STATEMENT FOR THE RECORD

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EDUCATION & THE WORKFORCE COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

ON

STRENGTHENING THE MULTIEMPLOYER PENSION SYSTEM: WHAT REFORMS SHOULD POLICYMAKERS CONSIDER?

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Introduction

On behalf of our more than 37 million members and all Americans age 50 and older, AARP appreciates the opportunity to submit this statement for the record on the "Solutions, Not Bailouts" proposal by the Retirement Security Review Commission on Multiemployer Pension Plans.[1]

AARP is a nonprofit, nonpartisan organization that strengthens communities and fights for the issues that matter most to families, including healthcare, equal employment opportunity, and retirement security. For decades, AARP has also worked to preserve and strengthen defined benefit pensions as well as ERISA's protections for pension participants and beneficiaries. Defined benefit pension plans have proven themselves to be reliable, efficient, and vital mechanisms for ensuring retirement income security. Unfortunately, such plans increasingly have been supplanted by defined contribution arrangements such as 401(k)s, which shift all of the investment and longevity risk to employees. AARP believes we should take needed steps to preserve those defined benefit plans still in operation, explore ways of incorporating some of their participant protections and efficiencies into the defined contribution system, and devise innovative, improved systems for ensuring retirement security for all.

AARP appreciates the tremendous effort and thoughtful proposal put forward by the Retirement Security Review Commission of the National Coordinating Committee for Multiemployer Plans (NCCMP plan), which is the focus of this hearing. It must be recognized that some deeply troubled multiemployer plans face insolvency within the next two decades. If this happens, only the very low levels of insurance from the Pension Benefit Guaranty Corporation (PBGC) for multiemployer plans will be available – a *maximum* of $12,870 for a 30-year participant – and even that amount is not guaranteed because the PBGC's multiemployer insurance fund itself has far less than it needs to pay projected claims. In the event that the PBGC fund runs short, participants would receive less than the insured amount, or possibly even nothing at all. AARP agrees that "doing nothing" in the face of these threats is not a useful option.

The NCCMP proposal lays out in detail the forces, risks, and liabilities weighing on both employers and employees in multiemployer plans. It seeks to keep troubled plans from becoming insolvent so as to ensure that working-age participants who are contributing to the plan and retirees who are already receiving their hard-earned pensions receive benefits that are above PBGC-insured levels. However, it accomplishes solvency chiefly by granting plan trustees virtually unbridled discretion, allowing them to cut accrued benefits for participants, *including the unprecedented step of reducing benefits of retirees in pay status*. The proposal also does not address the shortfall in the PBGC's multiemployer insurance fund. AARP is sympathetic to the very real challenges facing distressed multiemployer pension plans, and the NCCMP proposal offers a good start for discussing how best to address those challenges. However, AARP has several strong concerns that need to be addressed before any such proposal should be considered.

Alternatives to Cutting Accrued Benefits

If ERISA stands for anything, it stands for the proposition that accrued benefits cannot be reduced. The law provides that *future* benefits can be pared or frozen, but not benefits that have already been earned and vested. The “anti-cutback rule” is perhaps the most fundamental of ERISA's

[1] R. DeFrehn & J. Shapiro, *Solutions not Bailouts: A Comprehensive Plan from Business and Labor to Safeguard Multiemployer Retirement Security, Protect Taxpayers and Spur Economic Growth* (National Coordinating Committee for Multiemployer Plans, Feb. 2013), *available at* http://www.solutionsnotbailouts.com/splash [hereinafter *NCCMP Proposal*].

participant protections. Moreover, in the event an employer terminates the plan, those benefits (up to a given amount) are insured by the PBGC.

AARP understands that active employees have already shouldered reductions in the form of increased contributions and scaled-back benefits. According to NCCMP, employers have already increased their contributions to the point of making themselves noncompetitive in bidding for jobs. We are not advocating that active employees and employers take further "hits" if their participation is at the tipping point. But this does not mean that the next step should be asking retirees to accept benefit cuts. Other than the due diligence requirements, which are advisory in nature, the NCCMP proposal makes cutting retirees its first resort – it is the centerpiece of the proposal based on the assumption that plans have already done everything else they can possibly do, and that insolvency will result in benefit cuts for retirees that are even deeper than those proposed by NCCMP.

What is missing from the NCCMP proposal is an explicit recognition of the considerations that argue against cutting benefits for retirees or near-retirees. Historically, there is a broad consensus that any plan modification that leads to benefit reductions should protect (hold harmless) retirees and near-retirees (e.g., those within 10 years of retirement age). For good reason: those in and near retirement are either already relying on that income, which is usually modest in amount, or have already made plans in reliance on that income. In the case of retirees, they do not have any meaningful opportunity to return to the workforce or somehow generate new sources of income; in the case of near-retirees, they are deemed too close to retirement to be able to effectuate any significant change in career or retirement plans. It is widely viewed as simply unfair to change the rules of the game people have relied upon throughout their working careers.

Accordingly, other alternatives should be fully explored and deployed as an alternative to cutting *anyone's* accrued benefits. Moreover, because retirees generally cannot return to work and lack other options for generating lost income, cutting benefits for retirees in pay status should be the absolute *last* resort. AARP believes that alternative measures should be considered and pursued rather than considering abrogation of the anti-cutback rule, including (not in priority order):

- **Mergers and Alliances** – AARP agrees with NCCMP that mergers and alliances with healthy plans should be encouraged, and not only for small plans. Yet, the NCCMP report states that although many smaller troubled plans could benefit from mergers with healthier plans, funding rules under the Pension Protection Act of 2006 (PPA) and the PBGC's recently restrictive interpretation of its authority are barriers to allowing this to happen. To the extent that overly narrow interpretations of its authority are getting in the way of this potentially helpful strategy, AARP agrees that the PBGC's authority to facilitate mergers and alliances prior to insolvency should be affirmed.

  In addition, as an alternative to reducing accrued benefits, it would be worth exploring whether multiemployer or single employer plans with overlapping sponsors might be able to share participants or assets in a way to so as materially assist troubled plans and still protect participants. Normally, the exclusive benefit and fiduciary rules would and should prevent transfers of assets from one plan to another; however, under very narrow circumstances, limited transfers of assets between one employer's plans have been permitted with the goal of helping preserve benefits for retirees.[2] Some employers and unions participate in more than one plan, some of which may be healthy and one of which may be distressed. To the extent that any given employer and/or union participates in more than one multiemployer plan, and if it would actually be effective and make a difference, the possibility of transferring participants from one plan to another should be considered in order increase the base of contributing active

[2] *See e.g.*, I.R.C. § 420.

participants or otherwise protect retirees. The same might apply for employers that sponsor a healthy single employer plan as well as participating in a distressed multiemployer plan. Certainly, healthy plans should not undertake steps that would put the better-funded plan at risk of underfunding. However, to the extent pooling assets and liabilities in this way might work to save a portion of at-risk participants from cuts in accrued benefits, this step should be considered.

- **Partition** – The PBGC has rarely used its authority to partition the benefit obligations of employers who failed to make contributions or went bankrupt.[3] Assuming that the PBGC had the funds needed to partition off and cover participants whose employers no longer contribute, this step could improve the solvency of the plan for remaining participants. In the case of deeply troubled plans, though, it is unclear whether this remedy would be sufficient to restore solvency, because other factors have also contributed to the distress of these plans. Moreover, this strategy doesn't avoid benefit cuts, at least for those partitioned into the PBGC-assisted plan. However, partition might help staunch concerns about *further* withdrawals from the plan.

- **Increased Funds for the Plans and for the PBGC** – The NCCMP report is called *Solutions, not Bailouts*. Pension plans, and the PBGC, are set up to be self-financing, without the need for federal funds. And for the most part, they have been. Some of the same plans that are so troubled now were adequately funded at the beginning of 2008, when the financial meltdown decimated business and jobs for many of the industries such as construction that sponsor multiemployer plans. The meltdown also led to steep losses in plan asset values and returns, and it produced the need for an extended, stimulative, low-interest rate environment, which is placing inflated funding obligations on employers. Given the role played by large banks and investment houses in creating the financial meltdown, steps can be taken to require them to also help distressed multiemployer plans.

  - Low-interest loans by the large banks and investment funds – Until jobs and higher interest rates return to a certain level that helps these plans regain their financial footing, the banks and investment houses that received TARP funds could be required to make long-term, low-interest loans to them at the same Federal Reserve discount rate they use to loan each other funds.

  - Public guarantee of private loans – Normally, the PBGC's assistance to insolvent multiemployer plans consists of providing loans to the plan so that it can pay benefits, but at lower, PBGC-guaranteed levels. Then, when and if the plan becomes solvent again, it is required to repay the PBGC. Previous hearings have explored whether there might be a way to bring investment banks or hedge funds into this picture, to provide federally guaranteed loans to plans earlier so as to stave off insolvency due to cash flow issues, or even a federal credit facility that would infuse funds to help offset the contributions that employers are having to make for orphans and others in the plan for whom an employer is not contributing.[4] The NCCMP proposal puts forward the idea of federally guaranteed bond offerings that companies could use to pay off their unfunded legacy costs. Options such as

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[3] *See, Challenges Facing Multiemployer Pension Plans: Evaluating PBGC's Insurance Program and Financial Outlook* 8, (Testimony of Joshua Gotbaum, PBGC Director, before the Health, Employment, Labor and Pensions Subcommittee of the House Committee on Education and the Workforce (Dec. 19, 2012)), *available at* http://www.pbgc.gov/Documents/PBGC-Testimony-Multiemployer-Plans.pdf.

[4] *See e.g.*, *Assessing The Challenges Facing Multiemployer Pension Plans* 39-40, 51, Hearing before the Health, Employment, Labor and Pensions Subcommittee of the House Committee on Education and the Workforce. (Transcript) (June 20, 2012), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg74621/pdf/CHRG-112hhrg74621.pdf.

these should be fully considered before the hard-working employees and retirees who rely on these plans should be asked to accept cuts in accrued benefits.

- Increased PBGC premiums – Aside from measures taken to shore up troubled plans, there also need to be measures to bring the PBGC's multiemployer plan insurance fund back into balance, capable of handling its projected liabilities. There is no getting around the fact that the PBGC needs additional funds. Premiums were recently increased in the MAP-21 legislation, but are set at the still-too-low level of $12/year per participant beginning in 2013 – about what it costs to go to a movie. These premiums are inadequate to cover the PBGC's liabilities. They also yield insurance levels that are too low to provide retirement security to participants.

  According to the PBGC, raising premiums to $120/year per participant would reduce the probability of the PBGC's insolvency by 2022 down to zero,[5] at least for plans now on the PBGC's books. The NCCMP plan insinuates that employers cannot bear additional costs such as premium increases of this magnitude without triggering withdrawals and other severe consequences. However, faced with the threat of being forced to accept benefit cuts of one-third or worse under the NCCMP proposal, it is quite possible that retirees and other participants might find it less onerous to be required to pay those premiums. For example, if all of the more than 10 million participants in multiemployer plans were required to contribute $250 per year, it would raise more than $25 billion dollars over the next 10 years, thereby closing the PBGC's deficit and financing more adequate levels of insurance without imposing additional costs on employers. In the past, some retiree health plans have started to charge premiums or exact other forms of cost-sharing of retirees, even though the plans were earlier offered as requiring no contributions from retirees.[6] As compared to the alternatives, participants might welcome the chance to better insure their pensions, especially if they would receive higher levels of insurance protections.

The alternatives discussed above represent "outside the box" approaches to addressing the challenge of insolvent multiemployer plans. But, so is the NCCMP proposal. As long as such approaches are on the table, AARP urges that all due consideration, and *priority*, be given to those proposals that would prevent drastic benefit cuts for participants, particularly any cuts to those in pay status.

Cutting Accrued Benefits

The NCCMP proposal attempts to balance many competing interests: to keep active workers willing to contribute in exchange for the promise of a decent benefit in retirement; to keep employers willing to continue (or new ones to begin) their participation, yet avoid raising their costs too high to maintain their competitiveness; and to preserve benefit payments above levels that would ensue if the plans became insolvent. However, in addition to its failure to require alternatives to cutting accrued benefits, the NCCMP proposal contains two other fatal flaws: it grants too much discretion to plan trustees, and it fails to provide adequate protections for participants, especially

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[5] PBGC Insurance of Multiemployer Pension Plans: *Report to Congress required by the Employee Retirement Income Security Act of 1974, as amended* 6 (Jan. 22, 2013), *available at* http://www.pbgc.gov/documents/pbgc-five-year-report-on-multiemployer-pension-plans.pdf.

[6] *See*, Employee Benefits Security Administration, U.S. Dept. of Labor, *Can the Retiree Health Benefits Provided By Your Employer Be Cut?*, *available at* http://www.dol.gov/ebsa/publications/retiree_health_benefits.html.

for retirees. Consequently, AARP believes that changes are needed before consideration of the NCCMP proposal.

Unbridled Discretion

At the outset, the NCCMP proposal states that certain criteria would need to be met before a plan would be eligible to cut accrued benefits. It would need to be so distressed as to face a projection of insolvency in 20 years or less, the cuts in benefits must fix the problem and restore solvency, and the "plan sponsors and trustees [must] have exercised due diligence in determining that suspensions are necessary, including having taken all reasonable measures to improve the plan's funded position."[7]

What constitutes "reasonable measures" is not specified, but would seem to be encompassed within the list of "illustrative" indicators of "due diligence," i.e., considering factors such as contribution levels, future accrual levels, the impact on ancillary benefits, etc. Yet, having granted that plans should be required to exercise due diligence to be eligible to take drastic actions, the proposal then provides that "it is impractical to develop a precise and complete list of quantitative tests to measure the due diligence of the sponsors and trustees...."[8] This same "illustrative" list of what constitutes due diligence is the basis for the limited parameters allowed for PBGC review and approval.

The plan, as proposed, grants too much, virtually unbridled, discretion to plan trustees. Nothing is required. No priorities are established. AARP understands that plan designs and terms can vary widely and that plan trustees may need to have some flexibility to fashion the measures that will work best for their stakeholders and participants. However, pension plans are not so different from one another that "all reasonable measures" cannot be anticipated and required, or that steps that constitute and are relevant to a finding of "due diligence" cannot be specified.

Moreover, the proposal does not appear to recognize that the trustees may have possible conflicts of interest between protecting the active employees, who are contributing to the plan, paying union dues, and voting for union leadership; the deferred vested employees, who no longer contribute, pay dues, or vote; and the retirees, who may no longer contribute or pay dues, and may not have a vote or representation among the plan trustees. In failing to differentiate among various groups of participants with competing interests, it also fails to provide any appropriate procedural and substantive protections against conflicts of interest.

The inclusion of an "approval process" by the PBGC, as outlined, does not compensate for these problems, as that process is itself inadequate. First, the entire scheme fails to acknowledge that the PBGC is *not* a disinterested watchdog in this context. If plans become insolvent, the agency is on the hook to pay benefits, and at present, it has insufficient funds to do so. It is in the interest of the PBGC to do all it can to prevent the plan from becoming insolvent; it has no incentive not to approve the trustees' plan. Second, even if the PBGC were not so incentivized, its assigned scope of review is limited to whether the plan trustees exercised due diligence. Yet, as stated above, "due diligence" is simply a list of considerations, not a defined set of duties that provides a basis for any real measure of accountability. The plan also calls for PBGC approval of the distribution of suspensions, taking into account "equitable" distribution across populations and "protections" for

[7] *NCCMP Proposal*, *supra* n. 1, at 24. AARP reads this last criterion as requiring plans to have already taken "all reasonable measures" *before* determining cuts are necessary; to the extent that it does not, it should be modified to do so. Every plan should consider other measures rather than consider cuts to accrued benefits.
[8] *Id*.

"vulnerable populations."[9] However, these terms, too, are undefined. Third, the PBGC must defer to the plan's decisions "absent clear and compelling evidence to contrary." It is difficult to imagine what evidence would be sufficient, given that plan trustees are not required to do anything or have their decisions comport with any substantive standards, other than to achieve eventual solvency. Finally, if the PBGC fails to approve the plan within six months, the plan is "deemed approved" and in accordance with fiduciary standards, possibly preempting challenges, or at least creating a presumption of compliance. The entire process amounts to little more than a rubberstamp of the trustees' decision.

Several changes are needed to address these deficiencies. First and foremost, "all reasonable measures" and "due diligence" cannot be whatever the trustees say they are. To prevent reductions in accrued benefits, it would be entirely appropriate to *require* certain steps be taken first. In addition to the alternatives already discussed, AARP believes that the standard steps should be required, such as cutting "extras" that are not part of accrued benefits (e.g., 13th checks to retirees), and paring future accruals. Moreover, the due diligence element needs to be strengthened by *requiring* trustees to follow certain specified standards and procedures. That is not to say there needs to be a one-size-fits-all list, every item of which is required. However, there should be a list of standards and priorities, based on longstanding principles of fairness and ERISA, which should apply. Adherence to that list of standards, considering the facts and circumstances in which the plan finds itself, should be considered the measure for determining whether the trustees did or did not exercise due diligence.

There also needs to be a stronger, more independent approval process. First, the PBGC's scope of review of the trustees' plan should be broadened to all relevant factors weighing in favor and against adoption of the plan, including but not limited to strengthened standards of due diligence. This review should preferably be done with the required approval of someone with some independence, such as the newly created Participant and Plan Sponsor Advocate, who is charged with advocating for "the full attainment of the rights of participants in plans trusteed by the corporation,"[10] or in this case, plans at risk of being trusteed by the corporation. AARP agrees with NCCMP that the agency should be given a time limit for acting; the PBGC will need to weigh in on the question of whether six months is reasonable and appropriate. However, we are uncomfortable with the notion of deemed approval by default, especially when people’s benefits are at stake. AARP is open to other alternatives. Perhaps the plan could be given the right to seek a time-limited review by the Employee Benefits Security Administration, or an independent third party, in order to better ensure approval within a defined time limit.

<u>Inadequate Protections for Participants, Especially Retirees</u>

AARP is also extremely concerned that the NCCMP proposal is substantially lacking in participant protections, especially for retirees. We start with the fact that consideration of *retirees* appears *nowhere* in the list of "illustrative" factors that would be used to determine due diligence! The plan's trustees, and then by design the PBGC, are not called upon by a single factor to weigh the impact of the solvency plan on retirees. Moreover, it seems to us that the due diligence factors that *are* listed appear to tilt *toward* cutting benefits for retirees. Clearly, the kind of substantive standards of fairness and ERISA that AARP believes should be required as part of any measure of due diligence would and should include the historic protections afforded to participants who are already retired and in pay status.

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[9] *Id*.

[10] Moving Ahead for Progress in the 21st Century (MAP-21), Pub. L. No. 112-141, 126 Stat. 405, 856, Sec. 40232 (2012).

In addition to omitting any consideration of retirees, the plan makes no differentiation in treatment between different groups of participants and beneficiaries. This is also a fatal flaw. There is nothing to prevent the trustees' plan from treating retirees or near-retirees more adversely than it treats newly vested participants, for example. The only allusion to differentiation in the proposal appears in the provision regarding the distribution of benefit suspensions. There, the proposal specifies that benefit cuts should be distributed "equitably" across the participant population, and that undefined "vulnerable" populations should receive unspecified protections.

These objections regarding lack of regard for retirees and near-retirees are not ones of the tail wagging the dog, or allowing concerns about the vulnerable to overwhelm the bigger proposal, as some have suggested. This is a huge problem *with* the bigger proposal. It is not very meaningful to cordon off a “vulnerable” group as if they are a small part of the population, when the median multiemployer pension benefit received by retirees is so modest: only about $8,300/year in 2009.[11] If, in fact, most of the participant and beneficiary population in multiemployer plans are receiving relatively small pensions of well under $10,000/year, AARP would contend that most retirees would qualify as "vulnerable" and unable to bear any benefit cuts whatsoever.

AARP recognizes that retirees and near-retirees could be hurt the worst in the event plans become insolvent. However, the NCCMP proposal must be modified in several ways. First, consideration of the status of retirees must be an explicit factor that is part of any evaluation of due diligence and fairness. Second, the plan should differentiate among groups of participants. There needs to be an established order of priority in how any proposed benefit suspensions would be handled in order to protect retirees in pay status, as well as near-retirees. This ranking should be mandatory/statutory. Third, any benefit cuts should also be expressly limited, perhaps according to a formula based on age or income, or limited on a sliding scale based on the size of the pension, e.g. there can be no cuts to those with benefits of $10,000 or less, or limits on cuts for those of higher age. Certainly, benefit protections that are only 10% higher than the amount provided by the PBGC in the event of insolvency is not much protection, and should be much higher.

AARP agrees that cuts in optional, adjustable, or "ancillary" benefits should come before consideration of cuts in core pension benefits. However, AARP disagrees that benefits for surviving spouses (the 50% qualified joint and survivor annuity), or former spouses/surviving spouses who have received a court-ordered share of a participant's pension, are "ancillary" benefits. These benefits were part of deferred compensation, jointly earned and jointly owned by both partners in the couple. They are considered part of the core benefit, and respect for these beneficiaries' rights are a condition of the plan's tax-qualified status. The NCCMP proposal does not state exactly how it would affect the rights of beneficiaries, or how, for example, a qualified domestic relations order that orders payment of a particular dollar amount would be fulfilled. AARP would maintain that the benefits of beneficiaries should be handled in a way that is congruent with the benefits of the participant. For instance, if the participant's benefits are reduced by 15%, so should the benefits of the beneficiary; the cuts to the beneficiary should not be larger.

AARP agrees with the proposal's provisions that any suspension of benefits "must achieve, but not exceed," the amount needed to achieve solvency. However, should such a proposal be adopted, we would take issue with the framing of another stated limitation. The proposal specifies, presumably after the plan achieves solvency, that any future benefit improvements "must be accompanied by equitable restoration of suspensions, where the liability value of the improvement for actives cannot exceed the value of the restoration for retirees."[12] Should retirees’ benefits be

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[11] *See,* GAO, *Private Pensions: Timely Action Needed to Address Impending Multiemployer Plan Insolvencies* 32 (March 5, 2013), *available at* http://gao.gov/assets/660/653383.pdf.
[12] *NCCMP Proposal*, *supra* n. 1, at 25.

reduced, it is insufficient to specify that improvements or restorations of benefits for active participants cannot exceed the value of restoring benefits to retirees. Under such a plan, it should be an absolute requirement that once solvency is achieved, the benefits of retirees are restored first, before there is *any* improvement or restoration of benefits to active participants. Once all suspended accrued benefits have been restored in full to retirees, improvements to the benefits of active participants would be permitted.

In summary, AARP believes we should not cut anyone's accrued benefits, especially those of retirees and near-retirees; other alternatives should first be explored and implemented. If Congress is committed to consideration of proposals to permit reductions, cuts to retirees and near-retirees should be the last resort, and severely limited in scope and amount. We do not countenance vague assertions of protections for vulnerable populations. Nor do we consider statutorily required benefits for surviving spouses and former spouses to be ancillary. Protections for these groups must be strong and explicit. Finally, *before* any future improvements in retirement benefits should be permitted, any benefit cuts for retirees should be required to be restored in full. In fact, periodic reviews of the implementation of any plan that includes accrued benefit reductions should be mandatory to determine whether solvency has been achieved and/or whether prior cuts could be partially restored.

There can be no doubt that the current proposal is contrary to one of the most central and fundamental tenets of ERISA, and would be a bad precedent for pension law generally. AARP also has no doubts that such a precedent would encourage other efforts to cut back accrued benefits. To prevent any further erosion of pension law, any proposal that advances should make clear that the measures permitted are confined only to the unique and difficult circumstances currently faced by multiemployer plans. Moreover, Congress should consider restricting the plans eligible to propose these unprecedented measures. Plans that are operating at a deficit but have 15-20 years until they face insolvency might be able to obtain low-cost financing or take steps that would significantly "bend the curve" away from insolvency, thereby lessening the need for more draconian measures.

Other Issues in the Proposal

The NCCMP proposal also proposes allowing plans to "harmonize" their normal retirement age with those of Social Security, as a way of strengthening the system.[13] Private sector pensions are barred from raising their retirement age for full benefits past 65.[14]

AARP would caution against this proposal for several reasons. First, the types of jobs held by participants in many multiemployer plans are physically demanding and/or are performed under difficult working conditions. Many of their participants will not be able to work until age 65, let alone later. It is for this very reason that many unions have been among the most ardent opponents of raising the early retirement age in Social Security above 62 and of raising the full retirement age beyond the levels already made in the 1983 changes.[15] Second, most pension plans already provide for actuarially reduced benefits in the event of early retirement. Raising the full retirement age in pension plans would have the same effect as it has in Social Security: to further reduce the benefits the participant receives, for life. Third, there would be no way to limit this change to

[13] *NCCMP Proposal*, *supra* n. 1, at 23.
[14] 29 U.S.C § 1056.
[15] *See e.g.*, International Brotherhood of Teamsters Resolution on Social Security/Medicare (July 1, 2011), *available at* http://www.teamster.org/content/social-securitymedicare; AFL-CIO, *What Is Social Security? available at* http://www.aflcio.org/Issues/Retirement-Security/What-Is-Social-Security.

multiemployer plans on the brink of insolvency. Finally, especially for those with physical disabilities or illness that prevents them from working longer, being able to collect a full pension at 65 enables the pensioner to make it until 66 or 67 when they can collect their full Social Security, in order to maximize what may be a small retirement income. AARP believes that retroactively increasing the retirement age for pensions, as is proposed, would impose an undue hardship.

AARP does believe that there needs to be better ways of handling bankruptcies by employers who sponsor or participate in pension plans. Currently, employers can use bankruptcy to discharge their pension liabilities and to foist payment responsibilities onto others. Employees and pension participants should stand first in line among creditors in a bankruptcy court. AARP does not have specific suggestions for addressing the problem of withdrawal liability facing multiemployer plans, however, we agree that action is needed to protect against excessive liability for orphans and other disincentives on remaining employers.

Finally, the NCCMP report puts forward some proposals for the redesign of pension plans in the future. AARP has not analyzed nor do we take a position on those plans here. However, AARP applauds the efforts of NCCMP and many others who recognize the unique value of defined benefit plans for both employers and employees, and recognize the importance to retirement security of best maintaining them.

Conclusion

AARP agrees the NCCMP proposal attempts to address real problems faced by multiemployer plans, and appreciates its attempt to ensure everyone comes out better than they would under insolvency. However, we are not convinced that alternatives to cutting accrued benefits – a fundamental protection under ERISA – have been adequately considered. We are convinced, however, that at the very least, more protections for participants and beneficiaries must be included to ensure the proposal is a preferable alternative to insolvency.