May 25, 2010

United States House of Representatives
Washington, D.C. 20515-3512

Dear Representative Tiberi:

Recent stories have characterized the Preserve Benefits and Jobs Act of 2009 (HR 3936 introduced by Reps. Pomeroy and Tiberi) as "a union bailout" which "puts taxpayers on the hook for $165 billion" attributable to multiemployer plans.

By way of background, multiemployer plans are collectively bargained, jointly administered plans funded by a number of contributing employers. Contributions are negotiated through the collective bargaining process and are fixed for the term of the agreement. A key feature of multiemployer plans is that when an employer withdraws from the plan, it is liable for its share of the plan's unfunded benefits. If an employer fails to pay its liability, the liability is shifted to the remaining contributing employers. It is this element of multiemployer plan system that requires legislative attention.

As the legislation is so important to securing the pensions of hundreds of thousands of U.S. workers and retirees, and averting the Pension Benefit Guaranty Corporation ("PBGC") from inheriting a much larger future obligation, we employers want to set the record straight. Here are some of the myths and the real facts:

Myth: The legislation is a "union bailout bill."

FACT: Nothing can be further from the truth. The legislation modifies a 30-year old pension framework that forces employers to become insurers for other employers that go out of business. Indeed, a March 2004 GAO report on multiemployer plans leads with the statement that "[t]he framework governing multiemployer plans generally places greater financial risk on employers and participants and less on PBGC than does PBGC's single-employer plans." HR 3936 protects contributing employers from the unsustainable cost of funding benefits of retirees who never worked for the employer, but rather for a competitor – or in some unrelated industry.

Myth: The problems facing these plans are the result of "irresponsible mismanagement" and "poor investment decisions."

FACT: These funds have independent, professional investment advisors. For example, the Central States, Southeast and Southwest Areas Pension Fund ("Central States") has operated under judicial and Department of Labor oversight since 1982, and the independent named fiduciaries are reviewed by the Department of Labor and approved by the U.S. District Court. These fiduciaries have exclusive management and control of the investment functions.

Myth: The funding issues facing the multiemployer plans "have been looming since well before the stock market drop and recovery over the past two years."

<u>FACT</u>: One of the overriding principles of the Pension Protection Act of 2006 was to force unions and employers to take unpopular but necessary measures to shore up the plans. And the plan was working – until the stock market collapse in 2008. For example, as of January 1, 2008, the funding level for the Central States Fund stood at 75.2%, with a plan in place to achieve 100% funding. No one anticipated the sharp declines in 2008, which left the Central States funding level at 48%.

Myth: The legislation is "nothing more than a transfer of $165 billion in labor pension debt over to U.S. taxpayers."

<u>FACT</u>: Hyperbole sells. The $165 billion amount represents the estimated underfunding of <u>all</u> 1,500+ multiemployer plans covering almost 10 million Americans. Just three weeks ago, the PBGC reported results from its new Multiemployer Pension Insurance Modeling System, which tracks risk to the PBGC's multiemployer program. According to its modeling, the average PBGC's exposure to risk for its multiemployer program in 2019 is $4.0 billion (in 2009 dollars).

Myth: The Pomeroy bill would allow the Major League Baseball Players Association and the National Football League Players Association to transfer their liabilities to taxpayers, thus shifting to taxpayers the pensions of millionaire athletes.

<u>FACT</u>: Another statement that has no basis in fact. The legislation imposes strict eligibility requirements on the types of plans that would qualify for relief. The strict requirements reflect the unique demographic and funding problems facing a handful of multiemployer plans. For example, in order to be eligible for relief, the Fund must have a high ratio of retirees to active participants as well as a high ratio of benefit payments to employer contributions. For the record, the average retirement benefit from the Central States Fund is $14,076 per year – or about $271 a week – hardly a millionaire's pension.

<u>THE EMPLOYER STORY</u>:

- We employers are committed to fully funding the benefits of <u>our</u> <u>employees</u> without any government assistance. However, we cannot continue funding the benefits of retirees who never worked for our companies. More than half of our contributions go to fund the benefits of these retirees.
- The increasing burden is driving more employers out of business, which only exacerbates the problem.
- Hardest hit by these burdens are small businesses, which can least afford these costs. In the Central States Fund, 90% of the contributing employers are small business owners (with less than 50 employees).
- H.R. 3936 (and its Senate counterpart, S. 3157) provides a mechanism for which, in very limited circumstances, employers would be relieved of the burden of funding the retirement obligations of retirees that never worked for them.
- This mechanism already is in place in the single-employer insurance system, whereby the PBGC assumes the retirement obligations of a bankrupt plan sponsor.
- The PBGC also already has the authority to partition multiemployer plans (but does not use its authority).
- Essentially, H.R. 3936 and S. 3157 allows employers (in very limited circumstances) to shed its role as a surrogate PBGC that we have assumed for the past 30 years – and have the real PBGC step in.

For all these reasons, H.R. 3936 and S. 3157 are critical to employers across the country. We are grateful and appreciate your continued support of this very important legislation.

Respectfully submitted,

ASSOCIATED WHOLESALE GROCERS, INC.

CONAGRA FOODS, INC.

DAIRY FARMERS OF AMERICA

DEAN FOODS

KELLOGG COMPANY

LAND O'LAKES, INC.

PRAIRIE FARMS DAIRY

SARA LEE CORPORATION

SCHNUCK MARKETS, INC.

SUPERVALU

THE KROGER CO.