**Comments of the Western Conference of Teamsters Pension Plan
to the House of Representatives Committee on Ways & Means
Pensions and Retirement Tax Reform Working Group
Representative Pat Tiberi, Chair, and Representative Ron Kind, Vice Chair**

April 15, 2013

Mr. Tiberi, Mr. Kind and Members of the Pensions and Retirement Tax Reform Working Group, on behalf of the Western Conference of Teamsters Pension Plan, thank you for the opportunity to submit the following comments on the provisions of the Internal Revenue Code that affect multiemployer defined benefit plans. The multiemployer plan funding rules contained in our tax code are crucially important to the financial health of multiemployer plans and the retirement security of millions of American workers. We appreciate the leadership of the Working Group in addressing these and other pension and retirement issues and in seeking input from stakeholders like the Western Conference Plan.

These comments provide a brief overview of the Western Conference Plan and the multiemployer funding rules enacted by Title II of the Pension Protection Act of 2006. The Western Conference Plan strongly supports reauthorizing these funding rules, which sunset on December 31, 2014. The Western Conference Plan also supports five minor modifications to the funding rules, which are described in detail below.

We understand that Members of the Working Group have recently heard a presentation of the National Coordinating Committee for Multiemployer Plans ("NCCMP") regarding the recommendations contained in *Solutions Not Bailouts*, a report of the NCCMP's Retirement Security Review Commission. The Western Conference Plan provided input to NCCMP during NCCMP's development of the report. Given NCCMP's comprehensive presentation, these comments will not cover the broader multiemployer plan issues raised by the report, but rather focus on multiemployer funding provisions particularly important to the Western Conference Plan.

Background on the Western Conference Plan

The Western Conference Plan, the largest multiemployer pension plan in the country, provides secure retirement benefits to approximately 375,000 active and inactive vested employees and 205,000 retirees. Since 1955, we have provided retirement benefits to over 300,000 additional retirees and their families. The Plan primarily covers the 13 western states – Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming – and we serve participants and retirees in every State and almost every U.S. Congressional district. Plan assets exceed $32 billion, and annual employer contributions total $1.3 billion. In 2012, we paid $2.2 billion in benefits to plan participants and beneficiaries in all 50 states and the District of Columbia.

Almost 1,600 employers, engaged in over 50 different industries, participate in the Plan. Our employers include large companies such as United Parcel Service, Safeway, Coca-Cola, and Waste Management. Along with these large companies, over three-quarters of our contributing employers are small businesses with fewer than 50 employees. Our contribution pool of employers is growing; in 2012, the contributions of our employers increased by 3%.

The Plan is financially healthy and has been in the green zone of the Pension Protection Act (discussed further below) since the implementation of that law's funding rules. The Plan is currently over 90% funded. The Plan's investments earned over 13% in 2012, well exceeding the Plan's actuarial earnings assumption of 7%. Over the past 20 years, even counting the stock market declines in 2008, the Plan's investments have averaged a return of over 8% annualized.

Sunset of the Pension Protection Act Multiemployer Rules

Title II of the Pension Protection Act of 2006 ("PPA")[1] amended the Employee Retirement Income Security Act ("ERISA") and the Internal Revenue Code[2] to establish several funding requirements for multiemployer pension plans. Among other things, the funding provisions created mandatory procedures to improve the funding of multiemployer plans in endangered ("yellow zone") or critical ("red zone") status. (Plans that are neither endangered nor critical are considered "green zone" plans.)

A multiemployer plan is in the yellow zone if the plan is not in the red zone and (1) the plan's funded percentage is less than 80% or (2) the plan has an accumulated funding deficiency for the current plan year or a projected accumulated funding deficiency for any of the next six plan years. Generally, a multiemployer plan is in the red zone if the plan is less than 65% funded and (1) will have a projected funding deficiency within five years, or (2) is projected to be unable to pay benefits within seven years.[3]

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[1] P.L. 109-280 (2006).

[2] See Subtitle B of Title II of the PPA, which, among other changes, added new sections 431 and 432 to the Internal Revenue Code of 1986 (as amended).

[3] A plan can also be in the red zone if:

> The plan's normal cost for the current plan year, plus interest for the current plan year on unfunded benefit liabilities, exceeds the present value of the reasonably anticipated employer contributions for the current plan year, plus the present value of nonforfeitable benefits of active participants and the plan (1) has an accumulated funding deficiency for the current plan year, or (2) is projected to have an accumulated funding deficiency for any of the next four succeeding plan years; or
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> The sum of the market value of plan assets plus the present value of the reasonably anticipated employer contributions for the current plan year and each of the four

(continued…)

Multiemployer plans in the yellow zone are required to adopt a "funding improvement plan." Pursuant to its "funding improvement plan," a yellow zone multiemployer plan must reduce its underfunding by certain benchmarks within a set time period. Plans in the red zone must adopt a "rehabilitation plan" to emerge from the red zone within ten years.

Other special rules apply to yellow zone and red zone plans. For instance, yellow zone and red zone plans generally cannot amend the plan to increase plan liabilities by increasing benefits. Plans in the red zone must abide by certain restrictions on paying lump sum contributions. Plans in the red zone are also permitted to reduce the adjustable benefits (for example, death benefits, early retirement subsidies, or other ancillary benefits).

The funding provisions, including the "zone" system described above, are scheduled to sunset on December 31, 2014. Following the sunset, ERISA and Internal Revenue Code rules in effect before the above provisions were enacted will be applicable again.

Reauthorize the Pension Protection Act Multiemployer Rules with Minor Changes

The Western Conference Plan strongly supports the reauthorization of the multiemployer funding provisions of the PPA. We believe that these funding rules have worked well for the majority of plans and have done much to protect the retirement security of Plan participants and retirees. Reauthorizing these funding provisions before they sunset at the end of 2014 would help to secure the retirement benefits of millions of American workers and provide certainty to the employers that participate in multiemployer plans.

In addition to the reauthorization of the multiemployer funding provisions, we also support the following modest changes to the PPA multiemployer funding rules. Since the passage of the PPA in 2006, a few aspects of the multiemployer funding rules have not functioned as intended, particularly with respect to the interaction between the red zone and yellow zone rules. Including these small changes in reauthorization legislation would strengthen the current system going forward.

1. **Provide an election to accelerate to critical status.**

The Plan supports adding a provision to the current multiemployer funding rules that would allow a plan to voluntarily elect to enter the red zone in the current year if the plan is projected to enter the red zone within the next five years.

Many multiemployer plans are financially healthy; that is, they are in the green zone and projected to stay there. However, sometimes plans that are in the yellow zone, or even plans currently in the green zone, can see from their projections that they will enter the red zone in the future. Early election to enter the red zone will allow the electing plan to access the tools

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succeeding plan years is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the four succeeding plan years.

available to plans in the red zone in order to improve their financial condition. For example, plans in the red zone may adopt a rehabilitation plan that includes a combination of employer contribution increases, expense reductions, and benefit adjustments in order to become financially healthy.

2. Resolve "revolving door" issues.

The Plan supports correcting "revolving door" issues that often force plans to reenter the red zone immediately after exiting the red zone.

Under current law, the test for entering the red zone and the test for emerging from the red zone inconsistently apply funding rules related to amortization extensions and the shortfall funding method. For example, in testing whether a plan should *enter* the red zone, the plan's actuary is required to disregard funding relief provided through amortization extensions. However, in deciding whether the plan qualifies to *exit* the red zone, the actuary is required to take the impact of amortization extension relief into account.

The differences between these tests result in a "revolving door" scenario. Plans that meet the test for exiting the red zone (under which funding relief is taken into account) immediately reenter the red zone the following year (because funding relief is not taken into account). To eliminate "revolving door" issues, the Plan supports amending the criteria for reentry into the red zone. Specifically, if a plan has previously entered and then exited the red zone, that plan should not be required to reenter the red zone the following year unless it fails to satisfy the red zone *exit* criteria for that year.

3. Harmonize red zone and yellow zone rules for certain issues.

Currently, the rules for red zone plans regarding benefit improvements, contribution increases, and waiver of excise taxes are more lenient than the rules for yellow zone plans regarding those issues. For example, plans in the red zone are sheltered from the excise tax on funding deficiencies as long as they are in compliance with their required rehabilitation plan. Plans in the yellow zone that are in compliance with their required funding improvement plan are not afforded the same protection.

Because the yellow zone rules are more onerous than the red zone rules in these areas, yellow zone plans sometimes actively seek to enter the red zone. To eliminate this incentive, the Plan supports applying red zone rules related to benefit improvements, contribution increases, and waiver of excise taxes to yellow zone plans. Importantly, the ability of plans to reduce adjustable benefits in the red zone—a measure that need only be taken by very troubled plans—would *not* be extended to yellow zone plans.

4. Correct withdrawal liability incentives.

Red zone and yellow zone employers often have to increase contributions in order to comply with the funding improvement or rehabilitation plans that their multiemployer pension plans adopt pursuant to the funding rules of the PPA. These increased contributions are not meant to provide additional benefits to participants, but instead to keep struggling plans on the path to becoming financially healthy.

Despite the fact that they are not linked to increased benefits, these increased contribution rates increase an employer's withdrawal liability—making it more costly for the employer to leave the plan should it choose to do so. Thus, current law produces a perverse incentive for many employers to preemptively withdraw from a plan before they are required to increase contributions, rather than comply with the funding improvement or rehabilitation plan (and thus be forced to accept greater total withdrawal liability following the required benefit increases). Early withdrawals from a multiemployer plan results in underfunded, or even insolvent plans, as remaining employers struggle to support "orphaned" beneficiaries.

To avoid this result, the Plan supports a correction providing that contribution increases attributable to compliance with a funding improvement or rehabilitation plan will be disregarded for purposes of determining the amount of withdrawal liability that is allocated to a withdrawing employer.

5. **Provide an automatic "trigger" for funding provisions when markets are in dramatic decline.**

The Plan supports additional language that automatically triggers certain funding provisions when plans encounter a dramatic decline in the markets. These provisions would include more time to amortize investment losses resulting from such a decline, a longer asset smoothing period to recognize those losses, and a limited extension of funding improvement/rehabilitation periods for yellow and red zone plans to return to green zone status.

Amortization extensions allow a plan to spread its payments for its liabilities over a longer period of time, improving plan cash flow. Asset smoothing allows annual fluctuations in a plan's investment performance to be averaged, providing employers with greater predictability with respect to the value of their pension assets. Extending the funding improvement/rehabilitation periods for yellow and red zone plans gives these plans more time to absorb material market losses that were not anticipated when their funding improvement/ rehabilitation plans were negotiated and implemented.

Both amortization extensions and modified asset smoothing provisions were previously approved by Congress in the Pension Relief Act of 2010. The Worker, Retiree, and Employer Recovery Act of 2008 granted yellow and red zone plans extensions of their funding improvement/rehabilitation periods. None of these provisions would require a federal financial contribution or additional tax revenues.

Instead of requiring Congress to legislate if the country experiences a drastic market fluctuation, an automatic trigger provision would ensure that funding rules can be used more quickly and efficiently. Amortization extensions, asset smoothing, and extensions of funding improvement/rehabilitation periods provided very effective help to plans following the market crash of 2008. Allowing plans to access these funding provisions automatically in similar situations in the future would speed plans' recoveries and do much to protect retiree benefits.

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The Western Conference Plan appreciates the opportunity to provide these comments to the Pensions and Retirement Working Group. We look forward to working with Working Group members to support thoughtful, targeted legislation that will provide genuine retirement security for the millions of Americans who rely on multiemployer pension plans. Should you have any questions, please do not hesitate to contact Holly Fechner or Beth Bell, Covington & Burling LLP at [redacted], or Charles Storke, Trucker Huss, at ([redacted]

Sincerely,

Richard L. Dodge	Chuck Mack
Chairman	Co-Chairman