beginning in 2015 and is indexed thereafter. This increase was necessary because of the poor financial condition of the PBGC multiemployer program. PBGC has projected that some multiemployer plans will still fail even with the tools in the Reform Act. The increased premiums will make it more likely that there will be sufficient assets to pay benefits to participants at the level of the PBGC guaranty. In the Reform Act, Congress has required PBGC to issue a report by June 1, 2016 regarding the adequacy of this new premium for the next 20 years. Hopefully, by that time, some of the failing plans will have used the tools in the Reform Act and will no longer be considered part of PBGC's liability.

PPA Sunset Repealed

The Reform Act repealed the sunset provision of the Pension Protection Act which would have limited use of the Yellow Zone and Red Zone Rules for plans meeting such requirements for the first time at the end of 2014. These rules are now permanent. This change, as well as some more specific (and optional) changes to the Yellow and Red Zone Rules, will protect multiemployer plans as they continue to use those rules to recover from the Great Recession.

Provisions Affecting Withdrawal Liability

The Reform Act provides that contribution increases required to fund a Funding Improvement Plan for a Yellow Zone plan or a Rehabilitation Plan for a Red Zone plan and that go into effect in plan years beginning after 2014 will be disregarded in determining the allocation of unfunded vested benefits to an employer for certain purposes. This change will apply to calculations of withdrawal liability and to determinations of the highest contribution rate for purposes of calculating the employer's withdrawal liability payments. These contributions will be treated similarly to the surcharge under Pension Protection Act. The

Reform Act directs PBGC to prescribe simplified methods for application of this provision similar to the simplified method issued concerning the surcharge.

This provision should help Local Unions negotiate for contribution increases to meet the funding obligations of their plans. In the past employers may have resisted such increases because, among other reasons, the increased contributions increased an employer's allocated withdrawal liability and payment amounts upon withdrawal.

An important provision that was removed from the Bill shortly before it was passed by the House is the proposal for new plan designs that would eliminate withdrawal liability for periods after adoption of a new design by plan trustees. We understand this provision was removed because some House committee members felt that more time was needed to review and understand this complex provision. We also understand that there is considerable support for legislation in 2015 to authorize new plan designs. NCCMP has pledged to continue working for legislation to provide multiemployer plan trustees with the flexibility to adopt plan designs that eliminate prospective withdrawal liability and thus encourage the participation of new employers in multiemployer plans and the continued participation of current employers.

Other Provisions in the Reform Act

There are many other provisions in the Reform Act. Some of these involve specific, technical provisions of the Pension Protection Act. We are reviewing these provisions in the Reform Act compared to the proposals in ***Solutions Not Bailouts*** on which they were based to determine if the legislation changed the proposal and if so the impact of the change. We will continue to keep you advised as we sort through and analyze the full text of the Reform Act.